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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 08 2015

R. Gonzalez

ALS

SEP 10 2015

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10 STEPHEN COLUCCI, individually, and on
behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 PRIVATE LABEL NUTRACEUTICALS LLC
14 dba MARITZMAYER LABORATORIES, a
Georgia Limited Liability Company,

15 Defendants.
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Case No.: RIC 1411347

The Hon. Craig Riemer
Department 5

**SECOND AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Complaint: November 26, 2014
Trial: Not yet set

1 Plaintiff STEPHEN COLUCCI ("Plaintiff"), individually and on behalf of all others similarly
2 situated, alleges the following on information and belief:

3 **I. INTRODUCTION**

4 1. Private Label Nutraceuticals LLC dba MaritzMayer Laboratories ("Defendant")
5 manufactures, markets, and sells "Garcinia Cambogia 1300" ("1300") and Garcinia Cambogia 75
6 ("75") (collectively, the ("Products")) as treatments for weight management. Defendant claims the
7 Products "Supports Appetite Control" and "Inhibits Fat Production." In reality, the Products'
8 ingredients have never been scientifically substantiated as being able to support appetite control or
9 inhibit fat production, and certainly not to the extent claimed by Defendant. Defendant's statements
10 about the Products' efficacy are false and misleading, and Defendant can point to no scientific
11 evidence to support its unfounded claims. In reality, the scientific studies and meta-analyses of
12 available studies regarding the ingredients in the Products, show results contrary to Defendant's
13 claims.^{1, 2}

14 2. Defendant's misrepresentations regarding the efficacy of the Products were designed
15 to, and did, lead Plaintiff and others similarly situated (collectively the "Class") to believe that the
16 Products were effective weight loss supplements that specifically supported appetite control and
17 inhibited fat production. Plaintiff and members of the Class relied on Defendant's misrepresentations
18 and would not have paid as much, if at all, for the Products but for Defendant's misrepresentations.

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

21 **II. THE PARTIES**

22 **A. Plaintiff.**

23 4. Plaintiff is a resident of Riverside, California and purchased 1300 in Riverside County
24 in 2013. Plaintiff relied on Defendant's representations regarding the efficacy of 1300, as detailed

25 _____
26 ¹ Heymsfield SB, Allison DB, Vasselli JR, Pietrobelli A, Greenfield D, Nunez C. (1998). "Garcinia
27 cambogia (hydroxycitric acid) as a potential antiobesity agent: a randomized controlled trial". JAMA.
28 280 (19): 1596-600.

² Igho O, Shao K, Rachel P, Barbara W, Edzard E (2011). "The Use of Garcinia Extract Hydroxycitric
Acid as a Weight loss Supplement: A Systematic Review and Meta-Analysis of Randomised Clinical
Trials". J Obes. 2011 (622): 849.

1 herein, and but for those representations, Plaintiff would not have purchased or paid as much for 1300.

2 Specifically, Plaintiff relied on the following labeling claims:

- 3 • Weight Management
- 4 • Supports Appetite Control ✓
- 5 • Inhibits Fat Production ✓
- 6 • Pure and Potent ✓

7 **B. Defendants.**

8 5. Upon such information and belief, Defendant Private Label Nutraceuticals dba
9 MaritzMayer Laboratories is a Georgia Limited Liability Company with its principal place of business
10 in Norcross, Georgia. Defendant develops and markets the Products and does business in California.

11 6. The true names and capacities, whether individual, corporate, associate, representative,
12 alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 1 through 25
13 inclusive are presently unknown to Plaintiff at this time, and are therefore sued by such fictitious
14 names pursuant to California Code of Civil Procedure § 474. Plaintiff will amend this Complaint to
15 allege the true names and capacities of DOES 1 through 25 when the same have been ascertained.
16 Plaintiff is further informed and believes, and based thereon allege, that DOES 1 through 25 were
17 and/or are, in some manner or way, responsible for and liable to Plaintiff for the events, happenings,
18 and damages hereinafter set forth below.

19 **III. JURISDICTION AND VENUE**

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

21 8. Venue is proper in this Court because Plaintiff purchased 1300 in this County and
22 because Defendant has received substantial compensation from sales in this County. Specifically,
23 Defendant knowingly engages in activities directed at consumers in this County, and Defendant
24 obtains substantial benefits from their scheme perpetrated in this County. Plaintiff has filed
25 concurrently with his original Complaint the declaration of venue required by Civil Code Section
26 1780(d) and was attached thereto as Exhibit One.

27 9. Defendant and other out-of-state participants can be brought before this Court pursuant
28 to California's "long-arm" jurisdictional statute.

