UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JOSHUA DEBERNARDIS and
CHRISTINA DAMORE, on behalf of
themselves and all others similarly situated,

CASE NO.: _____

Plaintiffs,

v.

IQ FORMULATIONS, LLC,
a Florida limited liability company, and
EUROPA SPORTS PRODUCTS, INC.,

Defendants.
_____/

CLASS ACTION COMPLAINT

Plaintiffs, Joshua DeBernardis and Christina Damore (collectively, "**Plaintiffs**"), on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, sue Defendant IQ Formulations, LLC ("**IQ Formulations**") and Defendant Europa Sports Products, Inc. ("**Europa**") (collectively, "**Defendants**"), and allege on personal knowledge, investigation of their counsel, and on information and belief as follows:

NATURE OF THIS ACTION

1. This is a consumer class action brought by Plaintiffs on behalf of themselves and all others similarly situated who purchased the dietary supplements Metabolic Nutrition Synedrex ("**Synedrex**") and Metabolic Nutrition E.S.P. (Energy Stimulant Pre-Workout) ("**E.S.P.**") (collectively, the "**Products**") from Defendants.

2. Defendants engage in unfair and/or deceptive business practices by misrepresenting the nature and quality of the Products on the Product labels. Defendants were unjustly enriched as a direct result of the unlawful conduct at issue in this matter.

JURISDICTION AND VENUE

3. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other Members of the putative Classes exceed $5,000,000.00, exclusive of attorneys' fees, pre-judgment interest and costs, and there are numerous putative Class Members who are citizens of states other than Defendants' states of citizenship.

4. Diversity jurisdiction exists because Plaintiff DeBernardis is a resident of Illinois, Plaintiff Damore is a resident of New York, Defendant IQ Formulations is a citizen of Florida, and Defendant Europa is a citizen of North Carolina.

5. This Court has personal jurisdiction over Defendants in this matter. The acts and omissions giving rise to this action occurred in the state of Florida. Defendants have been afforded due process because they have, at all times relevant to this matter, individually or through their agents, subsidiaries, officers and/or representatives, operated, conducted, engaged in and carried on a business venture in this state and/or maintained an office or agency in this state, and/or marketed, advertised, distributed and/or sold products, committed a statutory violation within this state related to the allegations made herein, and caused injuries to Plaintiffs and putative Class Members, which arose out of the acts and omissions that occurred in the state of Florida, during the relevant time period, wherein Defendants were engaged in business activities in the state of Florida.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Defendants conduct business in this District, and have intentionally availed

themselves of the laws and markets within this District. Further, Defendant IQ Formulations maintains a principal place of business in this District.

PARTIES

7. Plaintiff Joshua DeBernardis is a resident of Grayslake, Illinois who purchased Synedrex for $37.99 in September 2015 from Walgreens.com. After completing his purchase, Synedrex was shipped to Plaintiff DeBernardis' residence in Grayslake, Illinois.

8. Plaintiff Christina Damore is a resident of New York, New York who purchased Synedrex for $59.95 in June 2015 from NaturalBodyInc.com. She purchased Synedrex for $59.95 again in February 2016 from NaturalBodyInc.com. She also purchased Synedrex for $57.98 in August 2016 from BF Nutrition via eBay.com. After completing each purchase, Synedrex was shipped to Plaintiff Damore's residence in New York, New York.

9. Defendant IQ Formulations, LLC is a Florida limited liability company with a principle place of business located at 10151 NW 67th Street, Tamarac, Broward County, Florida 33351. All relevant decisions regarding the design, manufacture, advertising, marketing and warranties of the Products were made by Defendant IQ Formulations at its corporate headquarters in Tamarac, Florida. Defendant IQ Formulations has long maintained substantial business operations in Florida. It distributed and sold the Products at issue in this matter throughout the United States, including Florida, during the relevant time period.

10. Defendant Europa Sports Products, Inc. is a North Carolina domestic corporation with a principle place of business located at 11401 Granite Street, Charlotte, Mecklenburg County, North Carolina 28273. It distributed and sold the Products at issue in this matter throughout the United States, including Florida, during the relevant time period.

GENERAL ALLEGATIONS

11. Americans spend tens of billions of dollars a year on trying to keep in shape, and maintain their health, including purchasing gym memberships, diet plans, and dietary supplements.

12. The combined market for meal replacement and diet pills was an estimated $3.04 billion dollars in 2014.[1]

13. In such a competitive business environment, Defendants made an effort to differentiate their Products by including an illegal ingredient to entice consumers to choose their Products over those of competitors.

