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

REGINA BOZIC, on behalf of herself, all
others similarly situated, and the general
public,

Plaintiff,

v.

HENNY DEN UIJL; an individual,
SANDRA DEN UIJL; an individual,
BRYAN CORLETT; an individual,
OBESITY RESEARCH INSTITUTE, a
California Limited Liability Company,
CONTINUITY PRODUCTS, a Delaware
Limited Liability Company; NATIONAL
WEIGHT LOSS INSTITUTE, a California
Limited Liability Company; ZODIAC
FOUNDATION, a California Limited
Liability Company; CONVERSION
SYSTEMS, a California Limited Liability
Company; INNOTRAC CORPORATION, a
Georgia Corporation,

Defendants.

CASE No. '16CV0733 BTM RBB

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DECLARATORY JUDGMENT,
EQUITABLE AND INJUNCTIVE
RELIEF, MONETARY DAMAGES,
AND CONSUMER REDRESS**

Jury Trial Demanded

**CLASS ACTION COMPLAINT FOR DECLARATORY JUDGMENT, EQUITABLE AND INJUNCTIVE
RELIEF, MONETARY DAMAGES, AND CONSUMER REDRESS**

1 Plaintiff Regina Bozic, by and through her undersigned counsel, hereby brings the
2 below claims on behalf of herself, all others similarly situated, and the general public
3 against Defendants Henny Den Uijl ("Henny"), Sandra Den Uijl ("Sandra"), Bryan
4 Corlett, Obesity Research Institute, LLC ("ORI"), Continuity Products, LLC
5 ("Continuity"), National Weight Loss Institute, Zodiac Foundation, LLC ("Zodiac"), ,
6 Conversion Systems, LLC, ("Conversion"), and the Innotrac Corporation ("Innotrac")
7 alleging the following on personal knowledge or, where Plaintiff lacks personal
8 knowledge, upon information and belief, including the investigation of her counsel. The
9 claims and other legal contentions alleged in this complaint are warranted by existing law
10 or by a non-frivolous argument for extending, modifying, or reversing existing law or for
11 establishing new law and all factual contentions have evidentiary support or will likely
12 have evidentiary support after a reasonable opportunity for further investigation or
13 discovery:

14 INTRODUCTION

15
16 1. Thomas Edison once said: *"For faith, as well intentioned as it may be, must*
17 *be built on facts, not fiction— faith in fiction is a damable false hope."* This case involves
18 one of the most damable and predatory types of false hope— promising consumers that
19 by taking a "***clinically proven***" weight loss pill, they will "***lose weight without diet and***
20 ***exercise.***" Such tempting claims give people faith; After all, why would the advertisers
21 say it if it were not true? Wouldn't they be breaking the law if their claims were false?
22 But as Thomas Edison has told us, faith must be built on facts— not fiction.

23 2. There are no facts supporting the promises made by the Defendants in this
24 case with respect to their advertising of Lipozene. Defendants have been warned before
25 about their damable false hopes. But Defendants still spread the fictions, that lead to
26 consumer faith, which eventually lead to even more damnable false hopes.
27 Defendants must now answer to consumers.

3. This is a class action lawsuit on behalf of purchasers of Lipozene, which is marketed as "**AMERICA'S NUMBER #1 DIET SUPPLEMENT**" and claims to have "**Sold Over 25 MILLION Bottles.**"

4. Through a uniform and comprehensive marketing scheme, Lipozene is advertised online, in magazines, and in retail stores as being the "CLINICALLY PROVEN" weight loss supplement that helps users "LOSE WEIGHT WITHOUT DIET AND EXERCISE."

5. Lipozene is a staple of television infomercial programming, and has been featured on late night television since at least 2006. Early Lipozene commercials featured a then unknown television actress— Stacey Travis.¹ She asked Americans some important questions about their weight loss options at a time when weight loss surgeries like liposuction were garnering media attention.

Are you overweight?

Has it gotten so out of control that you've considered liposuction or other surgery?

Well you are not alone. **Many of us have given up the hope to lose weight.**

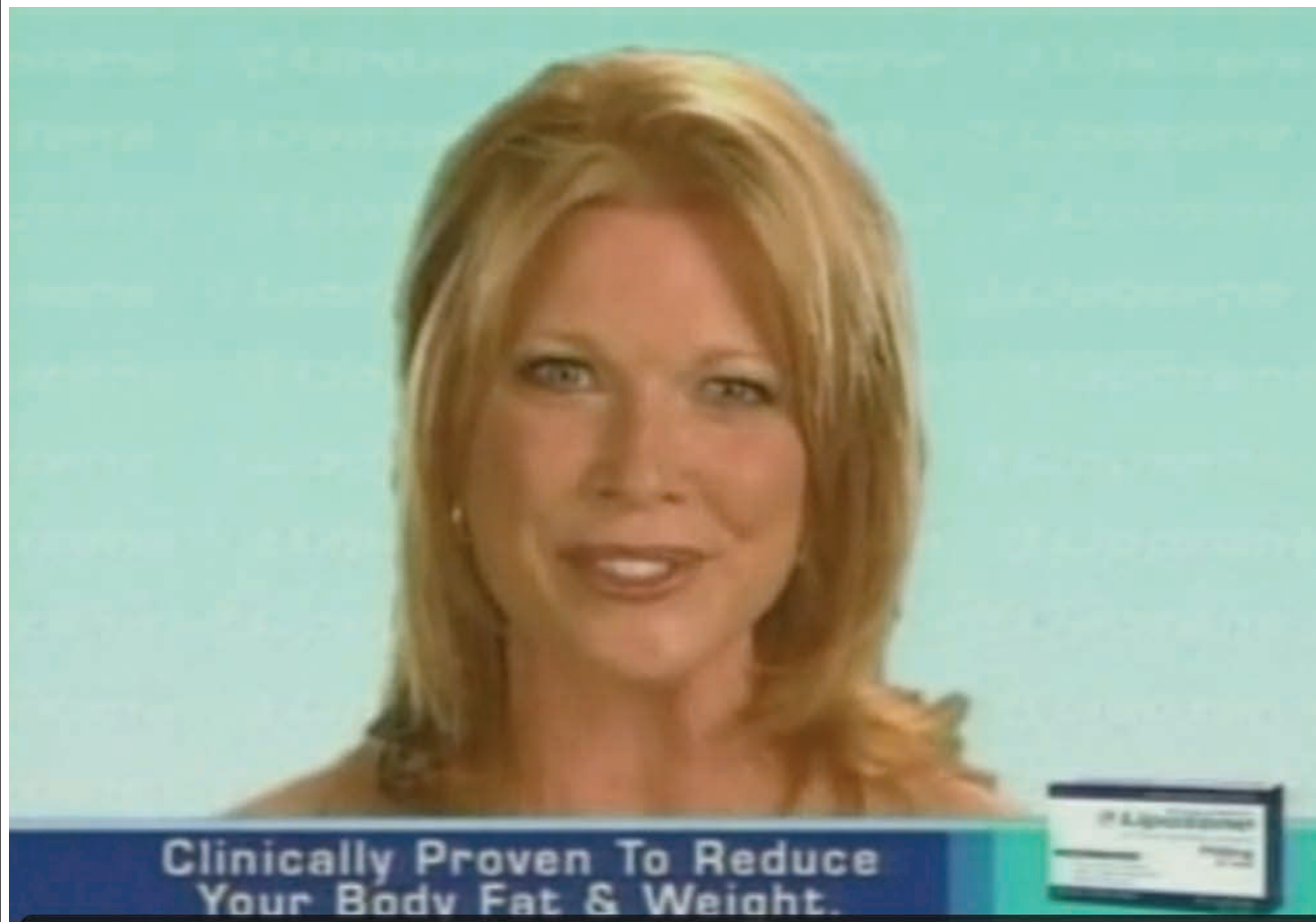
Liposuction surgery can be dangerous and expensive.

So before you consider surgery, listen to this.

Researchers have now discovered a capsule that helps remove this body fat and reduce your weight without harmful surgery.

It's called LIPOZENE- *Clinically proven to reduce your body fat and weight without surgery.*

¹ See Filmography of Stacey Travis, INTERNET MOVIE DATABASE (IMDB.COM), available at <http://www.imdb.com/name/nm0006826/>.



6. A *Los Angeles Times* article has called Lipozene “a dominant presence on basic cable.”² In 2008, ABC News published the following story titled “*Can a Diet Pill Work Without Diet or Exercise?*”

² Chris Woolston, *WEIGHT LOSS: A HOW-TO GUIDE / THE HEALTHY SKEPTIC Bold claims for Lipozene, but not Much Evidence*, LOS ANGELES TIMES (Jun. 9, 2008), available at <http://goo.gl/jmPm4J>. (“The bottom line: There’s simply no good evidence that the small doses of glucomannan offered by Lipozene could lead to significant weight loss, says Vladimir Vuksan, a professor of nutritional sciences at the University of Toronto.”).

1 America's obesity struggles have made international headlines in the
2 last several years, and with the new year have come countless slim-
down resolutions.

3 ***

4 And now some health-care professionals are voicing concern over one
5 infomercial suggesting easy weight loss without having to work hard
through diet and exercise.

6 "There's no secret remedy that has been buried for all these decades. I
7 promise you, if there were something good, we'd all know about it. It
8 would be on the front page of the newspaper. We'd all be using it and
9 they wouldn't have to promote it on television," said George
10 Washington University Weight Management Program medical director
Arthur Frank.

11 Yet, commercials promising weight loss with a mere pill pop continue
12 to woo customers' wallets and fuel the **\$55 billion U.S. weight loss**
13 **market**, according to Market Data Enterprises.

14 One popular product whose commercials regularly air late at night may
15 not be delivering on its promises, according to at least one dissatisfied
16 customer.

17 "I believe it's money wasted," said one woman who said the diet pill
18 Lipozene was ineffective. "I didn't see the results that I thought I would
19 be getting." She asked that her identity be concealed.

20 The price isn't cheap. One month's supply cost ABC News \$81.77.

21 **When you're looking to lose weight and**
22 **you're putting your hopes into a product, you**
23 **want it to be a viable product," the woman**
24 **added.**

25 **Lipozene makes incredible claims and has generated much hype.**
26 **Its infomercial suggests people can eat what they want without**
changing their lifestyles and still lose weight.

27 "It's a miracle, I swear it is," says one person quoted on the commercial.
28

1 "I just ate what I wanted and I lost weight. & Being able to lose the
2 weight without having to really work hard is really fantastic. I loved it."

3 Frank said he finds these claims troubling.

4 "I get very worried; I get very concerned when they say that you don't
5 have to change the way you eat, and you don't have to change your
6 lifestyle," Frank said. "Then I say, 'No, no, no. That doesn't work. It
7 doesn't make any sense.'"

8 **Weight loss experts said it's nearly impossible for Lipozene to**
9 **work. The pill essentially is a fiber pill and its ads mislead, they**
10 **said. "This type of an infomercial does raise *false hopes*,"** said David
11 Heber, a professor of medicine and UCLA Center for Human Nutrition
director.

12 The pill's active ingredient is glucomannan, which is supposed to
13 expand in the stomach and fill it up so people eat less. The ads claim
14 the pill's effectiveness is "backed by 12 clinical studies."

15 Heber said the studies deal with glucomannan, but not Lipozene, itself.
16 The research also included an additional element that was not hyped in
17 the Lipozene infomercial.

18 "All of them had diet and exercise included. You can't simply lose
19 weight without diet and exercise," Heber said.

20 Only in small, hard-to-read print at the bottom of the infomercial does
21 the same information appear in the Lipozene infomercials.

22 **The Obesity Research Institute**

23 The Obesity Research Institute, which is the company behind Lipozene,
24 may sound official, but it's really just a privately run company. ABC
25 News traced the company to an Encinitas, Calif., house.

26 In 2004, "Good Morning America" investigated the claims of another
27 amazing weight loss product Propolene, which was also produced by
the institute.

1 "I was 247 [pounds] eight weeks ago and I'm 30 pounds lighter today,"
2 one enthused customer said in the Propolene infomercial.

3
4 After the ABC News report, the Federal Trade Commission also
5 investigated the Obesity Research Institute.

6 "These ads really caught our eye because of the extreme weight loss
7 claims they were making," said FTC advertising practices associate
8 director Mary Engle.

9 The FTC fined the institute and its key players \$1.5 million for making
10 false and deceptive claims about Propolene and three other diet pills.

11 "The FTC requires that all advertising claims be truthful, not
12 misleading, and backed up by sound science," Engle said.

13 In the settlement, the defendants denied the allegations and admitted no
14 wrongdoing.

15 **The Company's Response**

16 The company refused to give ABC News an official comment about
17 Lipozene. But ABC News reached a Lipozene supervisor by phone who
18 said that the claims in the infomercial are "100 percent true" and that
19 people don't have to change their diet or exercise habits to lose weight.
20 The supervisor added that customers will achieve faster results if they
21 alter their diet and workout patterns. He said the company hears success
22 stories all the time, but admitted it doesn't work for everyone.
23 ABC News found no mention of diet and exercise on Lipozene's bottle
24 or packaging.

25 Engle, who wouldn't comment specifically on the Lipozene ad, said
26 people should look at weight loss product claims with a skeptical eye.

27 "Your mother may have told you, 'If it sounds too good to be true, it
28 probably is.' Well, that's correct. That's good advice. It's advice we
should all listen to," Engle said.

1 "This is not a simple solution for the extraordinarily complex task of
2 weight loss. I recognize that we don't have a simple solution, and surely
3 this is not it," Frank said.

4 7. Although this litigation cannot solve the "complex task of weight loss," the
5 relief requested by Plaintiff and the Class Members may provide a simple solution to the
6 ongoing and defiant false advertising practices of the makers of Lipozene.

7 8. In 2005, this Court issued an Order for a Permanent Injunction against
8 Defendants Henny Den Uijl, Bryan Corlett, and ORI for making similar types of false
9 claims about weight loss products. The injunction was the result of an FTC Enforcement
10 Action. According to a FTC press release:

11
12 The marketers of the dietary supplements FiberThin and Propolene have
13 settled Federal Trade Commission charges that their misleading weight-loss
14 claims violated federal laws. The principal defendants, located in Encinitas,
15 California, are barred from making false claims about any dietary product in
16 the future and are required to pay \$1.5 million in consumer redress.

17 According to the FTC, the defendants used a television infomercial, short TV
18 spots, and Web sites to market FiberThin and Propolene, two fiber-based
19 dietary supplements they claimed would cause rapid, substantial weight loss
20 without any need to diet or exercise. The supplements were marketed together
21 with two purported metabolism enhancers, Excelerene and MetaboUp.
22 FiberThin and Propolene purportedly contain glucomannan, while MetaboUp
23 and Excelerene purportedly contain green tea, chromium, and bitter orange.
24 The defendants charged \$99.80 and \$89.95, respectively, for 60-day supplies
25 of FiberThin/MetaboUp and Propolene/Excelerene, and offered a "Take it
26 Off, Keep it Off" automatic shipping program that would send consumers
27 additional supplies for \$29.95.

28 The defendants advertised these products through a 30-minute television
infomercial that aired on numerous television stations, including The

1 Learning Channel, PAX Family Entertainment Network, Home and Garden
2 TV, and CNBC.

3 In December 2003, the FTC announced its “Red Flag” campaign to educate
4 members of the media about different types of bogus weight-loss advertising
5 claims. The FTC’s complaint charged that the defendants made “Red Flag”
6 claims in their ads, including that the product would cause rapid, substantial
7 weight loss (more than 2 pounds per week) without the need to diet or
8 exercise; that weight loss would occur no matter what the consumer ate; and
9 that weight loss would occur in all users. The FTC also alleged that the
10 defendants used “expert endorsers” on their infomercial and other TV ads to
11 make “Red Flag” claims.

12 The FTC’s complaint named FiberThin, LLC and Obesity Research Institute,
13 LLC; their owners, Henny Den Uijl and Bryan Corlett; and the “expert
14 endorsers,” James Ayres and Jonathan M. Kelley, M.D., as defendants.

15 The stipulated final order **permanently bars** the defendants from making the
16 challenged “Red Flag” claims and unsubstantiated claims for any weight-loss
17 product, dietary supplement, food, drug, or device, or misrepresenting any
18 scientific study for the purposes of marketing a dietary supplement.

19 Defendants FiberThin, Obesity Research Institute, Henny Den Uijl, and Bryan
20 Corlett are required to pay \$1.5 million in **consumer redress; the order**
21 **contains a \$41 million suspended judgment**, which will become immediately
22 due if it is found that the defendants misrepresented their financial situation.
23 The order also contains standard recordkeeping provisions to assist the FTC
24 in monitoring the defendants’ compliance.

25 The Commission vote authorizing staff to file the complaint and proposed
26 stipulated final order was 5-0. The complaint and stipulated final order were
27
28

1 filed in the U.S. District Court for the Southern District of California on June
2 14, 2005.³

3 9. The 2005 FTC enforcement action was captioned *Fed. Trade Comm'n v.*
4 *FiberThin, LLC, et al.*, No. 05-cv-01217 (S.D. Cal. 2005). Notably, the FTC's complaint
5 requested that the Court grant "***such equitable relief that the Court finds necessary to***
6 ***redress injuries to consumers.***" See FTC Compl., ECF No. 1 at 10 (A copy of the FTC
7 Complaint is attached hereto as **Exhibit 1**). Similarly, the Stipulated Final Judgment and
8 Order granting Permanent Injunction is intended to benefit consumers who purchased
9 Lipozene. See Stipulated Final J. & Order for Perm. Inj. 8, Jun. 17, 2005, ECF No. 2
10 ("Judgment is hereby entered against Defendants Fiberthin LLC, Obesity Research,
11 Henny Den Uijl and Bryan Corlett, jointly and severally, in the amount of \$1,500,000.00
12 ***for consumer redress***) (A copy of the Stipulated Final Judgment is attached hereto as
13 **Exhibit 2**). Plaintiff and the class members, as consumers who purchased Lipozene, are
14 the intended third party beneficiaries of the Stipulated Final Judgment and are non-parties
15 for whom relief was "granted in favor for" within the meaning of Federal Rule of Civil
16 Procedure 71.

17 10. Defendant's marketing of Lipozene violates the Stipulated Final Judgment
18 and this Court's Permanent Injunction. For example, **the Order permanently enjoins**
19 **Defendants from claiming that any weight loss product "enables users to lose weight**
20 **or fat, or any specific amount of weight or fat, without the need to reduce caloric**
21 **intake or increase physical activity."** See Stipulated Final J. & Order for Perm. Inj., at
22 6. But Defendants continue to market Lipozene in bold defiance of the Court's Order
23 by making claims like "Lose Weight" with "No Diet Change" and "No Exercise Change."
24
25
26

27 ³ Press Release, *FTC Settles Claims with Marketers of FiberThin and Propolene*,
28 Federal Trade Commission (Jun. 20, 2005), available at <https://goo.gl/tufFeU>.

LOSE WEIGHT

- **NO DIET CHANGE**
- **NO EXERCISE CHANGE**

www.LIPOZENE.com

CALL NOW 1-800-797-8912

CLINICAL STUDY SPONSORED BY ORI WAS DONE UNDER FREE LIVING CONDITIONS, MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO MAKE ANY CHANGES TO THEIR DAILY LIFESTYLE. CLINICAL DATA SHOWS THAT THE DIFFERENCE IN THE AMOUNT OF WEIGHT LOSS EXPERIENCED BETWEEN THE ACTIVE AND PLACEBO GROUP WAS 4.93 LBS.



The image shows a box of Lipozene Maximum Strength capsules. The box is white with blue and green accents. It features the Lipozene logo, the text 'OBESITY RESEARCH INSTITUTE', 'MAXIMUM STRENGTH', '1500mg per dose', and '30 Capsules'. A gold seal on the box says '20 MILLION' and 'Clinically Proven'. Below the seal, it lists benefits: 'Helps Reduce Weight', 'Helps Reduce Body Fat', and 'Safe and Effective'.

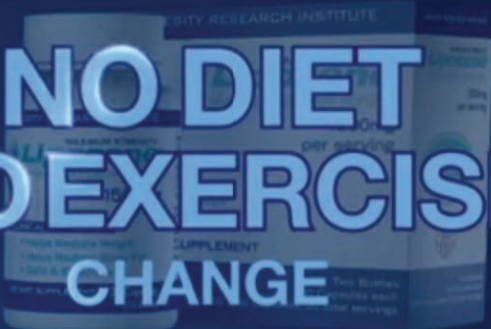

CLINICALLY PROVEN

**NO DIET
NO EXERCISE
CHANGE**

www.LIPOZENE.com

CALL NOW

CLINICAL STUDY SPONSORED BY ORI WAS DONE UNDER FREE LIVING CONDITIONS, MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO MAKE ANY CHANGES TO THEIR DAILY LIFESTYLE. CLINICAL DATA SHOWS THAT THE DIFFERENCE IN THE AMOUNT OF WEIGHT LOSS EXPERIENCED BETWEEN THE ACTIVE AND PLACEBO GROUP WAS 4.93 LBS, AND OF THE 4.93 LBS OF WEIGHT LOSS EXPERIENCED BY THE ACTIVE GROUP 3.86 LBS WAS BODY FAT.

The image shows a woman's back and arm, highlighting her slim physique. The background is dark blue with a faint image of a Lipozene product box. The text 'CLINICALLY PROVEN' is at the top, followed by 'NO DIET NO EXERCISE CHANGE' in large, bold letters. Below this is the website 'www.LIPOZENE.com' and 'CALL NOW'. At the bottom, there is a small text block about the clinical study and a 'MADE IN THE USA' seal.

11. Moreover, the Court's Order enjoined Defendants from claiming that a weight loss product "causes substantial weight loss through ***blocking the absorption of fat and calories.***" Stipulated Final J. & Order for Perm. Inj., at 6. But several Lipozene commercials depict a Lipozene pill literally absorbing body fat.



12. Defendants have violated the Permanent Injunction, and will continue to violate this Court's injunction if the relief sought in this complaint is not granted. Indeed, the FTC's complaint noted that "**Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.**" (FTC Compl. at ¶ 26). As further discussed in this Complaint, Defendants have largely ignored the Court Ordered mandate as they have injured consumers, reaped

1 substantial unjust enrichment, and have harmed the general public by spreading fictions
2 about responsible weight loss.

3 13. Thus far, the FTC has done nothing to enforce the Court's Permanent
4 Injunction even though millions of consumers have been harmed by Defendants' false
5 advertising claims. Even worse, recent testing performed on Lipozene capsules show that
6 the product is adulterated with undisclosed and potentially dangerous allergens even
7 though the label explicitly represents that the product contains “no allergens.”

8 14. Plaintiff brings this action on behalf of all Lipozene Product purchasers and
9 on behalf of the general public pursuant to California’s “Private Attorney General”
10 Doctrine. (Cal. Civ. Code 1021.5). This class action seeks to “enforce an important public
11 right affecting the public interest.” (*Id.*).

12 15. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiff
13 seeks to represent a class of all purchasers of Lipozene Products, as further described
14 herein, in an action for declaratory and corresponding equitable relief pursuant to the
15 Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiff and the proposed class seek a
16 Judgment declaring the rights and relations of the parties under the 2005 Stipulated Final
17 Judgment and Order for Permanent Injunction. Plaintiff and the Class respectfully request
18 the Court to interpret any ambiguities in the Order and enter a Judgment declaring that
19 Plaintiff and the Class are intended third party beneficiaries under the 2005 Order and
20 therefore have standing to enforce its provisions under the principles of contract law or
21 pursuant to Federal Rule of Civil Procedure 71, which provides that “when an order
22 grants relief for a nonparty or may be enforced against a nonparty, the procedure for
23 enforcing the order is the same as for a party.” The 2005 Order granted relief for the
24 benefit of Plaintiff and the Class members who are now requesting a Judgment declaring
25 that they have a legal right to enforce the 2005 Order for Permanent Injunction and may
26 seek equitable relief in the form of “Consumer Redress” as contemplated by the 2005
27

1 Order. Plaintiff and the Class also seek an Order holding Defendants in civil contempt
2 and corresponding "coercive" remedies and attorneys' fees.

3 16. Alternatively or in addition to the "Intended Beneficiary Class" described
4 above, Plaintiff seeks to represent certain classes of Lipozene purchasers, as further
5 described in this Complaint, for Defendants' violations of California's laws prohibiting
6 fraud and deceit, the California Unfair Competition Law, California's Consumer Legal
7 Remedies Act, California's False Advertising Law, and for Defendants' breaches of
8 express and implied warranties, and for injunctive and equitable relief to redress
9 Defendants' ill-gotten gains.

10 **JURISDICTION AND VENUE**

11 17. This Court has original and *exclusive* jurisdiction over this matter pursuant
12 to the Stipulated Final Judgment and Order for Permanent Injunction, Monetary and
13 Other Equitable Relief that was entered on June 17, 2015 in *Fed. Trade Comm'n v.*
14 *FiberThin, LLC, et al.*, No. 05-cv-01217 (S.D. Cal. Jun. 17, 2005). The Order provides
15 that "this Court shall retain jurisdiction of this matter for purposes of construction,
16 modification, and enforcement of this Order." Pursuant to 28 U.S.C.A. § 2201, Plaintiff
17 and the Class are seeking a Judgment declaring the rights and relations of the parties with
18 respect to the 2005 Stipulated Final Judgment and Order for Permanent Injunction and
19 this action involves the construction, modification, and enforcement of the Order.

20 18. This Court has diversity jurisdiction over this action pursuant to the Class
21 Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(a), because the matter in controversy
22 exceeds \$5,000,000 exclusive of interests and costs, and this matter is a nationwide class
23 action in which more than two thirds of the class members are citizens of States other
24 than Defendants' state of citizenship. This case easily meets the \$5,000,000 jurisdictional
25 threshold because the average retail price of Lipozene is and was approximately \$29.99
26 during the relevant time period. A Lipozene commercial that was aired by Defendants
27 claims that "over 20 Million Bottles" of Lipozene have been sold based on IRI sales data
28

1 as of May 19, 2013. Now, however, Defendants have updated their own website
2 (www.lipozene.com) and claim that “Over 25 Million Bottles” of Lipozene were sold
3 based on IRI sales data as of October 5, 2015. There are a total of 927 days between May
4 19, 2013 and October 5, 2015, meaning that Defendants sell approximately 5,393 bottles
5 of Lipozene per day. This means that from August 19, 2014 until the present, Defendants
6 have sold approximately 2,502,352 bottles of Lipozene at a price of about \$29.99 and
7 have therefore generated over \$75 Million in revenue from Lipozene sales. This figure
8 does not even account for the value of the injunctive and equitable relief requested by
9 Plaintiff and the Class Members in this complaint.

10 19. This Court has personal jurisdiction over each Defendant because they are
11 all either citizens of the state of California and each Defendant has continuous and
12 systematic contacts with this District and the state of California as to essentially render
13 them “at home” in this District. Moreover, each Defendant has purposefully availed
14 himself, herself, or itself to the laws and benefits of doing business in this District and
15 Plaintiff’s claims arise out of each of the Defendants’ forum related activities.

16 20. Venue is proper because each Defendant “resides” in this District, and a
17 substantial part of the events alleged in this Complaint giving rise to Plaintiff’s claims,
18 including the dissemination of the false and misleading advertising alleged herein,
19 occurred in and were directed from this District. Moreover, this District is the only U.S.
20 District Court that has jurisdiction over the interpretation, construction, and enforcement
21 to the 2005 Stipulated Final Judgment.

22 **PARTIES**

23 **Plaintiff Bozic**

24 21. Plaintiff Regina Bozic is and was at all relevant times a citizen of the state
25 of Pennsylvania, residing in Tobyhanna, Pennsylvania. Plaintiff Bozic purchased the
26 Lipozene product on at least one occasion around the spring of 2015 from a Walmart
27 retail store located in Tobyhanna, Pennsylvania. Plaintiff Bozic read and relied on certain

1 labeling statements made on the Lipozene packaging described in this complaint in
2 deciding to purchase the product and Plaintiff Bozic also recalls seeing Lipozene
3 commercials that she relied on in deciding to purchase the product.

4 22. Plaintiff Bozic saw the Misrepresentations prior to and at the time of
5 purchase and understood them as representations and warranties that the Lipozene
6 product was safe and effective for weight loss and fat loss as advertised. Ms. Bozic relied
7 on the representations made on the Products' label in deciding to purchase the Product.
8 Additionally, Plaintiff Bozic recalls seeing at least one of Defendants' television
9 commercials that promoted the Lipozene and relied on the representations made in the
10 commercial in deciding to purchase the Products. These representations and warranties
11 were part of her basis of the bargain, in that she would not have purchased Lipozene had
12 she known the representations were false. She also understood that in making the sale,
13 the retailer was acting with the knowledge and approval of and/or as the agents of
14 Defendants. She also understood that the purchase involved a direct transaction between
15 herself and the ingredient manufacturers because her purchase came with the ingredients
16 manufacturers misrepresentations and warranties that the products were, in fact, safe and
17 effective for weight loss and fat loss, among other things. Plaintiff Bozic would consider
18 purchasing Lipozene again if the advertising statements made on the Product labels and
19 in the Product advertisements were, in fact, truthful and represented in a manner as not
20 to deceive consumers.

21 **Defendant Henny Den Uijl**

22 23. Defendant Henny Den Uijl is a citizen of California and a resident of San
23 Diego County.

24 24. Defendant Den Uijl is a managing member/owner of Defendant ORI. On
25 information and belief, Defendant Den Uijl is an owner or member of Defendants
26 Continuity and Zodiac.

1 25. Defendant Henny Den Uijl is a signatory to the 2005 Stipulated Final
2 Judgment with the FTC and is bound by the terms of this Court's 2005 Permanent
3 Injunction.

4 26. Defendant Henny Den Uijl develops, manufactures, promotes, markets,
5 distributes, and/or sells the Lipozene Products to millions of consumers across the United
6 States.

7 **Defendant Sandra Den Uijl**

8 27. Defendant Sandra Den Uijl is the wife of Defendant Henny Den Uijl.

9 28. Defendant Sandra Den Uijl is believed to be directly involved with
10 management and operations of Defendants ORI, Continuity, and Zodiac. Plaintiff is
11 further informed and believes that Defendant Sandra Den Uijl is the "vice president" of
12 Defendant Continuity.

13 29. Defendant Sandra Den Uijl develops, manufactures, promotes, markets,
14 distributes, and/or sells the Lipozene Products to millions of consumers across the United
15 States.

16 30. Defendant Sandra Den Uijl has acted in concert with, and has provided
17 material aid and assistance to Defendants Henny Den Uijl, Bryan Corlett, and ORI in
18 their violations of the 2005 Stipulated Final Judgment and Permanent Injunction with
19 knowledge of the Injunction and the intent to aid and assist others with violating the
20 Permanent Injunction.

21 **Defendant Bryan Corlett**

22 31. Defendant Bryan Corlett is a citizen of California and a resident of San
23 Diego County. Defendant Corlett is the president of Defendant Continuity Products. Prior
24 to 2010, Defendant Corlett was also an employee for Defendant ORI.

25 32. Defendant Bryan Corlett is a signatory to the 2005 Stipulated Final
26 Judgment with the FTC and is bound by the terms of this Court's 2005 Permanent
27 Injunction.

33. Defendant Bryan Corlett develops, manufactures, promotes, markets, distributes, and/or sells the Lipozene Products to millions of consumers across the United States.

Defendant Obesity Research Institute

34. Defendant Obesity Research Institute, LLC is a California limited liability company with its principal place of business in Encinitas, California. ORI was founded in 2003 and has been the distributor and seller of Lipozene and participated in creating the product formulation, packaging, and marketing of Lipozene. Defendant ORI is the owner of the Lipozene trademark and controls the content of several Lipozene related websites, including Lipozene.com and shop.lipozene.com.

35. Defendant ORI is a signatory to the 2005 Stipulated Final Judgment and is bound by the terms of this Court's Order for Permanent Injunction.

36. Defendant ORI develops, manufactures, promotes, markets, distributes, and/or sells the Lipozene Products to millions of consumers across the United States.

Defendant Continuity Products, LLC

37. Defendant Continuity Products, LLC is a Delaware limited liability company with its principal place of business in Carlsbad, California. Continuity Products is actively involved in the marketing, sales, branding and promotion of Lipozene.

38. Plaintiff is informed and believes that Defendant Corlett is a managing member/owner of Continuity products and is further informed and believes that Defendant Sandra Den Uijl is the "vice president" of the company.

39. Defendant Continuity has acted in concert with, and has provided material aid and assistance to Defendants Henny Den Uijl, Bryan Corlett, and ORI in their violations of the 2005 Stipulated Final Judgment and Permanent Injunction with knowledge of the Injunction and the intent to aid and assist others with violating the Permanent Injunction.

1 40. Defendant Continuity develops, manufactures, promotes, markets,
2 distributes, and/or sells the Lipozene Products to millions of consumers across the United
3 States.

4 **Defendant National Weight Loss Institute**

5 41. Defendant National Weight Loss Institute is a California Limited Liability
6 Company. Plaintiff is informed and believes that Zodiac Foundation is an entity formed
7 to conceal the ill-gotten gains that Defendants have been unjustly enriched with in
8 connection with their sales of Lipozene.

9 42. Defendant National Weight Loss Institute has acted in concert with, and has
10 provided material aid and assistance to Defendants Henny Den Uijl, Bryan Corlett, and
11 ORI in their violations of the 2005 Stipulated Final Judgment and Permanent Injunction
12 with knowledge of the Injunction and the intent to aid and assist others with violating the
13 Permanent Injunction.

14 **Defendant Zodiac Foundation**

15 43. Defendant Zodiac Foundation is a California Limited Liability Company.
16 According to the Secretary of State's Office, Defendant Henny Den Uijl is the registered
17 agent for service of process for the company. Plaintiff is informed and believes that
18 Zodiac Foundation is an entity formed to conceal the ill-gotten gains that Defendants
19 have been unjustly enriched with in connection with their sales of Lipozene.

20 44. Plaintiff is informed and believes that Defendant Sandra Den Uijl is the
21 Chief Financial Officer of Defendant Zodiac Foundation.

22 45. Defendant Zodiac has acted in concert with, and has provided material aid
23 and assistance to Defendants Henny Den Uijl, Bryan Corlett, and ORI in their violations
24 of the 2005 Stipulated Final Judgment and Permanent Injunction with knowledge of the
25 Injunction and the intent to aid and assist others with violating the Permanent Injunction.
26
27
28

Defendant Conversion Systems

46. Defendant Conversion Systems is a Delaware Limited Liability Company. Defendant Conversion Systems is the operator and web administrator of the website Lipozene.com. In addition, Defendant Conversion Systems exercises control over the content that appears on the Lipozene Website and is entitled to shares of the profits that are generated through the Lipozene Website.

47. Defendant Conversion Systems has acted in concert with, and has provided material aid and assistance to Defendants Henny Den Uijl, Bryan Corlett, and ORI in their violations of the 2005 Stipulated Final Judgment and Permanent Injunction with knowledge of the Injunction and the intent to aid and assist others with violating the Permanent Injunction.

48. Defendant Conversion promotes, markets, distributes, and/or sells the Lipozene Products to millions of consumers across the United States.

49. Attached hereto as **Exhibit 3** is a copy of a complaint that Conversion Systems filed against Defendant ORI showing that Conversion had a high degree of control over the marketing of Lipozene and that it had a “revenue sharing” agreement in which it was entitled to profits from the sales of Lipozene.

Defendant Innotrak Corporation

50. Defendant Innotrak Corporation is a corporation organized under the laws of Georgia. Defendant Innotrak Corporation is the distributor of the Lipozene products, and on information and belief, is the host of the call centers for the 800 numbers that appear on Defendants’ infomercials. Plaintiff is also informed and believes that Defendant Innotrak produces the Lipozene infomercials and has control of the content of certain Lipozene advertisements and commercials. In addition, Plaintiff is informed and believes that Defendant Innotrak Corporation shares in the profits generated from the sales of Lipozene.

51. Defendant Innotrac Corporation has acted in concert with, and has provided material aid and assistance to Defendants Henny Den Uijl, Bryan Corlett, and ORI in their violations of the 2005 Stipulated Final Judgment and Permanent Injunction with knowledge of the Injunction and the intent to aid and assist others with violating the Permanent Injunction.

JOINT LIABILITY

52. In 2012, an article in the San Diego Reader titled *Fat Claims, Fat Chance* featured a story about Lipozene and the people behind it:

A web of interrelated North County enterprises — known for high-pressure TV ads — professes its products will help you peel off body fat. ***But to conceal what it is doing, this group of purported health-care-product distributors has gotten rather bloated itself.***

For example, if you go to California secretary of state records, you will find these interlinked limited liability companies registered: Continuity Products, Obesity Research Institute, Pounds Lost, Zylotrim, Dencor Research, Cell Genetics, Appetrol, Zodiac Foundation, Cyvita, Finance Marketing, Hdusdu, and Beau Cheveux. The last two have been canceled.

By touting alleged “clinical studies” that back up their claims, the promoters have sold a slew of so-called dietary and health products: Lipozene, Cyvita, I-PAK, Excelerene, MetaboUp, Lumanex, Appetrol, Vita 26, Metabo Pro, and Pounds Lost, to name a few.

The companies are run by Henny Den Uijl and Bryan Corlett, although some of the entities may be run by one or the other, not jointly. The companies have various headquarter locations: Carlsbad, Encinitas, Rancho Santa Fe, and Reno, Nevada. The two principals and the in-house lawyer, Joshua Weiss, did not return repeated phone calls.⁴

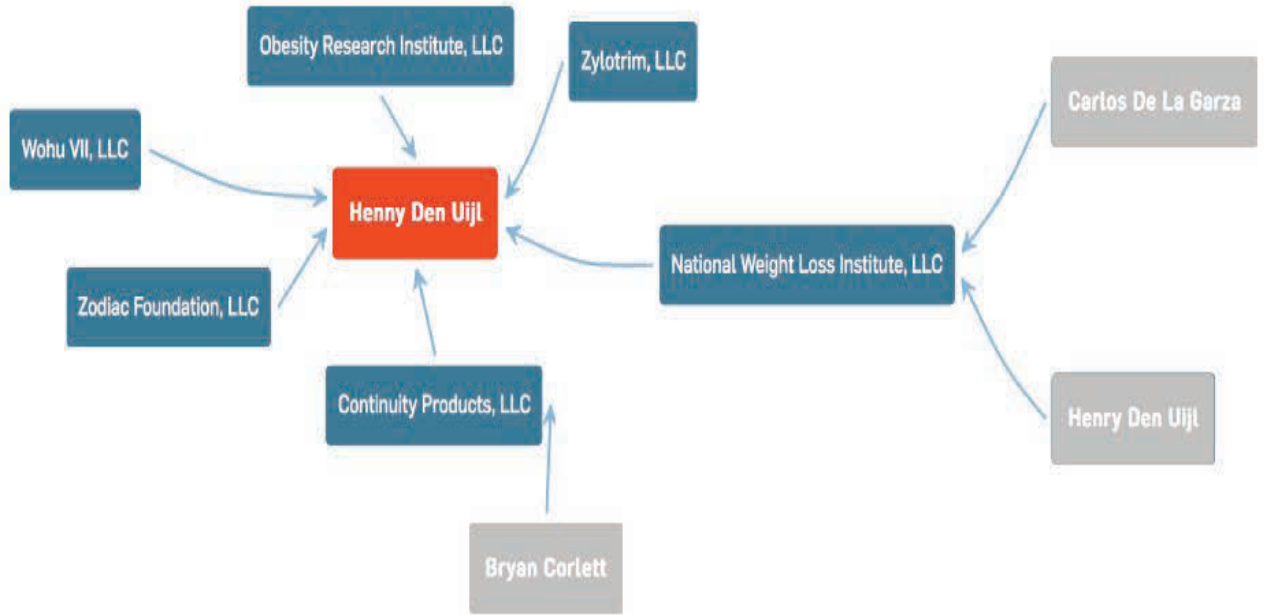
⁴ See Don Bauder, *Fat Claims, Fat Chance*, SAN DIEGO READER (Feb. 22, 2012), available at <http://goo.gl/kEzkv7>.

53. Attorney Joshua Weiss was employed as the in-house counsel for Defendants ORI and Continuity apparently since around 2006 until last year. According to the U.S. Patent and Trademark Office, **Mr. Weiss was listed as the attorney of record for Obesity Research Institute when it registered the Lipozene trademark on September 29, 2005—just three months after Defendants were enjoined from making false weight loss product claims.** Mr. Weiss has sued Defendants Den Uijl, ORI, Continuity, and Zodiac in the California Superior Court for the County of San Diego alleging employment harassment and discrimination. A copy of the complaint in the *Weiss* lawsuit is attached hereto as **Exhibit 4**. The allegations made in Mr. Weiss' complaint are made on Mr. Weiss' personal knowledge as a long time, former employee of Defendants. The allegations in Mr. Weiss' complaint provide insight into Defendants' business operations.

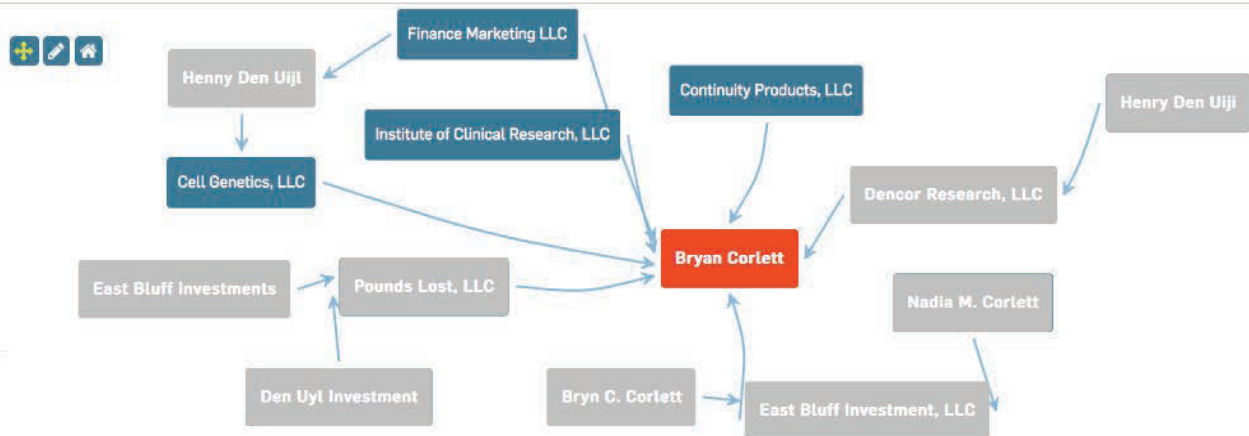
54. Plaintiff and the proposed Class incorporate by reference the highlighted paragraphs of Mr. Weiss' complaint attached hereto as **Exhibit 4** as they pertain to the joint liability of Defendants.

55. "Henny Den Uijl has been associated with thirteen companies, according to public records. The companies were formed over an eight-year period with the most recent being incorporated three years ago in September of 2012. Six of the companies are still active while the remaining seven are now listed as inactive."⁵

⁵ See Profile of Henny Den Uijl, *Corporation Wiki*, <https://goo.gl/Nd5vEq>.



