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Attorney for Plaintiff and the Proposed Class

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 NICHOLAS JABER, on behalf of himself,
 12 all others similarly situated and the general
 13 public,

Plaintiff,

v.

14 BPI SPORTS, LLC, IMAGE SPORTS,
 15 LLC, and BE POWERFUL, LLC,

Defendants.

Case No:

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF:
 CAL. BUS. & PROF. CODE §§17200 *et*
 seq.; CAL. BUS. & PROF. CODE
 §§17500 *et seq.*; CAL. CIV. CODE §§
 1750 *et seq.*; BREACH OF EXPRESS
 WARRANTIES; and BREACH OF
 IMPLIED WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiff Nicholas Jaber, on behalf of himself, all others similarly situated, and the
2 general public, by and through his undersigned counsel, hereby sues BPI Sports, LLC, Image
3 Sports, LLC, and Be Powerful, LLC (collectively “Defendants”), and alleges the following
4 upon his own knowledge, or where he lacks personal knowledge, upon information and belief
5 and the investigation of his counsel.

6 INTRODUCTION

7 1. Defendants market “Ultra Concentrated Garcinia” (the “Product”), an herbal
8 supplement that they falsely claim, *inter alia*, supports appetite control and weight loss,
9 despite that its only purportedly active ingredient, Hydroxycitric Acid (“HCA”) is
10 scientifically proven to be incapable of providing such benefits.

11 2. Plaintiff Nicholas Jaber read and relied upon Defendants’ claims when
12 purchasing the Product and was damaged as a result.

13 3. Plaintiff brings this action challenging Defendants’ weight-loss claims relating
14 to Ultra Concentrated Garcinia on behalf of himself and all others similarly situated
15 consumers in California, alleging violations of the California Consumer Legal Remedies Act,
16 Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”), Unfair Competition Law, Cal. Bus. & Prof. Code
17 §§ 17200 *et seq.* (“UCL”), and False Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”). Plaintiff
18 further alleges that Defendants breached express and implied warranties under state law.

19 4. Plaintiff seeks an order compelling Defendants to (a) cease marketing the
20 Product using the misleading and unlawful tactics complained of herein, (b) destroy all
21 misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising campaign,
22 (d) restore the amounts by which they have been unjustly enriched, and (e) pay restitution,
23 damages, and punitive damages as allowed by law.

24 JURISDICTION & VENUE

25 5. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2)
26 (The Class Action Fairness Act) because the matter in controversy exceeds the sum or value
27 of \$5,000,000, exclusive of interest and costs, and because, based on information and belief,
28

1 more than two-thirds of the members of the Class reside in states other than the state of which
2 any Defendant or their members are citizens.

3 6. The Court has personal jurisdiction over Defendants because they have
4 purposely availed themselves of the benefits and privileges of conducting business activities
5 within California and within this district.

6 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff
7 suffered injuries as a result of Defendants' acts in this District, many of the acts and
8 transactions, including the purchases and sales giving rise to this action, occurred in this
9 District and Defendants (1) have intentionally availed themselves of the laws and markets of
10 this District through the promotion, marketing, distribution, and sale of the Product in this
11 District, and (2) are subject to personal jurisdiction in this District.

12 **INTRADISTRICT ASSIGNMENT**

13 8. This civil action arises out of the acts and omissions of Defendants, which
14 occurred in Oakland County. Pursuant to Civil Local Rule 3-2(c), this action is correctly
15 assigned to the Oakland Division.

16 **PARTIES**

17 9. Plaintiff Nicholas Jaber is a resident of Alameda, California.

18 10. BPI Sports, LLC is a Florida company with its principal place of business
19 located at 3149 S.W. 42nd St., #200, Hollywood, Florida 33312. BPI Sports, LLC is the
20 owner of the "BPI Health" trademark, under which the Product is currently sold. It was also
21 the owner of the "Pro-Nutra" trademark, under which the Product was previously sold, before
22 the trademark was abandoned in October 2013. According to the Florida Department of State,
23 Division of Corporations, BPI Sports, LLC is doing business under the fictitious name BPI
24 Health. BPI Sports, LLC's 2016 annual report, filed with the Florida Secretary of State, lists
25 Be Powerful, LLC as its authorized manager and Derek Ettinger as its CEO.

26 11. Image Sports, LLC, is a Florida company with its principal place of business
27 located at 3149 S.W. 42nd St., #200, Hollywood, Florida 33312. On June 3, 2014, Pro Nutra
28 LLC was merged with and into Image Sports, LLC. Image Sports, LLC is doing business

1 under the fictitious name Pro Nutra, LLC. BPI Sports, LLC's 2016 annual report, filed with
2 the Florida Secretary of State, lists Be Powerful, LLC as its authorized manager and Derek
3 Ettinger as its CEO.

4 12. Be Powerful, LLC is a Florida company with its principal place of business
5 located at 3149 S.W. 42nd St., #200, Hollywood, Florida 33312. Be Powerful, LLC is listed
6 as the manager of BPI Sports, LLC and was listed as the manager of Pro Nutra LLC, before
7 Pro Nutra, LLC was merged into and with Image Sports, LLC. Derek Ettinger, James Grage,
8 and Jeff Settembrino, are the managing members and owners of Be Powerful, LLC.

9 13. Upon information and belief, Derek Ettinger, James Grage, and Jeff Settembrino
10 are residents of Florida.

11 FACTS

12 **I. Scientific Research Demonstrates that Garcinia Cambogia Extract (HCA) Is Not** 13 **Effective in Supporting Weight Loss or Appetite Control**

14 14. Numerous randomized, placebo controlled scientific studies demonstrate that
15 Garcinia Cambogia extract and/or HCA does not provide weight-loss benefits in humans.