14. The difference between the Products Defendants expressly and/or implicitly purported to deliver, and the Products actually delivered, is significant. As described below, both Synedrex and E.S.P. contain an unlawful ingredient, MethylPentane Citrate, and for that reason, each Product is similarly adulterated for purposes of the United States Food, Drug and Cosmetic Act, 21 U.S.C. § 301, *et seq.* ("**FDCA**"), and similar state laws, and is therefore unsafe for human consumption, and cannot be lawfully sold to consumers.

15. Defendant IQ Formulations formulated, manufactured, distributed and sold Synedrex and E.S.P. from 2013 to the present.

16. Defendant IQ Formulations' formulation, manufacture, distribution and sale of Synedrex and E.S.P., and all decisions relevant thereto, took place at its headquarters located in Tamarac, Florida. On its website, IQ Formulations represents the following about its Tamarac, Florida location:

[1] *U.S. Weight Loss Market Worth $60.9 Billion,* PRWEB, http://www.prweb.com/releases/2011/5/prweb8393658.htm (last visited March 28, 2017).

Facilities

IQ Formulations' headquarters is located in Tamarac, Florida. This state-of-the-art facility enables the company to produce a wide range of superior quality nutritional supplements.

The company's office utilizes the most technologically advanced manufacturing, packaging, and laboratory equipment.

Temperature-controlled facilities at IQ Formulations house all of the raw materials and finished health supplement products until they are ready for shipment to select distributors.

IQ Formulations' unrelenting commitment to excellence, attention to detail, and unparalleled logistics and organization are immediately evident upon entering the company's manufacturing facilities.

17. According to a press release, "IQ Formulations sells directly to consumers through its website, but has also partnered with a distribution company, Europa Sports Products, which sells its products to general nutrition shops around the country, as well as, dealing directly with large national retailer chains such as Vitamin Shoppe." https://www.businessviewmagazine.com/iq-formulations/ (last visited April 6, 2017).

18. According to IQ Formulations' website, "Europa Sports Products is a distributor with global reach who partners closely with IQ Formulations to deliver the company's products to market." http://www.iqformulations.com/tag/supplement-manufacturer-iq-formulations (last visited April 6, 2017).

19. Beginning in at least 2013 and continuing to present, Defendant IQ Formulations has sold the Products directly to consumers throughout the United States via its website www.metabolicnutrition.com. During that time, IQ Formulations also engaged Defendant Europa as the exclusive distributor of IQ Formulations' Products. Therefore, Synedrex and E.S.P. were exclusively distributed into the stream of commerce either directly through online sales via IQ Formulations' website, or through its exclusive distributor Europa. Following IQ Formulations' sale to Europa of Synedrex and E.S.P., Europa sold the Products directly to

consumers, and also distributed and sold the Products to various retailers throughout the United States, including Walgreens and Naturalbodyinc.com. These retailers then sold the Products to consumers, including Plaintiffs and Class Members. Through these various channels, Defendants purposefully placed the Products into the stream of commerce throughout the United States.

20. As described below, both Synedrex and E.S.P. contain an unlawful ingredient, MethylPentane Citrate, and for that reason, each Product is similarly adulterated for purposes of the FDCA, and similar state laws, and is unsafe for human consumption, and cannot be lawfully sold to consumers.

Defendant IQ Formulations' Illegal Ingredient In Its Products

21. Defendant IQ Formulations boasts on the Synedrex label that it is a "Powerful Stimulant Weight Loss Solution," a "High Potency Thermogenic," and that it provides "Extreme Energy."

22. In an effort to deliver on these label claims, IQ Formulations added the powerful and illegal stimulant MethylPentane Citrate, which is more commonly known as DMBA.

SUPPLEMENT FACTS

Serving size: 1 Capsule **Servings per container: 45**

	Amount Per Serving	% DV
Vitamin B3 (as Niacin)	20 mg	100%
Vitamin B6 (as Pyridoxine HCl)	4.25 mg	212%
Vitamin B12 (as Cyanocobalamin)	100 mcg	1666%
Chromium (from Chromium Polynicotinate)	175 mcg	146%
SYNEDREX™		
SYNEDREX Physician Formulated Weight Loss Solution		
Proprietary Blend	920 mg	**
Methylxanthine		**
Methylpentane Citrate		**
Sulbutiamine		**
Sandalwood Extract		**
Yohimbine Extract		**
Alpha Lipoic Acid		**
Poly-Iiodo-Thyronine		**
Meridextrine™		**

**No Daily Value Established.

Other Ingredients: DiPotassium Phosphate, MCMC, Silicon Dioxide, Magnesium Stearate, Titanium Dioxide, FD & C Blue 1, Red 40, TiO2, Gelatin.

