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

TANNER KIRCHOFF, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

PhD FITNESS, LLC, a California
Limited Liability Company,

Defendant.

Case No:

**CLASS ACTION COMPLAINT
FOR:**

- 1. VIOLATION OF WASH. REV. CODE § 19.86.010 *et seq.*;**
- 2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*;**
- 3. BREACH OF EXPRESS WARRANTY;**
- 4. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;**
- 5. NEGLIGENT MISREPRESENTATION;**
- 6. INTENTIONAL MISREPRESENTATION; AND**
- 7. UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Tanner Kirchoff (“Plaintiff”), individually and on behalf of all others similarly
2 situated, based on the investigation of counsel and his own individual knowledge as to
3 Plaintiff’s own circumstances, hereby complains against defendant PhD Fitness, LLC
4 (“Defendant” or “PhD”) as follows:

5 **I. INTRODUCTION**

6 1. PhD formulates, manufactures, advertises and sells the popular Pre-JYM
7 and Post-JYM sport supplements (the “Products”) throughout the United States,
8 including in California and Washington. However, PhD markets these Products in a
9 systematically misleading manner, stating that its products have characteristics and
10 benefits that they do not.

11 2. Defendant’s multiple and prominent misrepresentations regarding its
12 sport supplements form a pattern of unlawful and unfair business practices that harms
13 the consuming public.

14 3. Jim Stoppani, the face and member of Defendant PhD Fitness, LLC,
15 boasts of his expertise in sports supplementation throughout his marketing materials
16 and labels of the Products. However, although Stoppani consistently claims that all of
17 the ingredients in his products are scientifically supported and dosed properly, they are
18 not. In reality, Stoppani and Defendant PhD Fitness, LLC deceive consumers in the
19 same exact way as their competitors.

20 4. These actions violate a number of state consumer protections laws,
21 including the Washington Unfair Business Practices Act (“WUBPA”) and the
22 California Consumer Legal Remedies Act (“CLRA”). Defendant’s actions have
23 injured Plaintiff and members of the Class, therefore Plaintiff seeks actual damages,
24 restitution and/or disgorgement, punitive and statutory damages, and any injunctive or
25 equitable relief deemed proper by the Court.

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1 **II. JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over the subject matter of this action pursuant
3 to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff
4 alleges that he and the Class members are citizens of different states from Defendant,
5 and the cumulative amount in controversy for Plaintiff and the Class exceeds \$5
6 million, exclusive of interest and costs.

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

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

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

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

16 **III. PARTIES**

17 7. Plaintiff Tanner Kirchoff (“Kirchoff”) is, and at all times relevant hereto
18 was a resident of Washington and a citizen of Washington. Plaintiff Kirchoff has
19 purchased several of Defendant’s products, including Pre-JYM and Post-JYM.
20 Plaintiff Kirchoff most recently purchased Defendant’s Pre-JYM and Post-JYM
21 products at a GNC store located at 4630 25th Ave NE, Seattle, Washington
22 approximately on October 3rd, 2016, but has also purchased these Products numerous
23 times through Bodybuilding.com.

24 8. Defendant PhD Fitness, LLC is a California Limited Liability Company
25 with its headquarters in Thousand Oaks, California. PhD Fitness manufactures sports-
26 oriented dietary supplement products. PhD manufactures, markets, advertises,
27 distributes and sells a line of sport supplement products in California, Washington and
28

1 throughout the United States. All of PhD's product labeling and advertising for its Pre-
2 JYM and Post-JYM products, sold and distributed nationwide, are and were created,
3 controlled and distributed by management located at PhD's Thousand Oaks, California
4 headquarters.

5 **IV. SUBSTANTIVE ALLEGATIONS**

6 **A. Misrepresentations Regarding Defendant's Products Sold Exclusively**
7 **at Bodybuilding.com.**

8 9. On July 19, 2013 PhD started the JYM dietary supplement line through
9 an exclusive deal with online retail giant Bodybuilding.com by offering its products in
10 interstate commerce. On May 17, 2016 the exclusive deal between PhD and
11 Bodybuilding.com expired.

12 10. Every consumer that purchased the Products during this time period was
13 exposed to the same materials which were at the point of purchase on the
14 Bodybuilding.com website.

15 **Pre-JYM Claims**

16 11. Defendant claims that the Pre-JYM product uses "Proper Doses" and
17 blames competitors of misleading consumers by stating that they are "still guilty of
18 grossly underdosing ingredients":

19 **Proper Doses**

20 For the reasons detailed above, many supplement companies are moving toward
21 transparency and axing proprietary blends. That's a good thing. However, these companies
22 are still guilty of grossly underdosing ingredients.

23 12. Defendant goes further in its misleading marketing claims by stating that
24 the Pre-JYM product "contains 13 ingredients at proper, powerful doses" and "Full
25 doses of 13 science-backed ingredients":

No Concentrates

Many companies also try to trick buyers by calling their pre-workout product "concentrated." A serving of one of these "concentrated" products can contain as few as 3 to 6 grams of powder. What kind of magic did they use to cram enough creatine, beta-alanine, citrulline, arginine, caffeine, and other ingredients into that tiny dose? They didn't use any magic, which is why all of those "concentrated" formulas also include proprietary blends. That's also why the serving size of Pre JYM is more than 26 grams. It contains 13 ingredients at proper, powerful doses.