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IV. FACTS

10. Defendant manufactures, markets, and sells the Products as weight loss supplements. Defendant advertises the Products using the following words and other similar words to the same effect:

- Weight Management;
- Supports Appetite Control;
- Inhibits Fat Production; and
- Pure and Potent.

11. Defendant's claims for the Products set forth in the preceding paragraph of this complaint are false and misleading, Defendant did not have substantiation for these claims, and the scientific studies regarding the ingredients in the Products show results contrary to Defendant's claims. Contrary to Defendant's claims, the Products do not promote weight management; support appetite control, or inhibit fat production. Indeed, Defendant's claims in connection with the Products are inconsistent with and/or conflict with the guidelines and/or statements fo the U.S. Food and Drug Administration ("FDA") which, in an effort to promote real weight loss and to prevent Americans from being defrauded by "miracle pills," instructs that "[t]he only proven way to lose weight is either to reduce the number of calories you eat or to increace the number of calories you burn off through exercise. Most experts recommend a combination of both." A true and correct copy of a brochure published by the FDA, *The Facts About Weight Loss Products and Programs*, FDA/FTC/NAAG Brochure*: 1992, available at: http://www.attorneygeneral.gov/uploadedfiles/consumers/weight_loss.pdf.

12. Defendant at all times knew that the Products did not have the effects, properties, and/or characteristics claimed for it, but nevertheless manufactured, marketed, distributed, and/or sold the Products pursuant to the representations set forth above.

13. Plaintiff purchased 1300 for his own personal use in 2013. In so doing, Plaintiff relied on the representations contained in the marketing materials, advertisements, and labels for the product set forth above.

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1 14. Plaintiff purchased and consumed 1300 as directed, but the product has not worked as
2 advertised. Specifically, Plaintiff has found that 1300 does not promote weight management, support
3 appetite control, or inhibit fat production, and that Defendant's representations about the product set
4 forth herein are false and misleading. Plaintiff has thus suffered injury-in-fact and damage, including
5 but not limited to, the purchase price of the product.

6 15. Plaintiff is informed and believes, and on that basis alleges, that Defendant continued
7 to market and sell the Products in the manner described herein after knowing that its marketing and
8 representations were false and misleading, as set forth herein. Defendant's conduct and actions
9 alleged herein were despicable, and were done maliciously, oppressively and/or fraudulently, with a
10 willful and conscious disregard of Plaintiff and class members' rights.

11 16. Defendant's exaggerated and/ or blatant misrepresentations regarding the efficacy of
12 the Products were designed to, and did, lead Plaintiff and others similarly situated (collectively the
13 "Class") to believe that the Products were effective weight management supplements that would
14 support appetite control and inhibit fat production. Plaintiff and members of the Class relied on
15 Defendant's misrepresentations and would not have paid as much, if at all, for the Products but for
16 Defendant's misrepresentations.

17 17. Defendant sells the Products for approximately \$2.00 to \$4.00 based on the preceding
18 false advertising claims. As a result, Defendant has wrongfully taken hundreds of thousands of dollars
19 from California consumers.

20 18. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands
21 of California consumers by Defendant, and to recover the funds taken by this unlawful practice.

22 V. CLASS ACTION ALLEGATIONS

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

25 All persons who are domiciled or reside in the United States of America, who purchased 1300
26 or 75 in the United States for personal use between November 26, 2010 and the Opt-Out Date, and
27 were domiciled or resided in United States at the time of purchase.

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1 20. Excluded from the Class are governmental entities, Defendant, any entity in which
2 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
3 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, and individuals
4 bound by any prior settlement involving the Products. Also excluded from the Class is any judge,
5 justice, or judicial officer presiding over this matter and the members of their immediate families and
6 judicial staff.

7 21. The proposed Class is so numerous that individual joinder of all its members is
8 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
9 the total number of Class members is at least in the tens of thousands and members of the Class are
10 numerous and geographically dispersed across California and the United States. While the exact
11 number and identities of the Class members are unknown at this time, such information can be
12 ascertained through appropriate investigation and discovery. The disposition of the claims of the
13 Class members in a single class action will provide substantial benefits to all parties and to the Court.

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

- 18 a. Whether Defendant's efficacy claims are accurate;
- 19 b. Whether Defendant's efficacy claims are properly substantiated;
- 20 c. Whether Defendant has falsely represented that the Products have uses and
21 benefits which it does not have;
- 22 d. Whether Defendant knew that its efficacy claims were false;
- 23 e. Whether Defendant's conduct constitutes a violation of the Consumers Legal
24 Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 25 f. Whether Defendant's conduct constitutes a violation of California's false
26 advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- 27 g. Whether Defendant's conduct constitutes an unfair, unlawful, and/or fraudulent
28 business practice in violation of California's unfair competition law (Cal. Bus.