Store product at room temperature. Do not expose to excessive heat or moisture.

23. Similarly, IQ Formulations boasted on the E.S.P. label that it is "high-energy," "no crash," "fast-acting" and offers "laser sharp focus" and "explosive power."

SUPPLEMENT FACTS

CHOOSE YOUR STRENGTH	1x		2x		1x	
Serving size:	STRONG 1 Sm Scoop (3.3g)		INTENSE 2 Sm Scoop (6.6g)		EXTREME 1 Lg Scoop (10g)	
Servings per container:	90		45		30	
Amount Per Serving		**% Daily Value**		**% Daily Value**		**% Daily Value**
Calories	2		4		8	
Total Fat	0 g		0 g		0 g	
Total Carbohydrate	0.5 g	<1%	1 g	<1%	2 g	<1%
Total Protein	0 g		0 g		0 g	
Calcium	50 mg	5%	100 mg	10%	200 mg	20%
Magnesium	50 mg	12.5%	100 mg	25%	200 mg	50%
Potassium	50 mg	1.5%	100 mg	3%	200 mg	6%
Sodium	7.5 mg	.25%	15 mg	.5%	30 mg	1%
Vitamin B3	5 mg	25%	10 mg	50%	20 mg	100%
Vitamin B6	1 mg	53%	2.11 mg	106%	4.23 mg	212%
Vitamin B12	125 mcg	2083%	250 mcg	4166%	500 mcg	8333%

E.S.P. Pre-Workout Proprietary Matrix (consisting of): Beta Alanine Citrate, 1,3,7-Trimethylpurine-2,6-dione, Methyl Pentane Citrate HCl, 3,7-dimethyl-1H-purine-2,6-dione, N-Acetyl-L-Tyrosine, Picamilon, Choline Bitartrate, Calcium Glycerol Gluconate, Magnesium Glycerol Gluconate, Potassium Glycerol Gluconate, Sodium Glycerol Gluconate

Other Ingredients: Natural and Artificial Flavors, Sucralose, Acesulfame Potassium, Blue FD&C, Blue Alum. Lake, Silica

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

24. In an effort to deliver on these label claims, IQ Formulations added the powerful and illegal stimulant MethylPentane Citrate, which is more commonly known as DMBA.

25. As manufacturer and distributor of Synedrex and E.S.P., Defendant IQ Formulations and Defendant Europa had an affirmative duty to comply with the FDCA, as well as any parallel state statutes.

26. In 1994, the Dietary Supplement Health and Education Act ("**DSHEA**") was passed into law, establishing a new framework governing the composition, safety, labeling, manufacturing, and marketing of dietary supplements.

27. Dietary supplements are defined by the FDCA as a "product (other than tobacco) intended to supplement the diet" that contains one or more of the following: (1) vitamins; (2) minerals; (3) and herb or other botanical; (4) an amino acid; (5) a supplement meant to increase total dietary intake; (6) a concentrate, metabolite, constituent, extract, or combination of any of the listed ingredient. 21 U.S.C. § 321(ff)(1).

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

> (1) The dietary supplement contains only dietary ingredients which have been present in the food supply as an article used for food in a form in which the food has not been chemically altered [or]
>
> (2) There is a history of use or other evidence of safety establishing that the dietary ingredient when used under the conditions recommended or suggested in the labeling of the dietary supplement will reasonably be expected to be safe and, at least 75 days before being introduced or delivered for introduction into interstate commerce, the manufacturer or distributor of the dietary ingredient or dietary supplement provides the FDA with information, including any citation to published articles, which is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

21 U.S.C. § 350b(a).

29. A producer or distributor of a dietary supplement may not rely on a 75-day premarket notification from another manufacturer of a dietary supplement containing the same dietary ingredient. Nonetheless, even if a 75-day premarket notification of an NDI is provided to the FDA, the NDI must still meet the requirements of 21 U.S.C. § 342(f) – that is the dietary ingredient must be safe for human consumption. If either the 75-day premarket notification is not provided or the NDI does not satisfy the requirements of 21 U.S.C. § 342(f), the product containing the NDI is deemed adulterated and has no economic value as it cannot be sold in the United States.