Pre JYM Features

- Full doses of 13 science-backed ingredients.
- 6 grams of citrulline malate to promote better muscle endurance and bigger muscle pumps.*
- 6 grams of BCAAs in the 2:1:1 ratio best for blunting muscle fatigue, boosting muscle performance, and promoting muscle growth.*
- 2 grams of creatine HCL for greater strength, endurance, and the promotion of muscle growth.*
- 2 grams of CarnoSyn® beta-alanine to promote muscle power, strength, endurance, and muscle growth.*
- 1.5 grams of betaine for greater power and strength during workouts.*
- 600 milligrams of N-acetyl L-cysteine to blunt muscle fatigue and keep you training stronger, longer.*
- 500 milligrams of betavulgaris L.(beet) extract to provide real nitric oxide donors for bigger pumps and better energy.*
- 300 milligrams of caffeine to boost alertness and drive, increase muscle strength and endurance, during workouts for greater training intensity.*
- 300 milligrams of Alpha-GPC for better drive, focus, and strength in the gym.*
- 50 micrograms of huperzine A to increase mental focus and establish a stronger mind-muscle connection.*
- 5 milligrams of BioPerine® to enhance absorption of the active ingredients in Pre JYM for even better results.*

13. However, the Pre-JYM product has ingredients which are not backed by science, proven to be ineffective by scientific literature and many that are under-dosed for the claims that they make.

Creatine HCL

14. Defendant includes 2 grams of Creatine HCL which they claim produces greater strength, endurance, and the promotion of muscle growth.

15. This claim and dosage is based on the assumption that Creatine HCL

1 produces the same results as Creatine Monohydrate at a much smaller dose (“micro-
2 dosing”) because Creatine HCL is more water-soluble. There is absolutely no
3 scientific backing that Creatine HCL produces greater strength, endurance, and muscle
4 growth.

5 16. In fact, the theory of micro-dosing is fatally flawed.

6 17. First, Defendant fails to realize that the bioavailability of creatine is the
7 key to the effectiveness of the compound, not the water-solubility.

8 18. Bioavailability is determined by how much of the compound is absorbed
9 into the blood and ultimately the muscles.

10 19. Creatine Monohydrate has been found in a number of studies to be
11 completely absorbed by the GI tract¹. It has also been demonstrated that conversion of
12 creatine to creatinine in the GI tract is negligible with respect to transit duration,
13 suggesting that arterial bioavailability of CM is approximately 100%².

14 20. Again, there is no scientific backing for the claims Defendant associates
15 with Creatine HCL.

16 *CarnoSyn Beta-Alanine*

17 21. Defendant adds 2 grams of CarnoSyn beta-alanine to promote muscle
18 power, strength, endurance, and muscle growth.

19 22. The patented beta-alanine product, CarnoSyn, that the Defendant includes
20 in the Pre-JYM product lists the supported claims and the scientific studies that are

21 _____
22 ¹ See Chantuin A. The fate of creatine when administered to man. *J Biochem.* 67:29-41, 1926.,
23 See also Deldicque L, Decombaz J, Foncea H, Vuichoud J Poortmans J, Francaux M. Kinetics of
creatine ingested as a food ingredient. *Eur J Appl Physiol.* 102:133-43, 2008.

24 ² See Deldicque L, Decombaz J, Foncea H, Vuichoud J Poortmans J, Francaux M. Kinetics of
25 creatine ingested as a food ingredient. *Eur J Appl Physiol.* 102:133-43, 2008. See also Persky A,
26 Muller M, Derendorf J, Grant M, Brazeau G, Hochhaus G. Single- and multiple-dose
27 pharmacokinetics of oral creatine. *J Clin Pharmacol.* 43:29-37, 2003. See also Poortmans J, Auquier
28 H, Renaut V, Durussel A, Saugy M, Brisson G. Effect of short-term creatine supplementation on
renal responses in men. *Eur J Appl Physiol.* 76:566-67, 1997. See also Schedel J, Tanaka H,
Kiyonaga A, Shindo M, Schutz Y. Actue creatine ingestion in human: Consequences on serum
creatine an creatinine concentrations. *Life Sciences.* 65:2463-70, 1999.

1 purported to support those claims on their website www.carnosyn.com.

2 23. First, one study claims that CarnoSyn increases the working capacity of
3 muscle.³ However, the study was conducted with not only Carnosyn, but in
4 conjunction with Creatine Monohydrate. Also, the participants ingested 1.6 grams of
5 CarnoSyn four times a day for the first six days and two times a day for the remaining
6 twenty-two days. This dosing protocol is greater than Defendant's dosing of 2 grams
7 per serving.

8 24. Second, another study claims that CarnoSyn increases muscle strength.⁴
9 The study participants were given a dosing protocol of 1.6 grams twice daily, again a
10 higher dose than Defendant's Pre-JYM product.

11 25. Third, another study claims that CarnoSyn improves muscular
12 endurance.⁵ This dosing protocol was also higher than 2 grams per day where the
13 participants used 6 grams per day for the first 21 days and 3 grams per day for the
14 remaining 21 days.