56. "Bryan Corlett has been associated with seven companies, according to public records. The companies were formed over a ten year period with the most recent being incorporated two years ago in March of 2014. Three of the companies are still active while the remaining four are now listed as inactive."⁶



⁶ See Profile of Bryan Corlett, *Corporation Wiki*, <https://goo.gl/FWYRFU>.

I. The Lipozene Enterprise

57. "The Lipozene Enterprise" refers to an unincorporated association of natural persons, limited liability companies, corporations, trusts, associations, and other business entities who have a community of interest in furthering the sales of Lipozene products. To the best of the Plaintiffs knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, Plaintiff will likely have evidentiary support after a reasonable opportunity for further investigation or discovery to make a *prima facie* showing that the following natural persons and entities are members of the Lipozene Enterprise: Bryan Corlett, Henny Den Uijl, Sandra Den Uijl, Continuity Products, LLC, Institute of Clinical Research, LLC, Finance Marketing LLC, Cell Genetics, LLC, Zodiac Foundation LLC, Wohu VII, LLC, Obesity Research, LLC, Zylotrim, LLC, National Weight Loss Institute, LLC, Innotrac Corporation, Conversion Systems, and DOES 1-100 ("Members of the Enterprise").

58. DOES 1-100 are unknown members of the Lipozene Enterprise. Plaintiff is ignorant of the names of DOES 1-100, but alleges that DOES 1-100 are responsible for the unlawful conduct alleged herein. When the true names of DOES 1-100 are discovered, Plaintiff will amend her complaint accordingly.

59. The Members of the Enterprise are "persons" within the meaning of California Corporations Code 18030.

60. The Members of the Enterprise is "a unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not" as within the meaning of California Corporations Code 18035.

61. "The Lipozene Enterprise" is a "association" and "other organization of persons" within the meaning of California Business and Professions Code Section 17201.

II. Alter-Ego Liability

62. Defendants ORI, Continuity, Zodiac, and National Weight Loss Institute are the alter egos of Defendants Henny Den Uijl, Sandra Den Uijl, and/or Bryan Corlett.

1 “Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud,
2 circumvent a statute, or accomplish some other wrongful or inequitable purpose, the
3 courts will ignore the corporate entity and deem the corporation's acts to be those of the
4 persons or organizations actually controlling the corporation, in most instances the
5 equitable owners.” *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 83
6 Cal. App. 4th 523, 83 Cal. 4th 523 (Ct. App. 2000). “The alter ego doctrine prevents
7 individuals or other corporations from misusing the corporate laws by the device of a
8 sham corporate entity formed for the purpose of committing fraud or other misdeeds.” *Id.*

9 63. “In California, two conditions must be met before the alter ego doctrine will
10 be invoked. First, there must be such a unity of interest and ownership between the
11 corporation and its equitable owner that the separate personalities of the corporation and
12 the shareholder do not in reality exist. Second, there must be an inequitable result if the
13 acts in question are treated as those of the corporation alone.” *McGrath v. Superior Court*
14 *of San Diego County*, No. D056538 (Cal. Ct. App. May 25, 2010). “Among the factors
15 to be considered in applying the doctrine are commingling of funds and other assets of
16 the two entities, the holding out by one entity that it is liable for the debts of the other,
17 identical equitable ownership in the two entities, use of the same offices and employees,
18 and use of one as a mere shell or conduit for the affairs of the other.” *Id.*

19 64. Defendants have a unity of interest and on information and belief and an
20 opportunity for further discovery, Plaintiff alleges that Defendants comingle funds and
21 assets of each entity, they hold out that one entity is liable for the debts of the other, and
22 the entities use the same offices and employees and use of the entities as a mere shell or
23 conduit for the affairs of the individual Defendants.

24 65. The Services Agreement found at **Exhibit 3** shows that Defendant ORI
25 goes by the name “Continuity” when entering into contracts. **Exhibit 3** also
26 shows that “Continuity” has a role in distributing revenue earned from the Lipozene
27 website.

III. Joint Venture

66. Each and every Defendant named in this complaint have combined their property, skill, and knowledge to carry out a single business undertaking in that they produce, promote, and distribute weight-loss supplements with a community of interests in that they use a common marketing scheme that involves marketing through television infomercials and online to promote the Lipozene Products. Each and every Defendant has formed an agreement, either explicitly or implicitly by their conduct, to jointly share the control, profits, and losses of Joint Venture Enterprise and the Joint Venture Enterprise is a business undertaking in that it was formed to profit from the fraudulent sales of supplement products.

IV. Agency Allegations

67. At all times herein mentioned, Defendants, and each of them, were an agent of each of the other Defendants, and in doing the acts alleged herein, were acting within the course and scope of such agency. Each Defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful acts.”

68. At all times herein mentioned, each member of each joint ventures described above, were agents of the joint ventures and the other members of the joint ventures described above, and in doing the acts alleged herein, were acting within the ordinary course of business of the joint ventures or with the authority or ratification of the joint ventures.

V. Civil Conspiracy Allegations

69. During the relevant class periods, Plaintiff and the class members were harmed by Defendants’ unlawful business practices and fraudulent representations described herein because each Defendant was part of a conspiracy to commit fraud or and other deceptive and unlawful acts. Each Defendant intentionally entered into an

1 agreement in writing, orally, or through their conduct with at least one or more Co-
2 Defendants to commit wrongful violations of the law as described in Plaintiff's request
3 for relief section, *infra*. Each Defendant was aware of the fact that each co-conspirator
4 Defendant planned to commit fraud and other unlawful acts. Each Defendant intended
5 that the fraud and other unlawful acts be committed and each Defendant overtly acted in
6 furtherance of the goals of said civil conspiracies.

7 **VI. Aiding and Abetting Allegations**

8 70. During the relevant class periods, each and every Defendant knew that each
9 and every other Defendant were engaged in the unlawful acts subject to this complaint.
10 Each Defendant gave substantial assistance or encouragement to one or more co-
11 Defendants, who committed the predicate unlawful acts, by supplying those Defendants
12 with the means or instrumentalities to commit the unlawful acts, which were substantial
13 factors in causing harm to Plaintiff and the Classes.

14 **THE MARKETING AND SALES OF LIPOZENE**

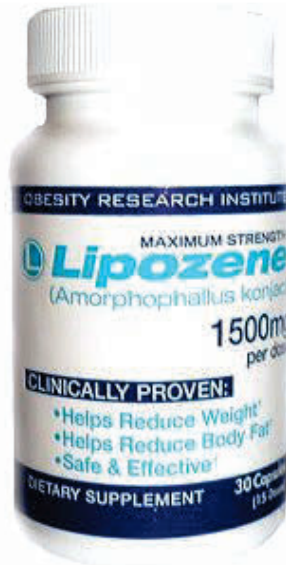
15 71. The Lipozene marketing campaign has been highly successful and effective
16 over the years by using the same marketing format that was used when the product was
17 first launched in 2006. Indeed, the Lipozene packaging and the overall marketing
18 message have remained virtually consistent throughout the years and is still being used
19 to this very day, including on the front label of the Lipozene product.

20 72. For purposes of this section, each statement that appears in quotation marks
21 ("") below create affirmative representations about the Products and also create express
22 and implied warranties that were relied on by Plaintiff and the Class members in deciding
23 to purchase the products.

24 73. These statements will from now on be referred to in this Complaint as the
25 "Express Warranties."
26
27

I. Misleading Packaging

74. At all times during the class periods defined herein, Defendants made and continue to make false, misleading, or fraudulent statements on the packaging and labeling of Lipozene, including, *inter alia*, “Clinical Study Proves: 78% of weight lost is pure body fat!” “Helps Reduce Weight” “Helps reduce body fat.”



2 BOTTLE BONUS PACK!

MAXIMUM STRENGTH
Lipozene®
(Amorphophallus konjac)

Clinically Proven:

- Helps Reduce Weight[†]
- Helps Reduce Body Fat[†]
- Safe and Effective[†]

Supplement Facts

Serving Size: 2 Capsules	Servings Per Container: 30
Amount Per Serving	%DV*
Proprietary Blend	1500 mg
Amorphophallus Konjac (from Konjac Root)	

* Daily Value (DV) not established.

No known allergens in this product.
Other Ingredients: Gelatin, magnesium silicate, and stearic acid.
Recommendation for Use: As a dietary supplement for maximum results take 2 capsules 30 minutes before meals up to three times per day with at least 8 oz of water.
Store in a dry place at room temperature. As with all nutritional supplements keep out of reach of children. Do not use this product if seals are missing or broken. If you are pregnant or lactating do not use this product. Consult your physician before beginning any weight loss program.

[†] These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

OBESITY RESEARCH INSTITUTE

Lipozene®
(Amorphophallus konjac)

MAXIMUM STRENGTH

2 BOTTLE BONUS PACK!

LOSE PURE BODY FAT
Clinical study proves:
78% of weight lost is pure body fat!

MAXIMUM STRENGTH
Lipozene®
(Amorphophallus konjac)

Clinically Proven:

- Helps Reduce Weight[†]
- Helps Reduce Body Fat[†]
- Safe and Effective[†]

**EXCLUSIVE:
BUY 1 GET 1 FREE**

**Two bottles 30 capsules each
(60 total capsules, 30 total doses)**
DIETARY SUPPLEMENT

OBESITY RESEARCH INSTITUTE

75. At all times during the class periods defined herein, Defendants made and continue to make false, misleading, or fraudulent statements on the packaging and labeling of Lipozene, including “Clinical Study Proves: 78% of weight lost is pure body fat!” “Helps Reduce Weight” “Helps reduce body fat.”

- a) “Lipozene”
- b) “Obesity Research Institute”
- c) “Lose Pure Body Fat”
- d) “Clinical Study Proves: 78% of weight lost is pure body fat!”
- e) “Maximum Strength”
- f) “Amorphophallus konjac 1500mg per dose”
- g) “Clinically Proven”
- h) “Helps Reduce Weight”
- i) “Helps Reduce Body Fat”
- j) “Safe and Effective”
- k) “Product of Excellence”
- l) “Dietary Supplement”
- m) “In a double blind study, not only did participants lose weight but 78% of each pound lost was pure body fat!”
- n) “No Known allergens in this product”
- o) “As a dietary supplement for maximum results take 2 capsules 30 minutes before meals up to three times per day with at least 8 oz. of water”
- p) “Proprietary blend [of] 1500mg [of] Amorphophallus Konjac (from Konjac Root).”

76. Each of the above statements are false and misleading because the product is not clinically proven to help users lose weight and Amorphophallus Konjac used in Lipozene is not pure, but rather adulterated with undisclosed substances. Moreover, the product contains allergens like sulfites despite being labeled as “no known allergens.”

1 77. Additionally, the Lipozene product's label contains the following false and
2 misleading graphic representations:

3 a. A picture of a ribbon that contains the statement "product of excellence,"
4 and "obesity research institute" that implies that the product somehow won
5 an award for being excellent and that such an award was given by an
6 independent "obesity research institute."

7 b. A picture of the Lipozene pill absorbing fat.

8 78. Each of the above-quoted statements are false, misleading, deceptive, and
9 unlawful for the reasons explained herein. Moreover, each of the above-quoted
10 statements create express or implied warranties and Defendants have breached said
11 warranties for the reasons alleged herein.

12 **II. Misleading Website**

13 79. The Lipozene website also makes several false and misleading statements
14 regarding the benefits of the Lipozene product. Significantly, the statements on the
15 Lipozene website state that with Lipozene you can **"Still eat your favorite foods"** and
16 that **"No change in exercise is required."** Moreover, Defendants claim that with
17 Lipozene there will be **"No Strict Diets"** and that you will **"Feel Full Faster and For
18 Longer."**

19 80. The Lipozene website claims that "Lipozene Really Works" because its
20 active ingredient has the following effect on the human body:

21 Lipozene's active ingredient is a super-fiber extracted from the root of the
22 Konjac plant. This super-fiber's ability to profoundly absorb water and
23 expand in size suggests that it may swell in your stomach and make you
24 feel fuller faster and longer; therefor [sic] you will eat less and lose
25 weight. Studies have shown this super-fiber can improve glucose control,
26 lower cholesterol. Its is believes [sic] that lower insulin levels may help
27 your body use your stored fat for energy and also result in decreased
28 storage of dietary fat.

Lipozene® does not contain caffeine or other stimulants that can leave you feeling jittery. Its active ingredient has been used in the Orient for 1,000's of years. Lipozene® is safe when taken as directed. Lipozene® has helped countless people meet their weight loss goals, and it can help you too!

81. The Lipozene website further touts the purported fact that Lipozene is “clinically proven” to help users lose weight:

Numerous studies have proven that the active ingredient in Lipozene® will help you lose weight. Researchers conducted an independent clinical study on Lipozene's exclusive formula, and found that not only did the participants lose weight, but 78% of each pound lost was pure body fat! Even more amazing was that study participants were not asked to change their daily lifestyle, meaning they were not asked to change what they ate or how they exercised.

82. The Lipozene website also has numerous fake testimonials from supposed customers.



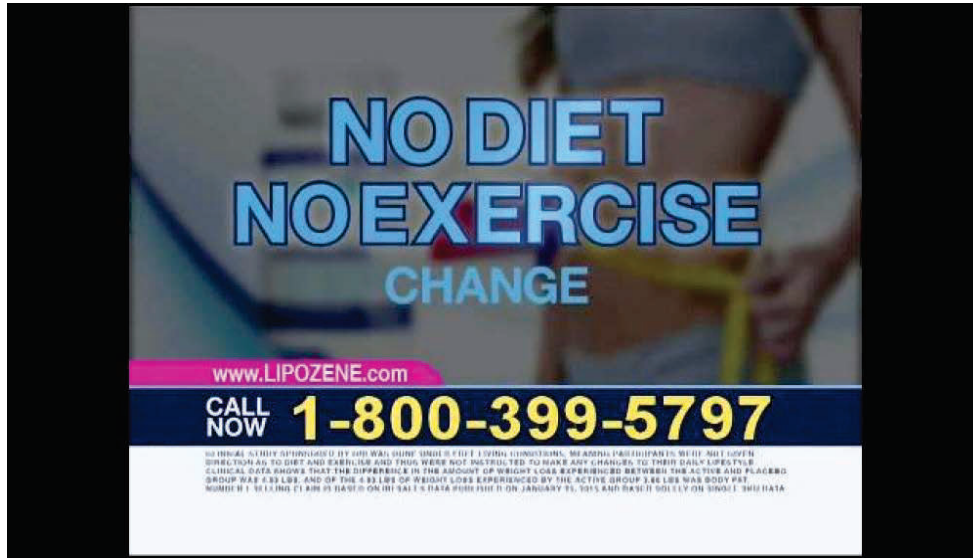


83. Attached hereto as **Exhibit 5** are exemplars from Lipozene.com that were obtained from the Internet Archive's "Wayback Machine." Plaintiff incorporates by reference each of the advertising statements made in **Exhibit 5**.

84. Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and Defendants have breached said warranties for the reasons alleged herein.

III. Misleading Infomercials

85. Defendants also advertise Lipozene on television infomercials that further state user's can "lose weight without changing your lifestyle" or with "No Diet, No Exercise."



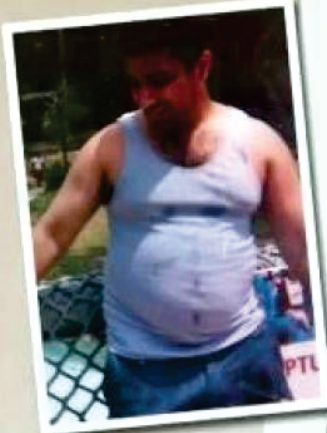
Lipozene TV Commercial, 'Lose Pure Body Fat', <http://ispot.tv/a/701n>



Lipozene TV Commercial, 'Water vs. Fat', <http://ispot.tv/a/74aH>



Lipozene TV Commercial, 'Weight Loss Mountain', <http://ispot.tv/a/Aq14>



SUCCESS STORY

NAME: **ROBBIE** CASE NUMBER: **265**

OVERVIEW:

Wanted to lose weight but didn't know how to do it.

That's when he discovered America's #1 Selling Diet Supplement

www.LIPOZENE.com



CALL NOW 1-800-260-8817

RESULTS NOT TYPICAL AVERAGE WEIGHT LOSS EXPERIENCED BETWEEN THE ACTIVE AND PLACEBO GROUP WAS 4.93 LBS.

VISA MasterCard American Express DISCOVER

MADE IN THE USA

LIPOZENE CLINICAL STUDY

THE 8 WEEK CLINICAL STUDY SPONSORED BY ORI WAS DONE UNDER FREE LIVING CONDITIONS, MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO CHANGE THEIR DAILY LIFESTYLE. ON AVERAGE, THE ACTIVE GROUP LOST 4.93 MORE POUNDS THAN THE PLACEBO GROUP, AND 3.86 LBS OF WEIGHT LOST WAS BODY FAT. THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FDA. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

1 **I. THE ACTIVE INGREDIENT IN LIPOZENE IS NOT “CLINICALLY**
2 **PROVEN” TO HELP USERS LOSE WEIGHT**

3 86. Defendants have made contradictory statements as to which scientific
4 studies support Lipozene’s claims of being “clinically proven.” A screenshot from the
5 Lipozene website taken in 2008 shows that Lipozene has made the “clinically proven”
6 claim since the product was first launched. However, the website does not provide any
7 citations to scientific studies that support the “clinically proven” claim.

8 87. Sometime in 2009, the Lipozene website was changed. A screenshot
9 from December 11, 2011 shows that Defendants now claimed that “Lipozene Diet
10 pills are backed by multiple clinical studies.” A 2009 press release from Defendant ORI
11 stated:

12 Obesity Research Institute LLC today announced multiple clinical
13 studies prove the active ingredient in Lipozene is safe and effective for
14 weight loss. Lipozene's active ingredient, Glucomannan, has been studied
15 by researchers at Georgetown University and University of Texas, to
name a few.

16 Lipozene consists of a proprietary blend of two unique Glucomannans,
17 providing a superior viscosity score. This 100% natural highly viscous
18 fiber expands in the stomach, providing a sense of fullness. Clinical
19 studies on Lipozene's proprietary blend show majority of weight loss is
from body fat.

20 In a randomized, double-blind, placebo-controlled study using Lipozene's
21 proprietary blend, the active group experienced weight loss and 78% of
22 the weight lost was pure body fat. More information is available at
23 www.lipozene.com.

24 88. Sometime around February 6, 2012, the Lipozene website was changed to
25 state that “Lipozene diet pills are backed by a major university clinical study.” Shortly
26 thereafter, sometime around August 28, 2012, the Lipozene website was changed again
27 to refer to “a double blind, placebo controlled study,” where “not only did participants

1 lose weight, but 78 percent of the weight lost was pure body fat.” The website then
2 claimed: “What’s even more amazing, is that people were not asked to change their daily
3 lives.” The website was then changed again to refer to “multiple clinical studies” and then
4 changed it again to refer to a just single “independent study.”

5 89. Finally, sometime around February of 2014, the Lipozene website was again
6 changed to include more information about the clinical studies. This time, three purported
7 studies were published on the website under a heading that read “Numerous Clinical
8 Studies confirm Lipozene’s active ingredient, Glucomannan, is safe and effective for
9 weight loss and body fat loss.” This webpage is still in operation as of the date of filing
10 this complaint at lipozene.com/clinical-studies. However, the current version of the
11 Lipozene homepage references only a single eight-week clinical study, where “the active
12 group lost 4.93 more pounds than the placebo group and 3.86 pounds was pure body fat.”
13 But none of the studies referenced on lipozene.com/clinical-studies support that claim.
14 Furthermore, none of the studies are “University” studies from either Georgetown
15 University or the University of Texas and none of the studies are “independent.” See
16 **Exhibit 5**.

17 90. The first “study” is by DE Walsh et al. titled Effect of Glucomannan on
18 Obese Patients: A Clinical Study (“Walsh Study”). This study was published in the
19 Journal of Obesity in 1984 and appears to be sponsored by General Nutrition Corporation.
20 The study was conducted by dividing “20 obese women” into two groups where one was
21 given “purified glucomannan” and the other was given “starch” as a placebo. The study
22 itself notes that the reported results are not statistically significant.

23 91. The second “study” cited on the Lipozene website is not actually a study at
24 all. Instead, it is a “critical review” of other studies that were performed on the efficacy
25 of Glucomannan. Furthermore, this study actually cites the Walsh Study and points out
26 that it is unclear why it “showed no reductions in body weight when presumably many
27 of the participants were overweight.” The critical review then concludes that “[b]efore

1 GM (Gluconoman) can be safely recommended for widespread use, however, additional
2 trials of standardized preparations are needed to extend extant data on its safety, efficacy,
3 and weight- reducing mechanisms of action.”

4 92. The third “study” cited on the Lipozene website likewise does not lend
5 support to the claim that Lipozene is “clinically proven” to help users lose weight without
6 diet or exercise. Instead, this is actually a “meta-analysis” of other studies and not a study
7 itself. Moreover, this meta-analysis notes that the Walsh study made a critical
8 miscalculation. Specifically, the *Walsh* Study erred by using the mean “for the entire
9 study cohort” instead of the baseline for each of the groups when it came to measuring
10 lipids in the blood. Finally, the meta-analysis notes that the studies analyzed included
11 those that have potential publication bias and that “larger individual studies following
12 patients for longer periods of time and evaluating both safety and efficacy are warranted
13 and needed.”

14 93. However, some of the same authors did do a follow-up clinical study and
15 concluded that there was no significant weight loss for users taking Glucomannan
16 compared to placebo. In sum, none of the “studies” relied on by Defendants support the
17 claim that Lipozene is “clinically proven” to help users lose weight as they are
18 fundamentally flawed or statistically insignificant.

19 **IV. THE FDA CALLED LIPOZENE “MISBRANDED” AND**
20 **“ADULTERATED”**

21 94. On September 15, 2014, the United States Food and Drug Administration
22 sent a “warning letter” to West Coast Laboratories, Inc. in Gardenia, California. Plaintiff
23 and the Class are informed and believe that West Coast Laboratories, Inc. is an ingredient
24 supplier for the Lipozene product.

25 95. The FDA stated that that the lab “did not conduct identity testing” for
26 amorphophallus Konjac Root used in the manufacturing of ‘Lipozene.’”
27

96. The FDA warned West Coast that Lipozene and Metabo-Up are “misbranded” and “adulterated” under the Food Drug and Cosmetics Act. Specifically, the FDA stated “With respect to your dietary supplement products, our inspection of your facility revealed that you failed to comply with the Current Good Manufacturing Practice (CGMP) regulations in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, found in Title 21 of the Code of Federal Regulations, Part 111 (21 CFR part 111). These violations cause your dietary supplements including, but not limited to, “Nano Cal/Mag” (capsules), “Lipozene” (capsules), “Metabo Up Plus” (tablets) and “Prenatal Formula with Folic Acid” (capsules) products, to be adulterated within the meaning of section 402 (g)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 342 (g)(1)] in that they have been prepared, packed, or held under conditions that do not meet CGMP regulations for dietary supplements.”

97. A copy of the FDA warning letter is attached hereto as **Exhibit 6**. Plaintiff and the class members incorporate by reference all allegations in the letter that pertain to Lipozene.

V. LIPOZNE IS ADULTERATED WITH ALLERGENS AND “CHEAP KNOCK OFF INGREDIENTS”

98. In 2015, the former ingredient supplier FiberThin sued Defendant Obesity Research for false and misleading advertising of Lipozene.

99. As alleged in the Fiberthin complaint:

From about December 2014 to January 2015, Japan Food Research Laboratories performed a chemical analysis of Lipozene Lot No. 424597, which had been purchased off the shelf from drug stores in the United States exactly as a regular consumer would purchase the product. The results of the analysis demonstrated that a 100-gram sample of Lipozene contained 0.6 grams of Galactose, and 0.2 grams of Glucuronic acid. Galactose and Glucuronic acid are chemical markers

1 of Xantham Gum, which is used to “spike” cheap glucomannan knock-off
2 products.”

3 Laboratory testing performed by Shimizu from April to November 2014 further
4 demonstrates Lipozene contains quantities of sulfites that exceed the regulatory
5 threshold for labeling, such that Lipozene should be labeled with an allergen
6 warning. But Obesity Research falsely represents on Lipozene’s label that there
7 are “No known allergens in this product.”

8 100. Attached hereto as **Exhibit 7** is a copy of Fiberthin’s Counterclaims and
9 relevant exhibits to that complaint. Pursuant to Federal Rule of Civil Procedure
10 10, Plaintiff adopts by reference the highlighted portions of **Exhibit 7** as if they were
11 alleged herein.

12 **VI. VIOLATIONS OF THE STIPULATED FINAL JUDGMENT AND 13 ORDER FOR PERMANENT INJUNCTION**

14 101. In 2005, the U.S. Federal Trade Commission ("FTC") instituted an
15 enforcement action against Defendants involving the false and deceptive advertizing of
16 Fiberthin, Metabo-up, Propolene, and Excelerene. The FTC's complaint sought to
17 "Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC Act, 15
18 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, or other promotion
19 or distribution of weight-loss products, or any food, drugs, dietary supplements, or other
20 products, services, or programs" **AND** the FTC sought an additional remedy in the form
21 of an order granting "**such equitable relief as the Court finds necessary to redress injury**
22 **to consumers** resulting from Defendants’ violations of the FTC Act, **including, but**
23 **not limited to**, rescission of contracts and restitution, and the disgorgement of ill-
24 gotten gains." (FTC Compl., Ex. 1 at p. 14).

25 102. The FTC complaint further notes that the action was brought on the behalf
26 of consumers who purchased the products: "Consumers throughout the United States
27 have suffered and continue to suffer substantial monetary loss as a result of Defendants’
28 unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a

1 result of their unlawful practices. **Absent injunctive relief by this Court, the**
 2 **Defendants are likely to continue to injure consumers, reap unjust enrichment,**
 3 **and harm the public."** (FTC Compl., *Ex. 1* at ¶ 26).

4 103. On June 17, 2005, this Court approved the Stipulated Final Judgment and
 5 entered an Order for Permanent Injunction, Monetary and other Equitable Relief (the
 6 "Order for Permanent Injunction"). A copy of the Order for Permanent Injunction
 7 is attached hereto as Exhibit 2 and is also available through the PACER database. *See*
 8 ECF No. 2, *Fed. Trade Comm'n v. FiberThin, LLC, et al.*, Case No. 05-cv-01217 (S.D.
 9 Cal.). 104. The Order permanently enjoins Defendants ORI, Henny Den Uijl, Brian
 10 Corlett and all other persons or entities acting in concert with them from expressly or
 11 implicitly making the following advertising claims about any supplement product that is
 12 "substantially similar" to the products at issue in that case:

- 13 A. Causes rapid or substantial weight loss without the need to reduce caloric
- 14 intake or increase physical activity;
- 15 B. Enables users to lose as much as 8 pounds or more per month without the
- 16 need to reduce caloric intake or increase exercise;
- 17 C. Works for all users; or
- 18 D. Causes substantial weight loss through blocking the absorption of fat or
- 19 calories.

20 105. The Order defines a "substantially similar product" as one "that has one or
 21 more of the following active ingredients: glucomannan, propol, konjac, konjac root,
 22 chromium, green tea, guarana seed, oolong tea, kola nut, bitter orange, cayenne,
 23 platycodon grandiflorum, or any extracts of these ingredients."

24 106. Furthermore, the 2005 Order enjoins Defendants ORI, Henny Den Uijl,
 25 Brian Corlett and all other persons or entities acting in concert with them from expressly
 26 or implicitly making the following advertising claims about any "covered product":
 27

- 1 “A. That such product or service causes weight loss;
 2 B. That such product or service enables users to lose weight or
 3 fat, or any specific amount of weight or fat, without the need to
 4 reduce caloric intake or increase physical activity;
 5 C. That such product or service blocks the absorption of fat or
 6 calories or increases metabolism; or
 7 D. About the health-related benefits, performance, efficacy,
 8 safety, or side effects of such product or service.

9 unless the representation is true, non-misleading, and, at the time it is made, Defendants
 10 possess and rely upon competent and reliable scientific evidence that substantiates the
 11 representation.”

12 107. A “covered product” is defined as “***any weight loss product, dietary***
 13 ***supplement***, food, drug, or device.”

14 108. Finally, the Order permanently enjoins Defendants ORI, Henny Den Uijl,
 15 Brian Corlett and all other persons or entities acting in concert with them from expressly
 16 or implicitly misrepresenting “the existence, contents, validity, results, conclusions, or
 17 interpretations of any test or study.”

18 109. Significantly, the Stipulated Final Judgment was indented to benefit Plaintiff
 19 and the Class Members, the consumers who purchased the products:

20 All funds paid pursuant to this Order shall be deposited into an account
 21 administered by the Commission or its agent ***to be used for equitable relief,***
 22 ***including but not limited to consumer redress,*** and any attendant
 23 expenses for the administration of such equitable relief

24 110. Less than one year after Defendants ORI, Henny Den Uijl, and Brian Corlett
 25 entered into the consent decree with FTC, they boldly launched the Lipozene- a product
 26 that Defendants claimed has now sold over 25 million bottles. The marketing and sales
 27

of Lipozene violates the Court’s Permanent Injunction in several respects, including but not limited to the following:

- a. “LOSE PURE BODY FAT”
- b. “Helps Reduce Weight”
- c. “Helps Reduce Body Fat”
- d. “What’s even more amazing is that people were not asked to change their daily lives. Just take Lipozene, that’s it.”
- e. “Lipozene is safe and effective”
- f. Lose weight “*Without Diet and Exercise*”
- g. “You can eat pizza, burgers, pasta, whatever you normally would.”
- h. “Your body will burn more fat.”
- i. “Reduce cholesterol”
- j. “Regulate Blood Sugar”

VII. THE NATIONAL ADVERTISING DIVISION ACCUSES DEFENDANTS OF MISLEADING CONSUMERS

111. On December 23, 2014, the Council for Responsible Nutrition challenged Lipozene advertising claims under procedures established by the industry “self-regulatory” group called the National Advertising Division (“NAD”). Specifically, the following claims were challenged:

- “Clinically proven: Helps reduce weight, Helps reduce Body Fat, Safe and Effective.”
- “Lipozene is an all-natural weight loss supplement that is clinically proven to help you lose weight and pure body fat.”
- “When taken prior to eating, Lipozene works to help you feel full faster, so you eat less!” It’s that easy!”
- “In an independent study, not only did participants taking Lipozene lose weight, but 78% of each pound lost was pure body fat.”

- 1 • “What’s even more amazing is that participants were not asked to change their
- 2 daily lifestyle. Just take Lipozene.”
- 3 • “Lipozene has effectively helped millions of people meet their weight loss goals
- 4 and it can help you too!”
- 5 • “Check out these studies that prove scientifically that the active ingredient in
- 6 Lipozene helps you lose weight!”
- 7 • “”Lipozene creates a dietary fiber gel in your stomach that makes you feel full so
- 8 you are able to eat less without feeling hungry.”
- 9 • “I’ve lost 6lbs in my first week and my progress is better and better. I only weigh
- 10 myself once a week but I’m on week two and can see the differences. Can’t wait
- 11 till my next weigh in to see further progress! – Belleville, Illinois”
- 12 • “Love it. I was 269.8 to 178.8 in three months. I stopped it and it’s been five
- 13 months and I have not gained the weight... . – Allentown, Pennsylvania”

14 112. The Council for Responsible Nutrition argued that many of the advertiser’s
15 claims “imply that Lipozene may be used for disease prevention and treatment because
16 of references to diabetes, obesity, and high cholesterol.”

17 113. Attached hereto as **Exhibit 8** is a copy of the letter from NAD. Pursuant
18 to Federal Rule of Civil Procedure 10, Plaintiff adopts by reference the highlighted
19 portions of **Exhibit 8**.

20 **CLASS ACTION ALLEGATIONS**

21 114. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks
22 certification of the following Classes as initially described in this section. Plaintiff
23 reserves the right to amend all class definitions at class certification based on further
24 discovery and/or changes in state law. Plaintiff has alleged the class definitions upon
25 good faith as to the law and on information and belief as to the facts.

26 115. Pursuant to Federal Rule of Civil Procedure 23(c)(4), Plaintiff alleges that it
27 is appropriate for certain causes of action alleged in this complaint to be maintained as
28

"divisible class actions" with respect to particular issues. At the appropriate time, Plaintiff may move the Honorable Court for an order bifurcating class certification as it may be in the interests of justice for the Court to decide whether certain claims may proceed as a class action pursuant to Rule 23(b)(2) before it is appropriate to decide whether other claims may proceed as a class action pursuant to Rule 23(b)(3).

116. Pursuant to Federal Rule of Civil Procedure 23(c)(5), Plaintiff alleges that she may seek certification of the following Classes, and/or Subclasses or alternative Classes:

I. The Intended Beneficiary Class

117. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiff brings Count I alleged in this action on behalf of herself and the Intended Beneficiary Class initially defined below.

All purchasers of the Lipozene Products in the United States for personal or household use and not for resale from the time when the Products entered into the stream of commerce until the time that a final judgment is entered, or within the statute of limitations period, or as otherwise ordered by the Court.

118. Excluded from the Third Party Beneficiary Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants' employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, including all parent companies, and their employees; and the judicial officers, their immediate family members and court staff assigned to this case. Also excluded from the Third Party Beneficiary Class are any persons or entities who have "acted in concert" with Defendants in violating this Court's 2005 permanent injunction.

119. Count I of this complaint, *infra*, is brought by Plaintiff and the Intended Beneficiary Class. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, Plaintiff and the class members respectfully request this Court to enter a judgment

1 declaring that Plaintiff and the Class Members are intended third-party beneficiaries to
2 the 2005 Stipulated Final Judgment. Additionally, Plaintiff and the Class Members are
3 requesting this Court to enter a judgment declaring that the Court's 2005 Order for a
4 Permanent Injunction "grants relief" for Plaintiff and the Class Members within the
5 meaning of Federal Rule of Civil Procedure 71. Plaintiff and the Class Members also
6 seek ancillary equitable relief that will effectuate any such Declaratory Judgment that is
7 issued by this Court.

8 120. Certification of the Intended Beneficiary Class pursuant to the provisions of
9 Federal Rule of Civil Procedure 23(b)(2) is appropriate because Defendants have acted
10 or refused to act on grounds generally applicable to the Intended Beneficiary Class,
11 thereby making declaratory relief appropriate with respect to the Class as a whole.

12 121. Pursuant to Federal Rule of Civil Procedure 23(a)(1), the proposed
13 Declaratory Relief class is so numerous that individual joinder of all the members is
14 impracticable.

15 122. Pursuant to Federal Rule of Civil Procedure 23(a)(2), there are questions of
16 law or fact common to the Intended Beneficiary Class and the Declaratory Judgment
17 claim alleged in Court I of this Complaint is dependent upon a common contention of
18 such a nature that it is capable of class wide resolution. Determination of the truth or
19 falsity with respect to the rights and remedies of Plaintiff and the Class members will
20 with respect to the 2005 Stipulated Final Judgment and Order issuing a Permanent
21 Injunction will resolve issues that are central to the validity of the claims for relief in one
22 stroke. Such common issues include, but are not limited to, the following:

- 23 a) Whether Plaintiff and the Class members have rights and remedies as intended
24 third-party beneficiaries to the 2005 Stipulated Final Judgment;
25 b) Whether the Court's 2005 Order issuing a Permanent Injunction was "granted in
26 favor of" Plaintiff and the Class Members within the meaning of Federal Rule of
27 Civil Procedure 71;

- 1 c) Whether a Declaratory Judgment would resolve the issues presented in (a) and (b)
2 above by declaring the rights of Plaintiff and the Class Members with respect to
3 their ability to proceed as a certified class of consumers when seeking enforcement
4 of their rights and remedies as Intended Beneficiaries;
- 5 d) Whether the requested Declaratory Relief would confer standing upon Plaintiff
6 and the Class to initiate civil contempt proceedings in accordance with Rule 71 of
7 the Federal Rules of Civil Procedure;
- 8 e) Whether the requested Declaratory Relief would confer standing upon Plaintiff and
9 the Class to pursue certain claims for relief under California's Unfair Competition
10 Law (Cal. Bus. & Prof. Code § 17200 *et seq.*) arising from Defendants' alleged
11 non-compliance with the Court's 2005 Permanent injunction;
- 12 f) Whether it would be appropriate for this Court to issue an ancillary Order to
13 enforce compliance with its 2005 Order for a Permanent Injunction, which may
14 include a *sua sponte* Order to Show Cause as to why Defendants should not be held
15 in civil contempt for violating of the 2005 Permanent Injunction;
- 16 g) Whether any other corresponding injunctive or equitable relief would be
17 appropriate to effectuate a Declaratory Judgment in favor of Plaintiff and the Class,
18 including an Order directing Defendants to bear the costs of notice to the class
19 members and whether an award of attorneys' fees and costs would be appropriate
20 should this action become a catalyst that leads to enforcement of the 2005
21 Permanent Injunction against Defendants, thus providing substantial benefits to a
22 large class of consumers and the general public;

23 123. Pursuant to Federal Rule of Civil Procedure 23(a)(3), the Declaratory
24 Judgment claims and defenses of Plaintiff are typical of the claims and defenses of the
25 members of the Intended Beneficiary Class.

26 124. Pursuant to Federal Rule of Civil Procedure 23(a)(4), Plaintiff will fairly and
27 adequately represent and protect the interests of the Intended Beneficiary Class. Plaintiff
28

1 has retained counsel with substantial experience in handling complex class action
2 litigation, including false advertising claims involving dietary supplement products in
3 particular. Plaintiff and her counsel are committed to vigorously prosecuting this action
4 on behalf of the Class and have the financial resources to do so.

5 125. Pursuant to Federal Rule of Civil Procedure 23(b)(2), Defendants have acted
6 or refused to act on grounds that apply generally to the Intended Beneficiary Class and
7 final injunctive relief or corresponding declaratory relief is appropriate respecting the
8 class as a whole.

9 **II. The Consumer Fraud Classes**

10 126. In addition, or in the alternative to the Intended Beneficiary Class described
11 above, Plaintiff may seek certification of the following Classes (or alternative classes or
12 Subclasses) pursuant to the provisions of Federal Rule of Civil Procedure 23(b)(3), or
13 alternatively, pursuant to Rule 23(b)(2):

14 All purchasers of Lipozene in the United States for personal or household
15 use and not for resale from August 19, 2014 until the date of class
16 certification, or as otherwise deemed appropriate by the Court.

17 Alternatively, purchasers of Lipozene in the United States for personal or
18 household use and not for resale during the applicable statute of
19 limitations period not to exceed four years prior to Plaintiffs filing of this
complaint.

20 127. Plaintiff reserves her right to amend the class periods stated above and will
21 seek such an amendment of her class definitions should the Final Judgment in *Duran v.*
22 *Obesity Research et al.* be overruled by the California Court of Appeal, or is otherwise
23 held to be non-binding on the *Duran* class members. *See Duran v. Obesity Research*
24 *Institute*, No. D067917 (Cal. App. 4th). Although the *Duran* appeal prevents the Final
25 Judgment from having a preclusion effect under California law, Plaintiff is not seeking
26 to certify the Consumer Fraud Classes described above in a way that would overlap
27 with the *Duran* Final Judgment.

1 128. Excluded from the Consumer Fraud Classes are governmental entities,
2 Defendants, any entity in which Defendants have a controlling interest, Defendants'
3 employees, officers, directors, legal representatives, heirs, successors and wholly or
4 partly owned subsidiaries or affiliated companies, including all parent companies, and
5 their employees; and the judicial officers, their immediate family members and court staff
6 assigned to this case

7 129. Members of the Consumer Fraud Classes are so numerous that their
8 individual joinder herein is impracticable.

9 130. Common questions of law and fact exist as to all Class members and
10 predominate over questions affecting only individual Class members.

11 131. The claims of the named Plaintiff are typical of the claims of the Consumer
12 Fraud Classes in that Plaintiff was exposed to Defendants' false and misleading
13 marketing and purchased Lipozene as a result of that marketing.

14 132. Plaintiff is an adequate representative of the Class because her interests do
15 not conflict with the interests of the Class members she seeks to represent, she has
16 retained counsel competent and experienced in prosecuting class actions, and they intend
17 to prosecute this action vigorously. The interests of Class members will be fairly and
18 adequately protected by Plaintiff and her counsel.

19 133. The class mechanism is superior to other available means for the fair and
20 efficient adjudication of the claims of Plaintiffs and Class members. Each individual
21 Class member may lack the resources to undergo the burden and expense of individual
22 prosecution of the complex and extensive litigation necessary to establish Defendants'
23 liability. Individualized litigation increases the delay and expense to all parties and
24 multiplies the burden on the judicial system presented by the complex legal and factual
25 issues of this case. Individualized litigation also presents a potential for inconsistent or
26 contradictory judgments. In contrast, the class action device presents far fewer
27 management difficulties and provides the benefits of single adjudication, economy of

scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

134. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Classes is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum.

COUNT I

CLAIM FOR A DECLARATORY JUDGMENT

(28 U.S.C. § 2201 AND FED. R. CIV. P. 57)

BY PLAINTIFF ON BEHALF OF THE INTENDED BENEFICIARY CLASS

-against-

ALL DEFENDANTS

135. Plaintiff and the Intended Beneficiary Class hereby re-allege and incorporate by reference the allegations set forth in the above paragraphs as though fully set forth herein.

136. This claim requests a declaration of rights and the legal relations of the parties to this action with respect to the 2005 Stipulated Final Judgment in accordance with the Declaratory Judgment Act, 28 U.S. Code § 2201.

137. **Plaintiff and the Class request a declaration of their rights as Intended Beneficiaries to the 2005 Stipulated Final Judgment contract that was entered into between Defendants and the Federal Trade Commission.** Significantly, "[E]nforcement of consent decrees is governed by the established contract principle that

non-parties, as intended third party beneficiaries, may enforce an agreement." *Hook v. State of Ariz. Dept. of Corrections*, 972 F.2d 1012 (9th Cir. 1992) (citing Restatement (Second) of Contracts § 304 & cmt. a-b (1981); *see also United States v. Asarco Inc.*, 430 F.3d 972, 980 (9th Cir. 2005) ("Without question courts treat consent decrees as contracts for enforcement purposes. A consent decree, like a contract, must be discerned within its four corners, extrinsic evidence being relevant only to resolve ambiguity in the decree.")).

138. **Plaintiff and the Class request a declaration of their right to enforce Defendants' compliance with the 2005 Order Granting a Permanent Injunction pursuant to the authority of Federal Rule of Civil Procedure 71.** According to Rule 71, "When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party." Such procedure includes initiation of civil contempt proceedings under Federal Rule of Civil Procedure 70(e). There appears to be a disagreement amongst some courts as to whether a non-party has standing to enforce a consent decree, or if so, whether she must first meet the criteria of an intended third party beneficiary under contract law, or whether Rule 71 should be read literally as to only require that the Order "grant relief" for a nonparty. *See, e.g., Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985) (noting a split in authority, but allowing third party enforcement of the decree in part because "[A] court has an affirmative duty to protect the integrity of its decree....'A defendant who has obtained the benefits of a consent decree-not the least of which is the termination of the litigation-cannot then be permitted to ignore such affirmative obligations as were imposed by the decree."); *see also US v. FMC Corp.*, 531 F. 3d 813, 820 (9th Cir. 2008) ("Under Ninth Circuit precedent, incidental third-party beneficiaries may not enforce consent decrees, but *intended* third-party beneficiaries may. Most other circuits are in accord with our restrictive reading of the Supreme Court's statement in *Blue Chip Stamps*...").