30. The stimulant DMBA was not marketed in the United States before 1994 and thus does not qualify for this exemption.

31. Defendants, in their respective roles as producer and distributor, were aware of and disregarded the FDA's NDI notification requirement that is mandated for all dietary supplements that contain NDIs which have not been "present in the food supply as articles used for food without being chemically altered." 21 U.S.C. § 350b(a)(1).

32. Defendants were responsible for ensuring that they complied with all applicable federal laws and FDA regulations in the marketing and sale of the Products, but failed to do so. Defendants failed to provide the FDA with the required NDI notification for the dietary ingredient DMBA, which was unlawfully included in the Products.

33. Dietary supplements that contain dietary ingredients, which have not been submitted to the FDA, are considered adulterated for purposes of the FDCA. Defendants have not provided the FDA with the required 75-day premarket notification showing a history of DMBA's harmless use in food products/supplements or any other evidence of safety. This lack of compliance with the FDCA's clear requirements renders the Products adulterated.

34. On April 28, 2015, the FDA issued warning letters to 14 companies regarding 17 products that had labels which unlawfully identified DMBA as a dietary ingredient.[2] According to the FDA website, the FDA determined that these products were adulterated because they were labeled as containing a new dietary ingredient, DMBA, which had not been submitted for notification to the FDA.[3]

35. Just like the 17 products identified in the FDA's warning letters, Defendants' Product labels also unlawfully declare DMBA as a dietary ingredient.

36. Defendants were fully aware that DMBA was an NDI, but nevertheless included DMBA as an unlawful dietary ingredient in its Synedrex and E.S.P. Products.

37. The failure to submit the dietary ingredient DMBA to the FDA renders the Products adulterated and not reasonably safe for consumers. By failing to disclose to Plaintiffs and putative Class Members that the Products contain unlawful dietary ingredients, the Products' labels are false and misleading.

38. When purchasing the Products, consumers were misled by their labels into believing that the Products are free of illegal dietary ingredients.

39. Pursuant to 21 U.S.C. § 321(f), the Products are "food" regulated by the FDCA.

40. Defendants' false and misleading label statements and representations violate 21 U.S.C. § 343(a) and the so-called "little FDCA" statutes adopted by many States, which deem food misbranded when "its labeling is false or misleading in any particular." Therefore, the introduction of misbranded food into interstate commerce is prohibited under the FDCA and all State parallel statutes cited in this Complaint.

---

[2] *DMBA in Dietary Supplements*, U.S. FOOD AND DRUG ADMINISTRATION, http://www.fda.gov/Food/DietarySupplements/ProductsIngredients/ucm444719.htm (last visited March 28, 2017).

[3] *Id*.

41. Florida has expressly adopted the federal food labeling requirements of §343(1) and (a)(1) into state law pursuant to the Florida Food Safety Act ("**FFSA**"), Fla. Stat. § 500.04 (1) and (2). The purpose of the FFSA is to "[p]rovide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act". *See* §§ 500.11(1)(a), (i), 500.02(2), Fla. Stat.

42. The state of Florida has adopted the exact language of the FDCA by stating, "[a] food is misbranded – (a) If its labeling is false or misleading in any particular way." *See* §§ 500.11(1)(a). Accordingly, a violation of federal food labeling laws is also an independent violation of Florida law and actionable as such.

43. Florida law also provides remedies, including private rights of action, for misbranding food under consumer protection laws, including the Florida Deceptive and Unfair Trade Practices Act, § 501.201, *et seq*., Florida Statutes ("**FDUTPA**"), which broadly prohibits use of "deceptive acts or practices" in business dealings in Florida.

44. The state of Illinois has also expressly adopted the federal food labeling requirements of §343(1) and (a)(1) into state law pursuant to the Illinois Food, Drug and Cosmetic Act ("**IFDCA**"), 410 ILCS 620/11. The IFDCA mirrors the requirements of the FDCA, stating that the Illinois Food and Drug Commission should "make the regulations promulgated under [the IFDCA] conform, in so far as practicable, with those promulgated under the Federal Act." 410 ILCS 620/21 (a).

45. The state of Illinois has adopted the exact language of the FDCA in 410 ILCS 620/11 by stating, "[a] food is misbranded - (a) If its labeling is false or misleading in any

particular." Accordingly, a violation of federal food labeling laws is also an independent violation of Illinois law and actionable as such.

46. Illinois law also provides remedies, including private rights of action, for misbranding food under consumer protection laws, including the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("**ICFA**"), which broadly prohibits use of "deceptive acts or practices" in business dealings in Illinois.