15 26. Also, a study that gave participants 4.8 grams per day of beta-alanine
16 failed to improve 400-M sprint times.⁶

17 27. Further, there are no scientific studies that show this ingredient's efficacy
18 using one dose per day, at the recommended level contained within the Product.

19 28. In fact, Jim Stoppani actually recommends two doses of 1.5-2g per day
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22 ³ Stout JR, et al., 2006. *Effects of twenty-eight days of beta-alanine and creatine monohydrate*
23 *supplementation on the physical working capacity at the neuromuscular fatigue threshold.* J Strngth
& Cond. Rsrch, 20(4): 928-931.

24 ⁴ Hoffman J, et al., 2006. *Effect of creatine and beta-alanine supplementation on performance*
and endocrine responses in strength/power athletes. Int J Sport Nutr & Exer Metab., 16: 430-446.

25 ⁵ Smith A E, et al., 2009. *Effects of beta-alanine supplementation and high level intensity interval*
26 *training on endurance performance and body composition in men—a double-blind trial.* J Int Soc
Sports Nutr., 6: 5.

27 ⁶ Derave W, et al., 2007. *beta-Alanine supplementation augments muscle carnosine content and*
28 *attenuates fatigue during repeated isokinetic contraction bouts in trained sprinters.* J Appl Physiol
103(5):1736-43.

1 and even states that 2-3g given twice per day “makes sense”.⁷ Both of which are
2 obviously higher recommended dosing protocols than what he includes in the Pre-
3 JYM product.

4 *Betaine*

5 29. The Pre-JYM product includes 1.5 grams of Betaine in the formulation
6 that Defendant claims provides “greater power and strength during workouts”.

7 30. There are numerous studies that show a modest increase in power output
8 after Betaine supplementation, but again, these dosing protocols were all at an
9 increased level of 2.5 grams per day.^{8,9}

10 31. There are also several studies that show at 2-2.5 grams per day of Betaine
11 actually have no effect on power output.^{10,11,12}

12 *N-acetyl L-cysteine*

13 32. The Pre-JYM product includes 600 mg of N-acetyl L-cysteine in the
14 formulation that Defendant claims “*blunt[s] muscle fatigue and keep you training*
15 *stronger, longer.*”

16 33. There have been some studies showing this efficacy, but not at the dosing
17 protocol in the Pre-JYM product:

18 “Although there is technically an antifatigue effect associated with N-
19 Acetylcysteine, it require a very large dose as well as injections thereof; even

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21 ⁷ See <http://www.bodybuilding.com/fun/your-expert-guide-to-carnosyn-beta-alanine.html> (Last
visited October 21, 2016).

22 ⁸ Lee EC, et al. 2010. *Ergogenic effects of betaine supplementation on strength and power*
performance. J Int Soc Sports Nutr. 7:27.

23 ⁹ Pryor JL, et al. 2012. *Effect of betaine supplementation on cycling sprint performance.* J Int
24 Soc Sports Nutr 9(1):12.

25 ¹⁰ Trepanowski TF, et al. 2011. *The effects of chronic betaine supplementation on exercise*
performance, skeletal muscle oxygen saturation and associated biochemical parameters in resistance
trained men. J Int Soc Sports Nutr. Dec;25(12):3461-71.

26 ¹¹ Hoffman JR, et al. 2011. *Effect of 15 days of betaine ingestion on concentric and eccentric*
force outputs during isokinetic exercise. J Strength Cond Res. Aug;25(8):2235-41.

27 ¹² Hoffman JR, et al. 2009. *Effect of betaine supplementation on power performance and fatigue.*
28 J Int Soc Sports Nutr. Feb 27;6:7.

1 then the antifatigue effect is small in magnitude”¹³

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3 *Alpha-GPC*

4 34. The Pre-JYM product includes 300 milligrams of Alpha-GPC in the
5 formulation that Defendant claims provides “better drive, focus, and strength in the
6 gym”.

7 35. The only study that shows Alpha-GPC increases strength uses 600mg,
8 twice the dosing of Pre-JYM.¹⁴

9 *Taurine*

10 36. The Pre-JYM product also contains 1 gram of Taurine which Defendant
11 claims to aid in endurance, muscle strength and increase nitric oxide:

12 **1g of Taurine**

- 13 • Taurine is a specialized amino acid that is important for endurance and muscle strength. It
14 can also increase nitric oxide (NO) production.*
15 • Exercise depletes taurine levels, thereby impairing strength and endurance, so it's helpful
16 to get a dose of taurine before every workout.*

17 37. There are no reliable scientific studies to support the claims Defendant
18 makes for its 1 gram of Taurine in the Pre-JYM product.

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20 *Bioperine*

21 38. The Pre-JYM product also contains 5mg of Bioperine, which Defendant
22 claims “increases the absorption of those supplements by 30 to 2,000 percent”:

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26 ¹³ See <https://examine.com/supplements/n-acetylcysteine/> (Last visited October 3, 2016).

27 ¹⁴ Ziegenfuss T, et al. 2008. *Acute supplementation with alpha-glycerolphosphorylcholine*
28 *augments growth hormone response to, and peak force production during, resistance exercise.*
*Journal of the International Society of Sports Nutrition*20085 (Suppl 1):P15.