16 15. In 1998, Dr. Steven Heymsfield and his colleagues published the first study to
17 "examine the effectiveness of hydroxycitric acid for weight loss and fat mass reduction in a
18 rigorous controlled trial."¹

19 16. Dr. Heymsfield and his team of researchers specifically noted that, at that time,
20 the "evidence of human hydroxycitric acid efficacy for weight control is based largely on
21 studies with small sample sizes, studies that failed to include a placebo-treated group, and use
22 of inaccurate measures of body lipid change." Therefore, their "investigation was designed
23 to overcome limitations of earlier studies and examine the effectiveness of hydroxycitric acid
24 for weight loss and fat mass reduction in a rigorous controlled trial."²

25
26 ¹ S. Heymsfield et al., *Garcinia Cambogia (Hydroxycitric Acid) as a potential antiobesity*
27 *agent*, 280 J. Am. Med. Assoc. 1596, 1596 (1998).

28 ² *Id.*

1 17. The study was “carried out using accepted clinical trial design procedures and
2 applying accurate body composition [measurement] methods,” and was designed “to evaluate
3 the efficacy of G. cambogia for body weight and fat mass loss in overweight human
4 subjects.”³

5 18. The “study, carried out during a 12-week evaluation period and using accepted
6 experimental design and in vivo analytic methods, failed to support the hypothesis that
7 hydroxycitric acid as prescribed promotes either additional weight or fat mass loss beyond
8 that observed with placebo.”⁴

9 19. “Specifically, body weight and fat mass change during the 12-week study period
10 did not differ significantly between placebo and treatment groups.”

11 20. “Additionally, there were no observed selective fat-mobilizing effects
12 specifically attributable to the active agent, hydroxycitric acid.”

13 21. The researchers specifically noted that the difference in weight loss between the
14 subjects that received the HCA supplementation and those that received the placebo was “not
15 statistically significant.”⁵

16 22. Further, “[b]ody weight change differences remained nonsignificant after
17 controlling for patient starting weight, sex, and age,”⁶ and “[i]n no case did any secondary
18 analysis indicate any statistically significant effect for the active compound to produce more
19 weight loss than placebo.”⁷

20 23. In addition, the study found that Garcinia Cambogia had no effect on fat loss.⁸
21 Rather, “the percentage of fat mass differences also was nonsignificant,” and “in no case did
22
23

24 ³ *Id.*

25 ⁴ *Id.* at 1599.

26 ⁵ *Id.* at 1598.

27 ⁶ *Id.*

28 ⁷ *Id.*

⁸ *Id.*

1 analysis indicate any statistically significant effect for the active compound to produce a
2 different percentage of body fat mass loss than the placebo.”⁹

3 24. In sum, this rigorous study, which “was designed to overcome limitations of
4 earlier studies,” “failed to support a specific weight loss effect of G Cambogia.”¹⁰

5 25. The next year, the International Journal of Obesity published a “double blind,
6 placebo controlled, randomized, crossover study” that likewise concluded that HCA
7 supplementation was not an effective weight loss agent in people consuming a typical mixed
8 diet.¹¹

9 26. The authors of the study noted that “[t]here are reports to support the role of (-)-
10 HCA in promoting weight loss during a de novo lipogenic state in rodent studies, however,
11 most people taking these weight loss supplements are not consuming diets that produce
12 substrate de novo lipogenesis.”¹² Therefore, they designed their study to examine “the effect
13 of (--)HCA on the regulation of metabolism in humans consuming a typical Western diet
14 (approx. 30 ± 35% total calories as fat).”¹³

15 27. Once again, after conducting a rigorous trial, the “results d[id] not support (--)HCA
16 supplementation as an effective weight loss agent in people consuming a typical mixed
17 diet.”¹⁴

18 28. The study found no effect on weight loss or fat metabolism.

19 29. In fact, “[b]ody weight did not change over the course of the study.”¹⁵

22
23 ⁹ *Id.*

24 ¹⁰ *Id.* at 1599.

25 ¹¹ AD Kriketos et al., *-hydroxycitric acid does not affect energy expenditure and substrate
oxidation in adult males in a post-absorptive state*, 23 Int. J. Obesity 867 (1999).

26 ¹² *Id.* at 868.

27 ¹³ *Id.*

28 ¹⁴ *Id.*

¹⁵ *Id.* at 870.

1 30. Further, HCA supplementation had no effect “on circulating concentrations of
2 blood substrates associated with fat oxidation and regulation of glucose metabolism.”¹⁶

3 31. Therefore, the authors concluded that “the inability to demonstrate metabolic
4 changes consistent with citrate lyase inhibition suggests that this mechanism is not operable
5 to promote weight reduction”¹⁷

6 32. In 2000, Professor Richard Mattes, published a study in the Journal of
7 Physiology and Behavior that found that HCA had no effect on appetite suppression or
8 reduction.¹⁸

9 33. Professor Mattes noted that “Hydroxycitric acid (HCA) reportedly promotes
10 weight loss, in part, through suppression of hunger. However, this mechanism has never been
11 evaluated in humans in a controlled study.”¹⁹

12 34. Therefore, Professor Mattes, designed a “randomized, double-blind, placebo-
13 controlled, parallel group design study,” in order “to assess the effect of G. cambogia on
14 appetitive indices and their relationship with weight loss during moderate energy
15 restriction.”²⁰

16 35. Based on the results, Dr. Mattes noted that “[t]he present data on appetitive
17 indices are unequivocal. No significant treatment effects were observed on mean, peak or
18 nadir hunger ratings, mean ratings of desire to eat, prospective consumption, fullness or
19 sensations of thirst, stomach growling, headache, distraction, irritability or, as a check on
20 malingering, itchiness. Prior support for an appetitive effect was based on anecdote and data
21 interpreted without a control treatment or pure HCA formulation. The appetitive indices also
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23

24 ¹⁶ *Id.* at 872.

25 ¹⁷ *Id.* at 873.

26 ¹⁸ Richard D. Mattes & Leslie Bormann, *Effects of (-)-hydroxycitric acid on appetitive variables*, 71 *Physiol. & Behav.* 87 (2000).

27 ¹⁹ *Id.* at 87.

28 ²⁰ *Id.* at 88.