47. New York has also expressly adopted the federal food labeling requirements of §343(1) and (a)(1) into state law pursuant to New York's Agriculture and Marketing law. N.Y. Agric. & Mkts. Law § 201 (McKinney).

48. New York's Agriculture and Marketing law incorporates the FDCA's labeling provisions and, likewise, provides that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular." Accordingly, a violation of federal food labeling laws is also an independent violation of New York law and actionable as such.

49. New York law also provides remedies, including private rights of action, for misbranding food under consumer protection laws, including GBL § 349, which broadly prohibits use of "deceptive acts or practices" in business dealings in New York.

50. Pursuant to the FDCA, and accordingly Florida, Illinois and New York law, food products that are misbranded cannot legally be manufactured, advertised, distributed, held or sold. Because misbranded products cannot be legally sold or possessed, they have no economic or legal value. Plaintiffs and Members of the Classes who purchased the Products paid an unwarranted amount for these Products.

51. Pursuant to the FDCA, and accordingly Florida, Illinois and New York law, misbranding relates to false claims, and also claims that might be technically true, but still

misleading. If any single representation in the product labeling is misleading, the entire product is misbranded, and no other statement in the labeling can cure a misleading statement.

52. Defendants intended for Plaintiffs and putative Class Members to be misled.

53. Defendants' misleading and deceptive practices proximately caused harm to Plaintiffs and Class Members. Defendants have sold Products that are misbranded and are worthless because they could not be lawfully sold to consumers.

CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action individually and, pursuant to Federal Rule of Civil Procedure 23, on behalf of all similarly situated consumers, including the below-defined Classes:

> **National Class:** All persons in the United States who purchased the Products.
>
> **Illinois Subclass:** All persons in Illinois who purchased the Products.
>
> **New York Subclass**: All persons in New York who purchased the Products.

Excluded from the Classes are Defendants and their affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

55. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

56. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The Members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, Class Members number in the thousands to millions. The precise number of Class Members and their addresses are presently unknown to Plaintiffs, but may be ascertained from

Defendants' books and records. Class Members may be notified of the pendency of this action by mail, e-mail, Internet postings, and/or publication.

57. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members. Such common questions of law or fact include:

a. The true nature of the ingredients in the Products;

b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;

c. Whether Defendant IQ Formulations' actions violate the Florida Deceptive and Unfair Trade Practices Act;

d. Whether Defendant IQ Formulations and Defendant Europa's actions violate the Illinois Consumer Fraud Act;

e. Whether Defendant IQ Formulations and Defendant Europa's actions violate New York General Business Law § 349, *et seq.*;

f. Whether Defendants were unjustly enriched at the expense of Plaintiffs and Class Members;

g. Whether Plaintiffs and Class Members have suffered an ascertainable loss of monies or property or other value as a result of Defendants' acts, omissions or misrepresentations of material facts;

h. Whether Plaintiffs and Class Members are entitled to monetary damages and, if so, the nature of such relief; and

i. Whether Plaintiffs and Class Members are entitled to equitable, declaratory or injunctive relief and, if so, the nature of such relief.

58. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of themselves and the other Class Members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, are pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

59. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other Members of the Classes because, among other things, all Class Members were comparably injured through Defendants' uniform misconduct described above. Further, there are no defenses available to Defendants that are unique to Plaintiffs.

60. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class Representatives because their interests do not conflict with the interests of the other Class Members they seek to represent, they have retained counsel competent and experienced in complex class action litigation, and Plaintiffs along with counsel will prosecute this action vigorously. Accordingly, Plaintiffs and their counsel will fairly and adequately protect the interests of other Class Members.

61. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, Members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated

purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

62. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other Members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Members of the Classes as a whole.

63. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Class Members to individually seek redress for Defendants' wrongful conduct. Even if Class Members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, § 501.201, *et seq*., Florida Statutes
(on behalf of Nationwide Class against Defendant IQ Formulations)

64. Plaintiffs incorporate paragraphs 1through 63 as if fully set forth herein.

65. Plaintiffs assert this cause of action on behalf of themselves and the putative Class.

66. Plaintiffs and Class Members are "consumers" as defined by Florida Statute §501.203(7), and the subject transactions are "trade or commerce" as defined by Florida Statute §501.203(8).

67. Defendant IQ Formulations advertised, promoted, marketed, manufactured, distributed and sold the Products, which contain, *inter alia*, an unlawful ingredient.