139. The 2005 Stipulated Final Judgment is a valid contract between Defendants ORI, Den Uijl, and Corlett on the one hand, and the FTC on the other hand. Additionally,

1 the remaining Defendants have assented to the contract because they had notice of the
2 contract and its provision that any "officers, agents, servants, representatives, and
3 employees, and all other persons or entities in active concert or participation with"
4 Defendants ORI, Den Uijl, and Corlett are bound by the agreement and may be held
5 liable.⁷ Valuable consideration was exchanged in that the remaining Defendants received
6 the benefit of profiting from the Products by acting in concert with ORI, Den Uijl, and
7 Corlett in exchange for being bound to the terms of the Stipulated Final Judgment.

8 140. Plaintiff and the Class allege that the 2005 Stipulated Final Judgment was
9 intended to benefit Plaintiff and the Class. The contract expressly provides that Plaintiff
10 and the Class are to receive a benefit in the form of a "consumer redress" fund in the
11 amount \$1.5 Million.⁸ Moreover, the injunctive relief provisions of the contract are for
12 the direct benefit of consumers who purchased the products and are designed to prohibit
13 Defendants from further exposing Plaintiff and the class members to the false and
14 misleading advertising of weight loss products.

15 141. Defendants, as the promisors to the contract, owe a duty of performance to
16 any intended beneficiaries of the promise.

17 142. Plaintiff and the Class Members contend that they are intended third party
18 beneficiaries to the promises made by Defendants under the 2005 Stipulated Final
19 Judgment.

20 143. There is a substantial and continuing controversy between the Intended
21 Beneficiary Class and Defendants. A declaration of rights is both necessary and
22 appropriate to interpret the ambiguous provisions of the 2005 Stipulated Final Judgment
23 to determine whether Plaintiff and the Class have rights as Intended Beneficiaries under
24 the contract. The Stipulated Final Judgment was entered into between the parties more
25 than ten years ago and the Federal Trade Commission has not taken any further

26
27 ⁷ See Stipulated Final Judgment, Ex. 1 at ¶ 7.

28 ⁸ See Stipulated Final Judgment, Ex. 1 at § 5A.

1 enforcement action, despite the fact that the advertising and labeling claims of the
2 Products appear to be in clear violation of the Stipulated Final Judgment.

3 144. Moreover, the ordinary "bread and butter" type of consumer class action
4 lawsuits have proved mostly ineffective at providing meaningful redress to consumers
5 and, more troubling, have failed to halt the unlawful practices of Defendants in their sales
6 of fraudulent weight-loss supplements. As such, it is necessary for Plaintiff and the Class
7 to explore all available rights and remedies they may have under the law, including their
8 possible legal right to enforce the 2005 Stipulated Final Judgment under principles of
9 contract law or under the remedy afforded under Federal Rule of Civil Procedure 71.

10 145. But for the failure to enforce the 2005 Stipulated Final Judgment, Plaintiff
11 and the Class would not have suffered injury because enforcement of the 2005 Stipulated
12 Final Judgment would have prevented Defendants from marketing and selling the
13 Products to Plaintiff and the Class in the first place.

14 146. Plaintiff and the Class face a concrete and imminent threat of future injury
15 because Defendants continue to deceptively market and sell the products and Defendants
16 are known to market and sell new weight-loss supplements that are equally misleading,
17 but without disclosing the connection and affiliation to the Products at issue in this
18 Complaint. Plaintiff and the Class Members would purchase the Products, or similar types
19 of products, in the future if, the advertising and labeling claims were truthful and not
20 likely to mislead.

21 147. The harm suffered by Plaintiff and the Class Members can be redressed
22 through the requested relief: A Declaratory Judgment of Intended Beneficiary Rights
23 would allow Plaintiff, the Class Members, the Court, and the Public to have a clear and
24 early understanding of what rights and relations exist between the parties. Plaintiff and
25 the Class would find it more favorable to pursue their rights, if any, as Intended
26 Beneficiaries under the 2005 Stipulated Final Judgment. Absent the requested relief,
27 Plaintiff and the Class would face uncertainty as to their rights and may have to forego
28

1 the possibility of bringing civil contempt, or other meaningful proceedings against
2 Defendants in order to better preserve their rights and remedies in bringing state law
3 consumer fraud claims.

4 148. Plaintiff and the Class Members are intended third-party beneficiaries
5 under the terms of the contract and this intent seems to appear on the face of the contract.
6 Specifically, the following provisions, among others, suggest that Plaintiff and the Class
7 Members are intended third party beneficiaries:

- 8 a. “The action and relief awarded herein are in addition to, and not in
9 lieu of, other remedies that may be provided by law. *See* Ex. 1, ¶ 6.
10 (Emphasis Added).”
- 11 b. “Proceedings instituted under this paragraph *are in addition to, and not*
12 *in lieu of, any other civil or criminal remedies that may be provided by*
13 *law, including any other proceedings the Commission may initiate to*
14 *enforce this Order. *Id.* at ¶ V.(D) (Emphasis Added).”*
- 15 c. “...Proceedings instituted under this provision would be *in addition to,*
16 *and not in lieu of, any other civil or criminal remedies as may be*
17 *provided by law, including but not limited to contempt proceedings, or*
18 *any other proceedings that the Commission or the United States may*
19 *initiate to enforce this Order.” *Id.**

20 149. As a direct and proximate result of Defendants’ marketing and sales of the
21 Products, Plaintiff and the Declaratory Judgment Class have suffered injury to their legal
22 rights under the 2005 Stipulated Judgment, including their right not to be injured by and
23 subjected to illegal and false advertising statements.

24 150. Plaintiff and the Class request an Order for judgment declaring their rights
25 and relations under the 2005 Stipulated Final Judgment, the Court's Permanent
26 Injunction, and all corresponding injunctive and equitable relief necessary to effectuate
27

1 the Declaratory Judgment. In addition, Plaintiff and the Class seek an award of attorneys'
2 fees and costs as allowed by law.

3 **COUNT II**

4 **CLAIM FOR INTENTIONAL MISREPRESENTATION, FRAUD, AND DECEIT**

5 **CAL. CIV. CODE § 1710(2)**

6 ***By the Consumer Fraud Classes***

7 151. Plaintiff and the Class members incorporate by reference and re-allege each
8 and every allegation set forth above as though fully set forth herein.

9 152. Plaintiff brings this Claim individually and on behalf of the members of the
10 Class against all Defendants.

11 153. There are no material differences in the laws of the fifty states with respect
12 to claims for fraud and deceit as such claims arise from common law principles and
13 duties. In the event the Court does find that a material difference in state law exists, then
14 Plaintiffs and the Class assert this Claim based on the laws of California and all state with
15 substantially similar laws. Plaintiff and the Class reserve their right to amend the class
16 definitions in this complaint to further define multistate classes consisting of persons in
17 states that have substantially similar laws

18 154. Plaintiff brings this claim under alternate legal theories sounding in both tort
19 and contract as allowable by Federal Rule of Civil Procedure 8(d)(2). Plaintiff also asserts
20 alternate remedies sounding in both law and equity for this Claim.

21 ****False Statements of Material Facts****

22 156. Defendants made material representations to Plaintiff and the Class
23 members that the Lipozene Products are effective at providing weight loss benefits and
24 other representations described in this complaint. However, the Products are not
25 effective at providing the advertised weight loss results because the ingredients in the
26 Products are ineffective, as established by numerous reliable and credible studies, and the
27 ingredients cannot provide the advertised weight-loss benefits.

****Material Statements of Fact and not Opinions****

157. Defendants claimed to have special knowledge about the weight loss supplements because they tout the clinical studies supporting the Lipozene Products and claim that the Products are made by "Obesity Research Institute," which is a name designed to mislead consumers into believing that the Products are associated with a legitimate facility that conducts scientific research into obesity, such as the similar sounding Obesity Research Center at the National Institute of Health.

158. Plaintiff and the class members did not have the same superior knowledge about the products.

159. Defendants made the representations described in this complaint as true representations, not casual expressions of belief, and did so in a way that declared the matter to be true.

160. Defendants had reasons to expect that by disseminating purported "clinically proven" weight loss products, that Plaintiff and the Class would rely on their representations as material statements of facts and not opinions.

161. Defendants' actions constitute "actual fraud" within the meaning of Cal. Civ. Code § 1572 because Defendants did the following with the intent to deceive Plaintiffs and Class member and to induce them to enter into their contracts:

- a) Suggested that the Products are effective as weight-loss aids, even though Defendants knew that the Products are not;
- b) Positively asserted that the Products are made with no artificial ingredients or allergens, when in fact they are not;
- c) Suppressed the true nature of the Products from Plaintiffs and Class members; and
- d) Promised users would loose weight without diet and exercise.

162. Defendants' actions, listed above, also constituted "deceit" as defined by Cal. Civ. Code § 1710 because Defendants willfully deceived Plaintiff and the Class

1 members with intent to induce them to alter their positions to their detriment by
2 purchasing defective Products.

3 ****Fraud by Concealment and Omission of Material Facts****

4 163. As set forth above, Defendants concealed material facts concerning the true
5 nature of their Products, the testimonials about the products, and the true nature of the
6 clinical studies used in support of the weight-loss claims made on the product packaging
7 and advertising. Defendants had a duty to make these disclosures based on their superior
8 knowledge of the Products and the ingredients in the Products, as well as their affirmative
9 disclosure of some facts and concealment of other material facts, thus making the partial
10 disclosures deceptive.

11 164. Defendants actively concealed material facts, in whole or in part, with the
12 intent to induce Plaintiff and members of the Classes to purchase the Products.
13 Specifically, Defendants actively concealed the truth about the products by not disclosing
14 all facts about the studies supposedly supporting the Products or by making such studies
15 difficult or impossible to discover because many of the studies are only accessible by
16 means of a paid subscription to the “journal” or other publication that prints the full
17 version of the studies.

18 165. Plaintiffs and the Classes were unaware of these omitted material facts and
19 would not have acted as they did if they had known of the concealed facts.

20 166. Plaintiffs and the Class suffered injuries that were proximately caused by
21 Defendants’ active concealments and omissions of material facts.

22 167. Defendants’ fraudulent concealments and omissions were a substantial
23 factor in causing the harm suffered by Plaintiff and the class members as they would not
24 have purchased the products at all if all material facts were properly disclosed.

25 ****Knowledge of Falsities****

26 168. Defendants, at all times mentioned herein, had knowledge that that their
27 representations concerning the Products are false and misleading because they were put
28

1 on notice of the false and misleading nature of such advertising claims when the U.S.
2 Federal Trade Commission launched an enforcement action against them in 2005.

3 169. Defendants are sophisticated parties with superior knowledge about science
4 and supplement products knew that the representations were false or recklessly
5 disregarded to truth about the weight loss products they sold and marketed.

6 ****Intent to Defraud and Intent to Induce Reliance****

7 170. Defendants made the misrepresentations alleged herein with the intention of
8 inducing and persuading Plaintiffs and the Class to purchase the Lipozene Products
9 because the Defendants sought to reap enormous profits from the sales of the falsely
10 labeled Products and the fraudulent advertising and promotion of the Products was
11 essential to Defendants' ability to profit from the sales of the Products.

12 171. Defendants further withheld and omitted material information about the
13 Products with the intention of inducing and persuading Plaintiffs and the class to purchase
14 the Lipozene Products as a part of their unlawful scheme to make money from the sales
15 of the Products.

16 *****Intent to Defraud a Class of Persons and the Public*****

17 172. *"One who practices a deceit with intent to defraud the public, or a particular*
18 *class of persons, is deemed to have intended to defraud every individual in that class,*
19 *who is actually misled by the deceit."* Cal. Civ. Code § 1711.

20 173. Defendants are responsible for their material misrepresentations and
21 omissions described above even if they did not intend any particular Plaintiff or any
22 particular class member to rely on the misrepresentations because Defendants made the
23 representations to groups of persons and the public at large, intending or reasonably
24 expecting that it would be repeated to Plaintiffs and the Class members who are
25 consumers that were actually misled into purchasing the products.

**** Justifiable Reliance ****

174. Plaintiffs and the Class, by purchasing the products, justifiably relied on Defendants' false and misleading statements and misrepresentations, and on the absence of the material information that Defendants omitted. If Plaintiffs and the class would have known the truth concerning the false representations and omissions, they would not have purchased the Lipozene products at all because the Products are essentially "worthless" in that they have a fair market value of \$0.00.

175. Plaintiffs and the Class also justifiably relied on the the material misrepresentations made by all Defendants as described in this complaint because Defendants touted "clinical studies" to further the notion that the products worked as advertised.

**** Injury and Actual Damages ****

176. As a direct and proximate result of Defendants' intentional misrepresentations and deceptive omissions, Plaintiffs and the members of the Class were induced to pay for worthless products.

177. As a direct and proximate result of Defendants' intentional misrepresentations and deceptive omissions, Plaintiff and the members of the Class detrimentally relied on Defendants' misrepresentations and deceptive omissions in that they consumed worthless products that have no positive health benefits and in the fact that the products are potentially dangerous to their health.

178. Plaintiff and the Class bring this claim for intentional misrepresentation based on alternate legal theories sounding in both tort and contract.

179. Plaintiff and the Class were damaged through their purchase and use of the Products. Plaintiff and the Class suffered harm in that they suffered actual damages in the amount of what they paid for the Products subtracted by the fair market value of the products are actually worth.

180. The Products are worthless in that they have a fair market value of zero. Therefore, Plaintiffs and the Class have suffered actual damages in the amount of the purchase price paid for the products.

181. Alternatively, Plaintiff and the class allege that the Lipozene Products are priced at a premium in comparison to other weight-loss products and that the premium price is commanded in the marketplace as a direct result of the false and misleading advertising tactics described in this complaint. This alternative premium-price measure of damages can be calculated on a uniform class-wide basis and Plaintiffs and the classes out-of-pocket loss is the amount of the premium price that the Products command.

****Fraudulent Inducement ****

182. For Plaintiff's alternate intentional misrepresentation claim sounding in contract, Plaintiff suffered harm in that she would have actual economic damages for Defendants' breach of contract by way of fraud and Plaintiff alleges that the proper measure of damages would be a full refund of the class members' purchase price of the products because the sales contracts are voidable as a result of fraudulent inducement.

183. Plaintiff and the Class were induced by fraud when entering into the contracts and would not have purchased the products had they known the truth. Therefore, Plaintiff and the Class repudiate their purchase contracts and pray for legal or equitable restitution to the extent that Defendants have been unjustly enriched by wrongfully obtaining Plaintiffs and the class members' purchase money.

184. For Plaintiffs' alternative intentional misrepresentation claim based in tort, Plaintiffs and the class suffered harm and seek the actual damages suffered because they detrimentally relied on Defendants' false statements of material facts by expending their time purchasing the products and they suffered a personal injury in that they consumed Products that are worthless and potentially dangerous in that they are "adulterated" and contain undisclosed allergens. This chain of events is collateral to Plaintiffs purchase of the Products and gives rise to a separate tort claim as it affects a separate primary right.

1 Plaintiffs and the class have all suffered the threshold amount of harm to state a claim for
 2 fraud, but in the event that the actual damages based on this tort theory cannot be
 3 determined on a class-wide basis, Plaintiffs and the Class will then seek nominal damages
 4 for their alternative intentional misrepresentation claim based on tort in the amount of
 5 \$1.00 for each purchase of the Lipozene Products.

6 ****Punitive Damages****

7 185. Defendants' conduct was systematic, repetitious, knowing, intentional, and
 8 malicious, and demonstrated a lack of care and reckless disregard for Plaintiffs' and Class
 9 members' rights and interests. Defendants' conduct thus warrants an assessment of
 10 punitive damages under Cal. Civ. Code § 3294 and other applicable states' laws,
 11 consistent with the actual harm it has caused, the reprehensibility of its conduct, and the
 12 need to punish and deter such conduct.

13 **COUNT III**

14 **CLAIM FOR NEGLIGENT MISREPRESENTATION**

15 **CAL. CIV. CODE § 1710(2)**

16 ***By the Consumer Fraud Classes***

17 186. Plaintiff and Class Members re-allege and incorporate by reference each and
 18 every allegation set forth above, and further allege as follows:

19 187. Plaintiff and the Class bring this Count in the alternative to Count II.

20 188. Defendants had a duty to disclose to Plaintiffs and Class Members correct
 21 information as to the quality and characteristics of the Products because Defendants were
 22 in a superior position than Plaintiffs and Class Members such that reliance by Plaintiffs
 23 and Class Members were justified., Defendants possessed the skills and expertise to know
 24 the type of information that would influence a consumer's purchasing decision.

25 189. During the applicable Class period, Defendants negligently or carelessly
 26 misrepresented, omitted, and concealed from consumer's material facts regarding the
 27 quality and characteristics of the Products, including the alleged weight-loss benefits.

190. Defendants made such false and misleading statements and omissions through a wide range of advertisement medium described herein, with the intent to induce Plaintiffs and Class Members to purchase the Products.

191. Defendants were careless in ascertaining the truth of its representations in that they knew or should have known that Plaintiffs and Class Members would not realize the alleged benefits represented by Defendants.

192. Plaintiffs and Class Members were unaware of the falsity in Defendants' misrepresentations and omissions and, as a result, justifiably relied on them when making the decision to purchase the Products.

193. Plaintiffs and Class Members would not have purchased the Products or paid as much for the Products if the true facts had been known.

COUNT IV

CLAIM FOR QUASI-CONTRACT/ UNJUST ENRICHMENT

THE COMMON LAW OF CALIFORNIA

By the Consumer Fraud Classes

194. Plaintiff and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

195. Plaintiff and the Class members conferred a benefit on Defendants by purchasing the Products.

196. Defendants have been unjustly enriched in retaining the revenues derived from Class members' purchases of the Products, which retention under these circumstances is unjust and inequitable because Defendants misrepresented the facts concerning the efficacy of the Products and caused Plaintiffs and the Class to lose money as a result thereof.

197. Plaintiff and the Class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased the Products if the true facts had been known. Because Defendants' retention of the non-gratuitous benefit

conferred on it by Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

COUNT V

CLAIM FOR VIOLATIONS OF THE UNFAIR COMPETITION LAW

CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

By the Consumer Fraud Classes

198. Plaintiff and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

199. California's Unfair Competition Law, Business and Professions Code §17200 (the "CULL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendants have engaged in unfair, deceptive, untrue and misleading advertising, and continue to engage in such business conduct, in violation of the UCL.

200. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

****Unlawful****

201. Defendants have violated the UCL unlawful prong in at least the following ways:

- i. By knowingly and intentionally concealing from Plaintiff and the other Class members that the Products cannot provide the advertised weight-loss benefits while obtaining money from Plaintiffs;

- ii. By misrepresenting the nature of the Products and the Products' effectiveness at providing the weight-loss benefits;
- iii. By engaging in the conduct giving rise to the claims asserted in this complaint;
- iv. By violating the federal Food Drug and Cosmetics Act and California's Counter-part, the Sherman Act, in that Defendants sold products that are "misbranded" and "adulterated."
- v. By violating the Court's 2005 Order for a Permanent Injunction and by civil contempt of court;
- vi. By abuse of legal process and contempt of court in that Defendants have mislead the courts, the Class Members, and the Public by engaging in collusive and egregious "class action settlement" practices, including by hiring a "class action administrator" who markets, sells, distributes and profits from sales of the Lipozene Products that were at issue in the case;
- vii. Breach of fiduciary duties and providing material assistance in breaching fiduciary duties in that class action administrators are to serve in the role of a trustee and fiduciary on behalf of the class;

202. Such conduct is ongoing and continues to this date.

203. Plaintiff and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices.

****Unfair****

204. The UCL also prohibits any "unfair"... business act or practice."

206. Plaintiff also alleges violations of consumer protection, unfair competition and truth in advertising laws in California and other states resulting in harm to consumers. Plaintiffs assert violation of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of the UCL. Such conduct is ongoing and continues to this date.

207. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

208. The UCL also prohibits any “fraudulent business act or practice.”

209. Defendants' claims, nondisclosures (i.e., omissions) and misleading statements, as more fully set forth above and specifically in Count II, were false, misleading and/or likely to deceive a reasonable consumer within the meaning of the UCL. Such conduct is ongoing and continues to this date.

210. Defendants' conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact as a result of Defendants' unfair conduct.

211. Defendants have thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff and the Class to injunctive relief against Defendants, as set forth in the Prayer for Relief.

212. Pursuant to Business and Professions Code §17203, Plaintiffs and the Class seek an order requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendants to engage in a corrective advertising campaign.

213. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Products they purchased, which was unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition and attorneys' fees and costs.

COUNT VI

CLAIM FOR VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT ("CLRA")

CAL. CIV. CODE §§ 1750, *et seq.*

By the Consumer Fraud Class

214. Plaintiff and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

215. Defendants are "persons" under Cal. Civ. Code § 1761(c).

216. Plaintiff is a "consumer," as defined by Cal. Civ. Code § 1761(d).

217. By making affirmative misrepresentations about the weight loss benefits of the products and by concealing material facts about the products and the studies supporting the efficacy claims about the products, Defendants engaged in deceptive business practices prohibited by the CLRA, Cal. Civ. Code § 1750, *et seq.*, including:

- § 1770(a)(2): Misrepresenting the source, sponsorship, approval, or certification of goods or services by claiming that that the Products are "clinically proven" to help users lose weight when in fact they are not.

- 1 • § 1770(a)(3): Misrepresenting the affiliation, connection, or association with, or
2 certification by, another by using fake testimonials and endorsements.
- 3 • 1770(a)(5): Representing that goods have characteristics, uses, or benefits which
4 they do not have by claiming that the products are effective as weight-loss aids
5 when in fact they provide no such benefits.
- 6 • § 1770(a)(7): representing that goods are of a particular standard, quality, or
7 grade if they are of another by claiming that the products are natural and contain
8 no allergens when in fact such representations are not true.
- 9 • § 1770(a)(9): advertising goods with intent not to sell them as advertised because
10 Defendants knew that the Products could not provide the advertised benefits, but
11 they chose to advertise and sell the Products to consumers.
- 12 • § 1770(a)(16): representing the subject of a transaction has been supplied in
13 accordance with a previous representation when it has not by using harmful
14 ingredients that fluctuate in their quantity and quality.

15 218. Defendants had a duty to make material disclosures about the true nature of
16 the Products.

17 219. A reasonable consumer would not have purchased nor paid as much for the
18 Products had Defendants disclosed the truth about the weight loss benefits of the products
19 and the clinical studies supporting the products, as that information is material to a
20 reasonable consumer.

21 220. As a result of its violations of the CLRA detailed above, Defendants have
22 caused and continues to cause harm to Plaintiff and members of the Class and, if not
23 stopped, will continue to harm them. Had Plaintiff known the truth about the Products
24 she would not have purchased the Products.

25 221. In accordance with Civil Code § 1780(a), Plaintiff and members of the Class
26 seek injunctive and equitable relief for Defendants' violations of the CLRA. In addition,
27 after mailing appropriate notice and demand in accordance with Civil Code § 1782(a) &
28

(d), Plaintiff will subsequently amend this Complaint to also include a request for damages. Plaintiff and members of the Class request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

COUNT VII

CLAIM FOR FALSE ADVERTISING

CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

By the Consumer Fraud Classes

222. Plaintiff and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

223. Plaintiff and the Class members have standing to pursue this claim as Plaintiff and Class have suffered injury in fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Product in reliance upon Defendants' marketing claims. Plaintiff used the Products as directed, but the Products have not worked as advertised, nor provided any of the promised benefits.

224. Defendants' business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to California Business and Professions Code section 17500, *et seq.* because Defendants advertised the Products Plaintiff purchased in a manner that is untrue and misleading, and that is known or reasonably should have been known to Defendants to be untrue or misleading.

225. Defendants' wrongful business practices have caused injury to Plaintiff and the Class.

226. Pursuant to section 17535 of the California Business and Professions Code, Plaintiffs and the Class seek an order of this court enjoining Defendants from continuing

1 to engage in deceptive business practices, false advertising, and any other act prohibited
2 by law, including those set forth in the complaint.

3 227. Plaintiffs also seeks an order for the disgorgement and restitution of all
4 monies from the sale of the Products which were unjustly acquired through acts of
5 unlawful, unfair, and/or fraudulent competition and attorneys' fees and costs.

6 **COUNT VIII**
7 **CLAIM FOR BREACH OF EXPRESS WARRANTY**

8 **CAL. COMM. CODE § 2313**

9 ***By the Consumer Fraud Class***

10 228. Plaintiff and Class Members re-allege and incorporate by reference each and
11 every allegation set forth above, and further allege as follows:

12 229. The Express Warranties as defined in this complaint are written warranties
13 that appear on the product labels and packaging.

14 230. Defendants, in their capacity as manufacturers of the Products, expressly
15 warranted that the Products were fit for their intended purpose by making the Express
16 Warranties.

17 231. The foregoing representations were material and were a substantial factor in
18 causing the harm suffered by Plaintiff and the Class because they concerned alleged
19 efficacy of the Products regarding the ability aid with weight loss.

20 232. These representations had an influence on consumers' decisions in
21 purchasing the Products.

22 233. Defendants made the above representations to induce Plaintiff and the
23 members of Class to purchase the Products. Plaintiff and the Class members relied on the
24 representations when purchasing Defendants' products.

25 234. In fact, the Products do not conform to the Express Warranties because each
26 of the Express Warranties are false and misleading and the Products do not perform as
27 warranted.

235. Plaintiff and the Class members were injured and continued to be injured as a direct and proximate result of Defendants' breach because they would not have purchased the Products or paid as much for the Products if the true facts had been known.⁹

236. Plaintiff and the Class bring this claim against Defendants in their capacities as manufacturers of the Products with whom Plaintiffs have not dealt with directly. Therefore, Plaintiff and the Class were not required to notify Defendants of their breaches of express warranties within a reasonable time. Plaintiffs have notified Defendants of their breaches via letters sent by certified mail, return receipt requested, and are allowing Defendants reasonable time to take corrective actions. Should Defendants fail to take corrective action, Plaintiff and the Class reserve their right to amend this complaint and bring claims for breach of warranty based on Defendants' capacities as sellers of the Products and to assert other warranty claims based on similar state laws like the California Song-Beverly Consumer Warranty Act and the Federal Magnuson-Moss Warranty Act.

COUNT IX

CLAIM FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

CAL. COMM. CODE § 2313

By the Consumer Fraud Class

237. Plaintiff and the Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

238. Defendants, in their capacity as manufacturers of the Products, impliedly warranted that the Products were fit for their intended purpose in that the Products would aid with weight-loss.

239. Defendants did so with the intent to induce Plaintiff and Class Members to purchase the Products.

⁹ Though, Plaintiff and the Class would still be interested in purchasing the Lipozene Products again if they were represented properly or truthfully.

1 240. At the time of Plaintiff and the class members' purchase, Defendants, by
2 their occupations as manufacturers of the goods, held themselves out as having special
3 knowledge or skill regarding the Products.

4 241. Defendants breached the warranties implied in the contract for the sale of
5 the Products in that the Products:

- 6 a) Were not of the quality as of other products generally acceptable in
7 the trade of weight-loss aids and/or supplement products;
- 8 b) Were not fit for the ordinary purposes for which the Products were
9 intended because they provide no weight-loss benefits.
- 10 c) Were not adequately labeled because the statements on the label
11 are false and misleading;
- 12 d) Were not conformed to the promises or affirmations of fact made
13 on the container or label because the Products provide no weight-
14 loss benefits and are worthless products;

15 242. Moreover, the Products could not pass without objection in the trade under
16 the contract description, the goods were not of fair or average quality within the
17 description, and the goods were unfit for their intended and ordinary purpose. As a result,
18 Plaintiffs and the Class members did not receive the Products as impliedly warranted by
19 Defendants to be merchantable.

20 243. Plaintiffs and the Class bring this claim against Defendants in their
21 capacities as manufacturers of the Products with whom Plaintiffs have not dealt with
22 directly. Therefore, Plaintiffs and the Class were not required to notify Defendants of
23 their breaches of implied warranties within a reasonable time. Plaintiffs have notified
24 Defendants of their breaches via letters sent by certified mail, return receipt requested,
25 and are allowing Defendants reasonable time to take corrective actions. Should
26 Defendants fail to take corrective action, Plaintiffs reserve their right to amend this
27 complaint and bring claims for breach of implied warranties based on Defendants'

capacities as sellers of the Products and to assert other warranty claims based on similar state laws like the California Song-Beverley Consumer Warranty Act and the Federal Magnuson-Moss Warranty Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members request that the Court enter an order or judgment against Defendants including the following:

- A. An order certifying that the Intended Beneficiary Class is proper as a class action pursuant to Rule 23(b)(2) with respect to adjudication of Plaintiff's claim for Declaratory Judgment;
- B. In addition to or in the alternative to the Rule 23(b)(2) class, an order certifying that the Consumer Fraud Classes are proper as class actions pursuant to Rule 23(b)(3), or Rule 23(b)(2), with respect to adjudication of Plaintiff's remaining claims;
- C. An order bifurcating class certification by allowing Plaintiff to file a motion for class certification as to the Intended Beneficiary Class before filing a motion for certification of the consumer fraud classes;
- D. An order appointing Plaintiff as a class representative of the Classes, as class representative of her respective Subclasses, and The Law Office of Ronald A. Marron as counsel for the Class;
- E. An order requiring Defendants to bear the costs of Class notice;
- F. An Order for a Judgment declaring that Plaintiff and the Intended Beneficiary Class Members are third party intended beneficiaries to the 2005 Stipulated Final Judgment that Plaintiff and the Class Members have standing to initiate civil contempt proceedings against Defendants in accordance with Federal Rule of Civil Procedure 71;
- G. An Order holding Defendants in civil contempt for violations of the 2005 Order for Permanent Injunction and Stipulated Final Judgment;

- H. An Order for a preliminary and permanent injunction to enforce compliance with the provisions of the 2005 Stipulated Final Judgment, and attorneys' fees, costs of suit, and incentive award for Plaintiff's representation of the Class pursuant to applicable state or federal law.
- I. Restitution in such amount that Plaintiff and Class Members paid to purchase Defendants' Products;
- J. Actual damages, compensatory damages, punitive, treble damages, nominal damages, and such other relief as provided by the statutes cited herein;
- K. Other appropriate injunctive relief;
- L. An order declaring Defendants' conduct as unlawful, and an order enjoining Defendants from unlawfully and misleadingly representing the Products in violation of state law;
- M. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and pre- and post-judgment interest on such monetary relief;
- N. An order requiring an accounting for, and imposition of, a constructive trust upon all monies Defendants received as a result of the misleading, fraudulent, and unlawful conduct alleged herein.
- O. Such other relief to which Plaintiffs and Class Members may be entitled to at law or in equity.

Jury Trial Demanded

Plaintiff hereby demands a jury trial on all claims so triable.

1 Dated: March 29, 2015

**LAW OFFICES OF RONALD
A. MARRON**

2
3 Respectively submitted,

4 s/ Ronald A. Marron

5 Ronald A. Marron, Esq.
6

7
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16
17 ***Counsel for Plaintiff and the Proposed***
18 ***Classes***
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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

REGINA BOZIC, on behalf of herself, all others similarly situated, and the general public,

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

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

DEFENDANTS

HENNY DEN UIJL, SANDRA DEN UIJL, BRYAN CORLETT, OBESITY RESEARCH INSTITUTE, CONTINUITY PRODUCTS, WEIGHT LOSS INSTITUTE, ZODIAC FOUNDATION, et al.

County of Residence of First Listed Defendant SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)
UNKNOWN

'16CV0733 BTM RBB**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 type="checkbox"/> 1 | <input checked="" 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 checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - 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 checked="" 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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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 type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS 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			

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):
Class Action Fairness Act, 28 U.S.C. 1332

Brief description of cause:
Consumer Class Action Lawsuit - Contract

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 Hon. Judge Bashant

DOCKET NUMBER 3:15-cv-00595-BAS- MDD

DATE

03/29/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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 No. 1

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
1.	Copy of Complaint For Permanent Injunction And Other Equitable Relief, Federal Trade Commission v. Fiberthin et al., No. 3:05-cv-01217-BEN-BLM (S.D. Cal. Jun. 14, 2005) that was downloaded from the Federal Trade Commission's website on March 29, 2016, available at https://www.ftc.gov/enforcement/cases-proceedings/032-3196/fiberthin-llc-obesity-research-institute-llc-henny-den-uijl (see also ECF No. 1, Case No. No. 3:05-cv-01217)	1-15

Number	Description	Page Numbers
2.	<p>Copy of Stipulated Final Judgment and Order for Permanent Injunction, Monetary and Other Equitable Relief in Federal Trade Commission v. Fiberthin et al., No. 3:05-cv-01217-BEN-BLM (S.D. Cal. Jun. 14, 2005) that was downloaded from the Federal Trade Commission's website on March 29, 2016, available at https://www.ftc.gov/enforcement/cases-proceedings/032-3196/fiberthin-llc-obesity-research-institute-llc-henny-den-uijl</p> <p>(The Order that was entered by the Court can be found at ECF No. 2, Case No. No. 3:05-cv-01217)</p>	16-35
3.	Copy of Complaint in Conversion Systems, LLC v. Obesity Research Institute, LLC et al., Case No. BC599270 (Sup. Ct. Cal. Nov. 5, 2015).	36-62
4.	Copy of the Complaint in <i>Joshua Weiss v. Continuity Products et al.</i> , Case No. 00043385 (Sup. Ct. Cal. Nov. 31, 2015) adopting the highlighted allegations regarding the joint liability of Defendants.	63-87
5.	Archived screenshots of Lipoze.com that were obtained from the Internet Archive's "Way Back Machine," available at http://web.archive.org/web/*/lipozene.com .	88-104
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," available at http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112

Number	Description	Page Numbers
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FIBERTHIN, LLC,
OBESITY RESEARCH
INSTITUTE, LLC,
HENNY DEN UIJL,
BRYAN CORLETT,
JAMES AYRES, and
DR. JONATHAN M. KELLEY,
Defendants.

CIVIL NO.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), through its undersigned attorneys, for its Complaint alleges:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable

1 relief against Defendants for engaging in deceptive acts or practices in violation of Sections 5(a)
2 and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52,
5 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)
7 and (c).

8 **THE PARTIES**

9 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
10 States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section
11 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
12 affecting commerce. The Commission also enforces Section 12 of the FTC Act, 15 U.S.C. § 52,
13 which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or
14 affecting commerce. The Commission, through its own attorneys, may initiate federal district
15 court proceedings to enjoin violations of the FTC Act and to secure such equitable relief,
16 including rescission of contracts and restitution, and the disgorgement of ill-gotten gains caused
17 by Defendants' law violations, as may be appropriate in each case. 15 U.S.C. § 53(b).

18 5. Defendant FiberThin, LLC ("FiberThin") is a California limited liability company
19 with offices located at 1601 Aryana Drive, Encinitas, California. At times relevant to the
20 complaint, acting individually or in concert with others, FiberThin has advertised, marketed,
21 distributed, and sold the dietary supplements FiberThin and MetaboUp to consumers in the
22 United States. FiberThin transacts business in this district and throughout the United States.

23 6. Defendant Obesity Research Institute, LLC ("ORI") is a California limited
24 liability company with offices located at 1601 Aryana Drive, Encinitas, California. At times
25 relevant to the complaint, acting individually or in concert with others, ORI has advertised,
26 marketed, distributed, and sold the dietary supplements Propolene and Excelerene to consumers
27 in the United States. ORI transacts business in this district and throughout the United States.

28 7. Defendant Henny den Uijl is a Managing Member of both FiberThin and ORI, and

1 has a 50% ownership interest in each company. Mr. den Uijl is the registered agent for both
2 companies, and is listed as the administrative contact for the www.fiberthin.com website. At
3 times relevant to this Complaint, acting individually or in concert with others, Mr. den Uijl has
4 formulated, directed, controlled, or participated in the acts or practices of FiberThin and ORI,
5 including the acts or practices alleged in this Complaint. He transacts business in this district and
6 throughout the United States.

7 8. Defendant Bryan Corlett is a Managing Member of both FiberThin and ORI, and
8 has a 50% ownership interest in each company. He also holds the trademarks for “FiberThin”
9 and “MetaboUp.” At times relevant to this Complaint, acting individually or in concert with
10 others, Mr. Corlett has formulated, directed, controlled, or participated in the acts or practices of
11 FiberThin and ORI, including the acts or practices alleged in this Complaint. He transacts
12 business in this district and throughout the United States.

13 9. Defendant James Ayres is a partner in the company Ayres Weight Management,
14 which conducted purported studies on FiberThin and MetaboUp. His business address is 31600
15 Railroad Canyon Road, Canyon Lake, California. He has aided in the promotion of FiberThin by
16 appearing as a “weight loss consultant” and providing endorsements for the product in
17 advertisements. Mr. Ayres transacts business in this district and throughout the United States.

18 10. Defendant Jonathan M. Kelley, M.D. is a retired anesthesiologist. He has aided in
19 the promotion of Propolene by appearing and providing endorsements for the product in
20 advertisements. Dr. Kelley transacts business in this district and throughout the United States.

21 COMMERCE

22 11. The acts and practices of Defendants alleged in this Complaint have been in or
23 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

24 DEFENDANTS’ COURSE OF CONDUCT

25 12. Since at least 2003, Defendants FiberThin, den Uijl, and Corlett have advertised,
26 labeled, offered for sale, and sold products to the public throughout the United States, including
27 FiberThin and MetaboUp, two dietary supplements marketed and sold for weight loss.
28 Defendants primarily advertise and offer these products for sale through a 30-minute television

1 infomercial and an Internet website, www.fiberthin.com. The infomercial aired on numerous
2 television stations, including The Learning Channel, PAX Family Entertainment Network, Home
3 and Garden TV, and CNBC. Defendant Ayres appears in the television infomercial and endorses
4 the FiberThin product.

5 13. Since at least 2003, Defendants ORI, den Uijl, and Corlett have advertised,
6 labeled, offered for sale, and sold products to the public throughout the United States, including
7 Propolene and Excelerene, two dietary supplements marketed and sold for weight loss.
8 Defendants primarily advertise and offer Propolene for sale through television commercials and
9 an Internet website, www.propolene.com, and offer Excelerene for sale through the
10 www.propolene.com website. Defendant Kelley appears in the television commercials and
11 endorses the Propolene product. Propolene and FiberThin appear to be identical products with
12 different names. Excelerene and MetaboUp appear to be identical products with different
13 names.

14 The Supplements

15 14. FiberThin and Propolene are tablets that purportedly contain glucomannan as their
16 primary ingredient. MetaboUp and Excelerene are tablets that purportedly contain green tea,
17 chromium, and bitter orange as their primary ingredients. FiberThin and MetaboUp are sold
18 together for weight loss, as are Propolene and Excelerene. The initial 60-day supply of FiberThin
19 and MetaboUp offered through the www.fiberthin.com website costs \$99.80, including \$9.95 for
20 shipping and handling, and \$29.95 per month thereafter if customers join Defendants' "Take it
21 off, Keep it off" automatic shipping program. The initial 60-day supply of Propolene and
22 Excelerene offered through the www.propolene.com website costs \$89.85, and \$29.95 per month
23 thereafter if customers join Defendants' "Take it off, Keep it off" automatic shipping program.

24 Advertisements for FiberThin and MetaboUp

25 15. To induce consumers to purchase FiberThin and MetaboUp, Defendants
26 FiberThin, den Uijl, and Corlett have disseminated, or caused to be disseminated, advertisements
27 for the supplements, including but not limited to the attached Exhibits A and B. These
28 advertisements contain the following statements or depictions, among others:

A. Excerpts From Television Infomercial

MALE ANNOUNCER: Do you dream of having that thin, lean body but you just can't seem to lose that weight? You've tried the terrible tasting diet foods, the strenuous exercise and those messy shakes that leave you starving. You're just fed up because nothing works.

ON SCREEN: What CAN YOU DO?

MALE ANNOUNCER: What can you do?

ON SCREEN: Don't Give Up

MALE ANNOUNCER: Don't give up, because now, for the first time ever, one of the most powerful weight loss systems ever developed is available to you called the Fiber Thin System.

ON SCREEN: GUARANTEED YOU'LL LOSE UP TO 20 LBS. IN 30 DAYS!

OR YOUR MONEY BACK!

MALE ANNOUNCER: This system guarantees you'll lose up to 20 pounds in 30 days or your money back.

ON SCREEN: Before photo

Ron Phipps

LOST 50 LBS. IN 3 MONTHS!

City Controller

Results Vary

RON PHIPPS: I lost 50 pounds on the Fiber Thin System.

* * *

ON SCREEN: Clinically Proven

Guaranteed Weight Loss!

No Special Diet or Exercise Program Needed

MALE ANNOUNCER: The ingredients in the Fiber Thin System are clinically proven to deliver you weight loss results without any special diet or exercise program.

ON SCREEN: For best results/maximum weight loss, follow the diet and exercise plan.

GUARANTEED WEIGHT LOSS!

MALE ANNOUNCER: Included in the Fiber Thin System is the Guide to Healthy Living.

ON SCREEN: Full of Valuable Weight Loss Tips! Lose Even More Weight!

MALE ANNOUNCER: This guide gives you diet and exercise tips so you lose even more weight. When you combine Fiber Thin with the Guide to Healthy Living, we guarantee you'll lose up to 20 pounds in 30 days or your money back.

* * *

ON SCREEN: Jennifer Corlett

LOST WEIGHT IN DAYS!

College Student

Results Vary

JENNIFER CORLETT: With Fiber Thin, I didn't have to diet, I didn't have to exercise and I still lost weight.

* * *

ON SCREEN: Traps Fat and Eliminates It From Your Body Naturally!

MALE ANNOUNCER: This powerful fiber then becomes a fat-trapping machine that grabs fats and eliminates them from your body.

ON SCREEN: Traps Up to 400 Fat Calories Per Day!

MALE ANNOUNCER: In fact, laboratory studies show that Fiber Thin can trap up to 400 fat calories a day.

* * *

MALE ANNOUNCER: Also included in the Fiber Thin System is MetaboUp.

ON SCREEN: All Natural

Increases Energy

Boosts Metabolism Up to 43%

MALE ANNOUNCER: MetaboUp is a blend of all-natural herbs that are scientifically proven to increase your energy and boost your metabolism up to 43 percent.

ON SCREEN: Burn More Calories Every Day!

MALE ANNOUNCER: So, you'll be burning more calories every day.

* * *

ON SCREEN: Do you WANT PROOF?

MALE ANNOUNCER: You want proof that Fiber Thin works?

ON SCREEN: WE HAVE IT!

MALE ANNOUNCER: Well, we have it.

ON SCREEN: 42 Clinical Studies Prove That Fiber Thin™ Works!