1 were not significantly associated with energy intake or body weight change within the active
2 treatment participants.”²¹

3 36. “No effects of the HCA were observed on appetitive variables. The active
4 treatment group did not exhibit better dietary compliance or significant correlations between
5 appetitive variables and energy intake or weight change. This study does not support a satiety
6 effect of HCA.”²²

7 37. The authors concluded that HCA does not suppress appetite, promote satiety, or
8 “promote improved compliance with a reduced energy diet.”²³

9 38. In short, “Mattes and colleagues reported that HCA supplementation (2.4 g/d for
10 12-weeks) did not affect appetite, energy intake, or weight loss.”²⁴

11 39. Also in 2000, the American Journal of Clinical Nutrition published a study that
12 found that “HCA, even when provided in large quantities, does not increase total fat oxidation
13 in vivo.”²⁵

14 40. The “study showed that large doses of G. Cambogia extract [(18 ± 0.4 g HCA)]
15 do get absorbed in the intestine and can lead to a substantial increase in plasma HCA
16 concentrations. However, this does not affect fat and carbohydrate oxidation rates.”²⁶

17 41. “Accordingly, a direct effect of HCA on fat oxidation seems unlikely to
18 contribute to its claimed antiobesity or ergogenic potential.”²⁷

22 ²¹ *Id.* at 92.

23 ²² *Id.* at 87.

24 ²³ *Id.* at 92.

25 ²⁴ Kreider et al., *ISSN exercise & sport nutrition review: research & recommendations*, 7 J.
Int. Soc. Sports Nutr. 7 (2010).

26 ²⁵ Van Loon L et al., *Effects of acute (-)-hydroxycitrate supplementation on substrate
metabolism at rest and during exercise in humans*, 72 Am. J. Clin. Nutr. 1445, 1445 (2000).

27 ²⁶ *Id.* at 1449.

28 ²⁷ *Id.*

1 42. Thus, the authors “conclude[d] that plasma HCA availability does not increase
2 energy expenditure or stimulate skeletal muscle fat oxidation.”²⁸

3 43. In 2001, a study published in the International Journal of Obesity that tested the
4 effect of HCA, found that “Two-week supplementation with HCA . . . did not result in
5 increased satiety, fat oxidation, 24 h EE [energy expenditure] or BW [body weight] loss.”²⁹

6 44. The study employed a “double-blind, placebo-controlled, randomized, cross-
7 over design” and specifically examined the effects of HCA *alone* and HCA in combination
8 medium-chain triglycerides on “satiety, fat oxidation, energy expenditure and body
9 weight.”³⁰

10 45. Like other controlled human trials, the study found that HCA “did not result in
11 increased satiety, fat oxidation, 24 h EE [energy expenditure] or BW [body weight] loss.”³¹

12 46. The authors specifically noted that “BW [body weight] reduction was not
13 different between treatments,” and that “no difference in body fat loss was found between
14 treatments.”³²

15 47. In addition, “[t]he results did not support the hypothesis that HCA
16 supplementation may be effective on appetite and weight control by increasing fat
17 oxidation.”³³

18 48. To the contrary, “no effect of HCA on fat oxidation or 24 h energy expenditure
19 was found.”³⁴

22 ²⁸ *Id.* at 1448.

23 ²⁹ E. Kovacs et al., *The effects of 2-week ingestion of (–)-hydroxycitrate and (–)-*
24 *hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy*
expenditure and body weight, 25 *Int. J. Obes.* 1087, 1087 (2001).

25 ³⁰ *Id.* at 1088.

26 ³¹ *Id.* at 1087.

27 ³² *Id.* at 1091.

28 ³³ *Id.* at 1087.

³⁴ *Id.* at 1092.

1 49. Further, “There was no difference in SMR [sleeping metabolic rate], RMR
2 [resting metabolic rate], DIT [diet-induced thermogenesis] and AEE [activity-induced energy
3 expenditure] between treatments.”³⁵

4 50. Put simply, “HCA was not effective.”³⁶

5 51. The results of more recent studies have been the same: “Garcinia cambogia
6 extract did not show dietary efficacy.”³⁷

7 52. A 2008 study published in the Journal of Clinical Biochemistry and Nutrition,
8 found that “hydroxycitric acid had no significant effect on the body component” and that
9 “dietary efficacy was not indicated.”³⁸

10 53. That study, which employed a “double-blind, non-cross-matching test,”³⁹ found
11 that “Garcinia cambogia extract did not show dietary efficacy.”⁴⁰

12 54. A 2011 study published in the prominent Nutrition Journal found that Garcinia
13 Cambogia extract supplementation “failed to promote weight-loss or any clinically
14 significant change in % body fat.”⁴¹

15 55. The researchers noted that “the evidence for the effectiveness of natural food
16 supplements to promote weight-loss and improve health is largely derived from animal
17 studies. Therefore, it is essential randomized double-blind placebo-controlled trials (RCTs)
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21 ³⁵ *Id.* at 1091.

22 ³⁶ *Id.* at 1093.

23 ³⁷ Yoshikazu Yonei et. al, *Effects on the Human Body of a Dietary Supplement Containing*
24 *L-Carnitine and Garcinia Cambogia Extract: A Study using Double-blind Tests*, 42 J. Clin.
25 Biochem. Nutr. 89, 101 (2008).

26 ³⁸ *Id.* at 100.

27 ³⁹ *Id.* at 90.

28 ⁴⁰ *Id.* at 101.

⁴¹ Kim et al., *Does Glycine max leaves or Garcinia Cambogia promote weight-loss or lower*
plasma cholesterol in overweight individuals: a randomized control trial, 10 Nutr. J. 94, 94
(2011).

1 are conducted to determine the effectiveness of natural food supplements to promote weight-
2 loss.”⁴²

3 56. The randomized double-blind placebo-controlled trial found that “GCE
4 supplementation was not effective in promoting weight-loss in overweight individuals.”⁴³

5 57. Further, “[i]n agreement with past studies the present study provided no
6 evidence that [garcinia cambogia extract] GCE supplementation can modify calorie intake in
7 overweight individuals consuming their habitual diet.”⁴⁴

8 58. Like the previous studies, “neither EGML nor GCE supplementation alone can
9 promote weight-loss in overweight individuals.”⁴⁵

10 59. Based on these and other studies, numerous other researchers, scientists and
11 medical experts have concluded that Garcinia Cambogia is not an effective weight-loss tool.