1 & Prof. Code §§ 17200, et seq.);

2 h. Whether Plaintiff and Class members are entitled to compensatory damages,
3 and if so, the nature of such damages;

4 i. Whether Plaintiff and Class members are entitled to restitutionary relief; and

5 j. Whether Plaintiff and Class members are entitled to injunctive relief.

6 23. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
7 members of the Class have been similarly affected by Defendant's common course of conduct since
8 they all relied on Defendant's representations concerning the Products and purchased them based on
9 those representations.

10 24. Plaintiff will fairly and adequately represent and protect the interests of the Class.
11 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.
12 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class
13 and have the financial resources to do so. Plaintiff has retained a law firm who is widely recognized
14 as one of the most successful and effective class action litigators in California, and whose victories
15 have been publicized on CNN, Fox News, MSNBC, and nearly every major California newspaper.
16 The firm has also been certified as lead class counsel in similar class actions.

17 25. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a
18 result of Defendant's unlawful and wrongful conduct. A class action is superior to other available
19 methods for the fair and efficient adjudication of the present controversy. Individual joinder of all
20 members of the class is impracticable. Even if individual class members had the resources to pursue
21 individual litigation, it would be unduly burdensome to the courts in which the individual litigation
22 would proceed. Individual litigation magnifies the delay and expense to all parties in the court system
23 of resolving the controversies engendered by Defendant's common course of conduct. The class
24 action device allows a single court to provide the benefits of unitary adjudication, judicial economy,
25 and the fair and efficient handling of all class members' claims in a single forum. The conduct of this
26 action as a class action conserves the resources of the parties and of the judicial system and protects
27 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
28 mechanism that allows an opportunity for legal redress and justice.

1 26. Adjudication of individual class members' claims with respect to Defendant would, as
2 a practical matter, be dispositive of the interests of other members not parties to the adjudication, and
3 could substantially impair or impede the ability of other class members to protect their interests.

4 **VI. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

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

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

8 **(By Plaintiff and on Behalf of the Class Against Defendant)**

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

11 28. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
12 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
13 purchased 1300 in reliance on Defendant's marketing claims with respect to efficacy. Plaintiff used
14 1300 as directed, but it did not work as advertised and was not of the quality and standard advertised
15 by Defendant.

16 29. Defendant has engaged in and continues to engage in business practices in violation of
17 California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false and
18 unsubstantiated representations concerning the efficacy of the Products. These business practices are
19 misleading and/or likely to mislead consumers and should be enjoined.

20 30. Defendant has engaged in deceptive acts or practices intended to result in the sale of
21 the Products in violation of Civil Code § 1770. Defendant knew and/or should have known that its
22 representations of fact concerning the efficacy of the Products were material and likely to mislead the
23 public. Defendant affirmatively misrepresented that the Products were of a certain standard and
24 quality with certain benefits which it did not have.

25 31. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
26 including but not limited to, the following provisions: (1) using deceptive representations in
27 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods
28 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which

1 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with
2 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate
3 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or
4 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

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

7 33. Concurrently with the filing of Plaintiff's original Complaint, Plaintiff's counsel mailed
8 to Defendant, by certified mail, return receipt requested, the written notice required by Civil Code
9 Section 1782(a) on November 24, 2014. A copy of that letter was attached thereto as Exhibit Three.
10 Defendant failed to respond with appropriate corrective measures as set forth in the letter and in the
11 California Consumer Legal Remedies Act within thirty days. As such, Plaintiff now amends his
12 complaint, pursuant to Civil Code § 1782(d), to seek damages under the California Consumer Legal
13 Remedies Act.

14 34. The declaration of venue required by Civil Code § 1780(d) is attached hereto as Exhibit
15 One.

16 35. Defendant's wrongful business practices constituted, and constitute, a continuing
17 course of conduct in violation of the Consumer Legal Remedies Act since Defendant is still
18 representing that the Products have characteristics, uses, benefits, and abilities which are false and
19 misleading, and have injured Plaintiff and the Class.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

22 **(CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)**

23 **(By Plaintiff and on Behalf of the Class Against Defendant)**

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

26 37. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
27 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
28 purchased 1300 in reliance on Defendant's marketing claims. Plaintiff used 1300 as directed, but it

1 did not work as advertised and did not provide any of the promised benefits.