MALE ANNOUNCER: Forty-two clinical studies, some published in medical journals like --

ON SCREEN: Current Therapeutic Research

MALE ANNOUNCER: -- Current Therapeutic Research --

ON SCREEN: International Journal of Obesity

MALE ANNOUNCER: -- the International Journal of Obesity and --

ON SCREEN: American Journal of Clinical Nutrition

* * *

MALE ANNOUNCER: -- the American Journal of Clinical Nutrition found that subjects taking the ingredients in Fiber Thin lost weight without diet and exercise. . .

ON SCREEN: Faster and Easier Than Anything You've Tried!

MALE ANNOUNCER: We are so sure that you'll lose weight faster and easier than anything you've ever tried --

* * *

ON SCREEN: Weight Loss Specialist

Amber Pawlowski, RD, CLE

Registered Dietitian

AMBER PAWLOWSKI: You can exercise like you are, you can eat like you are, as long as you're taking Fiber Thin, you're going to lose weight.

ON SCREEN: Weight Loss Guaranteed!

MALE ANNOUNCER: No other diet product is clinically proven to deliver you results like this.

* * *

ON SCREEN: Carol Birdsall

LOST 22 Lbs. Of Body Fat!

Manicurist

Results Vary

CAROL BIRDSALL: Even if you eat the way you normally do, you're still going to lose the weight.

* * *

ON SCREEN: Weight Loss Specialist

1 **Amber Pawlowski, RD, CLE**
2 **Registered Dietitian**

3 AMBER PAWLOWSKI: One of the studies conducted found that if you take Fiber Thin before
4 each of your meals, you can trap up to 400 fat calories a day.

5 * * *

6 **ON SCREEN: CASE STUDY**

7 **Fiber Thin™**

8 **12 Week Study**

9 **Ayres Weight Management**

10 **Test Fiber Thin on**

11 **60 Test Subjects**

12 **100% Weight Loss**

13 **Success [sic]**

14 **ON SCREEN: Weight Loss Consultant**

15 **JIM AYRES**

16 **Ayres Weight Management**

17 JIM AYRES: Ayres Weight Management has evaluated several different weight loss products.
18 We have never seen a product that delivers results like Fiber Thin, period. One hundred percent
19 of the individuals in our study lost weight.

20 * * *

21 JIM AYRES: As a matter of fact, within the first two days, we had people reporting that they
22 had lost a pound or two.

23 **ON SCREEN: Weight Loss Consultant**

24 **JIM AYRES**

25 **Ayres Weight Management**

26 JIM AYRES: And after one week, we observed that some individuals lost anywhere from five to
27 ten pounds.

28 Now, that trend continued week after week after week for a 12-week period.

29 **ON SCREEN: Before and after photos**

30 **Ed May**

31 **LOST 50 LBS. IN 3 MONTHS!**

32 **Medical Technician**

33 **Results Vary**

34 JIM AYRES: We had some people lose even up to 50 pounds. FiberThin works.

35 * * *

36 **ON SCREEN: Before photo**

37 **Ron Phipps**

38 **LOST 50 LBS. IN 3 MONTHS!**

39 **City Controller**

40 **Results Vary**

41 RON PHIPPS: I saw my biggest results in the first four weeks. I think I lost 20 pounds in the
42 first four weeks just getting my metabolism going, you know, eating -- eating more than I ever
43 ate before and I was never hungry.

44 (Exhibit A)

45 B. Excerpts From Website www.fiberthin.com.

46 Fiber Thin is the most revolutionary weight loss system ever developed. Ingredients in Fiber

Thin are clinically proven to deliver dramatic weight loss results.

FiberThin works!
It's easy!
You'll feel full!
No dieting!

* * *

What is included in the Fiber Thin System?

...
 Metabo-Up tablets. These tablets are a blend of all natural herbs that are scientifically proven to increase your metabolism by 40%.
 We are including the Guide to healthy living with your order. As with any diet program, the right diet and exercise plan can accelerate your results. This guide will outline different ways you can supplement the Fiber Thin tablets with diet and exercise to lose weight even faster.

* * *

How much weight will I lose?

... Fiber Thin guarantees you'll lose up to 20 pounds in 30 days if you use the Fiber Thin System, which is what you are looking for, right?

* * *

How does each product work?

Fiber Thin creates a fiber sponge that makes you feel full. Fiber Thin traps and binds some of the fat in the foods you eat so that it is not absorbed into your system. As a result, Fiber Thin reduces caloric intake from fat and adds healthy fiber into your diet. Metabo-Up contains green tea. Green tea is proven to increase your metabolism safely so you burn more calories.

(Exhibit B)

Advertisements for Propolene and Excelerene

_____ 16. To induce consumers to purchase Propolene and Excelerene, Defendants ORI, den Uijl, and Corlett have disseminated, or caused to be disseminated, advertisements for the supplements, including but not limited to the attached Exhibits C through E. These advertisements contain the following statements or depictions, among others:

A. Excerpts From Television Commercials

ON SCREEN: Jonathan Kelley, M.D.
Harvard Medical School Graduate
Individual results vary (remainder of sentence illegible)

JONATHAN Kelley: If you're 20 pounds or more overweight, there's news from the Obesity Research Institute. Dramatic weight loss can now be achieved without diet or exercise.

* * *

1 **ON SCREEN: Dr. Jose Echevarria**
2 **Lost 80 Pounds in 4 Months!**

3 **Individual results vary. For maximum weight loss, diet and exercise are (illegible).**

4 DR. JOSE ECHEVARRIA: The first week I lost like about 10 and then every month like 20
5 pounds.

6 **ON SCREEN: Propolene**
7 **Scientifically Proven to Reduce Weight**
8 **9 Clinical Studies**

9 FEMALE ANNOUNCER: Propolene, scientifically proven to reduce weight without special diet
10 and exercise, backed by nine clinical studies.

11 **ON SCREEN: Only For Weight Loss of 20 Pounds or More**

12 JONATHAN Kelley: Please understand, Propolene is so powerful that it was formulated only
13 for those that need to lose 20 pounds or more.

14 (Exhibit C)

15 ...

16 **ON SCREEN: Mike Deckert**
17 **Lost 30 Pounds in 8 Weeks!**
18 **Results not typical and may vary**

19 MIKE DECKERT: I was 247 eight weeks ago and I'm 30 pounds lighter today.

20 * * *

21 **ON SCREEN: Michelle Wolfensparger**
22 **"It Works By Itself!"**
23 **Results not typical and may vary**

24 MICHELLE WOLFENSPARGER: It definitely works by itself because I know I didn't do
25 anything different and I took it and I lost weight.

26 **ON SCREEN: Jim Backman**
27 **Lost 25 Pounds in 6 Weeks!**
28 **Results not typical and may vary**

JIM BACKMAN: I eat at fast food places almost all the time, so it's hard to eat healthy and the
weight still came off.

ON SCREEN: Jodi Sadlon
"It Was Just Very Easy!"
Results not typical and may vary

JODI SADLON: It was just very easy. You just take these pills about 20 minutes before you eat
and the pounds just fell off.

ON SCREEN: Robert Scott
Lost 35 Pounds!
Results not typical and may vary

ROBERT SCOTT: If you're a skeptic just say, here, trust me, try it, eat the same way, do what
you're doing and this pill will work.

* * *

ON SCREEN: Christa Lizzarga
Lost Weight With No Exercise
Results not typical and may vary

CHRISTA LIZZARGA: If this could work for me, it could work for anybody because I haven't been to the gym in over a month, to be honest, I have not gone to the gym even once. I don't have the time.

* * *

ON SCREEN: Jim Backman
Lost 25 Pounds in 6 Weeks!
Results not typical and may vary

JIM BACKMAN: They told me if I didn't lose weight, I was going to die. You don't change your life, all you do is take a pill.

* * *

ON SCREEN: Lose Up to 20 Pounds Guaranteed

FEMALE ANNOUNCER: Call now to try Propolene risk-free for 30 days. . . .

(Exhibit D)

B. Excerpts From Website www.propolene.com

Propolene™ is formulated for people who desire to lose 20 lbs. of weight or more. It is scientifically proven, easy, and it works. No dieting is involved, and as one of our customers put it "you don't have to change your life, you just have to take a pill". . . . The ingredients in Propolene™ are clinically proven to deliver dramatic weight loss results.

*** Propolene is effective!**
*** It's simple, just take it before meals!**
*** Safely Reduces Hunger!**
*** Decreases fat without Dieting!**

* * *

Frequently Asked Questions

. . . .

What is Excelerene?

Excelerene™ tablets are comprised of a blend of 100% natural herbs, which are scientifically proven to increase your metabolism by 40%.

What is Healthy Living Guide?

Included with your order you will find a Healthy Living Guide. As with any diet program, proper nutrition and exercise plan (sic) can accelerate your results. Healthy Living Guide outlines several eating and exercise plans, which can be used in conjunction with the Propolene™ tablets to accelerate your weight loss.

How much weight will I lose?

1 Weight loss varies depending on the individual. Propolene™ guarantees you will lose up to 20
 2 pounds in 30 days if you use the Propolene™.

3 * * *

4 **How does each product work?**

5 Propolene™ creates a viscous fiber mass, which is 100% natural soluble dietary fiber and
 6 provides a feeling of satiety. Propolene™ encapsulates some of the fat in the foods you eat and
 7 prevents its absorption by digestive tract (sic), resulting in reduced caloric intake from fat and
 8 adding healthy fiber to your diet.

9 Excelerene™ contains Green Tea. Green tea is proven to increase your metabolism safely so you
 10 burn more calories.

11 * * *

12 **Healthy Living Guide**

13 Obesity Research Institute, LLC, in cooperation with others, has developed an eating and
 14 exercise plan that will help your body use fats, carbs, and proteins more efficiently. This in turn
 15 will help you lose unwanted body fat. When used in combination with the Propolene™ and
 16 Excelerene™ supplements provided to you, subjects in an in-house study lost as much as 50
 17 pounds of unwanted body fat in only 12 weeks. (Exhibit E)

18 **THE FTC ACT**

19 17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
 20 or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits
 21 the dissemination of any false advertisement in or affecting commerce for the purpose of
 22 inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or
 23 cosmetics. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, FiberThin, MetaboUp,
 24 Propolene, and Excelerene are either “foods” or “drugs” as defined in Sections 15(b) and (c) of
 25 the FTC Act, 15 U.S.C. §§ 55(b), (c). As set forth below, Defendants have engaged and are
 26 continuing to engage in such unlawful practices in connection with the advertising, marketing,
 27 and sale of FiberThin and MetaboUp and/or Propolene and Excelerene.

28 **UNFAIR OR DECEPTIVE ACTS OR PRACTICES**
IN VIOLATION OF THE FTC ACT

COUNT I

Claims for FiberThin and MetaboUp

18. Through the means described in Paragraph 15, including through the
 advertisements attached as Exhibits A and B, Defendants FiberThin, Henny den Uijl, and Bryan
 Corlett have represented, expressly or by implication, that:

- a. FiberThin and MetaboUp cause rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- b. FiberThin and MetaboUp enable users to lose as much as 4 to 5 pounds per week over multiple weeks and months without the need to reduce caloric intake or increase exercise;
- c. FiberThin and MetaboUp work for all users;
- d. FiberThin causes substantial weight loss through blocking the absorption of fat calories;
- e. FiberThin is scientifically proven to block absorption of up to 400 fat calories per day;
- f. MetaboUp is scientifically proven to boost users' metabolism up to 43%; and
- g. FiberThin and MetaboUp are clinically proven to cause rapid and substantial weight loss, including as much as 50 pounds in three months, without the need to reduce caloric intake or increase exercise.

19. The representations set forth in Paragraph 18 are false or were not substantiated at the time the representations were made. Therefore, Defendants' representations as set forth in Paragraph 18 constitute a deceptive act or practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

Claims for Propolene and Excelerene

20. Through the means described in Paragraph 16, including through the advertisements attached as Exhibits C through E, Defendants ORI, Henny den Uijl, and Bryan Corlett have represented, expressly or by implication, that:

- a. Propolene causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise;
- b. Propolene enables users to lose as much as 4 to 5 pounds per week over multiple weeks and months without the need to reduce caloric intake or increase exercise;
- c. Excelerene is scientifically proven to boost users' metabolism by 40%; and
- d. Propolene is scientifically proven to cause rapid and substantial weight loss, including as much as 80 pounds in four months, without the need to reduce caloric intake or increase exercise.

21. The representations set forth in Paragraph 20 are false or were not substantiated at the time the representations were made. Therefore, Defendants' representations as set forth in Paragraph 20 constitute a deceptive act or practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT III

Defendant Ayres' Expert Endorsement

22. Through the means described in Paragraph 15, including through his statements contained in the advertisement attached as Exhibit A, Defendant James Ayres has represented, expressly or by implication, that:

- a. FiberThin causes rapid and substantial weight loss; and
- b. FiberThin is clinically proven to cause rapid and substantial weight loss.

23. The representations set forth in Paragraph 22 are false or were not substantiated at the time the representations were made. Moreover, Defendant Ayres did not exercise his purported expertise in the field of weight loss in the form of an examination or testing of FiberThin at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in his endorsement. Therefore, the making of the representations set forth in Paragraph 22 constitutes a deceptive act or practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT IV

Defendant Kelley's Expert Endorsement

24. Through the means described in Paragraph 16, including through his statements contained in the advertisements attached as Exhibits C and D, Defendant Dr. Jonathan Kelley has represented, expressly or by implication, that Propolene causes rapid and substantial weight loss without the need to reduce caloric intake or increase exercise.

25. The representation set forth in Paragraph 24 is false or was not substantiated at the time the representation was made. Moreover, Defendant Dr. Kelley did not exercise his

1 purported expertise in the field of weight loss in the form of an examination or testing of
 2 Propolene at least as extensive as an expert in that field would normally conduct in order to
 3 support the conclusions presented in his endorsement. Therefore, the making of the
 4 representation set forth in Paragraph 24 constitutes a deceptive act or practice, and the making of
 5 false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC
 6 Act, 15 U.S.C. §§ 45(a) and 52.

7 **INJURY**

8 26. Consumers throughout the United States have suffered and continue to suffer
 9 substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, the
 10 Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive
 11 relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust
 12 enrichment, and harm the public interest.

13 **THIS COURT'S POWER TO GRANT RELIEF**

14 27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
 15 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
 16 of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary or
 17 other relief, including, but not limited to, rescission of contracts and restitution, and the
 18 disgorgement of ill-gotten gains caused by Defendants' law violations.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff FTC requests that this Court, as authorized by Section 13(b) of
 21 the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

22 (a) Permanently enjoin Defendants from violating Sections 5(a) and 12 of the FTC
 23 Act, 15 U.S.C. §§ 45(a) and 52, in connection with the offer, sale, advertising, or other
 24 promotion or distribution of weight-loss products, or any food, drugs, dietary supplements, or
 25 other products, services, or programs;

26 (b) Award such equitable relief as the Court finds necessary to redress injury to
 27 consumers resulting from Defendants' violations of the FTC Act, including, but not limited to,
 28 rescission of contracts and restitution, and the disgorgement of ill-gotten gains; and

(c) Award the Plaintiff the costs of bringing this action, and such other equitable relief as the Court may determine to be just and proper.

Dated:

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

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Exhibit No. 2

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
2.	<p>Copy of Stipulated Final Judgment and Order for Permanent Injunction, Monetary and Other Equitable Relief in Federal Trade Commission v. Fiberthin et al., No. 3:05-cv-01217-BEN-BLM (S.D. Cal. Jun. 14, 2005) that was downloaded from the Federal Trade Commission's website on March 29, 2016, available at https://www.ftc.gov/enforcement/cases-proceedings/032-3196/fiberthin-llc-obesity-research-institute-llc-henny-den-uijl</p> <p>(The Order that was entered by the Court can be found at ECF No. 2, Case No. No. 3:05-cv-01217)</p>	16-35

Number	Description	Page Numbers
3.	Copy of Complaint in <i>Conversion Systems, LLC v. Obesity Research Institute, LLC et al.</i> , Case No. BC599270 (Sup. Ct. Cal. Nov. 5, 2015).	36-62
4.	Copy of the Complaint in <i>Joshua Weiss v. Continuity Products et al.</i> , Case No. 00043385 (Sup. Ct. Cal. Nov. 31, 2015) adopting the highlighted allegations regarding the joint liability of Defendants.	63-87
5.	Archived screenshots of Lipoze.com that were obtained from the Internet Archive's "Way Back Machine," <i>available at</i> http://web.archive.org/web/*/lipozene.com .	88-104
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," <i>available at</i> http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
FIBERTHIN, LLC,)	
OBESITY RESEARCH INSTITUTE, LLC,)	
HENNY DEN UIJL,)	
BRYAN CORLETT,)	
JAMES AYRES, and)	
DR. JONATHAN M. KELLEY,)	
Defendants.)	

Case No.

STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION, MONETARY AND
OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) against Defendants FiberThin, LLC, Obesity Research Institute, LLC, Henny den Uijl, Bryan Corlett, James Ayres, and Dr. Jonathan M. Kelley (collectively, “Defendants”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). Defendants have denied, and do not admit liability for, the allegations in the Complaint, except jurisdictional facts, but agree to the entry of the following Stipulated Final Order for Permanent Injunction, Monetary and Other Equitable

Relief (“Order”). The Court, being advised in the premises, finds as follows:

FINDINGS

1. In its Complaint, the Commission alleged that the Defendants violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. The Commission sought permanent injunctive relief for alleged deceptive acts or practices by the Defendants in connection with the marketing and sale of dietary supplements, FiberThin, MetaboUp, Propolene, and Exceleerene.

2. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of California is proper.

3. The Complaint states a claim upon which relief can be granted, and the Commission has the authority to seek the relief it has requested.

4. The acts and practices of Defendants were and are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.

6. The action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law.

7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defendants, and their officers, agents, servants, representatives, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

8. Nothing in this Order obviates Defendants’ obligation to comply with Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52.

9. This Order was drafted jointly by plaintiff and Defendants and reflects the negotiated agreement of the parties.

10. The paragraphs of this Order shall be read as the necessary requirements for compliance and not as alternatives for compliance and no paragraph serves to modify another paragraph

unless expressly so stated.

11. Each party shall bear its own costs and attorneys' fees.

12. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Defendants" shall mean:

A. FiberThin, LLC ("FiberThin"), a limited liability company, its divisions and subsidiaries, its successors and assigns;

B. Obesity Research Institute, LLC ("Obesity Research Institute"), a limited liability company, its divisions and subsidiaries, its successors and assigns;

C. Henny den Uijl, individually and in his capacity as a Managing Member and owner of FiberThin and Obesity Research Institute;

D. Bryan Corlett, individually and in his capacity as a Managing Member and owner of FiberThin and Obesity Research Institute;

E. James Ayres; and

F. Dr. Jonathan M. Kelley.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "Weight loss product" shall mean any product, program, or service designed, used, or purported to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit, or to prevent weight gain, in a user of the product, program, or service.

4. "Substantially similar product" shall mean any product that contains one or more of the following active ingredients: glucomannan, propol, konjac, konjac root, chromium, green tea, guarana seed, oolong tea, kola nut, bitter orange, cayenne, platycodon grandiflorum, or any

extracts of these ingredients.

5. “Food,” “drug,” and “device” shall mean as “food,” “drug,” and “device” are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.

6. “Covered product or service” shall mean any weight loss product, dietary supplement, food, drug, or device.

7. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

8. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

9. The term “including” in this Order shall mean “without limitation.”

10. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of FiberThin, MetaboUp, ProPolene, Excelerene, or any substantially similar product, are hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, including through the use of a trade name or endorsement, that any such product:

- A. Causes rapid or substantial weight loss without the need to reduce caloric intake or increase physical activity;
- B. Enables users to lose as much as 8 pounds or more per month without the need to reduce caloric intake or increase exercise;
- C. Works for all users; or

- 1 D. Causes substantial weight loss through blocking the absorption of fat or
2 calories.

3 **II.**

4 IT IS FURTHER ORDERED that Defendants, directly or through any corporation,
5 partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants,
6 representatives, employees, and all persons or entities in active concert or participation with them
7 who receive actual notice of this Order, by personal service or otherwise, in connection with the
8 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of
9 FiberThin, MetaboUp, Propolene, Excelerene, or any other covered product or service, are
10 hereby permanently restrained and enjoined from making any representation, in any manner,
11 expressly or by implication, including through the use of a trade name or endorsement:

- 12 A. That such product or service causes weight loss;
13 B. That such product or service enables users to lose weight or fat, or any specific
14 amount of weight or fat, without the need to reduce caloric intake or increase
15 physical activity;
16 C. That such product or service blocks the absorption of fat or calories or increases
17 metabolism; or
18 D. About the health-related benefits, performance, efficacy, safety, or side effects of
19 such product or service,

20 unless the representation is true, non-misleading, and, at the time it is made, Defendants possess
21 and rely upon competent and reliable scientific evidence that substantiates the representation.

22 *Provided, that*, in addition, for any representation made as an expert endorser, Defendants Ayres
23 and Kelley must possess and rely upon competent and reliable scientific evidence, and an actual
24 exercise of each of their represented expertise, in the form of an examination or testing of the
25 product or service at least as extensive as an expert in the field would normally conduct in order
26 to support any conclusions presented in their representation.

Representations Regarding Tests or Studies**III.**

IT IS FURTHER ORDERED that Defendants, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

FDA Approved Claims**IV.**

IT IS FURTHER ORDERED that:

- A. Nothing in this Order shall prohibit Defendants from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration; and
- B. Nothing in this Order shall prohibit Defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.
- C. Nothing in this order shall prohibit Defendants from making any representation for any device that is permitted in labeling for such device under any new medical device application approved by the Food and Drug Administration.

Monetary Judgment and Consumer Redress

V.

IT IS FURTHER ORDERED that

- A. Judgment is hereby entered against Defendants FiberThin, Obesity Research Institute, Henny Den Uijl, and Bryan Corlett, jointly and severally, in the amount of ONE MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) for consumer redress, which amount shall be paid to the Federal Trade Commission within ten (10) days after the date of entry of this Order by wire transfer in accord with directions provided by the Commission not later than five (5) days after the date of entry of this Order.
- B. All funds paid pursuant to this Order shall be deposited into an account administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.
- C. Defendants relinquish all dominion, control and title to the funds paid into the account established pursuant to this Order, and all legal and equitable title to the funds shall vest in the Treasurer of the United States unless and until such funds are disbursed to consumers. Defendants shall make no claim to or demand for the

1 return of the funds, directly or indirectly, through counsel or otherwise; and in the
 2 event of bankruptcy of any Defendant, Defendants acknowledge that the funds are
 3 not part of the debtor's estate, nor does the estate have any claim or interest
 4 therein.

5 D. Proceedings instituted under this Paragraph are in addition to, and not in lieu of,
 6 any other civil or criminal remedies that may be provided by law, including any
 7 other proceedings the Commission may initiate to enforce this Order.

8 **Right to Reopen**

9 **VI.**

10 **IT IS FURTHER ORDERED** that the Commission's agreement to this Monetary Judgment is
 11 expressly premised on the truthfulness, accuracy, and completeness of the financial statements
 12 submitted to the Commission by Defendants dated September 21, October 12, October 22, and
 13 October 26, 2004, and January 4 and January 5, 2005. Such financial statements contain
 14 material information upon which the Commission relied in negotiating and agreeing to this
 15 Monetary Judgment. If, upon motion by the Commission, the Court finds that such financial
 16 statement of any such Defendant contains any material misrepresentation or omission, the Court
 17 shall enter judgment for consumer redress against such Defendant in favor of the Commission in
 18 the amount of Forty-One Million Dollars (\$41,000,000), which Defendants stipulate is the
 19 amount of gross sales of FiberThin, MetaboUp, Propolene, and Excelerene prior to entry of this
 20 Order. The judgment shall become immediately due and payable by such Defendant, and interest
 21 computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to
 22 accrue on the unpaid balance; **provided, however, that** in all other respects this Order shall
 23 remain in full force and effect unless otherwise ordered by the Court; and, **provided further,**
 24 **that** proceedings instituted under this provision would be in addition to, and not in lieu of, any
 25 other civil or criminal remedies as may be provided by law, including but not limited to contempt
 26 proceedings, or any other proceedings that the Commission or the United States may initiate to
 27 enforce this Order. For purposes of this Section, and any subsequent proceedings to enforce
 28

1 payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy
2 proceeding, Defendants agree not to contest any of the allegations in the Commission's
3 Complaint.

4
5 **Consumer Lists**

6 **VII.**

7 IT IS FURTHER ORDERED that:

- 8 A. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan
9 Corlett shall within seven (7) calendar days after service of this Order upon
10 Defendants, deliver to the Commission a searchable electronic file of all
11 consumers who purchased FiberThin, MetaboUp, Propolene, and/or Excelerene
12 on or after January 1, 2002 through the date of entry of this Order. Such file shall
13 include each consumer's name and address, the product(s) purchased, the quantity
14 and the amount paid, including shipping and handling charges, and if available,
15 the consumer's telephone number and email address.
- 16 B. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan
17 Corlett, and their officers, agents, servants, employees, and attorneys and all other
18 persons or entities who receive actual notice of this Order by personal service or
19 otherwise, are permanently restrained and enjoined from selling, renting, leasing,
20 transferring, or otherwise disclosing the name, address, telephone number, credit
21 card number, bank account number, e-mail address, or other identifying
22 information of any person who paid any money at any time prior to entry of this
23 Order, in connection with the purchase of FiberThin, MetaboUp, Propolene, or
24 Excelerene. *Provided, however,* that Defendants FiberThin, Obesity Research
25 Institute, Henny den Uijl, and Bryan Corlett may disclose such identifying
26 information as required in Subparagraph A above, to any law enforcement agency,
27 or as required by any law, regulation, or court order.
- 28

Acknowledgment and Receipt of Order**VIII.**

IT IS FURTHER ORDERED that within five (5) business days of receipt of this Order as entered by the Court, each Defendant shall execute and submit to the Commission a truthful sworn statement, in the form shown as Attachment A, acknowledging receipt of this Order.

Distribution of Order**IX.**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. **Corporate Defendants:** Defendants FiberThin and Obesity Research Institute must deliver a copy of this Order to all principals, officers, directors, and managers. These corporate Defendants also must deliver copies of this Order to all of their employees, agents, representatives, consultants, independent contractors, or other persons who have responsibilities with respect to the subject matter of this Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their position or responsibilities.
- B. **Individual Defendants as Control Person:** For any business engaged in conduct related to the subject matter of this Order that Defendants Henny den Uijl or Bryan Corlett controls, directly or indirectly, or in which such Defendant has a majority ownership interest, the Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendants Henny den Uijl and Bryan Corlett also must deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their position or responsibilities.

C. **Individual Defendants as Employee or Non-Control Person:** For any business where Defendants Henny den Uijl or Bryan Corlett is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Order, the Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan Corlett must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

Compliance Reporting

X.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order,

1. Individual Defendants Henny den Uijl, Bryan Corlett, James Ayres, and Dr. Jonathan M. Kelley each shall notify the Commission of the following:

a. Any changes in residence, mailing addresses, and telephone numbers of the Individual Defendant, within ten (10) days of such change;

b. Any changes in employment status (including self-employment) of the Individual Defendant, and any change in the Individual Defendant's ownership in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the

Individual Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in the Individual Defendant's name or use of any aliases or fictitious names; and

2. Individual Defendants Henny den Uijl and Bryan Corlett and Corporate Defendants FiberThin and Obesity Research Institute shall notify the Commission of any changes in corporate structure of the Corporate Defendant(s) or any business entity that an Individual Defendant(s) directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which the Defendant(s) learns less than thirty (30) days prior to the date such action is to take place, the Defendant(s) shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. Sixty (60) days after the date of entry of this Order, Defendants FiberThin, Obesity Research Institute, Henny den Uijl, Bryan Corlett, James Ayres, and Dr. Jonathan M. Kelley each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For each Individual Defendant:

a. The then-current residence addresses, mailing addresses, and telephone numbers of the Individual Defendant;

- b. The then-current employment and business addresses and telephone numbers of the Individual Defendant; a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and
 - c. Any other changes required to be reported under Subparagraph A of this Section.
 2. For Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and Bryan Corlett:
 - a. A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph VIII;
 - b. A statement describing the manner in which Defendant has complied and is complying with Paragraphs I through III, including identification of all products that they advertise or sell, and copies of all their current advertising; and
 - c. Any other changes required to be reported under Subparagraph A of this Section.
 3. For Defendants Ayres and Kelley:
 - a. A statement describing the manner in which Defendant has complied and is complying with Paragraphs I through III; and
 - b. Any other changes required to be reported under Subparagraph A of this Section.
- C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Advertising Practices
Federal Trade Commission
600 Pennsylvania Ave., NW, Washington, DC 20580
Attn: FTC v. FiberThin, LLC, et al., (S.D. Cal.)
Civil Action No. _____

- 1 D. For purposes of the compliance reporting and monitoring required by this Order,
2 the Commission is authorized to communicate directly with Defendants.
3 Defendants may have counsel present.
4

5 **Compliance Monitoring**

6 **XI.**

7 IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating
8 compliance with any provision of this Order,

- 9 A. Within ten (10) days of receipt of written notice from a representative of the
10 Commission, Defendants FiberThin, Obesity Research Institute, Henny den Uijl,
11 Bryan Corlett, James Ayres, and Dr. Jonathan M. Kelley each shall submit
12 additional written reports, sworn to under penalty of perjury; produce documents
13 for inspection and copying; appear for deposition; and/or provide entry during
14 normal business hours to any business location in such Defendant's possession or
15 direct or indirect control to inspect the business operation;
- 16 B. In addition, the Commission is authorized to monitor compliance with this Order
17 by all other lawful means, including but not limited to the following:
- 18 1. obtaining discovery from any person, without further leave of court, using
19 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
20 and
 - 21 2. posing as consumers and suppliers to: FiberThin, Obesity Research
22 Institute, Henny den Uijl, and Bryan Corlett, their employees, or any other
23 entity that they manage or control in whole or in part, without the necessity
24 of identification or prior notice; and
 - 25 3. Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and
26 Bryan Corlett shall permit representatives of the Commission to interview
27 any employer, consultant, independent contractor, representative, agent, or
28 employee who has agreed to such an interview, relating in any way to any

conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

Record Keeping Provisions

XII.

IT IS FURTHER ORDERED that:

- A. For a period of six (6) years from the date of entry of this Order, in connection with any business involved in the advertising, marketing, promotion, offer for sale, distribution, or sale of any covered product or service operated by Defendants FiberThin, Obesity Research Institute, Henny den Uijl, and/or Bryan Corlett, or where any such Defendant is a majority owner of the business or directly or indirectly manages or controls such a business, such Defendant(s) and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:
1. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
 2. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

3. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
4. Complaints and refund requests (whether received directly, indirectly or through any third party), including but not limited to reports of adverse incidents claimed to be associated with the use of any covered product or service, and any responses to those complaints or requests;
5. Copies of all advertisements, promotional materials, sales scripts, training materials, Websites, or other marketing materials utilized in the advertising, marketing, promotion, offering for sale, sale, or distribution of any covered product or service;
6. All materials that were relied upon in making any representations contained in the materials identified in Subparagraph A(5) of this Paragraph, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy of any covered product or service, including, but not limited to, all tests, reports, studies, demonstrations, or other evidence that confirm, contradict, qualify, or call into question the accuracy or efficacy of each such product or service;
7. Records accurately reflecting the name, address, and telephone number of each manufacturer or laboratory engaged in the development or creation of any testing obtained for the purpose of manufacturing, labeling, advertising, marketing, promoting, offering for sale, selling, or distributing any covered product or service;
8. Copies of all contracts concerning the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any covered product or service; and
9. All records and documents necessary to demonstrate full compliance with

1 each provision of the Order, including but not limited to, copies of
2 acknowledgments of receipt of this Order and all reports submitted to the
3 FTC pursuant to this Order;

4 B. For a period of six (6) years from the date of entry of this Order, in connection
5 with the advertising, marketing, promotion, offer for sale, distribution, or sale of
6 any covered product or service endorsed by Defendants Ayres and/or Kelley, such
7 Defendant(s), and those persons in active concert or participation with them who
8 receive actual notice of this Order by personal service or otherwise, are hereby
9 restrained and enjoined from failing to create and retain the following records:

- 10 1. Copies of all advertisements, promotional materials, sales scripts,
11 training materials, Websites, or other marketing materials utilized in the
12 advertising, marketing, promotion, offering for sale, sale, or distribution of
13 any covered product or service and in which Defendants Ayres or
14 Kelley appear as an endorser of any covered product or service;
 - 15 2. All materials that were relied upon by Defendants Ayers or Kelley in
16 making any representations contained in the materials identified in
17 Subparagraph B(1) of this Paragraph, including all documents evidencing
18 or referring to the accuracy of any claim therein or to the efficacy of any
19 covered product or service, including, but not limited to, all tests, reports,
20 studies, demonstrations, or other evidence that confirm, contradict,
21 qualify, or call into question the accuracy or efficacy of each such product
22 or service;
 - 23 3. Copies of all contracts or agreements concerning, referring, or relating to
24 the endorsement of any covered product or service; and
 - 25 4. All records and documents necessary to demonstrate full compliance with
26 each provision of the Order, including but not limited to, all reports
27 submitted to the FTC pursuant to this Order.
- 28

Retention of Jurisdiction

XIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED.

MATTHEW DAYNARD
RONA KELNER
600 Pennsylvania Avenue, N.W.
Rooms NJ-3213, NJ 3255
Washington, D.C. 20580
Attorneys for Plaintiffs
Tel.: (202) 326-2125, -2162
Fax: (202) 326-3259

FiberThin, LLC
by: HENNY DEN UIJL

OBESITY RESEARCH INSTITUTE, LLC
by: HENNY DEN UIJL

HENNY DEN UIJL, individually and as an
officer or director of FiberThin, LLC and
Obesity Research Institute, LLC

Local Counsel:

JOHN D. JACOBS
Cal. Bar No. 134154
10877 Wilshire Boulevard
Suite 700
Los Angeles, California 90024
(310) 824-4360
(310) 824-4380 - fax

BRYAN CORLETT, individually and as an
officer or director of FiberThin, LLC and
Obesity Research Institute, LLC

WILLIAM I. ROTHBARD
2002 4TH Street, Suite 109
Santa Monica, CA 90405
Attorney for Defendants FiberThin, Obesity
Research Institute, Henny den Uijl, Bryan Corlett,
James Ayers, and Dr. Jonathan M. Kelley
Tel.: (310) 314-4025
Fax: (310) 314-4026

JAMES AYRES

JONATHAN M. KELLEY, M.D.

IT SO ORDERED:

DATED:

JUDGE OF THE DISTRICT COURT

ATTACHMENT A

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FiberThin, LLC,
OBESITY RESEARCH INSTITUTE, LLC,
HENNY DEN UIJL,
BRYAN CORLETT,
JAMES AYRES, and
DR. JONATHAN M. KELLEY,

Defendants.

Case No. _____

Judge _____

AFFIDAVIT OF DEFENDANT _____

_____, being duly sworn, hereby states and affirms:

1. My name is _____. My current residence address is

_____. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. FiberThin, LLC, et al. (United States District Court for the Southern District of California.)

3. On (date) _____, 2005 I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction, Monetary and Other Equitable Relief, which was signed by the Honorable _____, United States District Court Judge for the Southern District of California. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

1
2 _____
(Defendant's full name)
3 STATE OF _____
COUNTY OF _____
4 BEFORE ME this day personally appeared _____, who being first duly
sworn, deposes and says that s/he has read and understands the foregoing statement and that s/he
5 has executed the same for the purposes contained therein.
SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2005 by
6 _____ . S/he is personally known to me or has
presented (state identification) _____ as identification.

7 _____
(print name)
8 NOTARY PUBLIC
Commission Number
9 Affix Seal
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Exhibit No. 3

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
3.	Copy of Complaint in Conversion Systems, LLC v. Obesity Research Institute, LLC et al., Case No. BC599270 (Sup. Ct. Cal. Nov. 5, 2015).	36-62

Number	Description	Page Numbers
4.	Copy of the Complaint in <i>Joshua Weiss v. Continuity Products et al.</i> , Case No. 00043385 (Sup. Ct. Cal. Nov. 31, 2015) adopting the highlighted allegations regarding the joint liability of Defendants.	63-87
5.	Archived screenshots of Lipoze.com that were obtained from the Internet Archive's "Way Back Machine," available at http://web.archive.org/web/*/lipozene.com .	88-104
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," available at http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

Arturo E. Matthews, Jr. (SBN 145232)
MATTHEWS LAW FIRM, INC.
6 Hutton Centre Drive, Suite 600
Santa Ana, CA 92707

Telephone: (714) 647-7110

Facsimile: (714) 647-5558

Attorneys for Plaintiff CONVERSION
SYSTEMS, LLC, a Delaware limited
liability company

FILED
Superior Court of California
County of Los Angeles

NOV - 5 2015

Sherri R. Carter, Executive Officer/Clerk
By Dawn Alexander Deputy
Dawn Alexander

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

CONVERSION SYSTEMS, LLC, a Delaware limited
liability company,

Plaintiff,

v.

OBESITY RESEARCH INSTITUTE, LLC, a
California limited liability company; and DOES 1
through 25, inclusive,

Defendants.

Case No.

BC 599270

DEMAND GREATER THAN \$25,000

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. COMMON COUNT - WORK,
LABOR & SERVICES RENDERED;
3. COMMON COUNT - ACCOUNT
STATED; and
4. COMMON COUNT - OPEN BOOK
ACCOUNT; AND

Plaintiff CONVERSION SYSTEMS, LLC, a Delaware limited liability company ("Plaintiff")

alleges as follows:

1. Plaintiff is, and at all times relevant hereto was, a limited liability company duly
formed under the laws of the State of Delaware and is qualified to do business under the laws of the
State of California.

2. Plaintiff is informed and believes and based thereon alleges that Defendant OBESITY
RESEARCH INSTITUTE, LLC ("ORI") is and all times relevant hereto was a limited liability
company duly formed under the laws of the State of California.

///

CIT. SASHA
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BC599270
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310
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2:49 PM

EXHIBIT 3

PAGE NO: 36 Complaint

PAGE NO. 37 Complaint

9. Defendants have failed to pay any part of the amount due, even though payment has been demanded by Plaintiff.

10. Plaintiff has performed all conditions on its part to be performed except those which have been excused by Defendants' non-performance.

11. As a result of Defendants' failure to remit the amount due, Plaintiff has been damaged in the minimum amount of \$50,451.84 plus interest at the legal rate from and after the date of breach.

SECOND CAUSE OF ACTION

(Common Count- For Work, Labor & Services Rendered against Defendant
ORI and DOES 1 through 25)

12. Plaintiff realleges the allegations in paragraphs 1 through 11, as though fully set forth herein at length.

13. Within the last four (4) years, Defendants became indebted to Plaintiff in the minimum sum of \$50,451.84 for work, labor and services rendered by Plaintiff to Defendants at their special instance and request.

14. No part of said sum has been paid and there remains due and owing the principal sum of \$50,451.84 plus interest thereon according to proof.

THIRD CAUSE OF ACTION

(Common Count - Account Stated Against Defendant ORI
and DOES 1 through 25)

15. Plaintiff realleges the allegations in paragraphs 1 through 11, as though fully set forth herein at length.

16. Within the last four (4) years, Defendants became indebted to Plaintiff in the minimum sum of \$50,451.84 pursuant to an account stated.

17. Despite demand therefor, neither the whole nor any part of the above sum has been paid, and there is now due, owing and unpaid from Defendants, and each of them, to Plaintiff the minimum amount of \$50,451.84 plus interest thereon according to proof.

///

FOURTH CAUSE OF ACTION**(Common Count - Open Book Account Against Defendant ORI and
DOES 1 through 25)**

18. Plaintiff realleges the allegations in paragraphs 1 through 11, as though fully set forth herein at length.

19. Within the last four (4) years, Defendants became indebted to Plaintiff in the minimum sum of \$50,451.84 pursuant to an open book account.

20. Despite demand therefor, neither the whole nor any part of the above sum has been paid, and there is now due, owing and unpaid from Defendants, and each of them, to Plaintiff the minimum amount of \$50,451.84 plus interest thereon and attorney's fees according to proof.

WHEREFORE, Plaintiff prays for judgment against Defendants ORI and DOES 1 through 25, inclusive, as follows:

ON THE FIRST, SECOND AND THIRD CAUSES OF ACTION:

1. For damages in the minimum amount of \$50,451.84; and
2. For prejudgment interest at the legal rate according to proof.

ON THE FOURTH CAUSE OF ACTION:

3. For damages in the minimum amount of \$50,451.84;
4. For prejudgment interest at the legal rate according to proof; and
5. For attorneys' fees pursuant to the open book account according to proof.

ON ALL CAUSES OF ACTION:

6. For costs of suit incurred herein; and
7. For such other and further relief as this Court deems just and proper.

Dated: November 4, 2015

MATTHEWS LAW FIRM, INC.

By: 

Attorney for Plaintiff CONVERSION
SYSTEMS, LLC, a Delaware limited
liability company

19492585269 From: Client Solutions

EXHIBIT 3
PAGE NO. 40

CONVERSION SYSTEMS
Maximize Your Ecommerce Revenue

SERVICES PROPOSAL

Obesity Research Institute,
LLC Ecommerce Managed
Services

11/5/2015

EXHIBIT 3

PAGE NO. 41

ECOMMERCE MANAGED SERVICES: OVERVIEW

Conversion Systems ("CS") will serve as an ecommerce solutions provider for Obesity Research Institute, LLC ("ORI") as it relates to website development, merchandising services and marketing services for its Lipozene direct response campaign (the "Lipozene Campaign"). CS's service offering will encompass any and all initiatives as they relate to aggressively increasing conversion rates, average order values, and online revenue within the Lipozene Campaign websites (the "Website", "Websites", or "Lipozene Website").

The primary objective of CS's turnkey ecommerce platform is to drive sales of the Lipozene Campaign products via the Internet. As part of its service offering, CS will implement a state-of-the art ecommerce approach for Continuity Products and will seek to maximize conversion rates as well as maximize the value of the traffic that is driven to the Websites from various sources.

The service offering will involve several functions, which will be managed on a turnkey basis by CS.

Examples of services provided include the following:

- Creation of Desktop, Mobile, & Tablet Microsites
- Merchandising, Promotions, and Analytics
- Hosting
- Remarketing Program Management
- SEM Management
- Multivariate and A/B Testing
- Analytics Management
- Technology Integration
- CPA Management
- Ongoing Creative Development

The services provided are broken down into two categories, including merchandising services and marketing services. Merchandising services consist of items necessary to create, update and optimize the Websites in order to maximize conversion rates and average order values, while marketing services are geared towards assisting to drive traffic to the Websites.

About Conversion Systems

Conversion Systems specializes in maximizing the direct sales revenue that can be generated from its clients' Websites. As a company, CS focuses strictly on ecommerce initiatives and uses state-of-the art merchandising and statistical methodologies in order to engage site visitors to purchase. Unlike most ecommerce service providers, CS does not just focus on the initial sale. Rather, CS builds platforms that seek to maximize the lifetime value of all site visitors. This is done by placing an exhaustive focus on maximizing conversion rates, as well as strategizing at length to ensure optimal performance in regard to continually sign ups, upsells, cross-sells, and long-term remarketing efforts. By doing so, CS enables its clients to maximize the value of their online and offline media spend.