12 60. For example, the renowned National Institutes of Health (“NIH”) concluded that
13 Garcinia Cambogia has “Little to no effect on body weight.”⁴⁶

14 61. In *An Evidence-Based Review of Fat Modifying Supplemental Weight Loss*
15 *Products*, published by the Journal of Obesity in 2011, Mary M. Egras and her colleagues
16 noted, “The data that is available,” regarding HCA, “does not demonstrate significant weight
17 loss. Therefore, *Garcinia cambogia* or HCA is not recommended at this time.”⁴⁷

18 62. In 2010, a team of researchers headed by Richard B. Kreider reviewed the
19 scientific evidence regarding the efficacy of various weight-loss supplement ingredients,
20 including Garcinia Cambogia. Based on the available scientific evidence the team concluded
21 that “[a]lthough there is some evidence that HCA may increase fat metabolism in *animal*

22
23 ⁴² *Id.* at 94-95.

24 ⁴³ *Id.* at 101.

25 ⁴⁴ *Id.* at 102.

26 ⁴⁵ *Id.*

27 ⁴⁶ See National Institutes of Health, *Dietary Supplements for Weight Loss*, available at,
28 <https://ods.od.nih.gov/factsheets/WeightLoss-HealthProfessional>.

⁴⁷ Amy M. Egras et al., *An Evidence-Based Review of Fat Modifying Supplemental Weight Loss Products*, 10 J. Obesity 1155, 1159 (2011).

1 *studies*, there is little to no evidence showing that HCA supplementation affects body
2 composition in *humans*.” Therefore, Kreider and his team concluded that “HCA
3 supplementation does not appear to promote fat loss in humans.”⁴⁸ (emphasis added)

4 63. These studies, all of which were controlled human trials, affirmatively
5 demonstrate that Garcinia Cambogia extract (HCA) does not and cannot aid in weight loss or
6 appetite control.

7 **II. Defendants’ Sale and Marketing of Ultra Concentrated Garcinia**

8 64. Defendants manufacture, distribute, and/or market the Product, Ultra
9 Concentrated Garcinia.

10 65. Defendants have distributed, marketed, and sold Ultra Concentrated Garcinia on
11 a nationwide basis, including California, for at least the past several years.

12 66. Ultra Concentrated Garcinia is sold nationally, including in California, at major
13 retailers such as GNC.

14 67. Ultra Concentrated Garcinia is also available online at Amazon.com, ebay.com,
15 luckyvitamin.com, and many more “e-tailer” websites.

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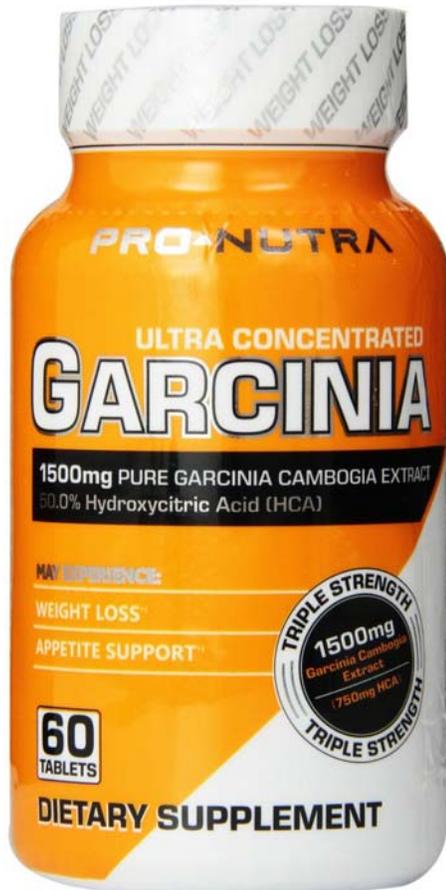
24 ///

25 ///

26

27 ⁴⁸ Kreider et al., *ISSN exercise & sport nutrition review: research & recommendations*, 7 J.
28 Int. Soc. Sports Nutr. 7 (2010).

1 68. Ultra Concentrated Garcinia was originally marketed and sold bearing a “Pro-
2 Nutra” logo, Figure 1, but is now marketed and sold bearing a “bpi Health” logo, Figure 2.



18 Figure 1.



Figure 2.

19 69. As seen in the figures above, the labeling of Ultra Concentrated Garcinia was
20 almost unchanged, varying only in brand logo and minor color changes.

21 70. Further, Ultra Concentrated Garcinia never changed in composition, at all times
22 containing, according to the label, 1500mg of Garcinia Cambogia Extra, 50 percent of which
23 (or 750mg) was claimed to be HCA.

24 71. Ultra Concentrated Garcinia comes in tablet form and is sold in various
25 quantities, including bottles of 60 and 120 tablets.

III. The Composition of Ultra Concentrated Garcinia

72. Defendants claim that Ultra Concentrated Garcinia, by means of its HCA is effective as a weight-loss product. However, HCA, the lone “active” ingredient in the Product, is incapable of providing any weight-loss benefits.

73. Ultra Concentrated Garcinia consists of a single purportedly “active” ingredient HCA, which is extracted from Garcinia Cambogia. Figure 3, below, shows the supplement facts panel of Ultra Concentrated Garcinia, as displayed on its packaging.



Figure 3.

74. Defendants claim that one tablet contains 750mg of HCA.

IV. Ultra Concentrated Garcinia’s Misleading Labeling Claims

75. Defendants market and advertise Ultra Concentrated Garcinia as an effective weight-loss supplement through claims placed directly on the bottle and packaging of the Product despite that it provides no such benefits.

A. Defendants Market Ultra Concentrated Garcinia with False and Misleading Labeling Claims

76. Below are true and correct exemplars and/or pictures of the complete Ultra Concentrated Garcinia labels, when sold with the Pro-Nutra logo, Figure 4, and when sold with the bpi Health logo, Figure 5, respectively.



Figure 4.