1 **5mg of BioPerine®**

- 2 • BioPerine® is a patented extract of the fruit of black pepper, or long pepper, that contains
3 standardized amounts of the active ingredient piperine.
4 • Numerous clinical studies suggest that when a 5 mg dose of BioPerine® is taken with
5 other supplements, it increases the absorption of those supplements by 30 to 2,000
6 percent.*

7 39. This claim may be true, but the studies that support these claims are for
8 specific ingredients, none of which are contained within the Products. These specific
9 studies were only conducted on Beta-Carotene, CoQ10, Curcumin, Iron, Resveratrol,
10 Selenium and Vitamin B6.¹⁵

11 40. Again, this ingredient has no scientific backing as applied to these
12 Products.

13 **Post-JYM Claims**

14 41. Defendant claims that the Post-JYM product has “proper dosing on all
15 ingredients”, “All eight of the ingredients in Post JYM are critical for recovery” and
16 “Every single ingredient is included at the best dose to optimize repair and growth”:

17 *Like every JYM product, Post JYM contains no proprietary blends, proper
18 dosing on all ingredients, no "abbreviated" formulas, no concentrates, and no
19 BS. All eight of the ingredients in Post JYM are critical for recovery.* There is
20 no filler. Every single ingredient is included at the best dose to optimize repair
21 and growth.* That's the power, and promise, of Post JYM.*

22 42. But as shown in the Pre-JYM product Creatine HCL, CarnoSyn, Betaine,
23 Bioperine are not properly dosed or have no scientific backing at all.

24 43. Post-JYM also contains 3 grams of L-Glutamine which Defendant claims
25 “ramp(s) up post-workout repair”, “is important for muscle recovery and growth”, and
26 “Research suggests that supplementation with glutamine allows subjects to recover
27 quicker between workouts”:
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¹⁵ See <http://www.bioperine.com/index.php/researchhighlight> (Last visited October 24, 2016).

1 Post JYM Active Ingredients Matrix also contains carnitine and glutamine,
2 which are important to quickly ramp up post-workout repair.* In addition, you
3 can also purchase Post JYM dextrose separately.

4 **3 grams of Glutamine**

- 5 • Glutamine is one of the most abundant amino acids in the body and is important for muscle
6 recovery and growth.*
- 7 • Research suggests that supplementing with glutamine allows subjects to recover quicker
8 between workouts.*
- 9 • Glutamine is also critical for optimal immune function.* Intense training can compromise your
10 immune system, which can derail your training and results. Glutamine can help maintain a
11 healthy immune system and keep your training and results on track.

12 44. Simply because a substance, such as glutamine, is a nutrient, does not
13 necessarily mean that its enhanced use is beneficial. Glutamine naturally found within
14 the body does play a role in certain mechanisms supporting muscle growth, recovery
15 and immunity support.

16 45. However, as noted in the numerous scientific citations contained herein,
17 glutamine supplementation has been found to be completely ineffective at mimicking
18 these physiological responses.

19 46. Simply put, the ingestion of L-Glutamine does absolutely nothing for the
20 recovery from exercise, recovery of muscle tissue or ability to decrease muscle
21 wasting (anti-catabolic).

22 47. Defendant's recovery and muscle building claims, however, are blatantly
23 false according to numerous scientific research papers, as contained herein.

24 48. "Recovery" in bodybuilding is the process of the fatigued muscles to
25 recuperate and grow after resistance training. This process enables the body to
26

1 undergo muscle growth.

2 49. In one study, glutamine failed to affect muscle protein kinetics of the test
3 subjects.¹⁶

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5 50. In a study involving healthy humans, glutamine was continuously infused
6 for 2.5 hours at a rate corresponding to 0.4 grams/kg, which revealed that glutamine
7 supplement did not stimulate muscle protein synthesis.¹⁷

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9 51. Another study investigated the effect of L-glutamine supplementation on
10 the plasma and muscle tissue glutamine concentrations of exercise-trained rats, both
11 immediately and three hours after a single exercise session until exhaustion. In that
12 study, rats were subjected to 60 minutes of swimming exercise daily for six weeks.
13 During the final three weeks, one group was given a daily dose of L-glutamine (1
14 gram/kg). The plasma and muscle glutamine levels were higher than placebo during
15 the post-exhaustive recovery period; however, this increase had no effect on the
16 exercise swim test to exhaustion performance, suggesting that elevations in plasma
17 and muscle glutamine levels have no benefit on muscle performance.¹⁸

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21 52. An additional study was also conducted to assess the effect of oral
22 glutamine supplementation combined with resistance training in young adults.

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24 ¹⁶ Gore D., Wolfe R. Glutamine supplementation fails to affect muscle protein kinetics in
critically ill patients. *JPEN J Parenter Enteral Nutr*, 2002, 26:342-49.

25 ¹⁷ Svanberg E., Moller-Loswick A., Matthews D., Korner U., Lundholm K. The effect of
26 glutamine on protein balance and amino acid flux across arm and leg tissues in healthy volunteers.
Clin Physiol, 2001, 4:478-89.