SCOPE OF WORK: MANAGED SERVICES

Creation of Ecommerce Microsites

CS will design and develop multiple Websites for the Lipozene Campaign. The various versions of the Websites will be based on specific traffic sources (i.e. different sites for different traffic sources), campaign messages, seasonality, promotional initiatives, and other components. All aspects of the Websites will incorporate ecommerce best practices and will be designed to maximize the conversion rates of site visitors into paying customers. The sites will place a strong focus on promoting upsells and cross-sells, as well as other initiatives geared towards maximizing the lifetime value of every customer secured.

Website Functionality

The following items represent the functional capabilities that can be made available as part of the Websites. CS will work with ORI to determine which of these functions shall be utilized within the Websites initially and which shall be reserved for later use. ORI shall have the ability to use as many, or as few, of these functions as desired by ORI.

Initial Website Functionality

- Instant Play Streaming Video
- Order Based Coupons
 - Apply to Entire Order
 - Apply to Specified Products
 - Percentage Based or Fixed Amount
 - Free Shipping
- Supports multiple images per product (icon, medium, and large)
- Post-Sale Transaction Functionality
- Show Upsell Products Directly On Cart Page
- Video Testimonials
- Continuity Signups
- Real Time Reporting Via Desktop and/or Mobile Devices
- Easy to Use Control Panel
- E-mail notification sent to store administrator when new order arrives
- Search for order by customer record criteria
- Total Customers by Date/Trend
- Automatic customized e-mail notification to customer upon order
- Can set a minimum revenue total or order total threshold for proceed to checkout
- Credit Cards: Accept Credit Cards in Real Time: Cards can be processed & verified in real-time, or you can delay processing until a later time

- Apply Tax by State, Zip Code, and Country
- Tax can be applied to shipping costs
- Can require customer to agree to Terms and Conditions block (user defined) before proceeding with payment
- Calculate Shipping By Order Total
- Calculate Shipping By Order Weight
- Calculate Shipping By Order Weight & Zip code Zone
- Calculate Shipping By Order Total & Zip code Zone
- Calculate Shipping By Fixed Item Shipping Costs
- Calculate Shipping By Fixed Percent of Order Total
- Specify All Orders As Free Shipping
- Add Shipping & Handling Extra Fee To Orders
- Support for CV2 (credit card security code) entry and checking (fraud prevention)
- Credit card numbers never displayed on site, but remembered for user in an encrypted state (shown as ****1111 on site).
- Supports SSL Encryption for secure ordering. Cart switches into secure mode appropriately.
- Secured password protected Store Administrator Control Panel

Creation of Mobile and Tablet Websites

CS will create additional Websites that cater to audiences specifically using iPhone, iPad, Blackberry, and Android devices. These streamlined sites will enable customers to more easily navigate the site from mobile platforms, as well as facilitate purchasing via mobile orders and "click to call" functionality.

Ongoing Website Analytics Management

In order for CS to continue to make improvements in converting browsers to buyers, it is important to measure website analytics on an ongoing basis. CS will integrate Google Analytics or a similar platform prior to launching the Websites in order to capture the flow of all traffic driven to the site. CS will then continually monitor the behavior of all traffic within the sites, and implement necessary changes to increase conversions and average order values.

Ongoing Website Merchandising Management

Part of a successful, ongoing, direct sales effort is to continually optimize the on-website merchandising of products based on changes in the traffic drivers, feedback from consumers and ROI results from all direct sales efforts. Merchandising includes, but is not limited to: unique product offers, custom product bundles, "call to action" copy, direct sales oriented graphics, custom landing/offer pages, up sell opportunities, exit page pop-ups and order confirmation emails. The merchandising program will be specifically designed to maximize the conversion of website visitors into paying consumers, and will be continually monitored on a day-to-day basis by the CS team.

Ongoing Multivariate and A/B Testing

CS will execute ongoing A/B testing and multivariate testing programs to ensure that all Websites are performing at peak levels. The testing optimization process will enable ORI to simultaneously test several elements within the Websites and determine the optimal mix of elements to maximize revenue. Examples of elements that can be tested include price-points, calls to action, upsells, product bundles, navigational layouts, images, and other items. By testing the elements in an aggressive manner, CS can dramatically improve performance of the Website. CS will also test creatives for email campaigns, banner ads, SEM landing pages, and all other sources of traffic.

Pay-Per-Click Search Engine Marketing Management

As web browsers are introduced to the Lipozene products, many potential customers will go directly to the various search engines such as Google and Bing to find out more information—specifically to determine where to purchase the products. The primary purpose of a search engine marketing campaign is to help ensure that such consumers are directed to the proper Websites or specific offer pages within the Websites.

Customer Remarketing and Abandonment Programs

Online customer remarketing programs are a way to continue reaching out to ORI customers to drive additional sales of Lipozene Products. By properly leveraging the existing customer database, ORI can generate incremental revenue and increase the lifetime value of its customer base. CS will also work with ORI to generate revenue via shopping cart abandonment strategies. This includes automated processes that will seek to generate incremental revenue from site visitors who have entered the checkout path but declined to make a final purchase.

Ongoing Management of Fulfillment House Integration

CS shall create, test, and implement a file structure that integrates with ORI's fulfillment house (and/or order management system) and submits orders to the fulfillment house in an automated manner. In addition, CS will continually update and integrate new SKU's and/or offers that are utilized by ORI on an ongoing basis, as well as work with the fulfillment house on a daily basis to ensure that proper controls are in place to reconcile order delivery.

Hosting Services

CS will host the Websites and manage the day-to-day logistics in regards to managing site uptime and server performance. CS will also ensure that the hosted Websites properly integrate with ORI's fulfillment and order management systems in order to facilitate the exchange of data between CS and ORI.

11:49:32 a.m. 11-05-2015
19492585269
To: Civil Clerk
Page 17 of 29
2015-11-05 19:58:18 (GMT)
19492585269 From: Client Solutions

TEAM MEMBERS: ECOMMERCE MANAGED SERVICES**Client Manager**

The Client Manager manages the internal project team and serves as the primary liaison to ORI. The Client Manager is responsible for keeping all project assignments on schedule and working closely with the Merchandising Strategist and ORI to achieve its objectives.

Merchandising Strategist

The Merchandising Strategist serves as the primary driver in regards to all initiatives relating to increasing the revenue generated from the Websites. This includes overseeing the merchandising initiatives within the Websites, creating ideas for testing and executing based upon results, measuring the impact of various elements within the Websites, creating new ideas for revenue generation outside of testing initiatives, locating and integrating third party technologies that can increase conversion, creating unique reports to further understand the results from the conversion optimization process, and other general initiatives that seek to increase the revenue that can be generated from the Lipozene Website.

Creative Designer

The Creative Designer is responsible for building all Websites, landing/offer pages, and other creative work. The Creative Designer is instrumental to determining the overall "look and feel" of the Websites and all creatives based on the specific design direction provided by the Lead Strategist.

Web Developers

The Web Developers are responsible for overseeing the implementation of the front-end and back-end coding for all items relating to ORI. Functions include such areas as Website coding, fulfillment file integration, web analytics integration, browser optimizing, user interface development, creation of customized reporting, and other key functional areas.

FEES: ECOMMERCE MANAGED SERVICES

Overview of Fees

In consideration of the services it provides, CS charges a fixed fee of \$5,000 per month plus a revenue share equal to 15% of the incremental revenue created by the lift in conversion achieved as a result of CS's optimization initiatives. The revenue share is calculated based on the performance of various versions of Websites created by CS during a two (2) week test that will occur upon the initial launch of the new Websites created by CS (the "Comparison Test"). Immediately prior to the commencement of the Comparison Test, CS shall provide written notice to ORI that the Comparison Test will begin.

Comparison Test Overview

The goal of the Comparison Test is to quickly establish an improvement in conversion that can serve as a foundation for CS's optimization efforts moving forward. As part of the Comparison Test, CS shall create up to six (6) new versions of the Website based on CS's experience and knowledge of conversion best practices. CS will then integrate a rotator into the various versions of the Websites so that incoming web traffic from the Lipozene Website URL can be split 50% randomly based on equal percentages throughout the new Websites created by CS (each such site an "Optimized Site") and 50% to the original Website from which the Optimized Sites were derived: in the form such original Website was live and available to the public at www.lipozene.com at the time of the Effective Date (the "Control Site"). By exposing the Optimized Sites and the Control Site to the same population of traffic and splitting the traffic randomly, CS is able to compare the performance of the Optimized Sites when compared to the Control Site under identical market conditions – thereby isolating the difference in performance of each site to be tested. The length of the Comparison Test shall be fourteen (14) complete and consecutive days; provided, however, if after five (5) complete and consecutive days none of the Optimized Sites perform better than the Control Site then ORI shall in its sole discretion have the right to terminate the Comparison Test. At the conclusion of the Comparison Test, the version of the Website created by CS that has the highest Revenue Per Visitor (defined as total revenue generated during a given time period/total unique visitors for such period but not including applicable sales tax) shall be identified as the winning site (the "Winning Site").

Steps to Determine Calculation of Revenue Share

Step 1: The lift in conversion is determined by comparing the Revenue Per Visitor (not including applicable taxes) of the Winning Site vs. the Revenue Per Visitor for such period for the Control Site as determined by the Comparison Test performed by CS, as described above. This lift (the "Conversion Increase Percentage") is calculated by using the following formula

$$\text{Conversion Increase Percentage} = (\text{Revenue Per Visitor of Winning Site} - \text{Revenue Per Visitor of Control Site}) \div \text{Revenue Per Visitor of Winning Site}$$

Step 2: The Conversion Increase Percentage is multiplied by 15% to determine the revenue share-based fee that CS will receive based on all gross revenue of Lipozene and its affiliates that is generated from the

Websites (including any site, regardless of its URL, that utilizes the Winning Site or any derivation thereof), including all initial purchases, shipping and handling fees, multi-payment sales, continuity sales, and remarketing sales less product returns and cancellations associated with such sales generated (the "Revenue Share"). Following the Comparison Test, it will be presumed during the term of this Agreement that the Website is utilizing the Winning Site or a derivation thereof (and therefore the Revenue Share as calculated below is owing to CS) in absence of clear and convincing proof by ORI to the contrary. The Revenue Share is calculated by using the following formula:

Revenue Share = 15% x Conversion Increase Percentage x monthly revenue generated from Websites less applicable sales tax

If there is no lift in conversion (i.e., the Revenue Per Visitor of the Control Site exceeds the Revenue Per Visitor of the Winning Site), no Revenue Share would be payable to CS.

Example

To facilitate an understanding of the manner in which the Revenue Share is calculated, an example will be provided. Assume that Company A has a website that has a Revenue Per Visitor of \$10 and generates monthly revenue of \$200,000 per month prior to utilizing CS's services. CS would create up to six (6) new versions of the website and conduct a Comparison Test to determine the performance of CS's versions of the website as compared to the original version of the site that was present prior to CS's involvement. In this example, assume that during the fourteen (14) day Comparison Test the Winning Site has a Revenue Per Visitor of \$15, while the Control Site has a Revenue Per Visitor of \$10. Based on the manner in which the increase in the Revenue Per Visitor is measured, CS's Winning Site would be determined to be responsible for a 33% lift in conversion as follows: $(\$15 \text{ Revenue Per Visitor of Winning Site} - \$10 \text{ Revenue Per Visitor of Control Site}) \div \$15 \text{ Revenue Per Visitor of Winning Site} = 33\%$. Since the Conversion Increase Percentage is 33%, the Revenue Share would be 5% ($33\% \text{ increase} \times 15\% = 5\% \text{ Revenue Share percentage}$). Assuming that Company A generates monthly revenue of \$300,000 the following month by utilizing the newly improved version of the website, it would pay CS a Revenue Share of \$15,000 for that month (representing a net incremental monthly gain of \$85,000 for Company A after the payment to CS). CS would continue testing and optimizing on an ongoing basis as part of its Ecommerce Managed Services platform in order to further increase the performance of the website. However, regardless of additional improvements to the website, the Conversion Increase Percentage would be based off of the initial Comparison Test and CS's Revenue Share percentage would remain at 5%.

TERMS AND CONDITIONS OF SERVICES AGREEMENT

Parties to Agreement

This Agreement (this "Agreement") is entered into by and between Conversion Systems, LLC ("CS"), and Obesity Research Institute, LLC ("Continuity Products"), and deemed effective as of 3/11, 2014 (the "Effective Date").

Term

The term of this Agreement shall commence on the Effective Date and will continue indefinitely until terminated by either ORI or CS in the manner provided below.

Scope of Agreement

Pursuant to this Agreement, CS will provide merchandising services as described on pages two (2) through five (5) of the accompanying proposal (the "Merchandising Services") for a Website or series of Websites to be created by CS for the purpose of selling the Lipozene products. The new versions of the Websites created by CS are expected to be live and available to the public within sixty (60) days of beginning work.

Services Fees

In consideration of the provision of services by CS and the deliverables described in the accompanying proposal which is hereby incorporated by reference herein (the "Services Proposal"), ORI shall pay to CS as follows: i) beginning upon the completion of the Comparison Test, provided that at least one of the Optimized Sites outperforms the Control Site by at least three percent (3%). ORI shall pay to CS a fixed fee of \$5,000 per month that will be due and payable at the beginning of each month in advance (the "Recurring Fee"), and ii) beginning upon the completion of the Comparison Test, ORI shall pay to CS on a monthly basis the Revenue Share calculated in accordance with the formula set forth on page eight (8) of the Services Proposal. CS shall invoice ORI at the beginning of each month for the Recurring Fee due for the upcoming month and for the Revenue Share due for the prior month and such invoice shall be paid to CS within 10 days of receipt.

Site Hosting

CS shall host the Website during the term of this Agreement, and ORI grants and CS accepts a limited, revocable, nonexclusive, nontransferable license to all materials and content incorporated in the Website for the entire term of this Agreement to enable CS to do so and to make the Website accessible to the World Wide Web. CS shall use its commercially reasonable efforts to make the Website accessible on a continuous, unlimited basis, twenty four (24) hours a day (excluding downtime associated with regularly scheduled maintenance).

Implementation of Web Analytics and Reporting For Comparison Test

CS will integrate a mutually agreed upon third-party web analytics tracking software suite (the "Analytics Suite") in order to capture the flow of all traffic to the Websites during the Comparison Test.

Data for Calculation of Conversion Increase Percentage and Revenue Share

ORI acknowledges that i) the measurements that CS will use to determine daily unique visitors will be measured using the Analytics Suite; ii) the measurement of orders derived from Websites created by CS shall be determined by the transmission of daily orders from CS to ORI; and iii) orders derived from the Control Site shall be determined by the transmission of daily orders from the Control Site. CS represents and warrants to ORI that it will use commercially reasonable efforts to ensure consistent measurement and that the Analytics Suite tracking pixels are placed properly on all pages and ORI will have the ability to check for pixel placements during the testing process to ensure proper compliance. ORI represents and warrants to CS that it will use commercially reasonable efforts to ensure consistent and accurate reporting of orders derived from the Control Site and CS will have the ability to confirm the accuracy of such reporting.

Conduct for Maintaining Accuracy of Control Site

ORI agrees that it will cooperate with CS in maintaining accuracy of the Control Site and that neither ORI nor its affiliates, vendors, contractors, or any related parties, shall directly or indirectly take any action that will: i) modify or adjust the design or functionality of the Control Site in any manner; or ii) impede or impair the accurate measurement of the Revenue Per Visitor or otherwise manipulate the results of the Control Site.

Termination

If the Revenue Per Visitor metric of the Winning Site as measured by the Comparison Test is not higher by at least three percent (3%) than the Revenue Per Visitor metric of the Control Site as measured by the Comparison Test, then either ORI or CS may terminate this Agreement upon twenty-four (24) hours written notice and no fees shall be payable by ORI. If the Revenue Per Visitor metric of the Winning Site as measured by the Comparison Test is higher than the Revenue Per Visitor metric of the Control Site as measured by the Comparison Test, then either ORI or CS may terminate the services being performed by CS under this Agreement by providing one-hundred twenty (120) days prior written notice to the other party. The following obligations shall survive any termination of this Agreement: (i) any obligation of ORI to pay fees that were owing at the time of termination; (ii) the obligation of CS to assign ownership of Work to ORI that is set forth below under the heading "License and Ownership of Work"; (iii) the indemnity obligations of each party set forth below under the heading "Indemnity"; and (iv) the obligations of the parties in the respective paragraphs under the headings "Non-Solicitation of Employees" and "Promotion". The terms of this paragraph also survive any termination of this Agreement.

Client Selected Employees, Vendors, and Subcontractors

CS is not responsible for delays in schedule caused by ORI selected employees, vendors, suppliers, and subcontractors. If actions or inactions by any of these parties affect the timing and cost of the services and deliverables to be provided, CS reserves the right to modify project timelines and budgets accordingly.

Additional Technologies

It is expressly understood by both parties that if ORI elects to use third-party technologies in the provision of CS's services, then the expense for such technologies shall be the sole responsibility of ORI.

Notwithstanding the above, integration services with such technologies provided as part of the Merchandising Services shall not be considered additional technologies.

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Ownership of Work

ORI shall provide all product photographs, product descriptions, product pricing information, product SKU numbers, all marketing and site copy relating to the Website, and any video necessary for use within the Website. After all fees due to CS are received, any and all concepts, designs, studies, plans, reports, drawings, and computer images created by CS in the course of performing services under this agreement will become works for hire specially ordered by ORI and will become the sole and exclusive property of ORI; provided that CS retains ownership of any pre-existing intellectual property of CS and CS is free to use for other clients any concepts, designs or other items of general application that are created by CS and that do not incorporate any proprietary items or confidential information of ORI. All end user names and customer data generated by programs managed by CS on behalf of ORI will be solely owned by ORI and may be used by ORI in its sole discretion, subject to compliance with any applicable privacy policies or laws. CS may not remarkat to, sell to or rent ORI's customers or prospects without authorization from ORI.

Non-Solicitation of Employees

Both during the term of this Agreement and for three (3) years after it is terminated, neither ORI nor its affiliates or related parties will directly or indirectly solicit any employee of CS or encourage any such employee to leave the employment of CS nor have any involvement in the hiring of any such employee without CS's prior written consent.

Promotion

CS shall have the right to include representations of all work performed for ORI among its advertising, promotional and professional materials, and each party shall have the right to indicate to the public that ORI is a customer of CS.

Confidentiality

In the performance of this Agreement, CS and ORI (each a "Party" and together the "Parties") will have access to each other's Confidential Information. "Confidential Information" includes, without limitation, the Confidential Materials (as defined below) and all other intellectual property of the Parties

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(including, without limitation, the terms and any information relating to this Agreement, revenue or analytics data from the Websites, research and development, inventions, discoveries, developments, improvements, methods and drawings, blueprints, specifications, computer programs and software, compositions, works, concepts, trade secrets, formulate, and patent, trademark, and copyrights and applications arising therefrom or related thereto), the Customer Data (as defined below), code, business information and plans (including, without limitation, consumer information, business plans, financial information, products, services, manufacturing processes and methods, costs, sources of supply, advertising and marketing plans, all customer information (including names, addresses, credit card numbers, and phone numbers), sales, profits, pricing methods, personnel, and business relationships arising therefrom or relating thereto). Each of the Parties agrees to maintain the other Party's Confidential Information in strict confidence. Each Party agrees not to use, disclose or permit any other person or entity access to the Confidential Information of the other Party without the prior written consent of such Party. Notwithstanding the foregoing, each Party may disclose Confidential Information solely as necessary to comply with a legal order or governmental regulation, provided that such Party provides the other Party sufficient prior notice and assistance to allow that Party to attempt to limit any such disclosure. Upon any termination of this Agreement or as instructed by one of the Parties in writing at any time, the other Party shall cease using any Confidential Information of such Party and, at the request or instruction of the requesting Party, shall immediately return any such Confidential Information then in the possession of the other Party as of the termination or notice date. The confidentiality and nondisclosure obligations set forth in this paragraph shall survive the termination or expiration of this Agreement.

Disclaimers and Limitations

CS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT OR ITS PERFORMANCE HEREUNDER. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR COST OF COVER OR FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFIT) ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. CS'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT IN NO EVENT

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WILL EXCEED THE AMOUNT OF PAYMENTS MADE BY ORI TO CS HEREUNDER.

Choice of Law

This Agreement is governed by the laws of the State of California. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located at Los Angeles, California with respect to any claim, action or proceeding arising out of or in connection with this Agreement or the transactions contemplated hereby.

Entire Agreement

This Agreement represents the entire agreement between CS and ORI with respect to the subject matter hereof and supersedes any previous or contemporaneous oral or written agreements and understandings regarding such subject matter. This Agreement may be amended or modified only by a written instrument signed by a duly authorized agent of each party.

Indemnification

ORI and CS shall each, respectively, indemnify and hold harmless the other Party from and against any damage, loss, expense, award, settlement or other obligation or liability arising out of any third party claims, demands, actions, suits, investigations or prosecutions that may be made or instituted as a result of any violation of applicable laws by, or the gross negligence or willful misconduct of, such indemnifying Party. ORI will also indemnify, defend and hold harmless CS and its directors, employees, members, agents, successors and assigns from and against any and all actions, losses, general damages, claims, demands, costs and expenses, including reasonable attorney's fees; fines, court costs, and insurance deductibles; arising from or related to any claims, demands or legal actions brought or asserted by any third party relating to the marketing and selling of products through the Websites, including any product liability or warranty claim or any false advertising, misrepresentation or similar claim relating to the Websites.

11:49:32 a.m. 11-05-2015

Acceptance

The signatures below indicate acceptance of the terms, and conditions set forth in this Agreement, thereby signifying agreement of the parties to be legally bound hereby and authorization by ORI for CS begin work as specified above

OBESITY RESEARCH INSTITUTE, LLC

Print Name: Henny den UijlTitle: 7/11/14Signature: 

CONVERSION SYSTEMS, LLC

Print Name: TODD GERMANTitle: CEOSignature: P
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EXHIBIT "B"
EXHIBIT 3
PAGE NO. 56

EXHIBIT "B"

EXHIBIT 3
PAGE NO. 56

Website Revenue**										Continuity Revenue***									
Website Gross Revenue		Less Allowance For Returns**		Website Revenue Eligible For Revenue Share*		Revenue Share Rate		Incremental Website Revenue Due To CS		Continuity Orders Generated		Continuity Revenue Eligible For Revenue Share***		Incremental Continuity Revenue Due To CS					
Invoiced Issued																			
Invoice OMS1022 - Fixed Fee March, 2015																			
NA		NA		NA		NA		NA		NA		NA		NA					
Invoice OMS1023 - Fixed Fee April, 2015																			
NA		NA		NA		NA		NA		NA		NA		NA					
Invoice OMS1024 - Fixed Fee May, 2015																			
NA		NA		NA		NA		NA		NA		NA		NA					
Invoice OMS1025 - Fixed Fee June, 2015																			
NA		NA		NA		NA		NA		NA		NA		NA					
Information Never Provided By Obesity Research																			
October 2014 Continuity Orders																			
305,384.00		-50,999.13		254,384.87		3.40%		ALREADY PAID		626		22,542.41		766.44					
November 2014 Continuity Orders																			
396,002.00		-66,132.33		329,869.67		3.40%		ALREADY PAID		812		29,231.53		993.87					
December 2014 Continuity Orders																			
501,995.00		-83,833.17		418,161.84		3.40%		ALREADY PAID		1,029		37,055.57		1,259.89					
January 2015 Continuity Orders																			
567,940.00		-94,845.98		473,094.02		3.40%		ALREADY PAID		1,165		41,923.41		1,425.40					
February 2015 Continuity Orders																			
242,079.00		-40,427.19		201,651.81		3.40%		ALREADY PAID		496		17,869.45		607.56					
March 2015 Website Revenue and Continuity Orders																			
210,000.00		-35,070.00		174,930.00		3.40%		5,947.62		431		15,501.49		527.05					
April 2015 Website Revenue and Continuity Orders																			
210,000.00		-35,070.00		174,930.00		3.40%		5,947.62		431		15,501.49		527.05					
May 2015 Website Revenue and Continuity Orders																			
210,000.00		-35,070.00		174,930.00		3.40%		5,947.62		431		15,501.49		527.05					
June 2015 Website Revenue and Continuity Orders																			
210,000.00		-35,070.00		174,930.00		3.40%		5,947.62		431		15,501.49		527.05					
				\$ 2,376,882.20				\$ 80,813.59				\$ 210,628.33		\$ 7,161.36					
										5,850.79		\$ 210,628.33		\$ 7,161.36					

*Website revenue during the period the Website was hosted by Obesity Research is based on a conservative estimate. Actual revenue will be derived by an audit if necessary.
 **Assumes a return rate of 16.4% to account for returns, cancels and amounts charged back. Actual percentage will be derived by an audit if necessary.
 ***Assumes 16% of orders (after accounting for returns and an AOV of \$65) become Continuity Orders at a price of \$30 and an average cycle of 1.2 turns. Actual continuity revenue will be derived by an audit if necessary.

11/11/2015

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arturo E. Matthews, Jr. (SBN 145232) MATTHEWS LAW FIRM, INC. 6 Hutton Centre Drive, Suite 600 Santa Ana, CA 92707 TELEPHONE NO.: (714) 647-7110 FAX NO.: (714) 647-5558 ATTORNEY FOR (Name): Conversion Systems, LLC		FOR COURT USE ONLY <div style="text-align: center;"> FILED Superior Court of California County of Los Angeles NOV - 5 2015 Sherri R. Carter, Executive Officer/Clerk By <u>Dawn</u> Deputy Dawn Alexander </div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District, Stanley Mosk Courthouse		CASE NAME: Conversion Systems, LLC v. Obesity Research Institute, LLC	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: BC 599270 JUDGE: DEPT:	

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

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

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

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

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☒ Other contract (37)

Real Property

- ☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Four

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 4, 2015

Arturo E. Matthews, Jr.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

SHORT TITLE: Conversion Systems, LLC v: Obesity Research Institute, LLC

CASE NUMBER

BC 500270

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☐ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL ☐ HOURS/ ☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|----------------------------------------------------------------------------------|------------------------------------------------------------|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in central (other county, or no bodily injury/property damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 4.	

SHORT TITLE: Conversion Systems, LLC v. Obesity
Research Institute, LLC

CASE NUMBER

Non-Personal Injury/Property
Damage/Wrongful Death Tort

Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input checked="" type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 6., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

Employment

Contract

Real Property

Unlawful Detainer

SHORT TITLE: Conversion Systems, LLC v. Obesity
Research Institute, LLC

CASE NUMBER

		Case Number
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case 2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration 2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus 2., 8. <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter 2. <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review 2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation 1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect 1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort 1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case 1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental 1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only) 1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment 2., 9. <input type="checkbox"/> A6160 Abstract of Judgment 2., 6. <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) 2., 9. <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) 2., 8. <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax 2., 8. <input type="checkbox"/> A6112 Other Enforcement of Judgment Case 2., 8., 9.
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case 1., 2., 8.
Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only 1., 2., 8. <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) 2., 8. <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) 1., 2., 8. <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex) 1., 2., 8.
	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case 2., 8.
Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment 2., 3., 9. <input type="checkbox"/> A6123 Workplace Harassment 2., 3., 9. <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case 2., 3., 9. <input type="checkbox"/> A6190 Election Contest 2. <input type="checkbox"/> A6110 Petition for Change of Name 2., 7. <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law 2., 3., 4., 8. <input type="checkbox"/> A6100 Other Civil Petition 2., 9.

SHORT TITLE: Conversion Systems, LLC v. Obesity Research
Institute, LLC

CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.

☐ 1. ☐ 2. ☐ 3. ☐ 4. ☒ 5. ☐ 6. ☐ 7. ☐ 8. ☐ 9. ☐ 10.

ADDRESS: Contract provides for venue in Los Angeles, California

CITY:

Los Angeles

STATE:

CA

ZIP CODE:

90012

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: November 4, 2015

(SIGNATURE OF ATTORNEY/FILING PARTY)

Arturo E. Matthews, Jr.

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

11:49:32 a.m. 11-05-2015
19492585269
To: Civil Clerk Page 7 of 29
2015-11-05 19:58:18 (GMT)
19492585269 From: Client Solutions

Exhibit No. 4

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
4.	Copy of the Complaint in <i>Joshua Weiss v. Continuity Products et al.</i> , Case No. 00043385 (Sup. Ct. Cal. Nov. 31, 2015) adopting the highlighted allegations regarding the joint liability of Defendants.	63-87

Number	Description	Page Numbers
5.	Archived screenshots of Lipoze.com that were obtained from the Internet Archive's "Way Back Machine," <i>available at</i> http://web.archive.org/web/*/lipozene.com .	88-104
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," <i>available at</i> http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

Craig Nicholas (SBN 178444)
 Alex Tomasevic (SBN 245598)
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Attorney for Plaintiff Joshua A. Weiss

FILED
 JUDICIAL BUSINESS OFFICE 18
 CENTRAL DIVISION

15 DEC 31 PM 2:43

SUPERIOR COURT
 SAN DIEGO COUNTY, CA

FILED
 Clerk of the Superior Court
 DEC 31 2015

**SUPERIOR COURT OF THE STATE OF CALIFORNIA-FOR
 THE COUNTY OF SAN DIEGO**

JOSHUA A. WEISS, an individual,

 Plaintiff,

v.

CONTINUITY PRODUCTS, a Delaware
 Limited Liability Company, OBESITY
 RESEARCH INSTITUTE, a California
 Limited Liability Company, ZODIAC
 FOUNDATION, a California Limited
 Liability Company, NATIONAL WEIGHT
 LOSS INSTITUTE, a California Limited
 Liability Company, HENNY DEN UIJL, an
 individual, SANDRA DEN UIJL, an
 individual ; and DOES 1-100, inclusive,

Defendants.

CASE NO. 37-2015-00043385-CU-OE-CTL

COMPLAINT FOR DAMAGES:

1. Harassment Based on Sex and Religion;
2. Hostile Work Environment;
3. Failure to Take All Reasonable Steps to Prevent Harassment and Retaliation;
4. Constructive Discharge;
5. Fraud;
6. Negligent Misrepresentation;
7. Breach of Contract – Unlawful Harassment and Discrimination;
8. Breach of Contract – Problem Resolution Process
9. Violations of the California Labor Code;
10. Unfair Competition

JURY TRIAL DEMANDED

Plaintiff, JOSHUA A. WEISS, by and through his attorney, files this Complaint, and alleges as follows:

VIA FAX

INTRODUCTION

1. Plaintiff JOSHUA A. WEISS ("Plaintiff" or "Weiss") brings this action against his former employers to address the repeated sexually-charged and religiously-motivated harassment that he had to endure while working for Defendants.

2. Mr. Weiss is Jewish and Defendants repeatedly referred to Mr. Weiss' faith at work in a derogatory and harassing manner, saying things like that he was hired because he could really "Jew down" Defendants' business counterparts, and that "Jews [like Mr. Weiss] know how to watch money." Defendants also mocked Mr. Weiss for observing Jewish work holidays. Defendants even praised Dylan Roof (the infamous Charleston, South Carolina church shooter and alleged murderer)¹ and Roof's manifesto, which repeatedly and expressly attacked Jewish people and Jewish Americans. Defendants quipped with Weiss that Roof made a lot of "good points."

3. Mr. Weiss couldn't take it anymore and was forced to quit. He now brings this complaint to address these and other wrongs as more fully described below.

PARTIES

4. Plaintiff, JOSHUA A. WEISS ("Plaintiff" or "Weiss") is an individual and a California resident and, at all times relevant to the Complaint, was employed by Defendant Continuity Products, LLC ("Continuity Products" or "Defendant Continuity Products") located in San Diego County, California.

5. Plaintiff is a heterosexual Jewish male, who was employed by Defendant Continuity Products from about November 15, 2011, to on or about July 17, 2015.

6. Plaintiff is informed and believes that Defendant Continuity Products is a Delaware limited liability company that manages various shell companies operated by Defendant Henny den Uijl ("den Uijl").

7. Plaintiff is informed and believes that Defendant Obesity Research Institute, LLC ("ORI") is a California limited liability company that sells purported dietary weight loss

¹ See https://en.wikipedia.org/wiki/Dylann_Roof (last accessed on Dec. 31, 2015).

1 products.

2 8. Plaintiff is informed and believes that Defendant Zodiac Foundation, LLC
3 ("Zodiac") is a California limited liability company that serves as an investment vehicle for
4 Defendant den Uijl.

5 9. Plaintiff is informed and believes that Defendant National Weight Loss Institute,
6 LLC ("NWLI") is a California limited liability company that sells purported dietary weight loss
7 products.

8 10. Defendant Henny den Uijl is and was, at all times herein relevant, an individual,
9 and President, agent, and employee of Defendant Continuity Products. Defendant den Uijl is a
10 resident of California, who personally engaged in illegal acts causing harm to Plaintiff.

11 11. Sandra den Uijl (Defendant "Sandra") is and was, at all times herein relevant, an
12 individual, and agent, and held herself out third parties to be an employee of Defendant
13 Continuity Products. Defendant Sandra is a resident of California, who personally engaged in
14 illegal acts causing harm to Plaintiff.

15 12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
16 herein, Defendants den Uijl and Sandra were officers, agents, and employees of Defendant
17 Continuity Products, and in doing the things alleged in this Complaint, were acting within the
18 course and scope of such agency and employment. Plaintiff is informed and believes and
19 thereon alleges that Defendant den Uijl was at all times herein mentioned Plaintiff's direct
20 supervisor. In addition, Sandra often exercised direct control and supervision of Plaintiff.
21 Plaintiff is informed and believes and, on that basis, alleges that den Uijl and Sandra are
22 Christians.

23 13. Plaintiff is informed and believes that Defendant Continuity Products is the
24 employer of Defendant den Uijl and Sandra, and therefore, Defendant Continuity Products is
25 liable for Defendants' acts described herein under the principle of *respondeat superior*.

26 14. Plaintiff is informed and believes that each of the DOE Defendants reside in the
27 state of California and are in some manner responsible for the conduct alleged here. On

1 discovering the true names and capacities of these fictitiously named Defendants, Plaintiff will
2 amend this Complaint to show the true names and capacities of these fictitiously named
3 Defendants.

4 15. Each of the Defendants were Plaintiff's employer or joint-employer under
5 California law because they each, directly or indirectly, or through an agent or any other person,
6 employed or exercised control over Plaintiff's wages, hours, or working conditions. Each of the
7 Defendants did engage, suffer, or permit Plaintiff to work. Each Defendant, thus, is personally
8 or individually liable to Plaintiff for the conduct described here. In addition, each of the separate
9 Defendants are personally or individually liable for their wrongdoing based on application of the
10 "alter ego" doctrine. Among each of the Defendants, there is a unity of interest and ownership.
11 Also, it would be unfair if the acts in question are treated as those of one Defendant or group of
12 Defendants alone.

13 JURISDICTION AND VENUE

14 16. This Court has jurisdiction over this action, under the California Fair Employment
15 and Housing Act, California Government Code § 12940, et seq. ("FEHA"), and under Article VI,
16 § 10 of the California Constitution, which grants the Superior Court original jurisdiction in all
17 causes other than those given by statute to other courts.

18 17. Defendants, at all times relevant hereto, are and have been an "employer" as
19 defined by FEHA.

20 18. The amount in controversy exceeds the minimum jurisdictional threshold of this
21 Court.

22 19. Venue is proper in this Court as the acts complained of occurred in the County of
23 San Diego.

24 FACTS COMMON TO ALL CAUSES OF ACTION

25 20. On or about November 15, 2011, Plaintiff began his employment with Defendant
26 Continuity Products working as General Counsel.

27 21. Plaintiff's duties were to advise, counsel, and provide legal services to Continuity
28

1 Products. In 2014, Plaintiff was made head of Marketing and Sales and often gave advice and
 2 counsel that was business-oriented rather than legal in nature. Upon becoming Head of
 3 Marketing and Sales, Plaintiff also took on the management of the employees in this department
 4 most specifically Edgar den Uijl, the son of Defendant den Uijl and Sandra.

5 22. At the time Plaintiff worked for Defendant Continuity Products, Defendant den
 6 Uijl was Plaintiff's direct supervisor. In addition, Sandra often directed and supervised
 7 Plaintiff's employment.

8 23. On a frequent and consistent basis while at work, Plaintiff was subjected to
 9 derogatory and humiliating statements and attacks to his Jewish religion by his supervisor
 10 Defendant den Uijl. The statements and attacks directed towards him included, but were not
 11 limited to:

- 12 A. Calling Plaintiff "cheap" because he is Jewish.
- 13 B. Expressing and telling others that Plaintiff was hired because "Jews know
 14 how to screw over others" and that "Jews know how to watch money."
- 15 C. Stating that Jewish people know how to "nickel and dime others" and
 16 instructing Plaintiff during negotiations to "Jew down" the other party.
- 17 D. Repeatedly telling the joke in front of Plaintiff and others that "copper wire
 18 was invented by a Jew and a Dutchman fighting over a penny."
- 19 E. Mocking Plaintiff regarding his observation of important Jewish holidays and
 20 traditions, such as attending the Passover Seder, Yom Kippur, and Rosh
 21 Hashanah.
- 22 F. Proclaiming that, from Defendant den Uijl's and his wife Sandra's
 23 perspective, Dylan Roof's (the Charleston, South Carolina church shooter)
 24 manifesto, which repeatedly and expressly attacked Jewish people and Jewish
 25 Americans, made a lot of good points and had a lot of truth to it.
- 26 G. Fostering a hostile work environment where religious harassment by
 27 Defendants and Continuity Products employees was condoned, tolerated, and

1 ratified by Defendants.

2 24. On a frequent and consistent basis while at work Plaintiff was also subjected to
3 several sexually charged statements/and attacks by Defendant den Uijl and Sandra. The
4 statements and attacks directed towards him included, but were not limited to:

- 5 A. Looking at Plaintiff in an objectifying manner and telling him that he
6 needed to lose weight in his stomach, could stand to lose "a few pounds,"
7 and commenting on his appearance.
- 8 B. Treating Defendant and other employees like sexual objects by making
9 objectifying statements like "you would look better if you lost weight,"
10 and commenting on employees' tattoos and attractiveness.
- 11 C. Fostering a hostile work environment where men and women were
12 routinely objectified regarding their looks, weight, and/or other physical
13 attributes.
- 14 D. Challenging Plaintiff's sexual orientation/sexual identity by insinuating
15 Plaintiff was "gay" because he expressed discomfort with Defendants'
16 sexual comments and behavior.
- 17 E. Challenging Plaintiff's sexual orientation/sexual identity due to the way
18 Plaintiff dressed and/or his choice of attire.
- 19 F. Challenging Plaintiff's sexual orientation/sexual identity for abstaining
20 from drinking alcohol due to medication related to Plaintiff's medical
21 condition.
- 22 G. Requiring Plaintiff to go to strip clubs, despite Plaintiff's protestations that
23 doing so made him uncomfortable and embarrassed.
- 24 H. Pressuring Plaintiff to get "lap dances" and challenging Plaintiff's sexual
25 orientation/sexual identity when he abstained from doing so.
- 26 I. Requiring Plaintiff to pay for Defendant den Uijl's "lap dances" at strip
27 clubs, including maxing out Plaintiff's ATM card and requiring Plaintiff

1 to put Defendant den Uijl's charges on his personal credit card, because
2 Defendant den Uijl did not want to use his credit card so that den Uijl's
3 wife would not find out he had been to the strip club.

4 J. Requiring Plaintiff to chauffeur him around while he would speak to his
5 wife in a lewd, lascivious and sexually provocative nature.

6 K. Sandra would routinely sit on Defendant den Uijl's lap and kiss in front of
7 Plaintiff.

8 25. Additionally, Defendant Continuity Products' employees Nick Klaiber, Edgar den
9 Uijl and other Continuity Products' employees made derogatory Jewish comments on
10 approximately a weekly basis to Plaintiff. Defendant den Uijl condoned, supported, and ratified
11 these statements. Indeed, the use of derogatory Jewish comments was so common and condoned
12 by Defendants that one Continuity Products' employee told the above-noted joke regarding the
13 invention of the penny on a telephone conference with Plaintiff, another former Continuity
14 Products' employee, and other third-parties regarding a potential deal.

15 26. Defendant Sandra berated and used sexual slurs directed at Plaintiff. These
16 comments were condoned, supported, and ratified by Defendants and each of them. Indeed,
17 Defendants, and each of them, condoned, ratified, and fostered Sandra's conduct creating a
18 further hostile work environment, by, among other things, her use of sexual, and racial slurs
19 aimed at Plaintiff and others, her use of foul language and expletives aimed at Plaintiff and
20 others, and her use of sexually charged comments (e.g., when comparing Viagra to Continuity
21 Products' Lipozene, stating: "one makes you cum and one makes you go").

22 27. Defendant den Uijl's and Sandra's son and Continuity Products employee, Edgar
23 den Uijl, also regularly directed sexual and religious slurs aimed at Plaintiff. In particular,
24 among other things, Defendants condoned, supported and ratified Edgar den Uijl's repeated
25 comments regarding Plaintiff's physical appearance, including his arms and his choice of attire.
26 Such comments were condoned, supported and ratified by Defendants and each of them.

27 28. Plaintiff is informed and believes and thereon alleges that Sandra, Mr. Carlos de
28

la Garza, and Mr. Edgar den Uijl regularly discussed and spread rumors about Plaintiff that were sexual in nature, including to Continuity Products' head of human resources, Mr. Jamie Stein ("Stein").

29. After Plaintiff complained to Defendant den Uijl and to Defendant Continuity Products' head of human resources, Stein, both formally and informally about the hostile work environment fostered by Defendant den Uijl and Ms. Sandra den Uijl, Defendant den Uijl retaliated causing Plaintiff further humiliation. The retaliation included but was not limited to the following:

- A. Ms. Sandra den Uijl, increased her hostile behavior toward Plaintiff, with the behavior expressly condoned by Defendant den Uijl;
- B. Further fostering an environment of hostility toward Plaintiff's religion and sexual orientation/sexual identity.

30. At all times relevant, Plaintiff found the sexual harassment and the attacks to his religion as hostile, but stayed at his job in order to help support his family.

31. The situation eventually became so oppressive to Plaintiff that he was constructively terminated.

32. Defendants, each of them, subjected Plaintiff to harassment during Plaintiff's employment. Such incidents included, but are not limited to, those events mentioned in this Complaint. Defendants have engaged in a pattern and practice of discriminatory, harassing, abusive, and otherwise unlawful behavior.

33. Defendants' actions fostered, condoned, created, and ratified a hostile work environment for Plaintiff.

34. Plaintiff is informed and believes and, based thereon, alleges that during the roughly three and one-half years he worked for Continuity Products, the unlawful harassment, discrimination, and hostile work environment fostered, condoned, and ratified by Defendants led to approximately 150% employee turnover.