2 38. Defendant has engaged in false advertising as they have disseminated false and/or
3 misleading representations about the Products.

4 39. Defendant knew or should have known by exercising reasonable care that its
5 representations were false and/or misleading. During the Class Period, Defendant engaged in false
6 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its
7 advertising and marketing of the Products to Plaintiff, Class members, and the consuming public that
8 its Product is effective.

9 40. Each of the aforementioned representations alleged in this Complaint was false and
10 misleading because the Products are not of the standard, quality or grade advertised, and is in reality,
11 ineffective.

12 41. By disseminating and publishing these statements in connection with the sale of the
13 Products Defendant has engaged in and continues to engage in false advertising in violation of Bus. &
14 Prof. Code §§ 17500, *et seq.*

15 42. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant
16 has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant
17 has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution
18 and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500,
19 *et seq.*

20 43. Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of
21 Defendant's ill-gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

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

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1 **THIRD CAUSE OF ACTION**

2 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

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

4 **(By Plaintiff and on Behalf of the Class Against Defendant)**

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

7 46. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
8 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
9 purchased 1300 in reliance on Defendant's marketing claims. Plaintiff used 1300 as directed, but it
10 did not work as advertised and were not of the standard, quality and grade advertised.

11 47. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive
12 business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*,
13 in that Defendant's actions are unfair, unlawful, and fraudulent, and because Defendant has made
14 unfair, deceptive, untrue, or misleading statements in advertising media, including the Internet, within
15 the meaning of California Business and Professions Code §§ 17200, *et seq.*

16 48. Defendant knew or should have known by exercising reasonable care that its
17 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,
18 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
19 by misrepresenting in its advertising and marketing of the Products to Plaintiff, Class members, and
20 the consuming public that, the Products were effective.

21 49. Each of the aforementioned representations alleged in this Complaint was false and
22 misleading because the Products are not of the standard, quality or grade advertised.

23 50. Defendant's business practices, as alleged herein, are unfair because they offend
24 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially
25 injurious to consumers in that consumers are misled by the claims made with respect to the Products
26 as set forth herein.

27 51. Defendant's business practices, as alleged herein, are unlawful because they violate the
28 Consumer Legal Remedies Act and False Advertising Law.

1 52. Defendant's business practices, as alleged herein, are fraudulent because they are likely
2 to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the
3 Products have characteristics and benefits it does not have.

4 53. Defendant's wrongful business practices constituted, and constitute, a continuing
5 course of conduct of unfair competition since Defendant is marketing and selling the Products in a
6 manner likely to deceive the public.

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

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

17 **FOURTH CAUSE OF ACTION**

18 **NEGLIGENT MISREPRESENTATION**

19 **(By Plaintiff and on Behalf of the Class Against Defendant)**

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

22 57. During the Class Period, Defendant misrepresented to consumers through the
23 advertising, marketing, and sale of the Products that use of the Products would:

- 24 • [promote] Weight Management
- 25 • Supports Appetite Control ✓
- 26 • Inhibits Fat Production ✓
- 27 • [contained ingredients that are] Pure and Potent ✓

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1 58. Defendant's misrepresentations were false because the Products do promote weight
2 management, does not support appetite control, does not inhibit fat production, and is not pure and
3 potent. In fact, no competent, reliable scientific research can support Defendant's claims and
4 available scientific research, as shown herein, actually contradicts Defendant's claims.

5 59. Defendant's misrepresentations were material because a reasonable consumer would
6 attach importance to them in determining whether to purchase and use the Products.

7 60. Defendant's material misrepresentations regarding the efficacy of the Products are false
8 and made without reasonable grounds for believing them to be true.

9 61. Defendant made material misrepresentations regarding the Products with the intent to
10 induce Plaintiff and Class members to purchase and use the Products.

11 62. Plaintiff and Class members reasonably relied on Defendant's material
12 misrepresentations in choosing to purchase and use the Products.

13 63. As a direct and proximate result of Defendant's conduct, Plaintiff and Class members
14 have incurred damages in an amount to be proven at trial. Plaintiff and Class members are not seeking
15 damages arising out of personal injuries.

16 **FIFTH CAUSE OF ACTION**

17 **FRAUD**

18 **(By Plaintiff and on Behalf of the Class Against Defendant)**

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

21 65. Defendant approved and caused to be disseminated the false claims regarding the
22 Products. Defendant knew when it began making claims about the Products, and knows now, that its
23 claims regarding the Products were false, contrary to established medical authority, and were likely to
24 lead consumers. These representations were prominently displayed on every package of the Products,
25 causing plaintiff and every class member to be subjected to the same fraudulent labeling each time
26 they purchased the Products.