27 ¹⁸ Rogero M., Tirapequi J., Pedrose R., Castro I., Pires I. Effect of alanyl-glutamine
28 supplementation on plasma and tissue glutamine concentrations in rats submitted to exhaustive
exercise. *Nutrition*, 2006, 22:564-71.

1 Subjects received either placebo (0.9 grams/kg fat-free mass/day of maltodextrin) or
2 L-glutamine (0.9 grams/kg fat-free mass/day) during six weeks of resistance training.
3 Results showed that muscle strength, torque, fat-free mass, and urinary 3-methyl
4 histidine (a marker of muscle protein degradation) all significantly increased with
5 training, but were not different between the groups. This study demonstrated that L-
6 glutamine supplementation during resistance training had no significant effect on
7 muscle performance, body composition, or muscle protein degradation in young,
8 healthy adults.¹⁹

11 53. Moreover, a study was performed to examine the effects of a combination
12 of effervescent creatine, ribose, and glutamine on muscle strength, endurance, and
13 body composition in resistance-trained men. Subjects performed resistance training
14 while ingesting either placebo or an experimental supplement (5 grams of creatine, 3
15 grams of glutamine, and 2 grams ribose) for eight weeks. Both groups significantly
16 improved muscle strength, endurance, and fat-free mass, yet the groups were not
17 significantly different from one another. Therefore, the experimental supplement,
18 which included glutamine, was no more effective than placebo in improving skeletal
19 muscle adaptation to resistance training.²⁰

25 ¹⁹ Candow D., Chilibeck P., Burke D, Davison K., Smith-Palmer T. Effect of glutamine
26 supplementation combined with resistance training in young adults. *Eur J Appl Physiol*, 2001,
86:142-49.

27 ²⁰ Falk D., Heelan K., Thyfault J., Koch A. Effects of effervescent creatine, ribose, and glutamine
28 supplementation on muscle strength, muscular endurance, and body composition. *J Strength Cond
Res*, 2003, 17:810-16.

1 54. Another study sought to determine the effects of eight weeks of creatine
2 monohydrate and glutamine supplementation on body composition and performance
3 measures. Subjects were randomly assigned to receive either placebo for eight weeks,
4 creatine monohydrate (0.3 grams/kg/day for one week and then 0.03 grams/kg/day for
5 seven weeks), or the same dose of creatine in addition to 4 grams of glutamine per day
6 while engaged in a resistance training program. Body mass and fat-free mass increased
7 in the creatine and creatine + glutamine groups at a greater rate than with placebo.
8 Additionally, the two experimental groups underwent a significantly greater
9 improvement in the initial rate of muscle power production compared to placebo.
10 These results suggest that the creatine and creatine + glutamine groups were equally
11 effective in producing skeletal adaptation to resistance training and that glutamine
12 apparently had no preferential effect in augmenting the results.²¹

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17 55. One study was performed to determine if high-dose glutamine ingestion
18 affected weightlifting performance. In a double-blind, placebo-controlled, crossover
19 study, resistance-trained men performed weightlifting exercises one hour after
20 ingesting placebo (calorie-free fruit juice) or glutamine (0.3 g/kg) mixed with calorie-
21 free fruit juice. Results demonstrated no significant differences in weightlifting
22 performance (maximal repetitions on the bench press and leg press exercises),
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27 ²¹ Lehmkuhl M., Malone M., Justice B., Trone G., Pistilli E., Vinci D., Haff E., Kilgore L., Haff
28 G. The effects of 8 weeks of creatine monohydrate and glutamine supplementation on body
composition and performance measures. *J Strength Cond Res*, 2003, 17:425-38.

1 indicating that the short-term ingestion of glutamine did not enhance weightlifting
2 performance in resistance-trained men.²²

3 56. Similarly, another study sought to determine whether glutamine ingestion
4 influenced acid-base balance or improved high-intensity exercise performance.
5 Trained males performed five exercise bouts on a cycle ergometer at 100% of
6 maximal oxygen consumption. The first four bouts were 60 seconds in duration, while
7 the fifth bout was continued to fatigue. Each bout was separated by 60 seconds of
8 recovery. The exercise bouts were initiated 90 minutes after ingesting either placebo
9 or 0.3 grams/kg of glutamine. Results showed that blood pH, bicarbonate, and lactate,
10 along with time to fatigue, were not significantly different between supplement
11 conditions, indicating that the acute ingestion of L-glutamine did not enhance either
12 buffering potential or high-intensity exercise performance in trained males.²³

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17 57. Another study determined whether oral glutamine, by itself or in
18 combination with hyperoxia, influenced oxidative metabolism or cycle time-trial
19 performance in men. Subjects ingested either placebo or 0.125 grams/kg of glutamine
20 one hour before completing a brief high-intensity time-trial (approximately four
21 minutes in duration). The results showed no significant difference in pulmonary
22 oxygen uptake during the exercise test, thereby indicating no effect of glutamine
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26 _____
²² Antonio J., Sanders M, Kalman D., Woodgate D., Street C. The effects of high-dose glutamine
ingestion on weightlifting performance. *J Strength Cond Res*, 2002, 16:157-60.

27 ²³ Haub M., Potteiger J., Nau K., Webster M., Zebas C. Acute L-glutamine ingestion does not
28 improve maximal effort exercise. *J Sports Med Phys Fitness*, 1998, 38:240-44.