35. In addition to a religiously and sexually hostile work environment, Defendants

1 fostered, condoned, created, and ratified a hostile work environment based on race through
2 Defendant den Uijl regularly aiming hate-based derogatory comments at people of African
3 descent by saying things such as “Take all the blackies out of the commercials—Europeans don’t
4 like blackies,” and implying that Travon Martin was killed because he looked like a “thug” in his
5 hoodie and had no business in a gated community. Defendant den Uijl referred to President
6 Obama as that “blackie in the White House.” He further stated that more company product was
7 sold “when blackies got their welfare checks.” Defendant den Uijl told employees that the
8 reason one of the company’s products – Rip Fire – was not selling was that “all the black gang
9 bangers wanted it, they just could not afford it and their credit cards were no good.” Defendant
10 den Uijl similarly regularly made hate-based derogatory comments toward Latino and people of
11 Mexican descent by stating and/or implying that they are “lazy” and “liars.” Defendant den Uijl
12 similarly regularly made hate-based derogatory comments toward people of Asian descent by
13 using phrases such as: “slanty-eyed motherfuckers.”

14 36. At all relevant times, Plaintiff found these acts outrageous, hostile, and harassing.
15 Plaintiff incorporates herein such conduct, both known and unknown, and reserves the right to
16 more specifically identify and prove additional unlawful acts.

17 37. As a further direct and proximate cause of the acts and conduct of Defendants,
18 and each of them, as alleged here, Plaintiff has suffered injury, damage, loss and harm, including
19 but not limited to loss of income, humiliation, and embarrassment.

20 38. Defendants’ acts as herein described were committed maliciously, fraudulently, or
21 oppressively with the intent of injuring Plaintiff, and/or with a willful and conscious disregard of
22 Plaintiff’s right to work in an environment free from unlawful harassment and retaliation.
23 Therefore, Plaintiff is entitled to recover punitive damages in a sum sufficient to punish and deter
24 future such conduct.

25 39. Within the time provided by law, after suffering this harassment, Plaintiff made a
26 complaint to the California Department of Fair Employment and Housing (“DFEH”) alleging
27 illegal acts Plaintiff suffered during his employment with Defendants. DFEH issued Right-to-

1 Sue letters as to each defendant. True and correct copies of said letters are attached hereto,
 2 collectively marked as Exhibit "A," and incorporated here by reference.

3 40. At all relevant times, Plaintiff found the acts complained of here to be outrageous,
 4 hostile, abrasive, and exploitative. Plaintiff incorporates here such conduct, both known and
 5 unknown, and reserves the right to more specifically identify and prove additional unlawful acts.

6 **FIRST CAUSE OF ACTION**

7 *(Against all Defendants)*

8 **Harassment Based On Sex and Religion: Government Code Section 12900, et seq.**

9 41. Plaintiff re-alleges and incorporates each and every allegation contained above
 10 except where to do so would be inconsistent with pleading this cause of action.

11 42. Defendants, and each of them, subjected Plaintiff to unwelcomed harassment
 12 based on Plaintiff's sex and religion as described in detail above.

13 43. The unwelcomed harassment based on sex and religion was sufficiently severe or
 14 pervasive so as to alter the terms and conditions of Plaintiff's employment and/or create a
 15 hostile, intimidating, or offensive environment.

16 44. Plaintiff found Defendants' harassment, based on sex and religion, outrageous,
 17 hostile, abrasive, and exploitative and considered them as attacks to his heterosexual and Jewish
 18 identity.

19 45. Defendants are liable for the sexual and religious harassment by Defendants den
 20 Uijl and Sandra. At all relevant times, Defendants had actual and constructive knowledge of the
 21 harassment described and alleged herein and/or participated in the harassment directly.
 22 Defendants failed to take immediate and appropriate corrective action to stop the harassment.
 23 Thereby Defendants condoned, ratified, and participated in the harassment and failed to protect
 24 Plaintiff from further harassment.

25 46. As a direct and proximate result of Defendants' and each of their acts alleged
 26 herein, Plaintiff was harmed. Defendants' above-alleged conduct was extreme and outrageous
 27 and has caused Plaintiff injury, damage, loss, and harm including loss of income, humiliation,

1 embarrassment, and discomfort based on the sexual and religious harassment experienced, and
2 Defendants' failure to take immediate and appropriate action in response thereto, all which
3 amount to Plaintiff's damage in excess of the minimum jurisdiction of this court, the precise
4 amount to be proven at trial.

5 47. Defendants' and each of their conduct was malicious and oppressive in that it was
6 carried on by Defendants in a willful and conscious disregard of Plaintiff's rights and subjected
7 him to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is
8 justified.

9 48. Plaintiff is thereby entitled to general, compensatory, and punitive damages as
10 prayed herein. Plaintiff also requests an award of reasonable attorneys' fees, expert witness fees,
11 and costs as allowed by law.

12 **SECOND CAUSE OF ACTION**

13 *(Against all Defendants)*

14 **Hostile Work Environment: Government Code Section 12900, et seq.**

15 49. Plaintiff re-alleges and incorporates each and every allegation contained above
16 except where to do so would be inconsistent with pleading this cause of action.

17 50. Plaintiff was subjected to unwanted harassing conduct because of Plaintiff's
18 sexual orientation/sexual identity and religion.

19 51. Defendants, directly and through their agents and employees, engaged in a pattern
20 and practice of maintaining a hostile work environment in violation of California's Fair
21 Employment and Housing Act ("FEHA"), in connection with its treatment of Plaintiff and the
22 terms and conditions of his employment.

23 52. At all relevant times, Defendants had actual and constructive knowledge of the
24 hostile work environment described and alleged herein, and condoned, ratified, and participated
25 in said conduct, and their failure to protect Plaintiff from the hostile work has caused Plaintiff
26 damages.

27 53. At all relevant times, Plaintiff considered the work environment to be hostile and
28

1 abrasive, but stayed at his employment in order to pay his bills and support his family.

2 54. Plaintiff believes his work environment was hostile and that a reasonable
3 heterosexual Jewish man in Plaintiff's position would find the work environment hostile.

4 55. As a direct and proximate result of the willful, knowing and intentional hostile
5 work environment to which Plaintiff was subjected and the failure to act by Defendants, Plaintiff
6 has suffered anguish, indignation, and loss of income/employment benefits.

7 56. Plaintiff is thereby entitled to general and compensatory damages as prayed
8 herein. Plaintiff also requests an award of reasonable attorneys' fees, expert witness fees, and
9 costs as allowed by law.

10 57. Defendants' acts alleged herein are malicious, oppressive, despicable, and in
11 conscious disregard of Plaintiff's rights. As such, punitive damages are warranted against
12 Defendants in order to punish and make an example of them.

13 **THIRD CAUSE OF ACTION**

14 *(Against Defendant Continuity Products and all DOE Defendants)*

15 **Failure to Prevent Harassment, Discrimination and Retaliation:**

16 **Government Code Section 12940 et seq.**

17 58. Plaintiff re-alleges and incorporates each and every allegation contained above
18 except where to do so would be inconsistent with pleading this cause of action.

19 59. FEHA requires Defendant to take all reasonable steps to prevent discrimination,
20 harassment, and retaliation based on, among other things, Plaintiff's sex and religion.

21 60. Defendants failed to take all reasonable steps to prevent the discrimination,
22 harassment, and retaliation against Plaintiff as more fully described above. Defendants further
23 failed to take all immediate and appropriate corrective actions to stop the harassment,
24 discrimination, and retaliation Plaintiff was experiencing.

25 61. As a direct and proximate result of Defendants' failure to prevent harassment,
26 discrimination, and retaliation against Plaintiff, Plaintiff was harmed. Defendants' above-alleged
27 conduct was extreme and outrageous and has caused Plaintiff injury, damage, loss and harm

1 including loss of income, humiliation, embarrassment, and discomfort. Defendants' failure to
2 take immediate and appropriate action damaged Plaintiff in excess of the minimum jurisdiction
3 of this court.

4 62. Plaintiff is thereby entitled to general and compensatory damages as prayed
5 herein. Plaintiff also requests an award of reasonable attorneys' fees, expert witness fees, and
6 costs as allowed by law.

7 63. Defendants' failure to take all reasonable steps necessary to prevent
8 discrimination and harassment was malicious and oppressive in that it was carried on by
9 Defendants in a willful and conscious disregard of Plaintiff's rights and subjected him to cruel
10 and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

11 **FOURTH CAUSE OF ACTION**

12 *(Against Defendant Continuity Products and all DOE Defendants)*

13 **Tortious Constructive Discharge in Violation of Public Policy**

14 64. Plaintiff re-alleges and incorporates each and every allegation contained above
15 except where to do so would be inconsistent with pleading this cause of action.

16 65. In the face of the intolerable working conditions created by Defendants'
17 harassment based on sex and religion, Plaintiff had no reasonable choice but to resign his
18 position, and therefore was constructively terminated.

19 66. Plaintiff's constructive discharge was in contravention of the substantial public
20 policy embodied in those codes, statutes and regulations prohibiting an employer from harassing
21 an employee based on sex and religion. *See* Cal. Government Code §12940, *et seq.*

22 67. At all relevant times, Defendants had actual and constructive knowledge of the
23 hostile work environment and sex and religious-based harassment described and alleged herein.
24 Defendants intentionally created or permitted these unlawful actions to take place.

25 68. As a direct, foreseeable, and proximate result of Defendants' wrongful acts,
26 Plaintiff has suffered a loss of earnings, as well as humiliation, embarrassment, and discomfort,
27 all to his damage in an amount according to proof.

1 H. That there would be quarterly bonuses along with an end of year bonus thus
2 amounting to five (5) bonuses per year.

3 73. Defendants' misrepresentations were material. However, each representation made
4 by Defendants was patently false. In actuality, there had been such a tremendous amount of
5 turnover that Defendants had, outside of Plaintiff's purview, referred to it as a "revolving door."
6 Moreover, Defendants had gone through a number of layoffs due to the poor financial
7 performance of the company. Defendants grossly overstated their actual business success. Even
8 further there were no annual reviews or merit raises for Plaintiff or any other employee of
9 Defendants' and no employee ever in the history of the company had ever received the five
10 bonuses as promised by Defendants in the hiring process.

11 74. Defendants knew their representations were false when made and intended them to
12 mislead and induce Plaintiff to accept an employment position.

13 75. Plaintiff reasonably relied on Defendants' misrepresentations. Plaintiff was
14 unaware of the concealed or suppressed facts and had he known the truth, he would not have
15 accepted the position. Plaintiff gave up a higher paying job at the electronics giant, LG, to
16 accept a position with the Defendants, and lost a retention bonus of three months of salary.
17 Plaintiff also declined to pursue other potential job openings for which he had interviewed as a
18 result of the misrepresentations made by Defendants.

19 76. Plaintiff did not know, and could not reasonably have known, that the
20 representations were false until sometime in 2013 at the earliest.

21 77. Plaintiff has been damaged by Defendants' deceitful conduct in an amount above
22 this court's minimum jurisdiction. Also, Defendants' acts as herein described were committed
23 maliciously, fraudulently or oppressively with the intent of injuring plaintiff, and/or with a
24 willful and conscious disregard of Plaintiff's rights. Because these acts were carried out in a
25 despicable, deliberate and intentional manner, plaintiff is entitled to recover punitive damages in
26 a sum sufficient to punish and deter such future conduct.

SIXTH CAUSE OF ACTION

(Against all Defendants)

Negligent Misrepresentation

78. Plaintiff re-alleges and incorporates each and every allegation contained above except where to do so would be inconsistent with pleading this cause of action.

79. During the course of Plaintiff's hiring process, Defendants made numerous false representations to Plaintiff, as described above, that Defendants knew to be false when made, or that were made recklessly and without regard for the truth.

80. If Defendant's representations were not intentionally or recklessly made, then Defendants were at least negligent in making false and misleading statements. Plaintiff reasonably relied on those representations set forth above.

81. The representations made by Defendants were material, false, and misleading. Defendants made the representations without any reasonable ground for believing them to be true. They failed to exercise reasonable care or competence in making these representations and in ascertaining or failing to ascertain the truth or falsity of their representations.

82. Plaintiff did not know, and could not reasonably have known, that the representations were false until sometime in 2013 at the absolute earliest.

83. Plaintiff reasonably and justifiably relied on Defendants' misrepresentations in accepting a position at the company and has been substantially harmed by Defendants.

SEVENTH CAUSE OF ACTION

(Against all Defendants)

Breach of Contract – Unlawful Harassment and Discrimination

84. Plaintiff re-alleges and incorporates each and every allegation contained above except where to do so would be inconsistent with pleading this cause of action.

85. On Plaintiff's first day of employment, Defendants issued their employee handbook ("Handbook") to Plaintiff and required him to sign a statement acknowledging his receipt.

86. Plaintiff has, in good faith, performed all his duties and obligations under the terms

1 and provisions of the Handbook, and relied on the statements contained therein.

2 87. Defendants breached their contractual obligations to Plaintiff.

3 88. The Handbook contained certain unequivocal terms of employment, set forth in
4 mandatory terms. Among these mandatory terms was that Continuity Products would not
5 tolerate harassment and discrimination based on sex, sexual orientation, race or religion:

6 **Workplace Violence/Statement of Respect**

7 "Continuity Products strives to provide a safe work
8 environment that is conducive to quality customer service,
9 good morale and a high level of productivity. Employees,
10 officers and directors are expected to treat fellow employees,
11 officers, directors, customers and vendors with courtesy and
12 to resolve any difference in a professional, non- abusive and
13 non-threatening manner.

14 Employees, officers and directors are responsible for their
15 behavior and for understanding how others may perceive
16 their conduct in the workplace.

17 Disruptive, unruly or abusive behavior by employees,
18 officers, and directors in the workplace or at company-
19 sponsored events will not be tolerated. Inappropriate conduct
20 includes verbal or physical threats, fights, and obscene or
21 intimidating language and behavior, as well as any other
22 abusive conduct."

23 **Harassment and Discrimination**

24 "Continuity Products is committed to maintaining a
25 workplace free of unlawful harassment and discrimination
26 based on race, color, religion, sex (including pregnancy,
27 childbirth, or related medical condition), gender, sexual
orientation, national origin, ancestry, age, disability, veteran
status or any or other factor prohibited by law ("prohibited
behavior"). The company considers such behavior
unacceptable, and does not tolerate any violation of this
policy.

This policy also specifically covers sexual harassment as a
prohibited behavior that is defined by various laws and that
is not tolerated by our company. Sexual harassment typically
involves unwelcome sexual advances, requests for sexual
favors or other verbal or physical conduct of a sexual nature."

Equal Employment Opportunity and Diversity Statement

... "The Company is committed to equal employment opportunity (EEO) in policy and in practice. Quite simply, our company is committed to providing equal employment opportunities and will not tolerate discrimination or harassment on the basis of race, color, marital status, religion, sex, national origin, age disability, veteran status or other categories protected by state or local applicable law.

This policy assures equal employment opportunity to applicants under the company's Human Resources processes, including recruitment, hiring, training, compensation and promotion.

Every manager is responsible for establishing an environment where diversity is valued and where employees are free from all discrimination and harassment, including that which may be sexual, verbal, physical or visual in nature."

Examples of Sexual Harassment and Other Prohibited Behavior

"The following are examples of the types of prohibited behavior that are not allowed:

Verbal harassment: epithets, derogatory comments, negative stereotypes, offensive remarks of slurs.

Examples: name-calling, belittling, jokes, sexually explicit or degrading words to describe an individuals, comments about an employee's anatomy and/ or dress, questions about a person's sexual practices, use of patronizing terms or remarks, verbal abuse or graphic verbal comments about the body."

89. Defendants made an express contractual promise to its employees, including Plaintiff, to provide a "workplace free of unlawful harassment and discrimination." All of these promises were material.

90. Defendants, including Defendants den Uijl and Sandra, repeatedly challenged Plaintiff's sexual orientation/sexual identity due to the way he dressed and/or his choice of attire, and insinuated Plaintiff was "gay" because he expressed discomfort with Defendants' sexual comments and behavior. Defendants regularly directed sexual and religious slurs at Plaintiff and condoned, supported, and ratified comments made by other employees regarding Plaintiff's

1 physical appearance.

2 91. Defendants discriminated against Plaintiff based on his sexual orientation and
3 religion by tolerating harassment toward him and by failing to enforce Continuity Products'
4 policies to protect Plaintiff from harassment and discrimination.

5 92. Defendants' harassment was severe and pervasive. Defendants created,
6 contributed, and consistently tolerated an intimidating and hostile work environment for
7 Plaintiff.

8 93. As a direct and proximate result of Defendants' breach of their contractual promise
9 to provide a workplace free from harassment and discrimination, Plaintiff has been damaged in
10 an amount to be determined at trial.

11 **EIGHTH CAUSE OF ACTION**

12 *(Against all Defendants)*

13 **Breach of Contract – Problem Resolution Process**

14 94. Plaintiff re-alleges and incorporates each and every allegation contained above
15 except where to do so would be inconsistent with pleading this cause of action.

16 95. The Handbook set forth a policy encouraging employees to bring problems in the
17 workplace to their immediate supervisor or to Human Resources if the employee is unable to
18 discuss the problem with the supervisor or is dissatisfied with the supervisor's response. The
19 policy included the promise to resolve problems in a confidential manner and that employees
20 would not be subject to retaliatory action or reprisal:

21 **Problem Resolution Process: Let's Talk It Over**

22 "The 'Let's Talk it Over' Process is a confidential, formal
23 Problem Resolution process that gives employees an
24 effective internal method of dealing with workplace
25 problems, with an emphasis on two-way communication,
26 respect and a mutual effort to identify and implement
27 solutions."

28 "...Employees who use this process will not be subject to
any retaliatory action or reprisal."

... "Discipline will be promptly and consistently applied to
serve as notice that there are serious consequences for

1 intentional wrongdoing and to demonstrate that Continuity
2 Products is committed to integrity as an integral part of our
3 culture. Continuity Products believes that applications of
4 discipline for a violation of our ethics standards should be
5 prompt and must be appropriate. Therefore, the company
6 will weigh all mitigating and aggravating circumstances,
7 including whether the violation was intentional or
inadvertent, the extent of the likely damage to the company
and its shareholders resulting from the violation and whether
the offending person has committed previous violations of
this code or other company policy concerning ethical
behavior.”

8 The promises were material.

9 96. When Plaintiff complained to Defendant den Uijl and Defendants’ head of Human
10 Resources, Stein, about the hostile work environment, Defendants retaliated, causing Plaintiff
11 further humiliation by increasing their hostile behavior toward Plaintiff and further fostering an
12 environment of hostility toward Plaintiff’s religion and sexual orientation/sexual identity.

13 97. Further, on numerous occasions, Plaintiff complained to Defendants, including to
14 both Stein and Defendant den Uijl, about Sandra and Edgar den Uijl’s improper behavior. On
15 each and every occasion, Defendants, independently, acknowledged the actions on the part of
16 Edgar den Uijl and Sandra but stated there was nothing they could do about it. Put another way,
17 Defendants and Defendant den Uijl intentionally and knowingly failed to uphold their end of the
18 contract by dispensing out “discipline promptly and consistently” as required under the
19 Handbook despite the acknowledgement that violations had occurred and continues to occur.

20 98. Moreover, with every complaint Plaintiff made, the treatment towards Plaintiff by
21 Sandra and Edgar den Uijl continued to get more hostile, aggressive, and abusive in direct
22 contravention of the Handbook’s promise to protect employees from “retaliatory action or
23 reprisals.”

24 99. Defendants knowingly allowed its supervisors and staff to treat Plaintiff in a
25 manner that directly conflicts and completely contravenes The Handbook. Plaintiff was induced
26 by the Handbook to notify management and/or Human Resources of any harassment. Instead of
27 following promised procedures, Defendants humiliated Plaintiff in retaliation for his valid

1 complaints.

2 100. As a direct and proximate result of Defendants' breach, Plaintiff has been damaged
3 in an amount to be determined at trial.

4 **NINTH CAUSE OF ACTION**

5 *(Against all Defendants)*

6 **Violations of the California Labor Code**

7 101. Plaintiff re-alleges and incorporates each and every allegation contained above
8 except where to do so would be inconsistent with pleading this cause of action.

9 102. Pursuant to the California Supreme Court's decision in *Suastez v. Plastic Dress-Up*
10 *Co.*, 31 Cal. 3d. 774 (1982) and Labor Code section 227.3, vested vacation pay and other similar
11 forms of paid time off earned based on labor performed are considered wages that cannot be
12 subject to forfeiture without compensation for forfeited days at the applicable rates required by
13 law.

14 103. Pursuant to Plaintiff's employment contract, Plaintiff was an exempt employee who
15 accrued 168 vacation hours per year. Plaintiff was not covered by a collective-bargaining
16 agreement.

17 104. On several occasions, Plaintiff elected to use his accrued vacation pay. However,
18 Defendants required Plaintiff to work on his vacation days. On nearly all of Plaintiff's vacations,
19 he was required to participate in conference calls for Defendants and their family members,
20 review leases and contracts, respond to discovery requests, negotiate and settle class actions,
21 make and answer phone call as well as check and respond to e-mails. Additionally, Plaintiff
22 often was required to respond to emails and make calls while in the hospital for treatment, even
23 though he was using his vacation pay.

24 105. Although Plaintiff performed services for Defendants during most of his vacation
25 days, Defendants reduced Plaintiff's accrued vacation pay for full days. This was improper;
26 Defendants could not reduce Plaintiff's vacation pay on days they required him to perform work.
27 Defendants' intentional reduction of Plaintiff's accrued vacation pay with full knowledge of the

1 fact that Plaintiff was required to work *amounts to a forfeiture*. Or stated differently, Defendants
2 *took away* Plaintiff's vested vacation pay even though Plaintiff was truly working and not on
3 vacation.

4 106. Since Plaintiff was forced to work on vacation days, he cannot be charged for using
5 his vacation pay and then denied payment for those days. Defendants failed to pay Plaintiff his
6 full accrued vacation upon his termination of employment. Defendants willfully and knowingly
7 violated Labor Code section 227.3.

8 107. Labor Code section 227.3 clearly states that "all vested vacation shall be paid to [an
9 employee] as wages at his final rate in accordance with such contract of employment . . . upon
10 termination." Pursuant to Labor Code section 203, furthermore, "wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid or until an action
12 therefor is commenced; but the wages shall not continue for more than 30 days." Plaintiff is thus
13 entitled to the waiting time penalties under Labor Code section 203.

14 108. Furthermore, California Labor Code section 226(a) requires Defendants to furnish
15 each employee, at the time wages are paid, a statement containing an accurate, dated, itemized
16 account, in legible writing, showing, among other things, the gross and net wages earned, the
17 total number of hours the employee worked, all deductions, the dates of the pay period, the
18 employee's name and identification number, the employer's name and address, and all applicable
19 hourly rates in effect during the time period.

20 109. Although Defendant provided Plaintiff with pay stubs, as a result of Defendants'
21 illegal vacation pay forfeiture practices, Defendants failed to provide accurate pay stubs to
22 Plaintiff. Defendants' pay stubs inaccurately reflected the type of wages earned and the proper
23 vacation pay balance accrued. As a pattern and practice, Defendants provided Plaintiff with
24 inaccurate pay stubs each pay period that Plaintiff elected to use his vacation days but worked
25 during his vacations.

26 110. As such, Plaintiff is entitled to payment from Defendants of the greater of actual
27 damages or \$50 for the initial pay period in which the pay stub violation occurred and \$100 for

1 each subsequent violation, up to a maximum of \$4,000. Also pursuant to Labor Code section
 2 226, Plaintiff is entitled to and seeks reasonable attorneys' fees and costs incurred and all
 3 applicable penalties.

4 111. As a proximate result of Defendants' willful, knowing, and intentional failure to pay
 5 all of the wages owed to Plaintiff upon termination, Plaintiff has sustained and continues to
 6 sustain substantial losses of earnings. Plaintiff has incurred and continues to incur legal expenses
 7 and attorneys' fees in sums according to proof. Plaintiff seeks attorneys' fees and interest under
 8 this cause of action under Labor Code sections 218.5, 218.6, and 226.

9 **TENTH CAUSE OF ACTION**

10 *(Against all Defendants)*

11 **Violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof.**
 12 **Code, §§ 17200, et seq.**

13 112. Plaintiff re-alleges and incorporates each and every allegation contained above
 14 except where to do so would be inconsistent with pleading this cause of action.

15 113. Defendants are "persons" as that term is defined under California Business &
 16 Professions Code section 17021

17 114. California's UCL defines unfair competition as any unlawful, unfair, or fraudulent
 18 business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable
 19 relief with respect to unfair competition as follows:

20 Any person who engages, has engaged, or proposes to engage in unfair
 21 competition may be enjoined in any court of competent jurisdiction. The court
 22 may make such orders or judgments, including the appointment of a receiver, as
 23 may be necessary to prevent the use or employment by any person of any practice
 24 which constitutes unfair competition, as defined in this chapter, or as may be
 necessary to restore to any person in interest any money or property, real or
 personal, which may have been required by means of such unfair competition.
 (Cal. Bus. & Prof., §17203.)

25 115. Through the conduct alleged here, Defendants engaged in unlawful business
 26 practices by violating California law, including but not limited to provisions of California's
 27 Wage Orders, the California Labor Code, and FEHA as described further above. This Honorable

1 Court should, therefore, issue declaratory, injunctive and/or other equitable relief, pursuant to
2 California Business and Professions Code section 17203, as may be necessary to prevent and
3 remedy the conduct held to constitute unfair competition.

4 116. Defendants' knowing failure to adopt policies in accordance with and/or adhere to
5 these employment laws, all of which are binding upon and burdensome to Defendants'
6 competitors, engenders an unfair competitive advantage for Defendants, thereby constituting an
7 unfair business practice, as set forth in California Business and Professions Code sections 17200-
8 17208.

9 117. By and through the unfair and unlawful business practices described above,
10 Defendants have obtained valuable property, money, and services from Plaintiff and have
11 deprived him of valuable rights and benefits guaranteed by law, all to his detriment and to the
12 benefit of Defendants so as to allow Defendants to unfairly compete. Declaratory and injunctive
13 relief is necessary to prevent and remedy this unfair competition, and pecuniary compensation
14 alone would not afford adequate and complete relief.

15 118. All the acts described here as violations of, among other things, the California
16 Labor Code, FEHA, and the Industrial Welfare Commission Wage Orders, are unlawful, are in
17 violation of public policy, are immoral, unethical, oppressive, and unscrupulous, and are likely to
18 deceive employees, and thereby constitute deceptive, unfair and unlawful business practices in
19 violation of California Business and Professions Code section 17200 *et seq.*

20 119. Plaintiff is entitled to, and does, seek a declaration that the above described
21 business practices are deceptive unfair and/or unlawful and that injunctive relief should be issued
22 restraining Defendants from engaging in any of these deceptive, unfair, and unlawful business
23 practices in the future.

24 120. Plaintiff has no plain, speedy, and/or adequate remedy at law that will end the
25 unfair and unlawful business practices of Defendants. Further, and upon information and belief,
26 the practices alleged presently continue to occur unabated. As a result of the unfair and unlawful
27 business practices described above, Plaintiff has suffered and will continue to suffer irreparable

28

1 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
2 business practices.

3 121. As a result of Defendants' unfair business practices, Defendants have reaped unfair
4 benefits and illegal profits at the expense of Plaintiff. Defendants should be made to disgorge all
5 ill-gotten gains and restore such monies to Plaintiff.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

8 a. For general, special, actual compensatory/and or nominal damages, as against
9 Defendants, in an amount to be determined at trial and in excess of the jurisdictional limit
10 amount of this court;

11 b. For punitive damages as allowed by law in amount to be determined at trial
12 sufficient to punish, penalize and/or deter Defendants, and each of them, for their wrongful
13 conduct and set an example of others;

14 c. For restitution, injunctive, and declaratory relief where allowed by law;

15 d. For Plaintiff's costs and disbursements in this action, including reasonable
16 attorneys' fees, experts' fees, costs, and expenses as allowed by law;

17 e. For interest as provided by law; and

18 f. For such other and further relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby requests a jury trial.

21 Respectfully submitted,

22 Dated: December 31, 2015

23 **NICHOLAS & TOMASEVIC, LLP**

24
25 By 

26 Craig Nicholas

27 Alex Tomasevic

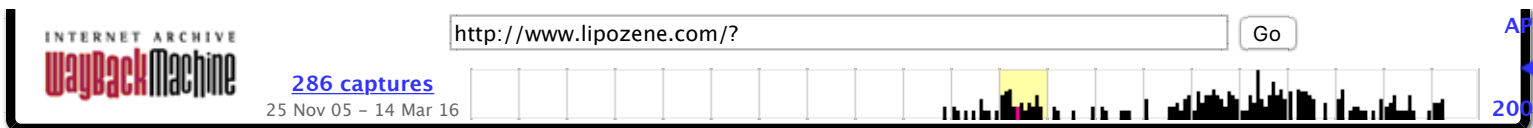
28 Attorneys for Plaintiff JOSHUA A. WEISS

Exhibit No. 5

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
5.	Archived screenshots of Lipoze.com that were obtained from the Internet Archive's "Way Back Machine," available at http://web.archive.org/web/*/lipozene.com .	88-104

Number	Description	Page Numbers
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," <i>available at</i> http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146



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Lipozene creates a dietary fiber sponge that makes you feel full, thus reducing caloric intake and adding healthy fiber to your diet. Lipozene is 100 percent natural and contains Glucomannan, an all-natural fiber derived from the Konjac root. Lipozene's main ingredient, Glucomannan, is a dietary fiber that has been used to treat constipation, obesity, high cholesterol and type 2 diabetes.

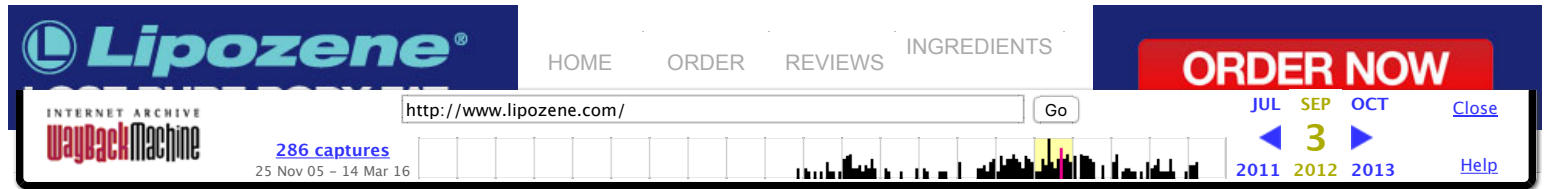
Glucomannan is a soluble fiber derived from the Konjac root, which is grown in India, China, Japan and Korea. Lipozene does not contain any caffeine or stimulants that cause jitters and other unwanted side effects. Lipozene is manufactured in the USA and there are no known side effects if taking Lipozene as directed. It is safe to take up to 2 capsules of Lipozene, 3 times a day before each meal, for a total daily maximum dosage of 6 capsules. As with all weight loss products, weight loss will vary depending on each individual. But here's where Lipozene is different. Lipozene is so confident you will lose weight and body fat, if you're not satisfied with your results you can return the product for a complete product refund. Your results are guaranteed!

Clinical trials: Clinical trials are organized studies that test the value of various treatments to support health and nutrition in human beings.

Disclaimer: The products and the claims made about specific products on or through this site have not been evaluated by the United States Food and Drug Administration (FDA) and are not approved to diagnose, treat, cure or prevent disease.

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Clinically Proven:

Helps Reduce Weight
Helps Reduce Body Fat
Safe and Effective



EXCLUSIVE OFFER
BUY ONE, GET ONE
FREE
PLUS FREE GIFT
ORDER NOW



FREE GIFT
ONLY
\$29^{.95}
FREE S&H

Buy 1 bottle of Lipozene and get 1 bottle free! As a bonus for ordering today, we will also include our energy boosting formula, Metabo Up, absolutely free with your order. Metabo Up helps increase your metabolism and is the perfect way to maximize your results even faster!

What is Lipozene?

Lipozene is an all-natural weight loss supplement that is clinically proven to help you lose weight and pure body fat.

Lipozene is safe and effective and can help you lose weight without a change in lifestyle.

Lipozene is not a pharmaceutical drug and is available without a prescription.

Clinically Proven

In a double blind, placebo controlled study, not only did participants lose weight, but 78 percent of the weight lost was pure body fat.

What's even more amazing, is that people were not asked to change their daily lives.

Safe & Effective

Lipozene has no known side effects when taken as directed. However, as with any weight loss supplement, it is always a good idea to check with your doctor before beginning use.

Satisfaction Guaranteed

Lipozene guarantees you will lose weight and body fat!

Try Lipozene risk-free for 30 days and if for any reason you are dissatisfied, simply contact us for a full product refund.

LIPOZENE IS EFFECTIVE

With over 15 million bottles sold, Lipozene is one of the top selling diet brands in America. Lipozene been on the market for over five years and has helped millions of Americans lose weight and pure body fat. Lipozene is made in the USA with quality imported and domestic materials and there are no known side effects when taken as directed. There is no caffeine or other stimulants that can cause jitters and elevated heart rate.

HOW IT WORKS

You simply take two Lipozene capsules thirty minutes before each meal. That's it.

Lipozene creates a dietary fiber gel in your stomach that makes you feel full so you are able to eat less without feeling hungry. This reduces your caloric intake and adds healthy fiber to your diet.

WHATS IN LIPOZENE

Lipozene is 100% natural and contains the super fiber Glucomannan. Glucomannan is derived from the Konjac root, which is grown in India, China, Japan and Korea. This soluble fiber has been used to treat constipation, obesity, high cholesterol and type 2 diabetes for centuries.

As with all weight loss products, weight loss will vary depending on each individual. But here's where Lipozene is different. We're so confident you will lose weight and body fat, if you're not satisfied with your results you can return Lipozene for a complete product refund.

Your results are guaranteed, or YOUR MONEY BACK!



Clinical trials: Clinical trials are organized studies that test the value of various treatments to support health and nutrition in human beings.

Disclaimer: The products and the claims made about specific products on or through this site have not been evaluated by the United States Food and Drug Administration (FDA) and are not approved to diagnose, treat, cure or prevent disease.

Lipozene is not a pharmaceutical drug and is available without a prescription.

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Clinically Proven:

Helps Reduce Weight *

Helps Reduce Body Fat *

Safe and Effective *

[Click here to View Studies](#)

EXCLUSIVE OFFER
BUY ONE, GET ONE
FREE
PLUS FREE GIFT
ORDER NOW



ONLY
\$29^{.95}
FREE S&H

Buy 1 bottle of Lipozene and get 1 bottle free! As a bonus for ordering today, we will also include our energy boosting formula, Metabo Up, absolutely free with your order. Metabo Up helps increase your metabolism and is the perfect way to maximize your results even faster!

What is Lipozene?

Lipozene is an all-natural weight loss supplement that is [clinically proven](#) to help you lose weight and pure body fat.

When taken prior to eating, Lipozene works to help you feel full faster, so you eat less! It's that easy!

[Clinically Proven](#)

In an independent study, not only did participants taking Lipozene lose weight, but 78% of each pound lost was pure body fat.

What's even more amazing is that participants were not asked to change their daily lifestyle. Just take Lipozene.

Safe & Effective

Lipozene has effectively helped millions of people meet their weight loss goals, and it can help you too!

There are no known side effects when taken as directed. However, as with any weight loss supplement, you should check with your doctor before beginning use.

Satisfaction Guaranteed

Check out these [studies](#) that prove scientifically that the active ingredient in Lipozene helps you lose weight!

We're so sure that you'll be satisfied with Lipozene, that we'll give you your money back if you don't lose weight.

LIPOZENE IS EFFECTIVE

With over 20 million bottles sold, Lipozene is America's #1 selling diet supplement*. Lipozene has helped millions of people successfully meet their weight loss goals and lose pure body fat. Best of all,

Lipozene is all-natural and does not contain caffeine or other stimulants that can leave you feeling jittery.

HOW IT WORKS

You simply take two Lipozene capsules thirty minutes before each meal. That's it.

Lipozene creates a dietary fiber gel in your stomach that makes you feel full so you are able to eat less without feeling hungry. This reduces your caloric intake and adds healthy fiber to your diet.

WHAT'S IN LIPOZENE

Lipozene is natural and contains the super fiber Glucomannan. Glucomannan is derived from the Konjac root, which is grown in India, China, Japan and Korea. This soluble fiber has been used to treat constipation, obesity, high cholesterol and type 2 diabetes for centuries.

As with all weight loss products, weight loss will vary depending on each individual. But here's where Lipozene is different. We're so confident you will lose weight and body fat, if you're not satisfied with your results you can return Lipozene for a complete product refund.

Satisfaction guaranteed, or YOUR MONEY BACK!



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Lipozene is not a pharmaceutical drug. The results from Lipozene are not intended to be compared with results from pharmaceutical drugs available by prescription.

*Number 1 selling claim is based on IRI sales data published on May 19th 2013 and based solely on single sku data.

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Try it Now!



Lose weight without dieting!

Effortless weight loss with America's #1 Diet Pill.

- You can still eat your favorite foods.
- No exercise required
- Clinically proven to help you lose weight!

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GUARANTEED
OR YOUR MONEY-BACK

View Details

OVER
20 Million
SOLD!



What you'll get

TRY IT FOR 30 DAYS! SATISFACTION GUARANTEED!

Get Dramatic Weight Loss Results While Still Eating! What You Love!

The All-Natural Formula works with your body to help you feel full faster so you eat less and burn more. That means you can still eat whatever you want! Clinically proven to help you lose weight and reduce body fat. No strict diets or impossible workouts!

- Easy to use! Simply take 2 pills before meals
- Natural ingredients are stimulant free
- Reduces hunger and makes you feel full easier



Millions of satisfied customers can't be wrong! **Try Lipozene today!**

Real People. Real Results.

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TRY LIPOZENE TODAY!

INTERNET SPECIAL OFFER,
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plus a FREE Gift & FREE S&H

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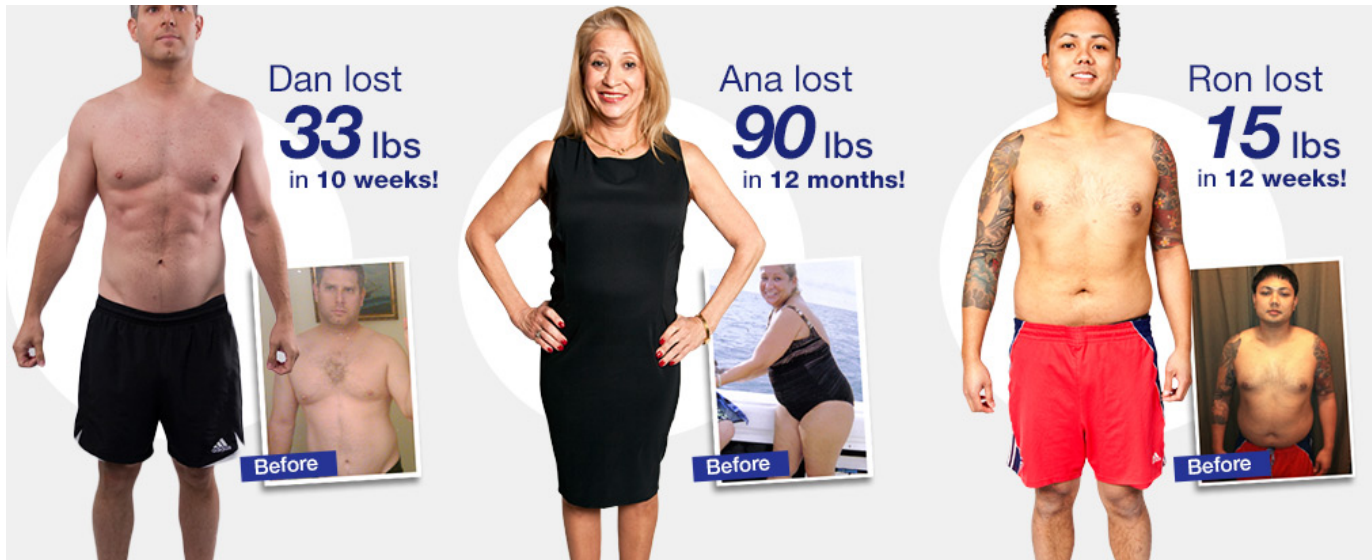
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FINALLY YOU CAN GET A DIET PILL THAT WORKS!

Try Lipozene Now!

Clinically Proven

Numerous studies have proven that Lipozene's active ingredient works, but Lipozene is even more effective! In an independent study on Lipozene's exclusive formula, participants not only lost weight, but 78% of each pound lost was pure body fat! The most amazing part- the participants were not asked to change their daily lifestyle.

Safe & Effective

Lipozene has effectively helped countless people reach their weight loss goals without harmful side effects. No stimulants means NO jitters. And the naturally occurring ingredients can be found in nature, not a chemist's lab so you can feel good about what you are putting into your body!

How Does it Work?



Take 2 pills
30 minutes before a meal

LOSE WEIGHT

(That's it!)



Reach your weight-loss goals.
TRY LIPOZENE TODAY!

Try it Now!



Clinically proven to help you **LOSE WEIGHT!**

The safe and effective way to shed pounds...

- No strict diets, easy to use
- Reduce hunger, feel full faster
- Natural ingredients are safe and effective
- *Millions of success stories!*

BUY 1 GET ONE FREE!
plus a FREE Gift & FREE S&H

Try it Now!

**OVER
20 Million
SOLD!**



What you'll get



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OFFER DETAILS: Internet Special Offer - Buy one bottle of Lipozene for only \$29.95 and get a 2nd bottle FREE! There is no shipping or handling charge for your purchase. All purchases are backed by our 30 Day NO QUESTIONS ASKED MONEY-BACK GUARANTEE. If you are not satisfied for ANY reason, simply return your purchase within 30 days of the ship date and we will issue you a FULL REFUND!

Clinical trials: Clinical trials are organized studies that test the value of various treatments to support health and nutrition in human beings.

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All sales are subject to Obesity Research Institute's Terms and Conditions of Sale which can be found at www.lipozene.com.

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100% Money Back
Guarantee

Lose Weight

Without Changing Your Lifestyle! [†]

ACHIEVE YOUR WEIGHT LOSS GOALS WITH AMERICA'S #1
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DIET SUPPLEMENT.*

Clinically proven to help you lose weight!
Still eat your favorite foods.
No change in exercise required.





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Billing Address City

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Lose Weight or your Money Back!



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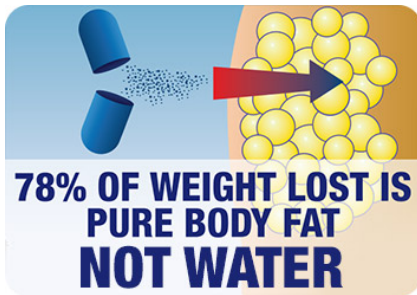
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Dramatization

Achieve Fantastic Weight Loss Results & Still Eat The Food You Love! †

Our *Proprietary Blend of All Natural Fiber* makes you feel full so you eat less. This means that you can lose weight without changing what you eat. Lipozene® is clinically proven to help you lose weight and reduce body fat without strict diets or grueling workouts!

Lose Fat, Not Water

Stimulant Free Ingredients

With over 25 million bottles sold, our customers can't be wrong!