68. The Products are "goods" within the meaning of the FDUTPA.

69. The FDUPTA was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

70. For the reasons discussed herein, Defendant IQ Formulations violated and continues to violate FDUPTA by engaging in the herein described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute §501.201, *et seq*.

71. IQ Formulations' actions of misrepresenting and omitting material facts regarding the unlawful ingredient DMBP in the Products constitute unconscionable, deceptive, or unfair acts or practices, and are immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers, in violation of FDUTPA. IQ Formulations knew or should have known that the Products contained an unlawful ingredient and could not be lawfully sold to consumers, and IQ Formulations failed to disclose this information to consumers.

72. IQ Formulations' actions of advertising, promoting, manufacturing, marketing, distributing and selling the Products containing the unlawful ingredient DMBP constitute unconscionable, deceptive, or unfair acts or practices, and are immoral, unethical, oppressive,

and unscrupulous activities that are substantially injurious to consumers, in violation of FDUTPA.

73. In addition, the practice employed by IQ Formulations, whereby it advertised, promoted, manufactured, marketed, distributed and sold the Products containing the unlawful ingredient DMBP constitutes a *per se* violation of FDUTPA under Section 501.203(3)(c) because it is in violation of the Florida Food Safety Act, Fla. Stat. § 500.04 (1) and (2), in that said Products are misbranded.

74. Plaintiffs and putative Class Members suffered damages when they purchased the Products, which contained the unlawful ingredient DMBP and could not be lawfully sold to consumers. IQ Formulations' unconscionable, deceptive and/or unfair practice caused actual damages to Plaintiffs and putative Class Members who were unaware of the unlawful ingredient in the Products when they purchased the Products.

75. IQ Formulations' affirmative misrepresentations, omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

76. Consumers, including Plaintiffs and putative Class Members, would not have purchased the Products had they known that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

77. Consumers, including Plaintiffs and putative Class Members, could not have purchased the Products had IQ Formulations disclosed to them and the consuming public that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

78. As a direct and proximate result of the unconscionable, unfair, and deceptive acts or practices alleged herein, Plaintiffs and putative Class Members have been damaged and are

entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.

79. In addition, Plaintiffs and the putative Class seek equitable relief and injunctive relief against IQ Formulations on terms that the Court considers reasonable, and reasonable attorneys' fees, litigation costs and expenses.

80. Plaintiffs and the putative Class reserve the right to allege other violations of FDUPTA as IQ Formulations' conduct is ongoing

COUNT II

Violation Of The Illinois Consumer Fraud And Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, Illinois Compiled Statutes (on behalf of the Illinois Subclass against both Defendants)

81. Plaintiff DeBernardis incorporates paragraphs 1 through 63 as if fully set forth herein.

82. Plaintiff DeBernardis asserts this claim on behalf of himself and the Illinois Subclass.

83. Defendant IQ Formulations advertised, promoted, marketed, manufactured, distributed and sold the Products, which contain, *inter alia*, an unlawful ingredient.

84. Defendant Europa entered into an exclusive distribution agreement with Defendant IQ Formulations, whereby Defendant Europa advertised, promoted, marketed and sold the Products, which contain, *inter alia*, an unlawful ingredient.

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

86. Section 2 of the ICFA provides as follows:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. 815 ILCS 505/2.

87. Defendants have engaged in unfair competition and unfair, unlawful, deceptive, or fraudulent business practices by the conduct, statements, and omissions described above, and by concealing from consumers, including Plaintiff DeBernardis and Illinois Subclass Members, that the Products contain the unlawful ingredient DMBP and could not be lawfully sold to consumers.

88. Defendants' actions of misrepresenting and omitting material facts regarding the unlawful ingredient DMBP in the Products constitute unfair, unlawful, deceptive, or fraudulent business practices in violation of the ICFA. Defendants knew or should have known that the Products contained an unlawful ingredient and could not be lawfully sold to consumers, and Defendants failed to disclose this information to consumers.

89. Defendants' actions of advertising, promoting, manufacturing, marketing, distributing and selling the Products containing the unlawful ingredient DMBP constitute unconscionable, deceptive, or unfair acts or practices, and are immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers, in violation of the ICFA.