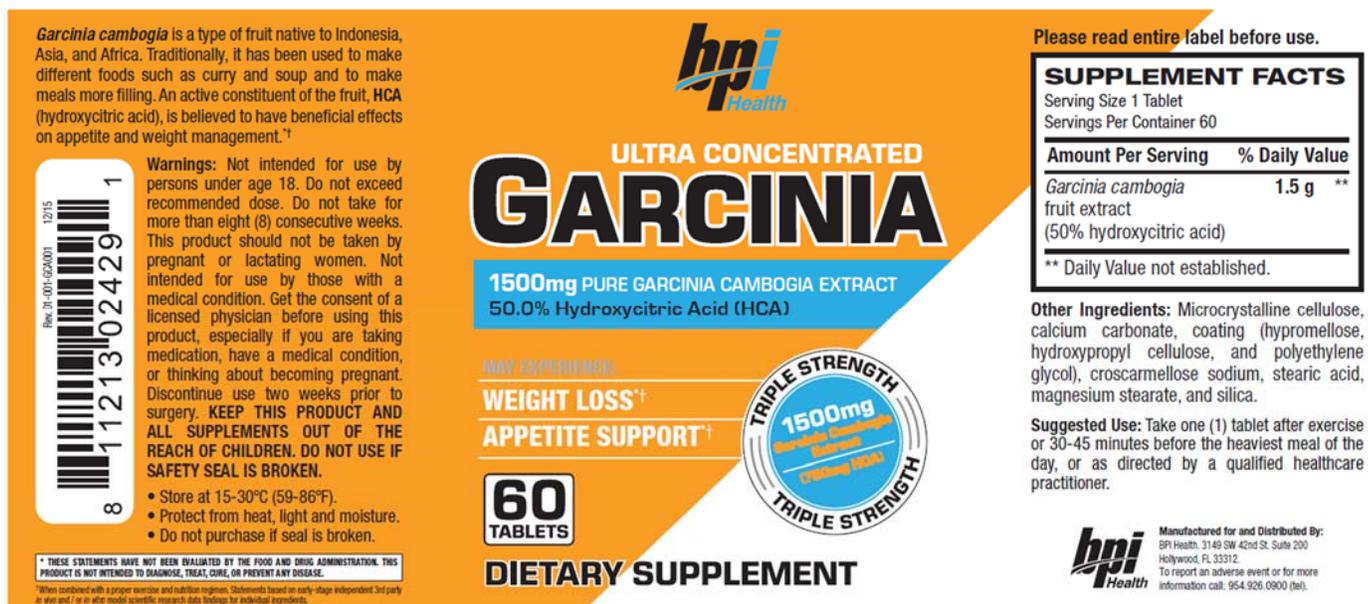


Figure 5.

1 77. **Misleading “Ultra Concentrated Garcinia” claim:** The very name of the
2 Product, “Ultra Concentrated Garcinia,” conveys to consumers to that the Product is potent
3 and will therefore be effective in providing the claimed weight-loss benefits. This claim,
4 individually and especially in context of the label as a whole, is misleading because the
5 Product’s lone “active” ingredient is incapable of providing any weight-loss benefits,
6 regardless of how concentrated its formula.

7 78. **Misleading “WEIGHT LOSS” and “APPETITE SUPPORT” claims:**
8 Defendants prominently label Ultra Concentrated Garcinia with the phrases “WEIGHT
9 LOSS” and “APPETITE SUPPORT,” in bold white print. These claims convey or suggest
10 that the Product is capable of and will help consumers lose weight and control their appetite.
11 However, these claims, taken individually and especially in context of the label as a whole,
12 are misleading because the Product’s lone “active” ingredient, HCA, is incapable of providing
13 any weight-loss benefits. Although Defendants attempt to qualify these claims with the phrase
14 “May Experience,” which is printed in smaller, less noticeable grey lettering, the clear
15 implication to consumers is that the Product is capable of aiding weight loss and appetite
16 support. Indeed, if consumers did not believe that it could, they would have no reason to
17 purchase the Product.

18 79. **Misleading “appetite and weight management” claim:** In an attempt to
19 bolster their weight-loss and appetite-support claims, Defendants also suggest that garcinia
20 cambogia “make[s] meals more filling” and the “active constituent of the fruit, HCA
21 (hydroxycitric acid), is believed to have beneficial effects on appetite and weight
22 management.” These claims further convey or suggest that the Product is capable of providing
23 weight-loss and appetite-control benefits. However, these claims, taken individually and
24 especially in context of the label as a whole, are misleading because the Product’s lone
25 “active” ingredient, HCA, is incapable of providing any weight-loss benefits.

26 80. **Misleading “Potency” claims:** In addition, the Ultra Concentrated Garcinia
27 label bears several claims suggesting that it is a strong, potent product and therefore effective
28 in providing the claimed weight-loss benefits. The front of the label, for example, bears a

1 prominent emblem stating that the Product is “TRIPLE STRENGTH,” with “1500mg
2 Garcinia Cambogia Extract (750mg HCA).” In similar fashion, the labels bears the claim
3 “1500mg PURE GARCINIA CAMBOGIA EXTRACT” and “50.0% Hydroxycitric Acid
4 (HCA).” These claims, taken individually and especially in context of the label as a whole,
5 are misleading because the Product’s lone “active” ingredient is incapable of providing any
6 weight-loss benefits.

7 81. In short, the claims on the label of Ultra Concentrated Garcinia convey the
8 concrete overall message that the Product, by means of its HCA content, can help consumers
9 lose weight and control their appetite. Defendants intended consumers to rely upon this
10 message, which is false and misleading for the reasons stated herein.

11 **I. The Labeling of the Ultra Concentrated Garcinia Violates California and Federal** 12 **Statutes and Regulations**

13 **A. Any Violation of Federal Food Labeling Statutes or Regulations is a** 14 **Violation of California Law**

15 82. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health
16 & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has adopted the federal
17 food and dietary supplement labeling requirements as its own. *See id.* § 110665 (“Any food
18 is misbranded if its labeling does not conform with the requirements for nutrition labeling as
19 set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation
20 adopted pursuant thereto.”); *id.* § 110670 (“Any food is misbranded if its labeling does not
21 conform with the requirements for nutrient content or health claims as set forth in Section
22 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulations adopted pursuant
23 thereto.”).

24 83. For the purposes of labeling, “a dietary supplement shall be deemed to be a
25 food.” *See* 21 U.S.C. § 321(ff).