Finally a Diet Pill That Really Works! †

Try Lipozene Now !
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Clinically Proven †

Numerous studies have proven that the active ingredient in Lipozene® will help you lose weight. Researchers conducted an independent clinical study on Lipozene's exclusive formula, and found that not only did the participants lose weight, but 78% of each pound lost was pure body fat! Even more amazing was that study participants were not asked to change their daily lifestyle, meaning they were not asked to change what they ate or how they exercised.+

Safe & Effective! ***

Lipozene® has helped countless people reach their weight loss goals without harmful side effects. No stimulants means NO jitters. The active ingredient in Lipozene® is found in nature, not in a chemist's lab- so you can feel good about what you are putting into your body!



Real People. Real Results. ***



Reach Your Weight-Loss Goals

Try Lipozene Now !

FOR ONLY

\$29.95*

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*** RESULTS NOT TYPICAL. ENDORSER USED LIPOZENE® IN COMBINATION WITH DIET AND EXERCISE AND WAS RENUMERATED.

~ IN 8 WK CLINICAL STUDY, ON AVERAGE THE ACTIVE GROUP LOST 4.93 MORE LBS THAN THE PLACEBO GROUP. 3.86 LBS OF WEIGHT LOST WAS BODY FAT. THE STUDY WAS DONE UNDER FREE LIVING CONDITIONS, MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO CHANGE THEIR DAILY LIFESTYLE.

* ALL ORI PRODUCT SHIPPED FROM THE MANUFACTURER ARE ASSESSED A \$1.35 PROCESSING FEE AND HAVE A 30 DAY MONEY BACK GUARANTEE EXCLUDING \$1.35 FOR PROCESSING.

** USE ONLY AS DIRECTED. CONSULT YOUR HEALTHCARE PROVIDER PRIOR TO TAKING THIS OR ANY OTHER SUPPLEMENT OR MEDICATION, EITHER OVER THE COUNTER OR PRESCRIPTION, OR STARTING THIS OR ANY OTHER WEIGHT LOSS REGIMEN. IF YOU ARE PREGNANT OR LACTATING, DO NOT TAKE THIS PRODUCT.

• BASED ON IRI SINGLE SKU SALES DATA, OCTOBER 4, 2015.

† THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FDA, THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

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Exhibit No. 6

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
6.	Warning Letter from the Food and Drug Administration to West Coast Laboratories, Inc. dated September 15, 2014 and showing that the FDA has called Lipozene "Adulterated" and "Misbranded," available at http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm414788.htm .	105-112

Number	Description	Page Numbers
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

U.S. Food and Drug Administration

Protecting and Promoting *Your* Health

West Coast Laboratories Inc 9/15/14



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Food and Drug Administration
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Pacific Region
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Irvine, CA 92612-2506
Telephone: 949-608-2900
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WARNING LETTER

VIA UNITED PARCEL SERVICE SIGNATURE REQUIRED

September 15, 2014

W/L# 35-14

Mr. Maurice E. Ovadia, President/Owner
Mr. Ronnie E. Ovadia, Technical Director
West Coast Laboratories, Inc.
116 E. Alondra Blvd.
Gardena, CA 90248-2806

Dear Mr. Maurice E. Ovadia and Mr. Ronnie E. Ovadia,

On February 4–18, 2014, an investigator with the U.S. Food and Drug Administration (FDA) inspected your facility located at 116 E. Alondra Blvd., Gardena, California. Based on our inspection and subsequent review of your product labeling collected during the inspection, we found serious violations of the Federal Food, Drug, and Cosmetic Act (the Act) and applicable regulations. You may find the Act and the FDA regulations through links on FDA's home page at www.fda.gov (<http://www.fda.gov>).

Your response to the FDA 483, Inspectional Observations, was received on March 18, 2014. Our assessment of your response follows each violation noted below.

Unapproved New Drugs

FDA laboratory analyses confirmed the presence of the following undeclared active pharmaceutical ingredients (APIs) in certain products that you manufacture, as identified below:

Product Name	Undeclared API(s)
Super ArthGold	chlorzoxazone, indomethacin, and piroxicam
Pro ArthMax	chlorzoxazone, diclofenac, indomethacin, ibuprofen, naproxen, and nefopam

Chlorzoxazone is the API in the FDA-approved drug Parafon Forte® DSC, approved on August 15, 1958, and is a prescription drug used to relieve musculoskeletal pain. Diclofenac, indomethacin, ibuprofen, piroxicam, and naproxen are non-steroidal anti-inflammatory drugs (NSAIDs) and APIs found in FDA-approved drugs that are used to treat pain and inflammation associated with several conditions, including some arthritic conditions.^[1] Nefopam is a non-opioid analgesic and is not approved for use in the United States.

Your “Super ArthGold” and “Pro ArthMax” products are marketed as dietary supplements. Under section 201(ff)(3)(B)(i) of the Act [21 U.S.C. § 321(ff)(3)(B)(i)], a dietary supplement may not contain an article that is approved as a new drug under section 505(a) of the Act [21 U.S.C. § 355(a)] unless that article was marketed as a dietary supplement or food prior to FDA approval of such drug. Given that neither chlorzoxazone, diclofenac, indomethacin, ibuprofen, piroxicam, nor naproxen were marketed as dietary supplements or as foods before FDA’s approval of Parafon Forte® DSC, Voltaren®, Indocin®, Motrin®, Feldene®, and Naprosyn®, your “Super ArthGold” and “Pro ArthMax”^[2] are excluded from the definition of a dietary supplement under section 201(ff)(3)(B) of the Act.

Moreover, your products are drugs as defined by section 201(g)(1)(C) of the Act [21 U.S.C. § 321(g)(1)(C)] because they are intended to affect the structure or function of the body. Labeling statements documenting the intended use of your products as drugs include, but are not limited to the following:

“Pro ArthMax”

- “Promotes healthy joints & cartilage”
- “Better Performance . . . Better Flexibility . . . Better Mobility”
- “With Pro ArthMax, they could work better, move better, and feel better.”

“Super Arthgold”

- “Super Arthgold is an ‘All-Natural Source Formula’ that has been known to help with arthritis, joint, and muscle-related aches and pains.”
- “Super Arthgold may improve the blood circulation, which can help relieve soreness caused by lactic acid build-up in the muscle tissues. Better blood flow can also contribute to increased range of motion in the joints, which may help arthritis and joint pain.”

Furthermore, FDA analysis of your “HerbAid Powder” blend confirmed the presence of undisclosed APIs in this ingredient. These undeclared APIs include chlorzoxazone, indomethacin, diclofenac, piroxicam, naproxen, ibuprofen, and/or nefopam. Under section 201(g)(1)(D) of the Act [21 U.S.C. § 321(g)(1)(D)], an article intended for use as a component of a drug is also a drug. Component means any ingredient intended for use in the manufacture of a drug product, including those that may not appear in such drug product. See Title 21 of the Code of Federal Regulations, Part 210.3(b)(3) [21 CFR 210.3(b)(3)]. Manufacturing batch records obtained from your firm indicate that “HerbAid Powder” is an ingredient used in the manufacture of drugs, including, but not limited to, “Super ArthGold” and “Pro ArthMax” products. Accordingly, your “HerbAid Powder” blend is a drug within the meaning of section 201(g)(1)(D) of the Act [21 U.S.C. § 321(g)(1)(D)].

Moreover, your “Super ArthGold” and “Pro ArthMax” products are “new drugs” under section 201(p) of the Act [21

U.S.C. § 321(p)] because these products are not generally recognized as safe and effective under the conditions prescribed, recommended, or suggested in their labeling. Under sections 301(d) and 505(a) of the Act [21 U.S.C. §§ 331(d) and 355(a)], a new drug may not be introduced or delivered for introduction into interstate commerce unless an application approved by FDA under either section 505(b) or (j) of the Act [21 U.S.C. § 355(b) or (j)] is in effect for it. There are no FDA-approved applications on file for “Super ArthGold” and “Pro ArthMax.” The distribution or sale of such products without approved applications violates these provisions of the Act.

Misbranded Drugs

Your “Super ArthGold” and “Pro ArthMax” products contain one or more muscle relaxants, NSAIDS, and/or drugs not approved for marketing in the United States. Specifically, chlorzoxazone, piroxicam, diclofenac, and indomethacin are limited by an approved new drug application to use under the professional supervision of a practitioner licensed by law to administer such drugs. Therefore, your “Super ArthGold” and “Pro ArthMax” products are prescription drugs as defined in section 503(b)(1)(A) of the Act [21 U.S.C. § 353(b)(1)(A)], because, in light of their toxicity or potentiality for harmful effect, the method of their use, or the collateral measures necessary for their use, they are not safe for use except under the supervision of a practitioner licensed by law to administer them.

As such, your “Super ArthGold” and “Pro ArthMax” products are misbranded under section 502(f)(1) of the Act [21 U.S.C. § 352(f)(1)] because their labeling fail to bear adequate directions for their intended use(s). “Adequate directions for use” means directions under which a layman can use a drug safely and for the purposes for which it is intended [21 CFR § 201.5]. Prescription drugs can only be used safely at the direction, and under the supervision, of a licensed practitioner. Therefore, it is impossible to write “adequate directions for use” for prescription drugs. FDA-approved prescription drugs which bear their FDA-approved labeling are exempt from the requirements that they bear adequate directions for use by a layperson [21 CFR §§ 201.100(c)(2) and 201.115]. Because there are no FDA-approved applications for your firm’s “Super ArthGold” and “Pro ArthMax” products, their labeling fail to bear adequate directions for their intended use, causing them to be misbranded under section 502(f)(1) of the Act [21 U.S.C. § 352(f)(1)].

Under section 502(a) of the Act [21 U.S.C. § 352(a)], a drug is misbranded if its labeling is false or misleading in any particular. According to section 201(n) of the Act [21 U.S.C. § 321(n)], in determining whether the labeling or advertising “is misleading, there shall be taken into account (among other things) not only representations made or suggested . . . but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations . . .” The use of muscle relaxants, NSAIDs, and other pain relieving drugs not approved for use in the United States can be associated with significant safety issues and the risk of serious adverse events. The undeclared drugs in your products may pose serious health risks because consumers with underlying medical issues may take the products without knowing that they can cause serious harm or interact in dangerous ways with other drugs they may be taking. For example, NSAIDs may cause increased risk of cardiovascular events, such as heart attack and stroke, as well as serious gastrointestinal damage including bleeding, ulceration, and fatal perforation of the stomach and intestines. Chlorzoxazone is a muscle relaxant which may cause drowsiness, dizziness, and lightheadedness, which may impair the ability to perform certain tasks, such as driving a motor vehicle or operating machinery. Because Nefopam is not FDA-approved, safety or efficacy has not been established for this non-narcotic pain relieving drug. In literature, adverse events such as rapid heart rate, sweating, dizziness, confusion, hallucinations, and seizures have been reported with Nefopam. Accordingly, your “Super ArthGold” and “Pro ArthMax” products are misbranded under section 502(a) of the Act [21 U.S.C. § 352(a)] because their labeling is false or misleading in that it fails to reveal material facts with respect to consequences that may result from the use of these products.

Your “Super ArthGold” and “Pro ArthMax” products are also misbranded under section 502(f)(2) of the Act [21 U.S.C. § 352(f)(2)] in that the products’ labeling lack adequate warnings for the protection of users. As previously noted, there is potential for adverse events associated with the use of the undisclosed drugs contained in these products. Consumers who use these products would be unaware of the presence of the undeclared muscle relaxants, NSAIDS, and/or other pain relieving drugs and placed at risk for their associated adverse events.

Accordingly, the introduction or delivery for introduction into interstate commerce of these misbranded drugs violates

section 301(a) of the Act [21 U.S.C. § 331(a)].

Dietary Supplement Current Good Manufacturing Practice (CGMP) Violations

With respect to your dietary supplement products, our inspection of your facility revealed that you failed to comply with the Current Good Manufacturing Practice (CGMP) regulations in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, found in Title 21 of the Code of Federal Regulations, Part 111 (21 CFR part 111). These violations cause your dietary supplements including, but not limited to, “Nano Cal/Mag” (capsules), “Lipozene” (capsules), “Metabo Up Plus” (tablets) and “Prenatal Formula with Folic Acid” (capsules) products, to be adulterated within the meaning of section 402 (g)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 342 (g)(1)] in that they have been prepared, packed, or held under conditions that do not meet CGMP regulations for dietary supplements.

Specific violations observed during the inspection include, but are not limited to, the following:

1. Your firm failed to conduct at least one appropriate test or examination to verify the identity of any component that is a dietary ingredient, prior to its use, as required by 21 CFR 111.75(a)(1)(i). Specifically, your firm did not perform any testing to verify the identity of the raw materials used in the manufacturing of your dietary supplements. For example, you did not conduct identity testing for the following dietary ingredients:

- a. Amorphophallus Konjac Root used in the manufacturing of “Lipozene” capsules (lots (b)(4));
- b. Green Tea Powder Extract, Guarana Powder Extract, Sterilized Oolong Tea Powder, Kola Nut Powder Extract, Cayenne Pepper Powder, Platycodon Root 10-1 Powder Extract, Cyanocobalamin 1% Trituration, Vitamin B-6, Caffeine Anhydrous Powder, and MetaboUp Blend used in the manufacturing of “MetaboUp Plus” tablets (lots (b)(4));
- c. Manganese, Copper, Zinc, Magnesium, Potassium, Iodine, Iron, Niacinamide Granular, Vitamin A Palmitate, Vitamin D, Thiamine Mononitrate, Riboflavin Powder, Vitamin B-6, Folic Acid, Cyanocobalamin, Calcium, and Ascorbic Acid used in the manufacturing of “Prenatal with Folic Acid” tablets (lots (b)(4));
- d. Nano Cal/Mag Powder blend used in the manufacturing of “Nano Cal/Mag” capsules (lot (b)(4)).

We acknowledge in your response dated March 3, 2014, you stated that you are sending raw materials to a lab in (b)(6), CA for identity analysis. Our review of your response determined that it is inadequate because you failed to provide adequate evidence that you are effectively implementing the corrective action. Specifically, you did not provide any verification documents from the lab of the type of testing they are conducting and the materials tested.

2. Your firm failed to qualify suppliers of components other than dietary ingredients by establishing the reliability of the suppliers’ certificate of analysis through confirmation of the results of the suppliers’ test or examinations, as required by 21 CFR 111.75(a)(2)(ii)(A). Specifically, you told investigators that you rely on certificates of analysis provided by your suppliers without performing any verification testing. In addition, please note that you are also required to maintain documentation of how you qualified a supplier pursuant to 21 CFR 111.75(a)(2)(ii)(C).

We acknowledge in your response dated March 3, 2014, you indicated that you are in the process of performing written audits of all of your vendors, chemical assays of their ingredients to qualify them, and that you have written an SOP for this procedure. However, our review determined your response is inadequate because you failed to provide supporting documents of your corrections and established procedures. Specifically, your firm failed to provide sufficient detail on how vendors are qualified and it did not address the immediate concern of using vendors that are not qualified.

3. Your firm failed to establish required specifications for points, steps, or stages in the manufacturing process where control is necessary to ensure the quality of dietary supplement and that the dietary supplement is packaged

and labeled as specified in the master manufacturing record, as required by 21 CFR 111.70(a). Specifically,

a. You failed to establish specifications for the identity, purity, strength, composition, and for limits on those types of contamination that may adulterate or may lead to adulteration of the finished batch of the dietary supplements for each component that you use in the manufacture of a dietary supplement, as required by 21 CFR 111.70(b).

b. You failed to establish specifications for the identity, purity, strength, and composition of the finished batch of dietary supplement, and for limits on those types of contamination that may adulterate, or that may lead to adulteration of, the finished batch of dietary supplement, as required by 21 CFR 111.70(e).

Once you have established the above specifications, you must determine whether the established specifications are met in accordance with 21 CFR 111.73, and you must make and keep records in accordance with 21 CFR 111.95(b).

We acknowledge in your response dated March 3, 2014, you indicated that you will purchase raw material standards and establish raw material specifications for each ingredient you use; and that you began establishing specifications for finished products. However, your response is inadequate because you failed to provide supporting documentation of your corrections and established specifications.

4. Your firm failed to establish and follow written procedures for the responsibilities of the quality control operations, including written procedures for conducting a material review and making a disposition decision, as required by 21 CFR 111.103. Specifically, you do not have written procedures for the responsibilities of your quality control operations pertaining to the following areas:

- a. Component, packaging, and labels before use in the manufacture of a dietary supplement [21 CFR 111.120];
- b. Master manufacturing record, batch production record, and manufacturing operations [21 CFR 111.123];
- c. Packaging and labeling operations [21 CFR 111.127].

We acknowledge in your response dated March 3, 2014, you indicated that you expect to hire a Quality Control employee and are in the process of creating SOPs. However, our review determined your response is inadequate because you failed to provide supporting documentation of your corrections and established procedures.

5. Your firm did not prepare a written master manufacturing record (MMR) that establishes controls and procedures to ensure that each batch of a dietary supplement that you manufacture meets specifications, as required by 21 CFR 111.205(b)(2). Specifically, your firm's MMR for the "Nano Cal/Mag" capsules, "Lipozene" capsules, "MetaboUp Plus" tablets, and "Prenatal with Folic Acid" tablets did not include the following required information:

- a. A statement of theoretical yield of a manufactured dietary supplement expected at each point, step, or stage of the manufacturing process where control is needed to ensure the quality of the dietary supplement, including the maximum and minimum percentages of theoretical yield beyond which a deviation investigation of a batch is necessary and material review is conducted and disposition is made [21 CFR 111.210(f)]. Your MMRs list a statement of the theoretical yield expected at the end of batch production; however, they do not include the maximum and minimum percentages of theoretical yield beyond which a deviation investigation is necessary;
- b. A description of packaging [21 CFR 111.210(g)];
- c. Written procedures for sampling and a cross-reference to procedures for tests or examinations [21 CFR 111.210(h)(2)];

- d. Written corrective action plans for use when a specification is not met [21 CFR 111.210(h)(5)].

We acknowledge in your response dated March 3, 2014, you indicated that you in the process of revising all of your batch records. However, our review determined your response is inadequate. Your response did not address your master manufacturing records.

6. Your firm's batch production record (BPR) did not include complete information relating to the production and control of each batch of dietary supplements, as required by 21 CFR 111.255(b). Specifically, your firm's BPR for the "Nano Cal/Mag" capsules, "Lipozene" capsules, "MetaboUp Plus" tablets, and "Prenatal with Folic Acid" tablets did not include the following required information:

- a. The identity of equipment and processing lines used in the producing the batch [21 CFR 111.260(b)];
- b. The date and time of maintenance, cleaning, and sanitizing of the equipment and processing lines used in the producing the batch, or a cross-reference to records such as individual equipment logs, where this information is retained [21 CFR 111.260(c)];
- c. A statement of the percentage of theoretical yield at appropriate phases of processing [21 CFR 111.260(f)];
- d. The actual results obtained during any monitoring operations [21 CFR 111.260(g)];
- e. The unique identifier you assigned to each packaging material used, and the quantities used [21 CFR 111.260(k)(1)];
- f. An actual or representative label, or a cross-reference to the physical location of the actual or representative label specified in the master manufacturing record [21 CFR 111.260(k)(2)];
- g. Documentation that quality control personnel reviewed the BPR [21 CFR 111.260(l)(1)];
- h. Documentation that quality control personnel approved and released, or rejected, the batch for distribution [21 CFR 111.260(l)(3)].

We acknowledge in your response dated March 3, 2014, you indicated that you are in the process of developing the identification of machinery, dates and times, cleaning logs, and maintenance logs. However, our review determined your response is inadequate because you failed to provide supporting documentation of your corrections and established procedures.

7. Your firm failed to comply with the requirements for reserved samples that are established by 21 CFR 111.83. Specifically, for each lot of packaged and labeled dietary supplements that you distribute, you did not specify the sample size for reserve samples to ensure that they consist of at least twice the quantity necessary for all tests or examinations to determine whether or not the dietary supplement meets product specifications [21 CFR 111.83(b)(4)].

We acknowledge in your response dated March 3, 2014, you indicated that you are writing a new SOP for collecting representative samples from multiple points of production. However, our review determined your response is inadequate because you failed to provide supporting documentation of your corrections and established procedures.

8. Your firm failed to document at the time of performance that established laboratory methodology was followed as required by 21 CFR 111.325(b)(2)(i). Specifically, your firm conducts disintegration testing for your finished dietary supplement products; however, the only record related to this test is a Laboratory Control Report that lists the disintegration time results. There is no documentation of the following test parameters: (1) the quantity of sample tested; (2) the temperature of the immersion fluid; and (3) the date of the analysis.

We acknowledge in your response dated March 3, 2014, you indicated that you are developing documentation forms for laboratory tests performed. However, our review determined your response is inadequate in that your firm has not provided sufficient evidence that you have written and implemented a new SOP to address this deviation. Also, your firm failed to provide sufficient evidence that documentation forms are developed and implemented to address this deviation.

9. Your firm did not calibrate instruments or controls used in manufacturing or testing a component or dietary supplement to ensure the accuracy and precision of the instruments or controls as required by 21 CFR 111.27(b). Specifically, your firm has not calibrated the thermometer used to measure the water temperature during disintegration testing of finished dietary supplement products for at least 3 years. As such, there is no assurance that the analysis was performed under the **(b)(4)** temperature range established in the procedure.

We acknowledge in your response dated March 3, 2014, you indicated that you are contracting with an outside thermometer calibration company to calibrate your thermometers on an annual basis. Our review determined your response is inadequate in that your firm did not provide supporting documentation to demonstrate that you hired an outside thermometer calibration to address this violation.

Section 743 of the Act, 21 U.S.C. § 379j-31, authorizes FDA to assess and collect fees to cover FDA's costs for certain activities, including reinspection-related costs. A reinspection is one or more inspections conducted subsequent to an inspection that identified non-compliance materially related to a food safety requirement of the Act, specifically to determine whether compliance has been achieved. Reinspection-related costs means all expenses, including administrative expenses, incurred in connection with FDA's arranging, conducting, and evaluating the results of the reinspection and assessing and collecting the reinspection fees, 21 U.S.C. § 379j-31(a)(2)(B). For a domestic facility, FDA will assess and collect fees for reinspection-related costs from the responsible party for the domestic facility. The inspection noted in this letter identified non-compliance materially related to a food safety requirement of the Act. Accordingly, FDA may assess fees to cover any reinspection-related costs.

The violations cited in this letter are not intended to be an all-inclusive statement of violations that exist at your facility. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence and the occurrence of other violations. It is your responsibility to assure compliance with all requirements of federal law and FDA regulations. You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice including, without limitation, seizure and injunction.

Within fifteen (15) working days of receipt of this letter, please notify this office in writing of the specific steps that you have taken to correct violations. Include an explanation of each step being taken to prevent the recurrence of violations and copies of supporting documentation. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the date by which you will have completed the correction.

If you have any questions regarding this letter, please contact Dr. Raymond W. Brullo, Compliance Officer, at (949) 608-2918

Your written reply should be sent to:
Acting Director
Compliance Branch
US Food & Drug Administration
19701 Fairchild
Irvine, CA 92612-2446

Sincerely,
/S/
Alonza E. Cruse, Director

Los Angeles District Director

cc: Harlan Loui
Branch Chief, Food and Drug Branch
California Department of Public Health
1500 Capitol Ave. ~MS 7602
P.O. Box 997413
Sacramento, CA 95899-7413

[1] Diclofenac is the API in the FDA-approved drug Voltaren®, approved on July 28, 1988; indomethacin is the API in the FDA-approved drug Indocin®, approved on June 10, 1965; ibuprofen is the API in the FDA-approved drug Motrin®, approved on September 19, 1974; piroxicam is the API in the FDA-approved drug Feldene®, approved on April 6, 1982; and naproxen is the API in the FDA-approved drug Naprosyn®, approved on March 11, 1976.

[2] We note that you also manufacture “New ProArth Max” and bulk label the product as a “food supplement” for further processing by an own label distributor. This product, which appears to be a substantially similar or subsequent version of “ProArthMax,” was analyzed by FDA and determined to contain undeclared drug ingredients including, chlorzoxazone, indomethacin, and piroxicam. Accordingly, “New ProArthMax” is excluded from the definition of a dietary supplement under section 201(ff)(3)(B) of the Act.

Close Out Letter

- **West Coast Laboratories Inc - Close Out Letter 4/23/15**
(/ICECI/EnforcementActions/WarningLetters/ucm444597.htm)

Exhibit No. 7

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
7.	Exerts from the ANSWER & FIRST AMENDED COUNTERCLAIMS filed in the matter <i>Obesity Research, Inc. v. Fiber Research Inc.</i> , adopting by reference the highlighted allegations regarding the Lipozene product. (Case No. 3:15-cv-00595-BAS-MDD, ECF No. 41 (S.D. Cal. May 28, 2015).	113-143

Number	Description	Page Numbers
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146

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Phone: (801) 530-2900

***Counsel for Defendant and Counterclaim
Plaintiff Fiber Research International, LLC***

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

OBESITY RESEARCH INSTITUTE, LLC,

Plaintiff & Counterclaim-Defendant,

v.

FIBER RESEARCH INTERNATIONAL,
LLC,

Defendant & Counterclaim-Plaintiff.

Case No. 15-cv-595-BAS-MDD

**ANSWER & FIRST AMENDED
COUNTERCLAIMS FOR VIOLATION
OF THE LANHAM ACT,
CALIFORNIA UNFAIR
COMPETITION LAW, AND
CALIFORNIA FALSE ADVERTISING
LAW**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COUNTERCLAIMS**

2 Fiber Research, by and through its undersigned counsel, hereby brings the below
3 Counterclaims against Obesity Research, alleging the following on personal knowledge or,
4 where Fiber Research lacks personal knowledge, upon information and belief, including the
5 investigation of its counsel.

6 **INTRODUCTION**

7 24. Glucomannan is a dietary fiber derived from Konjac, a root vegetable that is
8 eaten as a food in Asia. Shimizu Chemical Corporation has developed a proprietary, patented
9 process for extracting and refining Konjac root to produce the highest-quality glucomannan
10 available in the world, called “Propol.” Numerous clinical studies support the efficacy of
11 Propol glucomannan in assisting in weight loss, among other health benefits.

12 25. In 2006, Obesity Research introduced a weight loss product called Lipozene,
13 with a marketing campaign that highlighted Propol’s strong clinical testing results. As a
14 result, Lipozene has become the United States’ best-selling weight loss product.

15 26. However, while *Propol* is clinically-proven to promote weight loss, Lipozene
16 contains neither Propol glucomannan, nor any substantially equivalent glucomannan that
17 would justify Obesity Research relying on Propol clinical studies to support its Lipozene
18 weight loss claims.

19 27. Rather, laboratory testing shows Lipozene uses cheap knock-off ingredients
20 designed to mimic Propol glucomannan, but which are, in reality, a poor substitute. Chemical
21 analysis demonstrates that Lipozene does not contain high-quality glucomannan, but instead
22 contains cheap, low-quality ingredients like unrefined Konjac root powder and likely
23 Xanthan Gum, which is frequently used to “spike” the viscosity of cheap weight loss
24 products. Furthermore, Lipozene is adulterated with dangerous allergens called sulfites,
25 which Obesity Research does not disclose, instead falsely claiming that Lipozene is “allergen
26 free.”

27 28. Pursuant to an exclusive sales contract with Shimizu, Fiber Research markets
28 Propol in the United States. Fiber Research has been injured in its efforts to sell Propol as a

1 result of Obesity Research's unfairly passing off its sub-standard, adulterated, unrefined
2 Konjac root product as the same or substantially the same as that studied in clinical trials of
3 Shimizu's Propol glucomannan (even going so far as to call these the "Lipozene Clinical
4 Studies"). Fiber Research is also injured by the loss of good will to Propol caused by Obesity
5 Research's passing off an inferior product as Propol.

6 29. Fiber Research is the assignee of Shimizu's legal rights of action in the United
7 States for any damages incurred by Shimizu by virtue of any unlawful selling or marketing
8 of products in unfair or unlawful competition with Propol.

9 30. Fiber Research accordingly brings this action both for injuries sustained directly,
10 and as the legal assignee for injuries sustained by Shimizu, as a result of Obesity Research's
11 violation of the Lanham Act and California law.

12 **JURISDICTION & VENUE**

13 31. This action arises under 15 U.S.C. § 1125(a) and the statutory law of the State
14 of California. This Court has subject matter jurisdiction over these claims pursuant to 28
15 U.S.C. § 1331 (federal question), 15 U.S.C. § 1121 (Lanham Act claims), 28 U.S.C. § 1332
16 (diversity) and 28 U.S.C. § 1367 (supplemental jurisdiction).

17 32. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b).

18 **PARTIES**

19 33. Defendant and Counterclaim-Plaintiff Fiber Research International, LLC is a
20 limited liability company organized under the laws of the State of Nevada.

21 34. Plaintiff and Counterclaim-Defendant Obesity Research Institute, LLC is a
22 limited liability company located in Reno, Nevada and San Diego County, California.

23 **FACTS**

24 **A. Shimizu's Propol Glucomannan**

25 35. More than 300 years ago, the Japanese Shimizu family began farming Konjac, a
26 potato-like root vegetable that has been eaten in Asia for thousands of years.

1 36. Over the centuries, the Shimizu family's business grew, and it began to produce
2 refined products from the Konjac root, including glucomannan, a dietary fiber.

3 37. Shimizu developed a proprietary way to extract and refine glucomannan to
4 provide unique properties like long-term stability at body temperature, and high viscosity.
5 Eventually Shimizu adopted the name Propol® for the glucomannan extracted and refined
6 using its proprietary processes, and obtained a United States federal trademark registration
7 for the name.

8 38. During the 1970s, Shimizu began to study the health benefits associated with its
9 proprietary glucomannan. Through extensive and costly research, Shimizu discovered the
10 molecular structure of its glucomannan and the mechanisms by which it provided health
11 benefits. As a result of such research and development, Shimizu has been granted patents in
12 37 countries, including the United States, relating to its Propol glucomannan.

13 39. Shimizu has continued to fund scientific research on the health benefits of
14 Propol. More than 60 human trials have been published establishing Propol's numerous
15 health benefits, including weight loss.

16 40. When extracted and refined according to Shimizu's proprietary process, Propol
17 aids in weight loss because, when combined with water, the fiber forms a thick gel capable
18 of trapping dietary fats, preventing their absorption during digestion. In addition, the
19 glucomannan mixture in the stomach itself makes the consumer feel full, or satiated.

20 41. Human digestion occurs throughout the digestive tract, beginning with enzymes
21 in saliva breaking down food in the mouth, and then through the stomach and intestines,
22 during a process that takes about 72 hours from consumption to elimination. At virtually
23 every stage of digestion, the body is capable of absorbing dietary fats.

24 42. The effectiveness of any such fiber-based product for weight loss depends on
25 both the amount and duration of its viscosity. The more gelatinous a mixture is, and the longer
26 it sustains that gelatinousness, the more fat it is capable of trapping, and thus the greater its
27 benefit to weight loss. Similarly, the more gelatinous a mixture, the greater the feeling of
28 satiety it provides in the stomach.

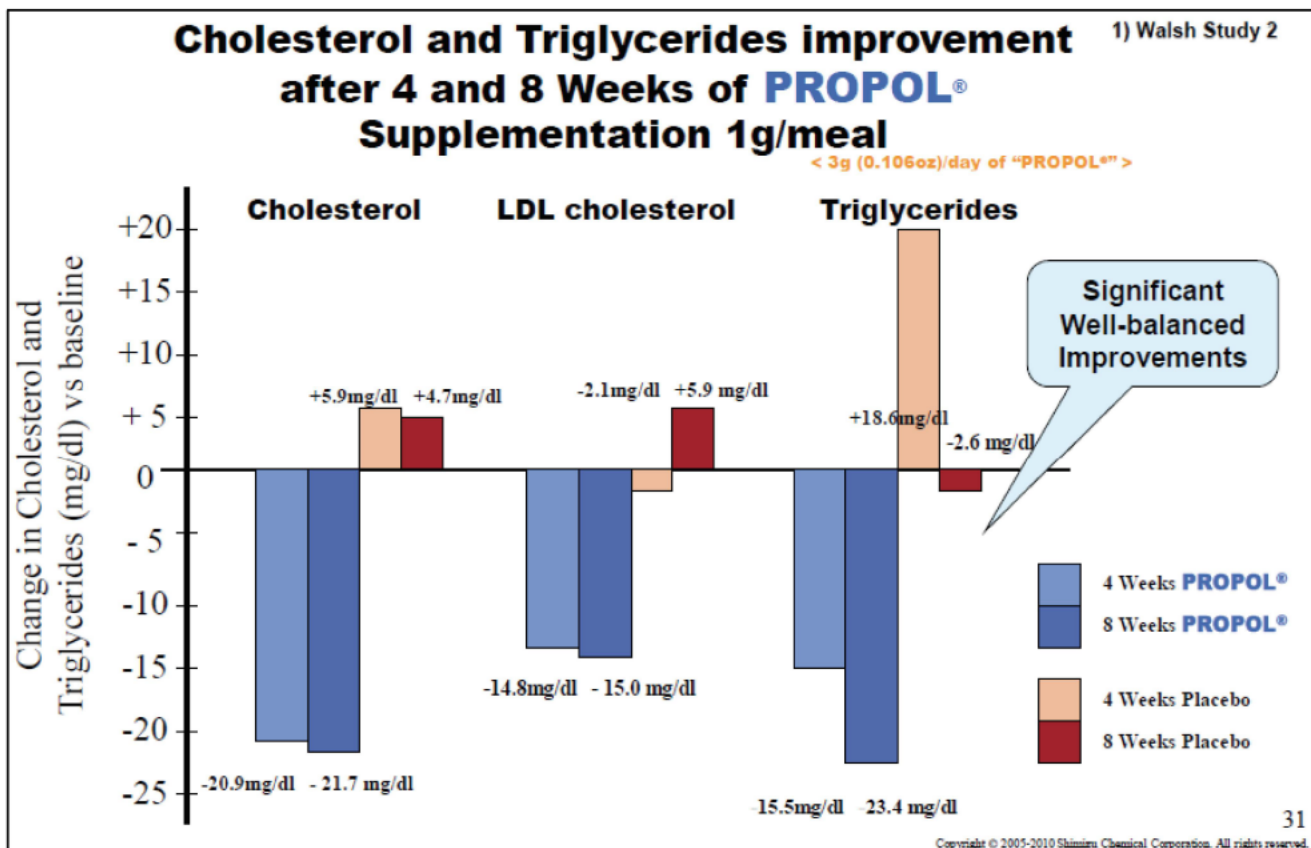
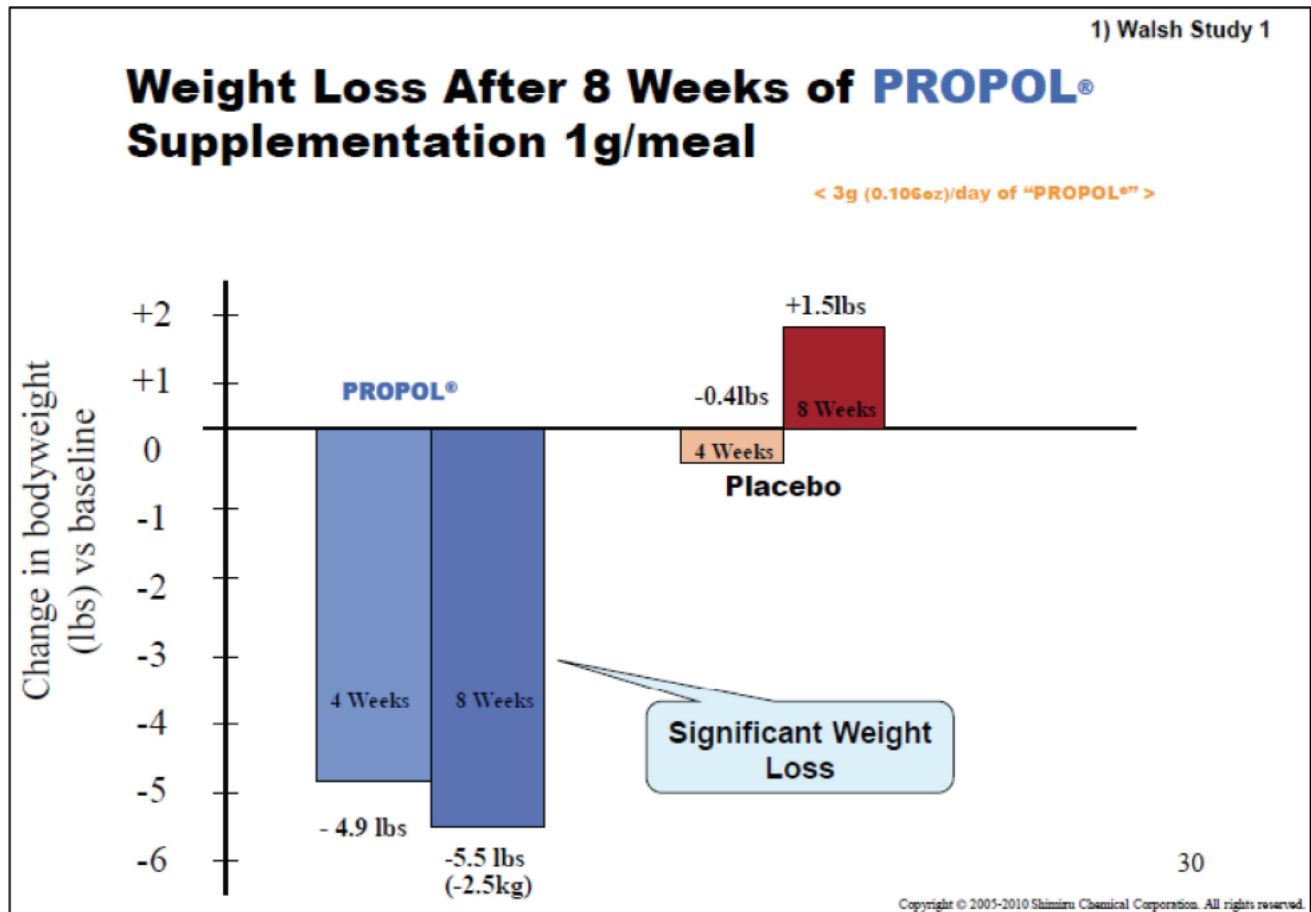
1 43. Shimizu manufactures different grades of Propol, like Propol-A, Propol-TS, and
2 Propol-RS, all of which are produced using proprietary techniques including special growing
3 conditions for the Konjac root, unique processes for extracting the glucomannan, and refining
4 procedures that result in a high molecular weight and viscosity as compared to other dietary
5 fibers. At body temperature, Propol-A's viscosity exceeds 80,000 mPa.S,¹ and maintains
6 viscosity above approximately 75,000 mPa.S for at least 84 hours.

7 44. Although there are dozens of studies supporting Propol's weight loss efficacy,
8 two Propol clinical trials are particularly relevant to this lawsuit.

9 45. First, in 1984, researchers published the results of a double-blind placebo-
10 controlled study of 20 obese female subjects during an 8-week period.² The active group was
11 given 1 gram of Propol to take 1 hour prior to meals (for a total of 3 grams per day). The
12 control group was given a placebo. No dietary changes were made. Researchers measured
13 changes in body weight, serum cholesterol, LDL and HDL cholesterol, and triglycerides. The
14 study showed in the test group significant mean weight loss of 5.5 pounds (compared to a
15 weight increase of 1.5 pounds in the control group), significant serum cholesterol reduction
16 of 21.7 mg/dl, and significant reduction of LDL cholesterol of 15.0 mg/dl. The results of the
17 study are represented in the following two graphs.

23 ¹ Milli-Pascal seconds, a measurement of viscosity. If a fluid is placed between two plates
24 with a distance of one meter, and one plate is pushed sideways with a shear stress of one
25 pascal (a unit of pressure), and it moves at x meters per second, then it has a viscosity of x
26 Pascal seconds. For example, water at 20 degrees Celsius (68 Fahrenheit) has a viscosity of
1.002 mPa.s, while motor oil has a viscosity of about 250 mPa.s.

27 ² Walsh, D. E., et al., "Effect of Glucomannan on Obese Patients: A Clinical Study,"
28 *International Journal of Obesity*, Vol. 8, pp. 289-93 (1984), attached hereto as Exhibit 1
[hereinafter, "Walsh"].



1 46. Second, in 2004, a group of researchers presented a paper titled “A Randomized
2 Double-Blinded Placebo-Controlled Study of Overweight Adults Comparing the Safety and
3 Efficacy of a Highly Viscous Glucomannan Dietary Supplement (*Propol*TM).”³ The study
4 compared changes in body composition and blood chemistries between a treatment group
5 taking 3 grams of Propol (1 gram 30-minutes prior to each of 3 meals), and a control group,
6 during a 60-day holiday season study period, and found “a highly significant reduction in
7 scale weight . . . % body fat . . . and fat mass . . . without a loss of fat-free mass or bone
8 density,” which was “consistent with weight losses . . . found in previous studies, but
9 provide[d] the additional finding that virtually all of the weight lost was excess body fat.”

10 47. Specifically, when comparing those in the placebo group to those in the
11 treatment group who were compliant with both the amount and duration requirements of the
12 study (i.e., consistently took 3 grams of Propol per day, 30 minutes before meals, during the
13 60-day study), the difference in mean weight lost was 4.93 pounds (treatment group lost 2.75
14 pounds, while the placebo group gained 2.18 pounds), and the difference in fat lost was 3.86
15 pounds (treatment group lost 2.47 pounds, placebo group gained 1.39 pounds). *See* Kaats, at
16 10, 13 (Table 15).⁴

17
18 ³ Gilbert R. Kaats et al., “A Randomized Double-Blinded Placebo-Controlled Study of
19 Overweight Adults Comparing the Safety and Efficacy of a Highly Viscous Glucomannan
20 Dietary Supplement (*Propol*TM),” *Technical Report* (2004), attached hereto as Exhibit 2
[hereinafter, “Kaats”].

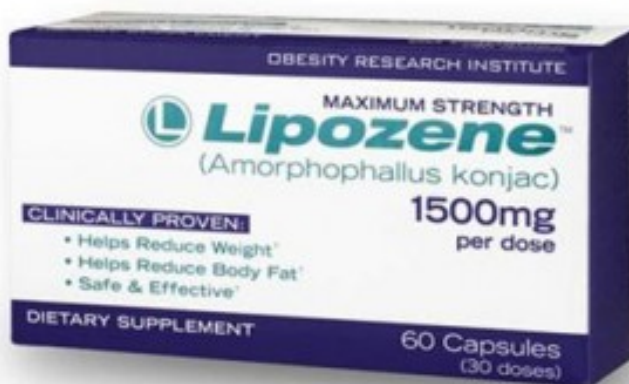
21 ⁴ In discussing the results, the researchers noted:

22 Since no diet/exercise recommendations were provided, participants were free
23 to follow any diet/exercise plan of their own choosing. One could make an
24 argument that participants in a weight loss clinical trial who are willing to
25 expend the time and energy to participate are people who are motivated to
26 lose weight or they wouldn’t participate and that this motivation would
27 include following a diet/exercise of their own choosing. Conversely, an
28 argument could also be advanced that people believing that they may have
received an efficacious weight loss supplement, would make no alterations in
diet and exercise relying, instead, in on the supplement to achieve their weight
loss goals. In either case, what the data do show is that the differences between

B. Obesity Research Markets Lipozene as “Clinically-Proven” Konjac Root

48. Obesity Research began marketing Lipozene in 2006, including in online and print advertisements, as well as radio and television commercials and infomercials.