27 66. As stated above, these false claims, included on each package of the Products contained
28 the following words and similar words to the same effect:

- 1 • Weight Management
- 2 • Supports Appetite Control ✓
- 3 • Inhibits Fat Production ✓
- 4 • Pure and Potent ✓

5 67. Plaintiff reviewed and believed, as stated herein, each of the aforementioned fraudulent
6 labeling claims made by Defendant.

7 68. Plaintiff was misled by the aforementioned claims because the claims are in fact false,
8 as shown herein.

9 69. Plaintiff purchased 1300 in Riverside, California in 2013.

10 70. Defendant acted fraudulently and deceitfully with knowledge that Plaintiff and the
11 Class would rely on its labeling claims.

12 71. In purchasing 1300, Plaintiff expressly relied on the representations that Defendant
13 made and had no reason to doubt or dispute those representations. Indeed, due to the uniformity of the
14 misrepresentations, Plaintiff and the Class at all times are presumed to have reasonably and justifiably
15 relied both directly and indirectly on the actions and representations of Defendant.

16 72. As a direct and proximate result of Defendant's fraud, Plaintiff and the Class have
17 suffered actual damages in an amount not presently known, but which will be shown by proof at time
18 of trial, including incidental and consequential damages, interest, and reasonable attorneys' fees.

19 73. Plaintiff is informed and believes and thereon alleges that Defendant undertook the
20 aforesaid illegal acts intentionally and with conscious disregard of the rights of Plaintiff and the Class.

21
22 **PRAYER FOR RELIEF**

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

- 25 1. For an order certifying the Class, appointing Plaintiff and his counsel to represent the
26 Class, and notice to the Class to be paid by Defendant;
- 27 2. For damages suffered by Plaintiff and Class members;
- 28 3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by

1 Defendant;

2 4. For an injunction ordering Defendant to cease and desist from engaging in the unfair,
3 unlawful, and/or fraudulent practices alleged in the Complaint;

4 5. For both pre-judgment and post-judgment interest at the maximum allowable rate on
5 any amounts awarded;

6 6. For Plaintiff's costs of the proceedings herein;

7 7. For reasonable attorneys' fees as allowed by statute; and

8 8. For any and all such other and further relief that this Court may deem just and proper.

9 **DEMAND FOR JURY TRIAL**

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

12 Dated: September 3, 2015

NEWPORT TRIAL GROUP
A Professional Corporation

14
15 By: 

Ryan M. Ferrell
Attorney for Plaintiff and the Class

1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
4 party to the within action; my business address is 4100 Newport Place, Suite 800, Newport Beach, CA
5 92660.

6 On August 31, 2015, I served the foregoing document described as SECOND AMENDED
7 COMPLAINT on the following person(s) in the manner indicated:

8 **SEE ATTACHED SERVICE LIST**


9 (BY MAIL) I am familiar with the practice of Newport Trial Group for collection and
10 processing of correspondence for mailing with the United States Postal Service. Correspondence so
11 collected and processed is deposited with the United States Postal Service that same day in the
12 ordinary course of business. On this date, a copy of said document was placed in a sealed envelope,
13 with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection
14 and mailing at Newport Trial Group, Newport Beach, California, following ordinary business
15 practices.

16 (BY FEDERAL EXPRESS) I am familiar with the practice of Newport Trial Group for
17 collection and processing of correspondence for delivery by overnight courier. Correspondence so
18 collected and processed is deposited in a box or other facility regularly maintained by Federal Express
19 that same day in the ordinary course of business. On this date, a copy of said document was placed in a
20 sealed envelope designated by Federal Express with delivery fees paid or provided for, addressed as
21 set forth herein, and such envelope was placed for delivery by Federal Express at Newport Trial
22 Group, Newport Beach, California, following ordinary business practices.

23 (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal
24 sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is
25 (949) 706-6469, the document described above and a copy of this declaration to the person, and at the
26 facsimile transmission telephone numbers, set forth herein. The above-described transmission was
27 reported as complete and without error by a properly issued transmission report issued by the facsimile
28 transmission machine upon which the said transmission was made immediately following the
transmission.

(BY ELECTRONIC SERVICE) I am causing the document(s) to be served by email or
electronic transmission via One Legal sent on the date shown below to the email addresses of the
persons listed in the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on August 31, 2015, at Newport Beach,
California.


Briana Rice

SERVICE LIST

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