26 84. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes
27 state regulations, such as the Sherman Law, that are “identical to the requirement[s]” of the
28 FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

1 85. Because the Sherman Law’s requirements are identical to the requirements of
2 the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly
3 authorized by the FDCA.

4 **B. Ultra Concentrated Garcinia’s False and Misleading Labeling Claims**
5 **Render it Misbranded Under California and Federal Law**

6 86. Defendants’ deceptive statements described herein violate Cal. Health & Safety
7 Code § 110660 and 21 U.S.C. § 343(a), which deem a food or dietary supplement misbranded
8 if its labeling is “false or misleading in any particular.”

9 87. Further, Defendants’ labeling of Ultra Concentrated Garcinia is misleading, and
10 thus misbranded, because “it fails to reveal facts that are material in light of other
11 representations.” 21 C.F.R § 1.21.

12 **C. Defendants’ Ultra Concentrated Garcinia is Misbranded Because it Makes**
13 **Unauthorized Structure Function Claims**

14 88. Ultra Concentrated Garcinia is further misbranded because its label bears
15 structure function claims even though the Product does not meet the requirements to make
16 such claims.

17 89. Specifically, the statements “WEIGHT LOSS” and “APPETITE SUPPORT,”
18 and are structure function claims.

19 90. These claims violate 21 U.S.C. 343(r)(6) because the weight of scientific
20 evidence does not support these claims as being “truthful and not misleading” as required.
21 *See* 21 U.S.C. 343(r)(6).

22 91. To the contrary, scientific evidence, as alleged herein, *affirmatively*
23 demonstrates that HCA is incapable of providing these benefits.

24 92. Ultra Concentrated Garcinia is thus “misbranded” and bears a “false or
25 misleading label” under California Health and Safety Code §§ 110390, 110660. *See also* 21
26 U.S.C. § 343. As such, Ultra Concentrated Garcinia violates the Sherman Law, including but
27 not limited to California Health and Safety Code §§ 110390, 110660.
28

1 **IV. Plaintiff's Purchase, Reliance, and Injury**

2 93. Mr. Jaber believes he purchased a 60-tablet bottle of Ultra Concentrated
3 Garcinia in or around January 2016 from the GNC store located at 4058 Piedmont Ave,
4 Oakland, California 94611, for approximately \$50.

5 94. When deciding to purchase Ultra Concentrated Garcinia, Plaintiff read and
6 relied on the following claims on the Ultra Concentrated Garcinia label:

- 7 a. "Ultra Concentrated Garcinia"
- 8 b. "WEIGHT LOSS" and "APPETITE SUPPORT"
- 9 c. "TRIPLE STRENGTH"
- 10 d. "1500mg Garcinia Cambogia Extract (750mg HCA)"
- 11 e. "1500mg PURE GARCINIA CAMBOGIA EXTRACT"
- 12 f. "50.0% Hydroxycitric Acid (HCA)"
- 13 g. "Garcinia cambogia . . . has been used . . . to make meals more filling"

14 and

15 h. "An active constituent of the fruit, HCA (hydroxycitric acid), is believed
16 to have beneficial effects on appetite and weight management."

17 95. Based on these representations, Plaintiff believed Ultra Concentrated Garcinia
18 was capable of providing weight-loss benefits and would help him lose weight, and suppress
19 or control his appetite.

20 96. When purchasing Ultra Concentrated Garcinia, Plaintiff was seeking a Product
21 that had the qualities described on the Ultra Concentrated Garcinia label, namely, an effective
22 weight-loss supplement that aids in weight loss and appetite control.

23 97. After purchasing Ultra Concentrated Garcinia, Mr. Jaber took it as directed on
24 its label, but experienced no weight loss, improved appetite control, or other weight-loss
25 benefits.

26 98. The representations on the Ultra Concentrated Garcinia label were false and
27 misleading, and had the capacity, tendency, and likelihood to confuse or confound Plaintiff
28 and other consumers acting reasonably (including the putative Class) because, as described

1 in detail herein, Ultra Concentrated Garcinia did not deliver the purported benefits nor is it
2 capable of delivering the purported benefits.

3 99. Plaintiff acted reasonably in relying on the weight-loss claims that Defendants
4 intentionally placed on the Ultra Concentrated Garcinia label with the intent to induce average
5 consumers into purchasing it.

6 100. Ultra Concentrated Garcinia costs more than similar products without
7 misleading labeling, and would have cost less absent the false and misleading statements.

8 101. Plaintiff paid more for Ultra Concentrated Garcinia, and would only have been
9 willing to pay less, or unwilling to purchase it at all, absent the false and misleading labeling
10 statements complained of herein.

11 102. For these reasons, Ultra Concentrated Garcinia was worth less than what
12 Plaintiff paid for it.

13 103. Instead of receiving a product that had actual beneficial weight-loss properties,
14 the Product that Plaintiff and the Class received was one that does not and cannot deliver the
15 claimed weight-loss benefits.

16 104. Plaintiff would not have purchased Ultra Concentrated Garcinia if he knew that
17 it was misbranded pursuant to California and FDA regulations or that its labeling claims were
18 false or misleading.

19 105. Plaintiff lost money as a result of Defendants' deceptive claims and practices in
20 that he did not receive what he paid for when purchasing Ultra Concentrated Garcinia.

21 106. Plaintiff detrimentally altered his position and suffered damages in an amount
22 equal to the amount he paid for the Product.

23 107. The senior officers and directors of Defendants, including Derek Ettinger, James
24 Grage, and Jeff Settembrino, allowed Ultra Concentrated Garcinia to be sold with full
25 knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and
26 misleading.

CLASS ACTION ALLEGATIONS

108. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks to represent a Class of all persons in California who purchased, for personal or household use, and not for resale or distribution, Defendants’ Ultra Concentrated Garcinia Product (the “Class”).