1 ingestion either alone or in combination with hyperoxia. Thus, there was no limiting
2 effect of the tricarboxylic acid intermediate pool size on oxidative metabolism or
3 performance during exercise.²⁴
4

5 **B. Misrepresentations Regarding Defendant’s Products Sold Exclusively at**
6 **GNC.**

7 58. After the expiration of the agreement between Defendant and
8 Bodybuilding.com on May 17, 2016, Defendant began selling the Products exclusively
9 through GNC, another dietary supplement retail giant. GNC also maintains a website
10 where the product pages for the Products reflect the exact descriptive language found
11 on the Products’ labels:
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14 **Description**

15 JYM Supplement Science
16 Muscle Growth - Strength - Energy - Mind*

17 **My Guarantee**

18 Inside this bottle is decades of supplement research — from the lab and the gym. As a
19 scientist, I have spent years researching ingredients that will produce results. As a gym
20 rat, I have spent years benefiting from that research. Now it’s your turn. Every ingredient
21 in this formula is in a dose used in clinical studies and my own gym to produce significant
22 gains in size, strength and endurance.* I know it works because this is what I take before
23 every one of my workouts. Let it work for you. Hit the JYM!
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27 _____
28 ²⁴ Marwood S., Botwell J. No effect of glutamine supplementation and hyperoxia on oxidative
metabolism and performance during high-intensity exercise. *J Sports Sci*, 2008, 26:1081-90.

1 **Description**

2 JYM Supplement Science
3 Muscle Growth - Endurance - Recovery

4 Over the decades I have spent in the gym experimenting with how muscles respond to
5 training and the decades I have spent in the lab studying those responses at the cellular
6 level, I have learned that the nutrients you take immediately after working out are just as
7 critical as those you take to prime your body before workouts. After you've put in your last
8 rep, your body is desperate for the ingredients that will help it refuel, recover and, in the
9 process, grow bigger and stronger. Those ingredients, in full research-backed doses, are
10 in this bottle. Post JYM is the perfect companion to Pre JYM. It's my personal post-
11 workout formula for maximizing recovery, muscle growth and performance*. Make it
12 yours to help you optimize your results in the gym. Hit the JYM!

13 59. Both the GNC and Bodybuilding.com versions of the Products contain
14 the ingredients at issue here, at the same doses.

15 60. The Pre-JYM product states “Every ingredient in this formula is in a dose
16 use in clinical studies and my own gym to produce significant gains in size, strength
17 and endurance.” As shown above, the majority of these ingredients are not properly
18 dosed, have no scientific backing or simply found to be completely ineffective,
19 making Defendant’s claims on the Pre-JYM label demonstrably false.

20 61. The Post-JYM product states “Those ingredients, in full research-backed
21 doses, are in this bottle.” As shown above, the majority of these ingredients are not
22 properly dosed, have no scientific backing or simply found to be completely
23 ineffective, making Defendant’s claims on the Post-JYM label demonstrably false.

24 62. Also, beyond these false claims regarding the ingredients contained
25 within the Products, Jim Stoppani himself on InstaGram admits that the Products
26 contain Sodium even though they are not listed on the labels, as required by State and
27 Federal Law:
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63. Apparently Defendant believes a social media post will resolve the illegality rather than issuing a recall.

64. Defendant’s deceptive statements violate 21 U.S.C. § 343(a)(1), which deems food (including dietary supplements) misbranded when the label contains a statement that is “false or misleading in any particular.”

65. Defendant’s deceptive statements also violate WASHINGTON STATUTE RCW 69.04.250 which also deem food (including dietary supplements) misbranded when the labels contains a statement that is “false or misleading in any particular.”

66. The difference between the Products promised and the Products sold is significant and material. The efficacy of ingredients has real impacts on the benefits provided to consumers by the Products and the actual value of the Products.

67. Had Plaintiff and members of the Class known the true nature of the Products, they would not have purchased Defendant’s Products or alternatively paid

1 significantly less for them.

2 **V. CLASS ACTION ALLEGATIONS**

3 68. Plaintiff bring this action as a class action pursuant to Federal Rule of
4 Civil Procedure 23 for the following Class of persons:

5 **Nationwide Class:** All persons in the United States who, purchased
6 the Products through Bodybuilding.com between July 19, 2013 and
7 May 17, 2016 and through GNC from May 18, 2016 to the present.

8 **Washington Sub-Class:** All persons residing in the State of
9 Washington who, purchased the Products through Bodybuilding.com
between July 19, 2013 and May 17, 2016 and through GNC from May
10 18, 2016 to the present.

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

14 69. Plaintiff reserves the right to amend the Class definition if further
15 investigation and discovery indicates that the Class definition should be narrowed,
16 expanded, or otherwise modified.

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

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

1 72. Plaintiff will fairly and adequately protect the Class members' interests
2 and have retained counsel competent and experienced in consumer class action
3 lawsuits and complex litigation. Plaintiff and his counsel have the necessary financial
4 resources to adequately and vigorously litigate this class action, and Plaintiff is aware
5 of his duties and responsibilities to the Class.