90. Defendants' unlawful and deceptive acts and practices have deceived Plaintiff DeBernardis and Illinois Subclass Members and are likely to deceive reasonable consumers targeted by such conduct. In failing to disclose the unlawful nature of the Products from Plaintiff

DeBernardis and Illinois Subclass Members, Defendants breached their duties to disclose this fact, violated the ICFA, and caused injuries to Plaintiff DeBernardis and the Illinois Subclass Members. The omissions and acts of concealment by Defendants pertained to information material to Plaintiff DeBernardis and the Illinois Subclass Members in that it would have been likely to deceive them based on reasonable consumer's expectations and assumptions of the lawful nature of the Products.

91. Defendants intended that Plaintiff DeBernardis and each of the other Members of the Illinois Subclass would rely upon their deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

92. Plaintiff DeBernardis and Illinois Subclass Members suffered damages when they purchased the Products, which contained the unlawful ingredient DMBP and could not be lawfully sold to consumers. Defendants' unfair or deceptive acts or practices caused actual damages to Plaintiff DeBernardis and Illinois Subclass Members who were unaware of the unlawful ingredient in the Products when they purchased the Products.

93. Defendants' affirmative misrepresentations, omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

94. Consumers, including Plaintiff DeBernardis and Illinois Subclass Members, would not have purchased the Products had they known that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

95. Consumers, including Plaintiff DeBernardis and Illinois Subclass Members, could not have purchased the Products had Defendants disclosed to them and the consuming public that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

96. Plaintiff DeBernardis and Illinois Subclass Members suffered the loss of the moneys paid for the Products, as well as consequential damages, as a proximate result of the deception. Had Defendants not engaged in the deceptive practices and omissions described above, Plaintiff DeBernardis and Illinois Subclass Members would not have purchased the Products.

97. Plaintiff DeBernardis seeks to enjoin further unlawful, unfair and/or fraudulent acts or practices by Defendants, to obtain compensatory damages, restitution, interest, reasonable attorney's fees, allowable expenses, and all other relief allowed by law.

98. As a result of the Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiff DeBernardis and Illinois Subclass Members have sustained damages in an amount to be proven at trial.

99. In addition, Defendants' conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

COUNT III
Violation of New York General Business Law §349, *et seq.*
(on behalf of the New York Subclass against both Defendants)

100. Plaintiff Damore incorporates paragraphs 1 through 63 as if fully set forth herein.

101. Plaintiff Damore asserts this claim on behalf of herself and the New York Subclass.

102. Defendant IQ Formulations advertised, promoted, marketed, manufactured, distributed and sold the Products, which contain, *inter alia*, an unlawful ingredient.

103. Defendant Europa entered into an exclusive distribution agreement with Defendant IQ Formulations, whereby Defendant Europa advertised, promoted, marketed and sold the Products, which contain, *inter alia*, an unlawful ingredient.

104. Defendants' foregoing acts and practices, including their omissions, were directed at consumers.

105. Defendants' foregoing deceptive acts and practices, including their omissions, were material, in part, because they concerned an essential part of the Products, including their lawful nature. Defendants omitted material facts regarding the Products by failing to disclose that the Products contain an unlawful ingredient DMBP and could not be lawfully sold to consumers.

106. Defendants' foregoing deceptive acts and practices, including their omissions, were and are deceptive acts or practices in violation of New York's General Business Law section 349, Deceptive Acts and Practices, N.Y. Gen. Bus. Law 349, *et seq.,* in that:

a. Defendants designed, formulated, manufactured, inspected, packaged, marketed, distributed, supplied and/or sold the Products when they knew, or should have known, that it was materially defective and could not be lawfully sold to consumers, including Plaintiff Damore and New York Subclass Members and;

b. Defendants knew the unlawful nature of the Products was unknown to and would not be easily discovered by Plaintiff Damore and New York Subclass Members, and would defeat their ordinary, foreseeable and reasonable expectations concerning the performance of the Products; and

107. Plaintiff Damore and New York Subclass Members were deceived by Defendants' failure to disclose and could not discover the unlawful nature of the Products before suffering damages and Injuries.

108. Plaintiff Damore and New York Subclass Members suffered damages when they purchased the Products, which could not be lawfully sold to them.

109. Defendants' unconscionable, deceptive and/or unfair practices caused actual damages to Plaintiff Damore and New York Subclass Members who were unaware of the unlawful ingredient DMBP in the Product when they purchased it.

110. Defendants' foregoing deceptive acts and practices, including their omissions, were likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

111. Consumers, including Plaintiff Damore and New York Subclass Members, would not have purchased the Products had they known that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

112. Consumers, including Plaintiff Damore and New York Subclass Members, could not have purchased the Products had Defendants disclosed to them and the consuming public that the Products contained an unlawful ingredient and could not be lawfully sold to consumers.