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

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

a. whether Defendants communicated a message regarding weight-loss benefits of the Product through its packaging and advertising;

b. whether that message was material, or likely to be material to a reasonable consumer;

c. whether the challenged claims discussed herein are false, misleading, or likely to deceive a reasonable consumer;

d. whether Defendants’ conduct violates public policy;

e. whether Defendants’ conduct violates state and federal food statutes or regulations;

f. the proper amount of damages, including punitive damages;

g. the proper amount of restitution;

h. the proper injunctive relief, including a corrective advertising campaign;

and

i. the proper amount of attorney’s fees.

111. These common questions of law and fact predominate over questions that affect only individual Class Members.

112. Plaintiff’s claims are typical of Class Members’ claims because they are based on the same underlying facts, events, and circumstances relating to Defendants’ conduct. Specifically, all Class Members, including Plaintiff, were subjected to the same misleading and deceptive conduct when they purchased the challenged Product, and suffered economic

1 injury because the Product was and still is misrepresented. Absent Defendants' business
2 practice of deceptively and unlawfully labeling Ultra Concentrated Garcinia, Plaintiff and
3 Class Members would not have purchased Ultra Concentrated Garcinia.

4 113. Plaintiff will fairly and adequately represent and protect the interests of the
5 Class, has no interests incompatible with the interests of the Class, and has retained counsel
6 competent and experienced in class action litigation, and specifically in litigation involving
7 the false and misleading advertising.

8 114. Class treatment is superior to other options for resolution of the controversy
9 because the relief sought for each Class Member is small relative to the cost of litigation such
10 that, absent representative litigation, it would be infeasible for Class Members to redress the
11 wrongs done to them.

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

14 116. Defendants have acted on grounds applicable to the Class, thereby making
15 appropriate final injunctive and declaratory relief concerning the Class as a whole.

16 117. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
17 23(b)(2), and 23(b)(3).

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Violations of the Unfair Competition Law,**

21 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

22 118. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
23 as if set forth in full herein.

24 119. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."
25 Cal. Bus. & Prof. Code § 17200.

26 120. The acts, omissions, misrepresentations, practices, and non-disclosures of
27 Defendants as alleged herein constitute business acts and practices.

28 **Fraudulent**

1 121. A statement or practice is fraudulent under the UCL if it is likely to mislead or
2 deceive the public, applying an objective reasonable consumer test.

3 122. As set forth herein, Defendants' claims relating to Ultra Concentrated Garcinia
4 are likely to mislead reasonable consumers to believe the Product can provide weight-loss
5 benefits, when it cannot.

6 **Unlawful**

7 123. The acts alleged herein are "unlawful" under the UCL in that they violate at least
8 the following laws:

- 9 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 10 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 11 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- 12 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
13 Code §§ 109875 *et seq.*

14 **Unfair**

15 124. Defendants' conduct with respect to the labeling, advertising, and sale of the
16 Product was unfair because Defendants' conduct was immoral, unethical, unscrupulous, or
17 substantially injurious to consumers and the utility of their conduct, if any, does not outweigh
18 the gravity of the harm to their victims.

19 125. Defendants' conduct with respect to the labeling, advertising, and sale of the
20 Product was and is also unfair because it violates public policy as declared by specific
21 constitutional, statutory or regulatory provisions, including but not limited to the Consumers
22 Legal Remedies Act, the False Advertising Law, portions of the Federal Food, Drug, and
23 Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

24 126. Defendants' conduct with respect to the labeling, advertising, and sale of the
25 Product was and is also unfair because the consumer injury was substantial, not outweighed
26 by benefits to consumers or competition, and not one consumers themselves could reasonably
27 have avoided.

28

1 127. Defendants profited from their sale of the falsely, deceptively, and unlawfully
2 advertised Product to unwary consumers.

3 128. Plaintiff and Class Members are likely to continue to be damaged by
4 Defendants' deceptive trade practices, because Defendants continues to disseminate
5 misleading information. Thus, injunctive relief enjoining Defendants' deceptive practices is
6 proper.

7 129. Defendants' conduct caused and continues to cause substantial injury to Plaintiff
8 and the other Class Members. Plaintiff has suffered injury in fact as a result of Defendants'
9 unlawful conduct.

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

13 131. Plaintiff and the Class also seek an order for disgorgement and restitution of all
14 monies from the sale of Defendants' Ultra Concentrated Garcinia, which may have been
15 unjustly acquired through acts of unlawful competition.

16 **SECOND CAUSE OF ACTION**

17 **Violations of the False Advertising Law,**

18 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

19 132. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
20 as if set forth in full herein.

21 133. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
22 association, or any employee thereof with intent directly or indirectly to dispose of real or
23 personal property or to perform services” to disseminate any statement “which is untrue or
24 misleading, and which is known, or which by the exercise of reasonable care should be
25 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

26 134. It is also unlawful under the FAL to disseminate statements concerning property
27 or services that are “untrue or misleading, and which is known, or which by the exercise of
28 reasonable care should be known, to be untrue or misleading.” *Id.*

1 135. As alleged herein, the advertisements, labeling, policies, acts, and practices of
2 Defendants relating to the Product misled consumers acting reasonably as to the effectiveness
3 and weight-loss properties of the Product.

4 136. Plaintiff suffered injury in fact as a result of Defendants' actions as set forth
5 herein because he purchased the Product in reliance on Defendants' false and misleading
6 labeling claims that the Product, among other things, can provide weight-loss benefits,
7 specifically, aiding weight loss and appetite control.

8 137. Defendants' business practices as alleged herein constitute deceptive, untrue,
9 and misleading advertising pursuant to the FAL because Defendants have advertised the
10 Product in a manner that is untrue and misleading, which Defendants knew or reasonably
11 should have known, and omitted material information from its advertising.

12 138. Defendants profited from their sale of the falsely and deceptively advertised
13 Product to unwary consumers.

14 139. As a result, Plaintiff, the Class, and the general public are entitled to injunctive
15 and equitable relief, restitution, and an order for the disgorgement of the funds by which
16 Defendants were unjustly enriched.

17 140. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of himself and
18 the Class, seeks an order enjoining Defendants from continuing to engage in deceptive
19 business practices, false advertising, and any other act prohibited by law, including those set
20 forth in this Complaint.

21 **THIRD CAUSE OF ACTION**

22 **Violations of the Consumer Legal Remedies Act,**

23 **Cal. Civ. Code §§ 1750 *et seq.***

24 141. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
25 as if set forth in full herein.