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

12 (a) Whether Defendant labels, markets and otherwise advertises its Products
13 in a deceptive, false, or misleading manner;

14 (a) Whether Defendant's Products contain any amount of sodium that would
15 warrant its disclosure on the Products' label;

16 (b) Whether Defendant's mischaracterization of the Products constitutes
17 unlawful, unfair and fraudulent acts under Washington Unfair Business Practices Act
18 ("WUBPA").

19 (c) Whether Defendant's sale of the Products constitutes unfair methods of
20 competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL.
21 BUS. & PROF. CODE §§ 1770 *et seq.*, including:

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

24 (ii) Whether Defendant misrepresents that its Products have benefits
25 which they do not have;

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

1 (iv) Whether Defendant advertises its Products with intent not to sell
2 them as advertised;

3 (d) The nature and extent of damages, restitution, equitable remedies, and
4 declaratory and injunctive relief to which Plaintiff and the Class are entitled; and

5 (e) Whether Plaintiff and the Class should be awarded attorneys' fees and the
6 costs of suit.

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

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

16 **FIRST COUNT**

17 **Violation of The Unfair Business Practices Act**
18 **(Wash. Rev. Code § 19.86.010 *et seq.*)**
19 **(On Behalf of the Washington Sub-class)**

20 76. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

21 77. Defendant engaged in unfair and deceptive acts or practices, including but
22 not limited to engaging in part of a scheme or plan to mischaracterize the Products'
23 ingredients. These acts and practices had the capacity to deceive a substantial portion
24 of the public.
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1 78. Defendant's unfair deceptive acts or practices occurred in the conduct of
2 trade or commerce in that Defendant was engaged in the sale of the Products.

3 79. Defendant's unfair deceptive acts or practices have an impact on the
4 public interest because defendants deceive consumers as to the characteristics,
5 ingredients and attributes of their Products. Such misrepresentations cause financial
6 harm to purchasers who would not have otherwise purchased the Products
7

8 80. Plaintiff relied on Defendant's misrepresentations.

9 81. As a result, Plaintiff suffered damages to his property and business, in the
10 form of economic and financial damages in addition to costs and reasonable attorneys'
11 fees.
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13

14 **SECOND COUNT**

15 **Violation of CAL. CIV. CODE §§ 1750, *et seq.*-**
16 **Misrepresentation of a Product's standard, quality,**
17 **sponsorship, approval, and/or certification**
18 **(On Behalf of the Nationwide class)**

19 82. Plaintiff hereby incorporates by reference the allegations contained in the
20 preceding paragraphs of this Complaint.

21 83. Defendant's Products are "goods" as defined by California Civil Code
22 §1761(a).

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

24 85. Plaintiff and the Class members are "consumers" within the meaning of
25 California Civil Code §1761(d) because they purchased their Products for personal,
26 family or household use.

27 86. The sale of Defendant's Products to Plaintiff and the Class members is a
28 "transaction" as defined by California Civil Code §1761(e).

1 87. Defendant violated California Civil Code §§ 1770(a)(2), (5), (7) and (9),
2 as it misrepresented the standard, quality, sponsorship, approval, and/or certification of
3 its Products.

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

10 89. Additionally, misbranded food products cannot legally be manufactured,
11 held, advertised, distributed or sold. Thus, misbranded food has no economic value
12 and is worthless as a matter of law, and purchasers of misbranded food are entitled to a
13 refund of the purchase price of the misbrand food.

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

18 91. Plaintiff provided Defendant with notice of its alleged violations of the
19 CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that
20 Defendant correct such violations.

21 92. If Defendant fails to respond to Plaintiff's CLRA notice within 30 days,
22 Plaintiff may amend his Complaint to seek all available damages under the CLRA for
23 all violations complained of herein, including, but not limited to, statutory damages,
24 punitive damages, attorney's fees and cost and any other relief that the Court deems
25 proper.

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THIRD COUNT

**Breach of Express Warranty
(On Behalf of the Nationwide Class)**

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4 93. Plaintiff hereby incorporates by reference the allegations contained in the
5 preceding paragraphs of this Complaint.

6 94. Plaintiff and each member of the Class formed a contract with Defendant
7 at the time Plaintiff and the other members of the Class purchased one or more of the
8 Products. The terms of that contract include the promises and affirmations of fact
9 made by Defendant on the packaging of the Products regarding the Products'
10 ingredients.

11 95. The Products' packaging constitute express warranties, became part of
12 the basis of the bargain, and are part of a standardized contract between Plaintiff and
13 the members of the Nationwide Class on the one hand, and Defendant on the other.

14 96. All conditions precedent to Defendant's liability under this contract have
15 been performed by Plaintiff and the Class.

16 97. Defendant breached the terms of this contract, including the express
17 warranties, with Plaintiff and the Class by not providing the products that could
18 provide the benefits promised, as alleged above.

19 98. As a result of Defendant's breach of its contract, Plaintiff and the Class
20 have been damaged in the amount of the different purchase price of any and all of the
21 Products they purchased and the price of a product which provides the benefits and
22 contents as warranted.

FOURTH COUNT

**Breach of Implied Warranty of Merchantability
(On Behalf of the Nationwide Class)**

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25 99. Plaintiff hereby incorporates by reference the allegations contained in the
26 preceding paragraphs of this Complaint.