113. As a direct and proximate result of Defendants' deceptive acts and practices, including their omissions, Plaintiff Damore and New York Subclass Members have been damaged as alleged herein, and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.

114. In addition, Plaintiff Damore and New York Subclass Members seek equitable and injunctive relief against Defendants on terms that the Court considers reasonable, and reasonable attorneys' fees and costs.

COUNT IV
(Fraud)
(On behalf of the Illinois and New York Subclasses against both Defendants)

115. Plaintiffs repeat the allegations contained in paragraphs 1 through 63 as if fully set forth herein.

116. Plaintiffs bring this Count individually and on behalf of Subclass Members.

117. As described herein, Defendants knowingly made material misrepresentations and omissions regarding the Products in their marketing and advertising materials.

118. Defendants have made representations and omissions to the public, including Plaintiffs and Subclass Members, by promoting, marketing, advertising, packaging, labeling, distributing, selling, and other means, in a way that led consumers to believe the Products contained lawful ingredients and could be lawfully be sold.

119. Contrary to these representations and omissions, the Products contained an unlawful ingredient DMBP, and could not be lawfully sold to consumers.

120. At the time Defendants made the representations and omissions herein alleged, Defendants knew the representations and omissions were false.

121. Defendants made these material misrepresentations and omissions in order to induce Plaintiffs and putative Subclass Members to purchase the Products.

122. The misrepresentations and omissions made by Defendants, upon which Plaintiffs and Subclass Members reasonably and justifiably relied, were intended to induce and did actually induce Plaintiffs and Subclass Members to purchase the Products.

123. Had Plaintiffs and Subclass Members known the truth about the unlawful nature of the Products, they would not and could not have purchased the Products.

124. Defendants' fraudulent actions and omissions caused damage to Plaintiffs and Subclass Members, who are entitled to damages and other legal and equitable relief as a result.

COUNT V
Unjust Enrichment
(On behalf of National Class and, alternatively, Illinois and New York Subclasses against both Defendants)

125. Plaintiffs incorporate paragraphs 1 through 63 as if fully set forth herein.

126. Plaintiffs and Class Members conferred benefits on Defendants by purchasing the Products.

127. Defendants received a substantial benefit in the form of payments from Plaintiffs and Class Members by purchasing the Products.

128. Plaintiffs and Class Members would not have purchased the Products if they had been aware of its misleading labeling, and the true nature and quality of the Products.

129. Defendants' retention of their benefits without providing the Products that Plaintiffs and Class Members reasonably expected to receive would be unjust and inequitable.

130. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and Class Members is unjust and inequitable, Defendants must pay restitution to Plaintiffs and Class Members for their unjust enrichment, as ordered by the Court.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other Class Members proposed in this Complaint, respectfully request that the Court enter judgment as follows:

A. Declaring that this action is a proper class action, certifying the Classes as requested herein, designating Plaintiffs as Class Representatives and appointing the undersigned counsel as Class Counsel for the Classes;

B. Ordering Defendants to pay actual damages to Plaintiffs and Class Members;

C. Enjoining Defendants from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

D. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiffs and Class Members;

E. Ordering Defendants to pay statutory damages, as provided by the applicable state consumer protection statutes invoked herein, to Plaintiffs and Class Members;

F. Ordering Defendants to pay attorneys' fees and litigation costs and expenses to Plaintiffs and Class Members;

G. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded;

H. Leave to amend this Complaint to conform to the evidence presented at trial; and

I. Ordering such other and further relief as may be just and proper.

Dated: April 26, 2017

Respectfully submitted,

MORGAN & MORGAN
COMPLEX LITIGATION GROUP

/s/ Rachel Soffin
Rachel Soffin (Florida Bar No. 018054)
Jonathan B. Cohen (Florida Bar No. 0027620)
201 N. Franklin St., 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 222-2434
rsoffin@forthepeople.com
jcohen@forthepeople.com

SIPRUT PC
Joseph J. Siprut*
jsiprut@siprut.com
Michael L. Silverman*
msilverman@siprut.com
17 N. State Street
Suite 1600
Chicago, Illinois 60602
Phone: 312.236.0000
Fax: 312.878.1342

BARBAT, MANSOUR & SUCIU PLLC
Nick Suciu III*
nicksuciu@bmslawyers.com
434 West Alexandrine, Suite 101
Detroit, Michigan 48201
Phone: 313.303.3472

** Pending pro hac vice application*

Counsel for Plaintiffs and Putative Class Members