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

1 143. Defendants' false and misleading labeling and other policies, acts, and practices
2 were designed to, and did, induce the purchase and use of Ultra Concentrated Garcinia for
3 personal, family, or household purposes by Plaintiff and Class Members, and violated and
4 continue to violate the following sections of the CLRA:

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

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

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

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

12 144. Defendants profited from the sale of the falsely, deceptively, and unlawfully
13 advertised Ultra Concentrated Garcinia to unwary consumers.

14 145. As a result, Plaintiff and the Class have suffered harm, and therefore seek, (a)
15 actual damages in the amount of the total retail sales price of the Ultra Concentrated Garcinia
16 Products sold throughout the Class Period to all Class Members, and (b) punitive damages in
17 an amount sufficient to deter and punish, (c) injunctive relief in the form of modified
18 advertising and a corrective advertising plan, and (d) restitution.

19 146. Defendants' wrongful business practices constituted, and constitute, a
20 continuing course of conduct in violation of the CLRA.

21 147. Pursuant to California Civil Code § 1782 Plaintiff notified BPI Sports, LLC,
22 Image Sports, LLC, and Be Powerful, LLC, in writing by certified mail, return receipt
23 requested of his claims and the particular violations of § 1770 of the Act, but Be Powerful,
24 LLC, Image Sports, LLC, and BPI Sports, LLC failed to remedy the violations within 30 days
25 thereafter.

26 148. Because Defendants failed to implement remedial measures, Plaintiff, on behalf
27 of himself and the Class, seeks injunctive relief under Civil Code § 1782(d), as well as actual
28 and punitive damages, including attorneys' fees.

1 149. In compliance with Cal. Civ. Code § 1780(d), Plaintiff Nicholas Jaber’s affidavit
2 of venue is filed concurrently herewith, attached to the Complaint.

3 **FOURTH CAUSE OF ACTION**

4 **Breach of Express Warranties,**

5 **Cal. Com. Code § 2313(1)**

6 150. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
7 as if set forth in full herein.

8 151. Through the Ultra Concentrated Garcinia labels and advertising, Defendants
9 made affirmations of fact or promises, or description of goods, which were “part of the basis
10 of the bargain,” in that Plaintiff and the Class purchased the Product in reasonable reliance
11 on those statements. Cal. Com. Code § 2313(1). Specifically, Defendants warranted that Ultra
12 Concentrated Garcinia aids, *inter alia*, “WEIGHT LOSS” and “APPETITE SUPPORT.”

13 152. Defendants breached the express warranties by selling a Product that does not
14 and cannot provide the promised benefits.

15 153. That breach actually and proximately caused injury in the form of the lost
16 purchase price that Plaintiff and Class members paid for Ultra Concentrated Garcinia.

17 **FIFTH CAUSE OF ACTION**

18 **Breach of Implied Warranty,**

19 **Cal. Com. Code § 2314**

20 154. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
21 as if set forth in full herein.

22 155. Defendants, through their acts and omissions set forth herein, in the sale,
23 marketing, and promotion of Ultra Concentrated Garcinia, made representations to Plaintiff
24 and the Class that, among other things, Ultra Concentrated Garcinia can aid weight loss and
25 appetite control.

26 156. Plaintiff and the Class bought Ultra Concentrated Garcinia manufactured,
27 advertised, and sold by Defendants, as described herein.

1 157. Defendants are merchants with respect to the goods of this kind which were sold
2 to Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an
3 implied warranty that those goods were merchantable.

4 158. However, Defendants breached that implied warranty in that Ultra Concentrated
5 Garcinia provides no weight-loss benefits, as set forth in detail herein.

6 159. As an actual and proximate result of Defendants' conduct, Plaintiff and the Class
7 did not receive goods as impliedly warranted by Defendants to be merchantable in that they
8 did not conform to promises and affirmations made on the container or label of the goods.

9 160. Plaintiff and Class have sustained damages as a proximate result of the foregoing
10 breach of implied warranty in the amount of the Ultra Concentrated Garcinia's purchase price.

11 **PRAYER FOR RELIEF**

12 161. Wherefore, Plaintiff, on behalf of himself, all others similarly situated and the
13 general public, prays for judgment against Defendants as to each and every cause of action,
14 and the following remedies:

15 A. An Order declaring this action to be a proper class action, appointing Plaintiff
16 as class representative, and appointing undersigned counsel as class counsel;

17 B. An Order requiring Defendants to bear the cost of class notice;

18 C. An Order compelling Defendants to conduct a corrective advertising campaign;

19 D. An Order compelling Defendants to destroy all misleading and deceptive
20 advertising materials and Product labels, and to recall all offending Products;

21 E. An Order requiring Defendants to disgorge all monies, revenues, and profits
22 obtained by means of any wrongful act or practice;

23 F. An Order requiring Defendants to pay restitution to restore all funds acquired by
24 means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent
25 business act or practice, untrue or misleading advertising, plus pre-and post-judgment interest
26 thereon;

27 G. An Order requiring Defendants to pay actual and punitive damages where
28 permitted under law;

- 1 H. An award of attorneys' fees and costs; and
2 I. Any other and further relief that Court deems necessary, just, or proper.

3 **JURY DEMAND**

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

5
6 Dated: September 19, 2016

/s/ Paul K. Joseph _____

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Attorney for Plaintiff and the Proposed Class

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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

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.

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Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NICHOLAS JABER, on behalf of himself,
all others similarly situated and the general
public,

Plaintiff,

v.

BPI SPORTS, LLC, IMAGE SPORTS, LLC,
and BE POWERFUL, LLC,

Defendants.

**CONSUMERS LEGAL REMEDIES
ACT VENUE AFFIDAVIT**

1 I, Nicholas Jaber, declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by California
3 Civil Code § 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action
5 because the transactions that are the subject of the action occurred in this county.

6
7 I declare under penalty of perjury under the laws of the United States that the foregoing
8 is true and correct.

9 Executed on September 7, 2016, at Alameda, California.

10
11 

12 _____
13 Nicholas Jaber
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