27 100. Defendant, through its acts and omissions set forth herein, in its sale,
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1 marketing and promotion of the Products, made representations to Plaintiff and the
2 Class that the Products contained scientifically backed and properly dosed ingredients
3 they do not contain.

4 101. Plaintiff and the Class bought the Products manufactured, advertised, and
5 sold by Defendant.

6 102. Defendant is a merchant with respect to the goods of this kind that were
7 sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other Members
8 of the Class an implied warranty that those goods were merchantable.

9 103. Defendant breached the warranty implied in the sale of goods in that the
10 Products do not contain scientifically backed and properly dosed ingredients. Absent
11 these scientifically backed and properly dosed ingredients, the Products are not fit for
12 the intended purpose.

13 104. As a result of Defendant's conduct, Plaintiff and the Class did not receive
14 goods as impliedly warranted by Defendant to be merchantable in that they did not
15 conform to the promises and affirmations made on the container or label of the goods.

16 105. As a result of Defendant's breach of its contract, Plaintiff and the Class
17 have been damaged in the amount of the entire purchase price of the Products.

18
19 **FIFTH COUNT**

20 **Negligent Misrepresentation**
21 **(On Behalf of the Nationwide Class)**

22 106. Plaintiff hereby incorporates by reference the allegations contained in the
23 preceding paragraphs of this Complaint.

24 107. Defendant has made material misrepresentations of fact concerning the
25 nature of the ingredients in the Products.

26 108. Defendant has and had no reasonable basis for believing that its
27 misrepresentations were true.

28 109. Defendant knew, or should have known, that Plaintiff and the Members

1 of the Class would rely on the false representations about the nature of, and
2 ingredients in, the Products.

3 110. Defendant's false representations about the ingredients of the Products
4 are objectively material to reasonable consumers, and therefore reliance upon such
5 representations may be presumed as a matter of law.

6 111. Plaintiff and Members of the Nationwide Class reasonably relied to their
7 detriment on Defendant's false representations, which caused them to purchase the
8 Products.

9 112. As a proximate result of Defendant's negligent misrepresentations,
10 Plaintiff and Members of the Nationwide Class have been damaged.

11
12 **SIXTH COUNT**

13 **Intentional Misrepresentation**
14 **(On Behalf of the Nationwide Class)**

15 113. Plaintiff hereby incorporates by reference the allegations contained in the
16 preceding paragraphs of this Complaint.

17 114. Defendant has intentionally made material misrepresentations of fact
18 concerning the nature of the ingredients in the Products.

19 115. Defendant knew that the intentional misrepresentations herein were false
20 at the time they were made.

21 116. Defendant intended that Plaintiff and Members of the Class would rely on
22 the false representations and purchase Defendant's Products.

23 117. Defendant's false representations are objectively material to reasonable
24 consumers and therefore reliance upon such representations may be presumed as a
25 matter of law.

26 118. Plaintiff and Members of the Class reasonably relied to their detriment on
27 Defendant's intentional misrepresentations.

28 119. Defendant's intentional misrepresentations were a substantial factor in

1 causing Plaintiff and Members of the Class to purchase the Product.

2 120. Defendant has acted with malice by engaging in conduct that was and is
3 intended to cause injury to Plaintiff and the Members of the Class.

4 121. Defendant has committed fraud through its intentional
5 misrepresentations, deceit, and/or concealment of material facts known to Defendant
6 with the intent to cause injury to the purchasers of the Products.

7 122. As a proximate result of Defendant's intentional misrepresentations,
8 Plaintiff and the Members of the Nationwide Class suffered an ascertainable loss and
9 are entitled to relief and compensatory and punitive damages, in an amount to be
10 determined at trial.

11
12 **SEVENTH COUNT**
13 **Unjust Enrichment**
14 **(On Behalf of the Nationwide Class)**

15 123. Plaintiff hereby incorporates by reference the preceding paragraphs of
16 this Complaint.

17 124. Defendant knew that the Products did not contain all scientifically
18 supported and properly dosed ingredients, and it knowingly misrepresented the
19 Product's ingredients to Plaintiff and the Nationwide Class.

20 125. As a result of its fraudulent acts and omissions related to the Products,
21 Defendant obtained monies that rightfully belong to the Plaintiff and the Members of
22 the proposed Nationwide Class, and retained those monies to the detriment of
23 Plaintiff and the Members of the proposed Nationwide Class.

24 126. It would be inequitable and unjust for Defendant to retain these
25 wrongfully obtained monies. Plaintiff and the proposed Nationwide Class are entitled
26 to restitution of the monies unjustly obtained, plus interest.

27 **VI. PRAYER FOR RELIEF**

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

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

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

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

7 D. For an order enjoining Defendant from continuing to engage in the
8 unlawful and unfair business acts and practices as alleged herein;

9 E. For restitution of the funds that unjustly enriched Defendant at the
10 expense of the Plaintiff and Class Members.

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

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

15 H. Such other and further relief as this Court may deem just and proper.
16

17 **VII. JURY TRIAL DEMAND**

18 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint
19 so triable.

20 Respectfully submitted,

21 Dated: November 8, 2016

22 By: /s/ Jonathan N. Shub

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