49. Lipozene’s packaging includes a scientific-sounding name for the “active ingredient” in the product, “Amorphophallus Konjac,” which actually means nothing more than penis-shaped Konjac.



50. For many years, in advertising Lipozene, Obesity Research referred generally to clinical proof of its efficacy, but did not specifically identify the publication or paper on which these claims were based.⁵

51. In a commercial that aired no later than February 2007, for example, Obesity Research stated:

the treatment and the placebo groups suggest that the supplement provided the benefits whether or not they participated in a diet/exercise plan of their own choosing.

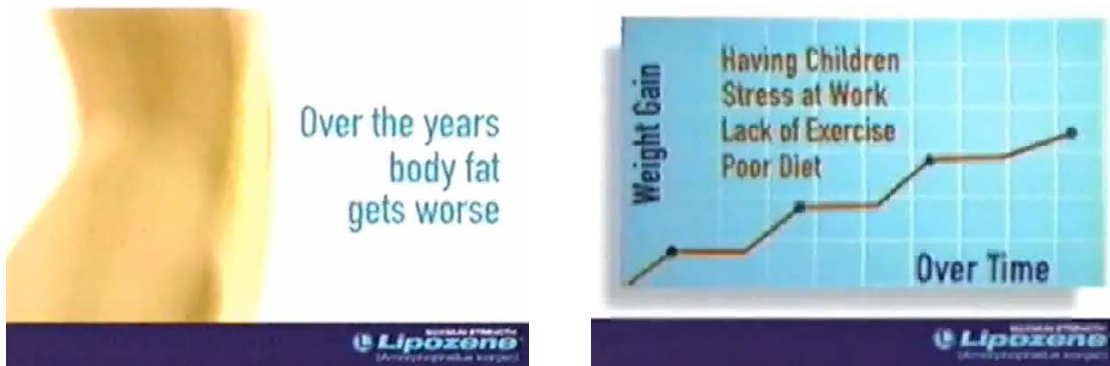
Kaats, at 18.

⁵ As a result of Obesity Research obscuring the source of its alleged clinical proof, in January 2012, Los Angeles consumer Martin Conde filed a putative class action lawsuit alleging that while Obesity Research made “numerous efficacy assertions . . . which Defendant states are supported by ‘clinical studies,’ University testing and other ‘research[,]’ . . . [i]n reality, no reliable clinical research or University testing can support the . . . claims made by Defendant,” especially where “[t]hose ‘tests’ and ‘studies’ purportedly relied upon by Defendant are not named or identified by the Defendant, nor are the ‘Universities’ or institutions that allegedly conducted them.” *Conde Compl.* ¶ 13 (attached hereto as Exhibit 3).

1 SPOKESWOMAN: Are you struggling to lose weight? Does it seem
2 like, no matter what you do, you just can't seem to get rid of excess body fat?
3 It's not your fault. Many of us have simply given up the hope to lose weight.

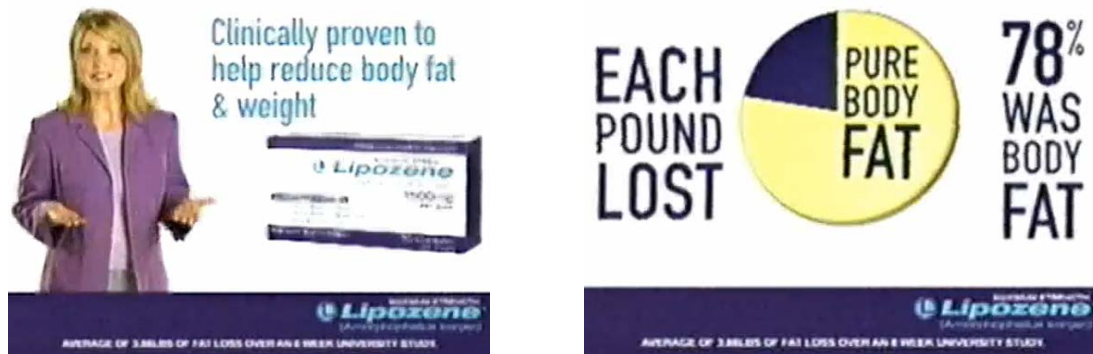


10 NARRATOR: Body fat builds over our midsection, on top of the
11 muscle, underneath the skin, and over the years, it gets worse. Body fat
12 increases from having kids, stress at work, lack of exercise, and poor diet.



19 SPOKESWOMAN: The Obesity Research Institute has found the
20 solution. It's called Lipozene. Lipozene is clinically proven to help reduce
21 your body fat and weight. And, to raise awareness about this weight loss
22 breakthrough, the company is letting people try Lipozene risk-free for 30
23 days. In a moment, there will be a toll-free number on the screen that you can
24 call to receive your risk-free trial. In a recent major university double-blind
25 study, not only did participants lose weight, but 78% of each pound lost was
26 pure body fat. That's right, nearly all the weight lost is body fat. What's even
27 more amazing is that people were not asked to change their daily lives. It's so
28 easy. Just take Lipozene. That's it. Now you can get Lipozene over the phone

direct from the manufacturer. If you're ready to get rid of pounds of body fat, then call the number on your screen right now. Lipozene is worth the price, because Lipozene is clinically proven to work.



NARRATOR: Call now to try Lipozene risk-free for 30 days for only \$29.95. Call in the next 10 minutes, and we'll double your order, and pay for shipping, absolutely free. This offer will never be available in pharmacies or drug stores. Remember, Lipozene is clinically proven to reduce your body fat, and weight, or we'll refund your purchase price. Call 1-800-419-3417 to get your free bottle and free shipping with your order of Lipozene. Call 1-800-419-3417. That's 1-800-419-3417.

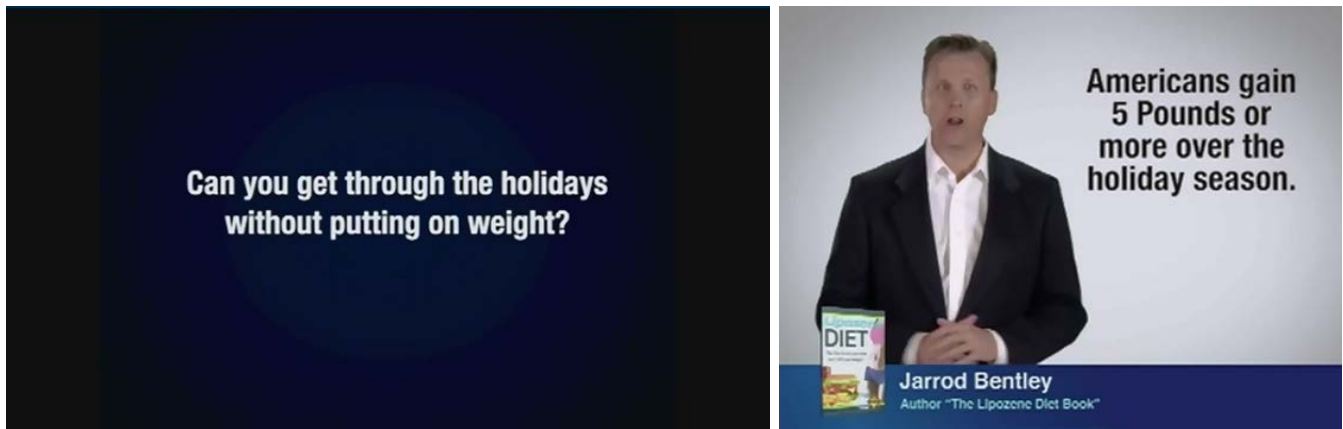
52. Starting in 2006 or 2007 and continuing to today, Obesity Research has aired about 14 different television commercials nationwide, each of which conveys similar messaging to that of the commercial transcribed above.

53. Despite attempting to conceal the identity of the specific clinical testing to which its Lipozene commercials and advertising have consistently referred, the context demonstrates that Obesity Research has been referring for years to the Kaats study, discussed in paragraphs 46-47, above.

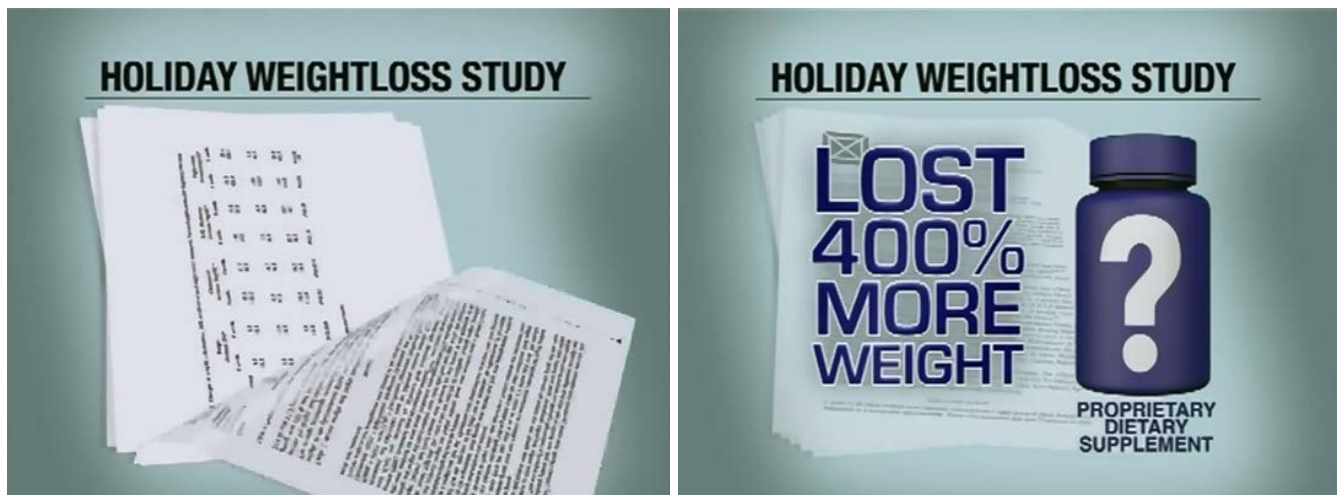
54. For example, many Lipozene commercials contain textual, small-print sentences stating that participants in the clinical study to which the commercials refer lost 4.93 pounds, of which 3.86 was body fat (thus forming Obesity Research's "78% was body fat" figure: $3.86 \div 4.93 = 0.78296$). This was the exact finding in Kaats.

55. In addition, in a recent commercial that aired this past holiday season—December 2014 into January or February 2015—Obesity Research highlighted the fact that the study on which it relies was conducted during the holiday season, as was the Kaats study.

SPOKESMAN: Can you get through the holidays without putting on weight? It's believed the average American gains five pounds or more over the holiday season.



But, thanks to a remarkable holiday weight loss study, people taking a proprietary dietary supplement lost an amazing 400% more weight than people who weren't given this breakthrough weight loss pill. Best of all, this clinical study was designed to be conducted over the holidays. A time when most Americans put on weight, these people lost weight.



So what is this remarkable weight loss supplement? It's Lipozene. And it works so well, it's already sold over 20 million bottles.

And now, for only \$29.95, you can join the countless people who have lost weight with Lipozene. But wait. Call right now and we'll double your order absolutely free. Plus, we'll even pay for your shipping. Remember, Lipozene is clinically proven to help you lose weight without changing your lifestyle. And that's exactly what scientists proved in a groundbreaking clinical study conducted over the holidays, where people who took Lipozene lost an amazing 400% more weight than people who didn't. And of the weight they did lose, 78% was pure body fat.



And now, for only \$29.95, you can join the countless people who have lost weight with Lipozene. But wait. Call right now and we'll double your order absolutely free. Plus, we'll even pay for your shipping. But that's still not all. To celebrate selling over \$20 million bottles of Lipozene, we'll give you a free bottle of MetaboUp with your order. That's a \$20 value, free. So instead

of putting on weight these holidays like most people do, with Lipozene you can eat your favorite foods and still lost weight. So call right now.

NARRATOR: To order your Lipozene, call 1-800-377-5518. Or log onto Lipozene.com. Call or log on now.

56. Obesity Research had no involvement in the 1984 Kaats study. Nevertheless, the above "holiday season" television commercial, and other commercials, including ones currently being aired, included the following statement:

Clinical study sponsored by ORI was done under free living conditions meaning participants were not given direction as to diet and exercise and thus were not instructed to make any changes to their daily lifestyle. Clinical data shows that the amount of weight loss experienced between the active and placebo group was 4.93 lbs. and of the 4.93 lbs of weight loss experienced by the active group 3.86 lbs was body fat.

Holiday Weightloss Study

www.LIPOZENE.com

CALL NOW 1-800-377-5518

CLINICAL STUDY SPONSORED BY ORI WAS DONE UNDER FREE LIVING CONDITIONS. MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO MAKE ANY CHANGES TO THEIR DAILY LIFESTYLE. CLINICAL DATA SHOWS THAT THE DIFFERENCE IN THE AMOUNT OF WEIGHT LOSS EXPERIENCED BETWEEN THE ACTIVE AND PLACEBO GROUP WAS 4.93 LBS. AND OF THE 4.93 LBS OF WEIGHT LOSS EXPERIENCED BY THE ACTIVE GROUP 3.86 LBS WAS BODY FAT.

USA

OF WEIGHT
LOST
78%
BODY FAT

www.LIPOZENE.com

CALL NOW **1-800-790-1393**

CLINICAL STUDY SPONSORED BY ORI WAS DONE UNDER FREE LIVING CONDITIONS. MEANING PARTICIPANTS WERE NOT GIVEN DIRECTION AS TO DIET AND EXERCISE AND THUS WERE NOT INSTRUCTED TO MAKE ANY CHANGES TO THEIR DAILY LIFESTYLE. CLINICAL DATA SHOWS THAT THE DIFFERENCE IN THE AMOUNT OF WEIGHT LOSS EXPERIENCED BETWEEN THE ACTIVE AND PLACEBO GROUP WAS 4.93 LBS, AND OF THE 4.93 LBS OF WEIGHT LOSS EXPERIENCED BY THE ACTIVE GROUP 3.86 LBS WAS BODY FAT.



57. As with its commercials, Lipozene's packaging has also consistently referred to "clinical proof" of weight loss efficacy.

2 BOTTLE BONUS PACK!

BOOST YOUR METABOLISM!

MAXIMUM STRENGTH
Lipozene[®]
(Amorphophallus konjac)

LOSE PURE BODY FAT

Clinically Proven:

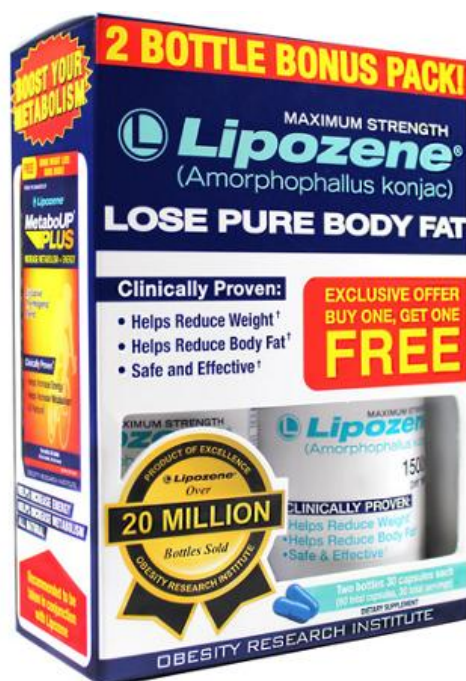
- Helps Reduce Weight[†]
- Helps Reduce Body Fat[†]
- Safe and Effective[†]

EXCLUSIVE OFFER
BUY ONE, GET ONE FREE

20 MILLION
Bottles Sold

CLINICALLY PROVEN
Helps Reduce Weight[†]
Helps Reduce Body Fat[†]
Safe & Effective[†]

OBESITY RESEARCH INSTITUTE



TWO BOTTLE BONUS PACK!

LOSE PURE BODY FAT!
Clinical study proves: 78% of weight lost is pure body fat!

MAXIMUM STRENGTH
Lipozene[®]
(Amorphophallus konjac)

CLINICALLY PROVEN!

- Helps Reduce Weight[†]
- Helps Reduce Body Fat[†]
- Safe & Effective[†]

1500mg
per dose

120 Total Capsules, 60 Total Doses
(Two bottles 60 capsules each)

DIETARY SUPPLEMENT

NEED TO LOSE BODY FAT?

In a Double Blind Study, not only did participants lose weight but 78% of the weight lost was pure body fat!

BODY FAT INCREASES FROM:

- Having kids
- Stress at work
- Lack of exercise
- Poor diet

The Obesity Research Institute has found the solution, it's called Lipozene.

OBESITY RESEARCH INSTITUTE



58. Notwithstanding that Obesity Research's Lipozene television commercials and packaging have relied exclusively on the Kaats study, and despite its prior failure to specifically identify any clinical proof supporting Lipozene's weight loss claims, in approximately September 2012, Obesity Research began referring on its website to three specific papers as comprising the supposed "clinical proof" of Lipozene's efficacy:

a. Walsh, *supra* n.2.

b. Joyce Keithley and Barbara Swanson, "Glucomannan and Obesity: A Critical Review," *Alternative Therapies*, Vol. 11, No. 6, pp 30-34 (November/December 2005) [hereinafter "Keithley"].

c. Nitesh Sood, William L. Baker, and Craig I. Coleman, "Effect of glucomannan on plasma lipid and glucose concentrations, body weight, and blood pressure: systematic review and meta-analysis," *American Journal of Clinical Nutrition*, Vol. 88, pp. 1167-75 (2008) [hereinafter "Sood"].

59. The Lipozene website currently refers to these studies as the "Lipozene Clinical Studies," as shown in the below screen shot (a full version of which is attached as Exhibit 4).

Lipozene - Lipozene Review, What is Lipozene? Official Site

En Español Phone Orders: (800) 998-8763

Home How it Works Reviews FAQs Contact Us

TRY IT FOR 30 DAYS! **Try Lipozene Now !**

TRY LIPOZENE TODAY!
MANUFACTURER'S SPECIAL OFFER.
NOT AVAILABLE IN STORES
BUY 1 GET ONE FREE!
plus a FREE GIFT of
MetaboUP Plus & FREE S&H

First Name Last Name United States
Shipping Address
City Select State Zip Code
Phone Email
Try it Now [Loss Weight or your money back](#)

Lipozene Clinical Studies

Numerous clinical studies confirm Lipozene's active ingredient, Glucomannan, is safe and effective for weight loss and body fat loss.

EFFECT OF GLUCOMANNAN ON OBESE PATIENTS: A CLINICAL STUDY

David E. Walsh, Vazgen YAGHOUBIAN and Ali BEHFOROOS

An eight-week double-blind trial was conducted to test purified glucomannan fiber as a food supplement in 20 obese subjects. Glucomannan fiber (from konjac root) or placebo was given in 1-g doses (two 500 mg capsules) with 8 oz water, one hour prior to each of three meals per day. Subjects were instructed not to change their eating or exercise patterns. Results showed a significant mean weight loss (5.5 lbs) using glucomannan over an eight-week period. Serum cholesterol and low-density lipoprotein cholesterol were significantly reduced (21.7 and 15.0 mg/dl respectively) in the glucomannan treated group. No adverse reactions to glucomannan were reported.

DOWNLOAD FULL STUDY

GLUCOMANNAN AND OBESITY: A CRITICAL REVIEW

Joyce Keithley, DNSc, RN, FAAN, Barbara Swanson, DNSc, RN, ACRN

Glucomannan (GM) is a soluble, fermentable, and highly viscous dietary fiber derived from the root of the elephant yam or konjac plant, which is native to Asia. Preliminary evidence suggests that GM may promote weight loss. This review summarizes studies using GM for weight loss as well as studies investigating its

C. The “Lipozene Clinical Studies” are Studies of Shimizu Propol Glucomannan

60. Each of the so-called “Lipozene Clinical Studies” identified on Obesity Research’s Lipozene website, and the “university” study routinely referred to in Lipozene commercials but not on its website (Kaats), is either expressly a study of Shimizu’s Propol glucomannan, or a review of studies that includes studies of Propol.

61. As described above, the subjects of both clinical studies, Kaats and Walsh, were provided Shimizu Propol glucomannan for study.

62. Although Obesity Research refers to Keithley and Sood as “Clinical Studies,” in fact both are simply review papers or meta-analyses, but like Kaats and Walsh, they also discuss clinical studies of pure glucomannan (including many involving Shimizu Propol glucomannan). Aside from the single webpage, none of Obesity Research’s advertising during the past decade has relied on Keithley or Sood to support Lipozene’s weight loss claims.

63. In sum, since late 2006, Obesity Research has been supporting its claims for Lipozene with the Kaats and Walsh studies, both actually studies of Shimizu Propol glucomannan. However, Lipozene is not Propol glucomannan.

D. Lipozene is Not Propol Glucomannan

64. From about December 2014 to January 2015, Japan Food Research Laboratories performed a chemical analysis of Lipozene Lot No. 424597, which had been purchased off the shelf from drug stores in the United States exactly as a regular consumer would purchase the product. The results of the analysis demonstrated that a 100-gram sample of Lipozene contained 0.6 grams of Galactose, and 0.2 grams of Glucuronic acid. Galactose and Glucuronic acid are chemical markers of Xanthan Gum, which is used to “spike” cheap glucomannan knock-off products. A true and correct copy of a Japan Food Research Laboratories Certificate of Analysis showing these results, dated January 19, 2015, is attached hereto as Exhibit 5.

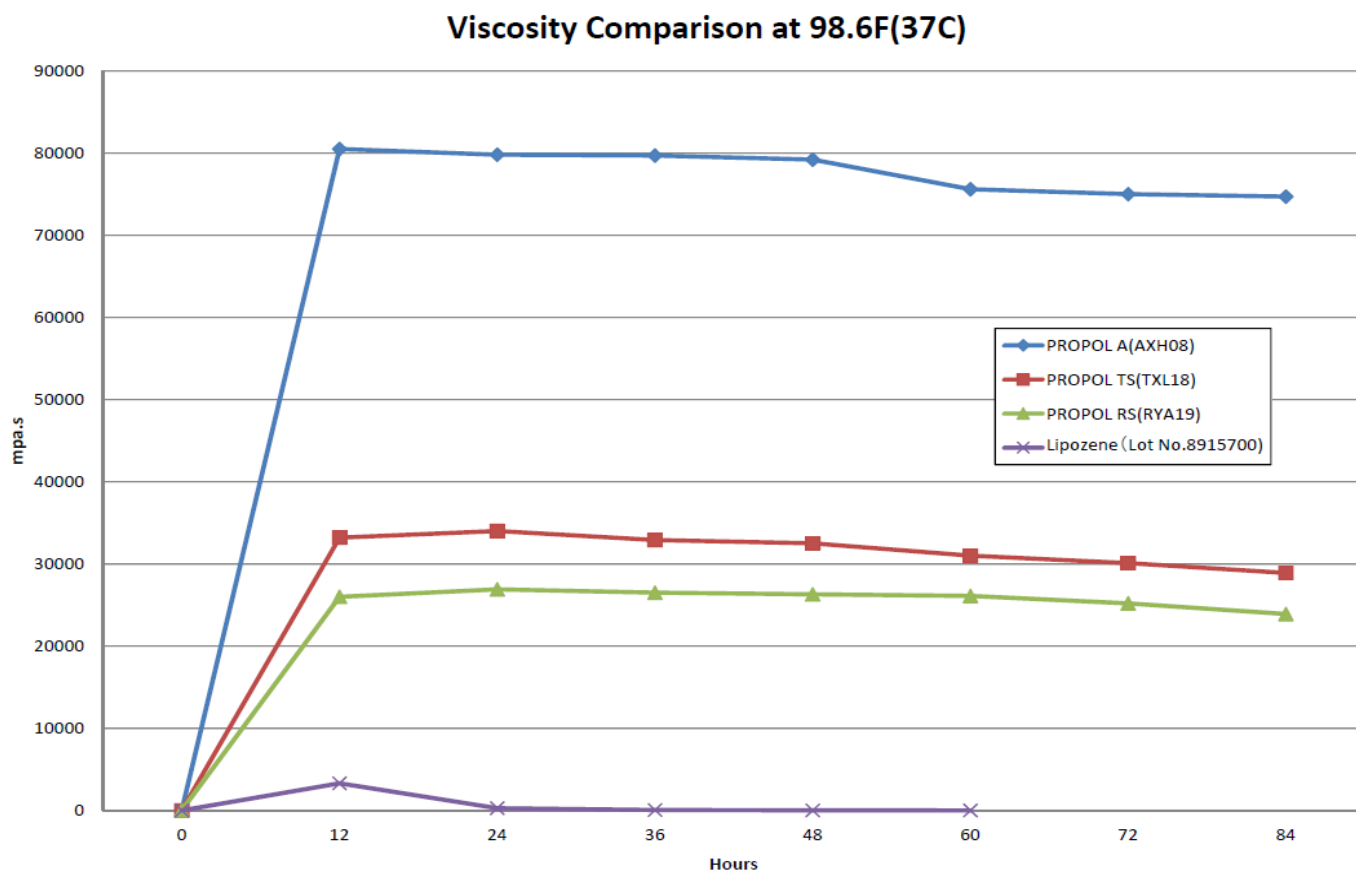
65. The chemical analysis demonstrates that Lipozene, unlike Propol glucomannan or a substantial equivalent, contains poor-quality, cheap ingredients and adulterants that do

not have the same functional chemical profile as Propol. Hence, Lipozene does not have the weight loss benefits of Propol as demonstrated by Propol's clinical testing.

66. Instead, there is no reliable clinical data supporting Lipozene's efficacy in reducing cholesterol, controlling diabetes, or promoting weight loss.

67. Laboratory testing performed by Shimizu from April to November 2014 further demonstrates Lipozene contains quantities of sulfites that exceed the regulatory threshold for labeling, such that Lipozene should be labeled with an allergen warning. But Obesity Research falsely represents on Lipozene's label that there are "No known allergens in this product." True and correct copies of Shimizu Chemical Corporation Certificates of Analyses for testing done on different five different Lipozene lots is attached hereto as Exhibit 6.

68. Shimizu performed a comparative viscosity analysis of several of its Propol products, and Lipozene Lot No. 8915700, the results of which are graphed below:



69. As demonstrated above, Lipozene has a peak viscosity of just 5,000 mPa.s, which lasts at most for 24 hours. Propol products, by contrast, peak at approximately 27,000, 33,000, and 80,000 mPa.s, and sustain their viscosity for the full 84 hours tested.

OBESITY RESEARCH'S FALSE AND MISLEADING STATEMENTS

70. Since late 2006, Obesity Research has been misrepresenting that the Kaats and Walsh clinical studies establishing the efficacy of Propol glucomannan are clinical studies concerning Lipozene. Obesity Research's statements to this effect (in television and print advertisements, and on Lipozene's packaging) include, without limitation:

- a. "Clinical study proves: 78% of weight lost is pure body fat!"
- b. "Clinically proven!"
- c. "Need to lose body fat? In a Double Blind Study, not only did participants lose weight but 78% of the weight lost was pure body fat!"
- d. "Lipozene is clinically proven to help reduce your body fat and weight."
- e. "In a recent major university double-blind study, not only did participants lose weight, but 78% of each pound lost was pure body fat. That's right, nearly all the weight lost is body fat. What's even more amazing is that people were not asked to change their daily lives. It's so easy. Just take Lipozene. That's it."
- f. "Lipozene is worth the price, because Lipozene is clinically proven to work."
- g. "Remember, Lipozene is clinically proven to reduce your body fat, and weight, or we'll refund your purchase price."
- h. "Researchers have now discovered a capsule that helps remove this body fat, and reduce your weight. It's called Lipozene. Clinically proven to reduce your body fat and weight. In a major university double-blind study, not only did participants lose weight, but 78% of the weight lost was pure body fat. What's even more amazing is that people were not asked to change their daily lives. It's so easy. Just take Lipozene twice a day. That's it."

1 i. "Researchers in a weight loss study didn't tell people to diet. Instead, they
2 gave them something else. And remarkably, they ended up shedding pounds and fat.
3 So what was their secret? They took Lipozene, a breakthrough diet supplement that
4 allows your body to lose fat without changing what you eat. In fact, Lipozene is so
5 powerful, 78% of the weight you lose is pure body fat. Not water. Fat."

6 j. "But, thanks to a remarkable holiday weight loss study, people taking a
7 proprietary dietary supplement lost an amazing 400% more weight than people who
8 weren't given this breakthrough weight loss pill. Best of all, this clinical study was
9 designed to be conducted over the holidays. A time when most Americans put on
10 weight, these people lost weight. So what is this remarkable weight loss supplement?
11 It's Lipozene."

12 k. "Remember, Lipozene is clinically proven to help you lose weight without
13 changing your lifestyle. And that's exactly what scientists proved in a groundbreaking
14 clinical study conducted over the holidays, where people who took Lipozene lost an
15 amazing 400% more weight than people who didn't. And of the weight they did lose,
16 78% was pure body fat."

17 l. "Clinical study sponsored by ORI was done under free living conditions
18 meaning participants were not given direction as to diet and exercise and thus were not
19 instructed to make any changes to their daily lifestyle. Clinical data shows that the
20 amount of weight loss experienced between the active and placebo group was 4.93 lbs.
21 and of the 4.93 lbs of weight loss experienced by the active group 3.86 lbs was body
22 fat."

23 m. "Lipozene is America's number one selling diet pill, because Lipozene is
24 clinically proven to work. That's right. In an independent clinical study, people who
25 took Lipozene lost weight without changing their lifestyle. That means they were not
26 asked to change their diet or exercise. They were simply instructed to take Lipozene.
27 That's it. And by taking Lipozene, they lost weight. But here's where it gets really
28 exciting. 78% of the weight they lost was pure body fat. Not water. Fat."

1 reputation in the industry has suffered, and Shimizu and Fiber Research have lost sales and
2 opportunities to make sales.

3 78. Indeed, Shimizu enjoyed a near-100% market share for refined Konjac root
4 products like glucomannan in the United States in 2000, but currently has only a 2% market
5 share, with mostly Chinese manufacturers selling what is actually knock-off, unrefined
6 Konjac root to companies like Obesity Research, for Lipozene.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF THE LANHAM ACT, 15 U.S.C. §§ 1125 *ET SEQ.***

10 **(False Advertising, Unfair Competition, and False Designations in Violation of §**
11 **1125(a)(1))**

12 79. Fiber Research incorporates by reference the preceding paragraphs of its
13 counterclaims as though fully set forth herein.

14 80. Obesity Research's advertising, marketing and representations for Lipozene are
15 false and misleading. Obesity Research uses in interstate commerce false, deceptive and/or
16 misleading descriptions in commercial advertising and marketing that misrepresent the
17 nature, characteristics, and qualities of Lipozene.

18 81. Obesity Research's false and misleading statements actually confuse and
19 deceive, or have the tendency to, and are likely to confuse and deceive an appreciable number
20 of relevant consumers and members of the trade. Obesity Research's false and misleading
21 statements are material and likely to influence the purchasing decisions of actual and
22 prospective purchasers of Lipozene and Propol products, and their ingredients.

23 82. Obesity Research's false and misleading statements have diverted, do divert, and
24 will continue to divert sales to Lipozene at the expense of Propol products, and have lessened,
25 are lessening, and will continue lessen the goodwill enjoyed by Propol products, if not
26 enjoined.

27 83. Obesity Research's acts constitute false advertising, unfair competition, and
28 false designations in violation of the Lanham Act § 43 (a)(1), 15 U.S.C. § 1125 (a)(1).

84. Obesity Research's acts have deceived and, unless restrained, will continue to deceive the public, including consumers and retailers, and have injured and will continue to injure Fiber Research and the public, including consumers and retailers, causing damage to Fiber Research and its assignor, Shimizu, in an amount to be determined at trial, and other irreparable injury to the goodwill and reputation of Propol products.

85. Obesity Research's acts of false and misleading advertising are willful, intentional, and egregious, and make this an exceptional case within the meaning of 15 U.S.C. § 1117(a).

86. Fiber Research has no adequate remedy at law to compensate it for all the damages Obesity Research's wrongful acts have and will cause.

SECOND CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*

87. Fiber Research incorporates by reference the preceding paragraphs of its counterclaims as though fully set forth herein.

88. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice," Cal. Bus. & Prof. Code § 17200.

89. Obesity Research conduct as alleged herein is "fraudulent" within the meaning of the UCL because Obesity Research made, published, disseminated, and circulated false, deceptive, and misleading statements, representations, and advertisements concerning the nature, quality, and characteristics of Lipozene.

90. Obesity Research's conduct as alleged herein is "unlawful" within the meaning of the UCL because it violates at least the following statutes:

- The Lanham Act, 15 U.S.C. § 1125(a)
- The Federal Food, Drug, and Cosmetic Act, 321 U.S.C. §§ 301 *et seq.*
- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*
- The California Sherman Act, Cal. Health & Safety Code § 110660

1 91. Obesity Research's conduct with respect to the labeling, advertising, and sale of
2 Lipozene as alleged herein was "unfair" within the meaning of the UCL because it was
3 immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of
4 its conduct, if any, did not outweigh the gravity of the harm to its victims.

5 92. Obesity Research's conduct with respect to the labeling, advertising, and sale of
6 Lipozene as alleged herein was also "unfair" because it violated public policy as declared by
7 specific constitutional, statutory or regulatory provisions, including the False Advertising
8 Law.

9 93. Obesity Research's conduct with respect to the labeling, advertising, and sale of
10 Lipozene was also "unfair" because the consumer injury was substantial, not outweighed by
11 benefits to consumers or competition, and not one consumers themselves could reasonably
12 have avoided.

13 94. As a direct and proximate result of Obesity Research's wrongful conduct, Fiber
14 Research and its assignor, Shimizu, have suffered injury in fact and lost money or property,
15 including lost sales and damage to Propol products' goodwill with existing, former, and
16 potential customers and consumers.

17 95. Obesity Research's wrongful conduct has also damaged consumers.

18 96. These wrongful acts have proximately caused and will continue to cause Fiber
19 Research and its assignor, Shimizu, substantial injury, including loss of customers, dilution
20 of goodwill, confusion of existing and potential customers and diminution of the value of
21 Propol products. The harm these wrongful acts will cause is both imminent and irreparable,
22 and the amount of damage sustained by Fiber Research will be difficult to ascertain if these
23 acts continue. Fiber Research has no adequate remedy at law.

24 97. Fiber Research is entitled to an injunction restraining Obesity Research from
25 engaging in further such unlawful conduct.

26 98. Fiber Research is further entitled to restitution from Obesity Research.
27
28

THIRD CAUSE OF ACTION

**VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, CAL. BUS. &
PROF. CODE §§ 17500, *ET SEQ.***

99. Fiber Research incorporates by reference the preceding paragraphs of its counterclaims as though fully set forth herein.

100. The FAL prohibits any statement in connection with the sale of goods “which is untrue or misleading,” Cal. Bus. & Prof. Code § 17500.

101. Obesity Research knew or in the exercise of reasonable care should have known that, as alleged herein, its publicly-disseminated statements and omissions regarding Lipozene were false and misleading. Obesity Research’s false advertising injured consumers, Fiber Research, and its assignor, Shimizu.

102. By reason of Obesity Research’s conduct, Fiber Research has suffered injury in fact and has lost money or property, including lost sales and damage to Propol products’ goodwill with existing, former, and potential customers and consumers.

103. Obesity Research has caused, and will continue to cause, immediate and irreparable injury to Fiber Research, including injury to its business, reputation and goodwill, for which there is no adequate remedy at law.

104. Fiber Research is entitled to an injunction restraining Obesity Research from engaging in further such acts.

105. Fiber Research is further entitled to restitution from Obesity Research.

PRAYER FOR RELIEF

106. WHEREFORE, Fiber Research respectfully requests the following relief:

A. A permanent injunction against Obesity Research, its officers, agents, employees, affiliates, parents, and all persons acting in concert or participation with them who receive actual notice of the injunction by personal service or otherwise, enjoining and restraining them directly or indirectly from falsely advertising, marketing, packaging, labeling, and/or selling Lipozene using any false representations, which misrepresent the nature, characteristics, or qualities of Obesity

Research's goods or other commercial activities or from engaging in any other false advertising with regard to Obesity Research's products.

B. Judgment for the damages suffered by Fiber Research (directly and as assignee of Shimizu's damages) as a result of Obesity Research's false advertising, unfair competition, and deceptive acts or practices, in an amount to be determined at trial, including without limitation as measured by Shimizu's lost sales to Obesity Research and by Obesity Research's Lipozene profits.

C. Judgment for an award of Obesity Research's Lipozene profits attributable to its willful false advertising, unfair competition, and deceptive acts or practices.

D. Judgment trebling Fiber Research's recovery pursuant to 15 U.S.C. § 1117, as a result of Obesity Research's willful and intentional violations.

E. Judgment awarding Fiber Research's reasonable attorneys' fees in this action, pursuant to 15 U.S.C. § 1117, and otherwise as appropriate.

F. Judgment awarding Fiber Research pre- and post- judgment interest, as well as costs of the action.

G. Such other and further relief as the Court deems just and proper.

JURY DEMAND

107. Fiber Research hereby demands a trial by jury on all issues so triable.

Dated: May 28, 2015

/s/ Jack Fitzgerald

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**Japan Food Research Laboratories**

Authorized by the Japanese Government

52-1 Motoyoyogi-cho, Shibuya-ku, Tokyo 151-0062, Japan

<http://www.jfrl.or.jp/>

No. 14131746001-01 1/1

January 19, 2015

CERTIFICATE OF ANALYSIS

Client: SHIMIZU CHEMICAL CORPORATION
4-5-1, Kihara, Mihara-Shi, Hiroshima-Ken, 729-0321 Japan

Sample name: Lipozene (Lot No. 424597)

Received date: December 23, 2014

This is to certify that the following result(s) have been obtained from our analysis on the above-mentioned sample(s) submitted by the client.

Test Result(s)

Test Item	Result	QL	N	M
Glucose	34.1 g/100g	---	1	1
Mannose	45.4 g/100g	---	1	1
Galactose	0.6 g/100g	---	1	1
Glucuronic acid	0.2 g/100g	---	1	1
Investigation of sugars	---	---	2	1
Mannose	(+)	---		
Arabinose	(-)	---		
Galactose	(+)	---		
Xylose	(-)	---		
Glucose	(+)	---		
Rhamnose	(-)	---		
Ribose	(-)	---		
Fucose	(-)	---		
Glucuronic acid	(+)	---		

QL: Quantitation limit N: Notes M: Method

Notes

1: Acid hydrolysis was performed before measurement. Hydrolysis conditions: stirred in 72 % sulfuric acid at room temperature for 1 hour and autoclaved (121 °C) in 4 % sulfuric acid for 1 hour.

2: The result (+) means not less than 0.2 %. Acid hydrolysis was performed before measurement. Hydrolysis conditions: stirred in 72 % sulfuric acid at room temperature for 1 hour and autoclaved (121 °C) in 4 % sulfuric acid for 1 hour.

Method

1: HPLC



T. Arai
Takeko Arai
Principal Investigator

Jan. 19, 2015
Date

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QUALITY CONTROL
E-mail: info@shimizuchemical.co.jp

Apr. 01, 2014

CERTIFICATE OF ANALYSIS

COA No.5005

Sample: Lipozene

This is to certify that the following results have been obtained
by our analysis on the above-mentioned samples.

Result :

Lot No.	380114	423915
Sulfite (SO ₂)	36ppm	36ppm

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Aug. 07, 2014

CERTIFICATE OF ANALYSIS

COA No.5025

Sample: Lipozene (Lot No.425074)

This is to certify that the following results have been obtained
by our analysis on the above-mentioned samples.

Result :

Sulfite (SO ₂)	102ppm
----------------------------	--------

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Oct. 31, 2014

CERTIFICATE OF ANALYSIS

COA No.5046

Sample: Lipozene (Lot No.425907)

This is to certify that the following results have been obtained
by our analysis on the above-mentioned samples.

Result :

Sulfite (SO ₂)	92ppm
----------------------------	-------



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Nov. 21, 2014

CERTIFICATE OF ANALYSIS

COA No.5052

Sample: Lipozene (Lot No.424597)

This is to certify that the following results have been obtained
by our analysis on the above-mentioned samples.

Results :

Sulfite (SO ₂)	147ppm
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Product image



Exhibit No. 8

Bozic v. Den Uijl et al.

Number	Description	Page Numbers
8.	Screenshot from the website of the National Advertising Division ("NAD") showing that NAD sent the maker's of Lipozene a warning letter and then referred the matter to the FTC, available at http://www.ascreviews.org/nad-refers-advertising-for-obesity-research-...for-review-after-advertiser-declines-to-participate-in-nad-proceeding/	144-146



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NAD Refers Advertising for Obesity Research Council's 'Lipozene' to FTC for Review after Advertiser Declines to Participate in NAD Proceeding

New York, NY – Dec. 23, 2014 – The National Advertising Division has referred advertising for Lipozene, a product marketed by the Obesity Research Council, to the Federal Trade Commission (FTC) after the company declined to participate in NAD's review of its advertising claims.

The claims were challenged by the Council for Responsible Nutrition (CRN) as part of an initiative by CRN and NAD to expand the review of advertising claims made for dietary supplements.

Challenged claims included:

- *"Clinically proven: Helps reduce weight, Helps reduce Body Fat, Safe and Effective."*
- *"Lipozene is an all-natural weight loss supplement that is clinically proven to help you lose weight and pure body fat."*
- *"When taken prior to eating, Lipozene works to help you feel full faster, so you eat less!" It's that easy!"*
- *"In an independent study, not only did participants taking Lipozene lose weight, but 78% of each pound lost was pure body fat."*
- *"What's even more amazing is that participants were not asked to change their daily lifestyle. Just take Lipozene."*
- *"Lipozene has effectively helped millions of people meet their weight loss goals and it can help you too!"*
- *"Check out these studies that prove scientifically that the active ingredient in Lipozene helps you lose weight!"*
- *"Lipozene creates a dietary fiber gel in your stomach that makes you feel full so you are able to eat less without feeling hungry."*
- *"I've lost 6lbs in my first week and my progress is better and better. I only weigh myself once a week but I'm on week two and can see the differences. Can't wait till my next weigh in to see further progress! – Belleville, Illinois"*
- *"Love it. I was 269.8 to 178.8 in three months. I stopped it and it's been five months and I have not gained the weight... . – Allentown, Pennsylvania"*

The challenger argued that many of the advertiser's claims imply that Lipozene may be used for disease prevention and treatment because of references to diabetes obesity and high cholesterol.

In light of the advertiser's failure to submit a substantial response, pursuant to Section 2.10(B) of NAD/NARB Procedures, NAD is referring this matter to the FTC for further review.

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