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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Nidia Reyes, Deputy Clerk

1 **THE LAW OFFICE OF**
 2 **PAUL K. JOSEPH, PC**
 3 PAUL K. JOSEPH (SBN 287057)
 4 *paul@pauljosephlaw.com*
 5 4125 W. Pt. Loma Blvd., No. 206
 6 San Diego, CA 92110
 7 Phone: (619) 767-0356
 8 Fax: (619) 331-2943
 9 ***Attorney for Plaintiffs and the***
 10 ***Proposed Class***

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF SAN DIEGO**

13 RENEE SHOAF and PAMELA PARRA, on
 14 behalf of themselves, all others similarly
 15 situated and the general public,

16 Plaintiffs,

17 v.

18 VITAQUEST, INTL. LLC, and WINDMILL
 19 HEALTH PRODUCTS, LLC,

20 Defendants.

Case No: 37-2017-00030910-CU-BT-CTL

CLASS ACTION

**VIOLATIONS OF CAL. BUS. & PROF.
 CODE §§17200 et seq.; CAL. BUS. &
 PROF. CODE §§17500 et seq.; CAL.
 CIV. CODE §§ 1750 et seq.; N.Y. GEN.
 BUS. L. § 349; N.Y. GEN. BUS. L. § 350;
 and BREACH OF EXPRESS &
 IMPLIED WARRANTIES**

DEMAND FOR JURY TRIAL

1 Plaintiffs Renee Shoaf, and Pamela Parra, on behalf of themselves, all others similarly
2 situated, and the general public, by and through their undersigned counsel, hereby sue
3 Vitaquest Intl., LLC and Windmill Health Products, LLC (“Defendants”), and allege the
4 following upon their own knowledge, or where they lack personal knowledge, upon
5 information and belief and the investigation of their counsel.

6 **INTRODUCTION**

7 1. Defendants market and sell DietWorks Garcinia Cambogia, as a “powerful”
8 weight loss and dietary aid despite that the only purportedly “active” ingredient,
9 Hydroxycitric Acid (“HCA”), has been scientifically proven to be ineffective in providing
10 the claimed benefits.

11 2. Plaintiffs Renee Shoaf and Pamela Parra read and relied upon Defendants’
12 misleading labeling claims when purchasing the Products and were damaged as a result.

13 3. Plaintiffs bring this action challenging Defendants’ weight loss claims relating
14 to the Products on behalf of themselves and all other similarly situated consumers in
15 California and New York, alleging violations of the California’s Consumer Legal Remedies
16 Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”), Unfair Competition Law, Cal. Bus. & Prof.
17 Code §§ 17200 *et seq.* (“UCL”), False Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”), and
18 New York’s General Business Law, N.Y. Gen. Bus. L. §§ 349 and 350. Plaintiffs further
19 allege that Defendants breached express and implied warranties under state law.

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

25 **JURISDICTION & VENUE**

26 5. The California Superior Court has jurisdiction over this matter as a result of
27 Defendants’ violations of the California Business and Professions Code, California Civil
28 Code, and California Commercial Code.

EXHIBIT A

- 16 -

1 6. The aggregate monetary damages and restitution sought herein exceed the
2 minimum jurisdictional limits for the Superior Court and will be established at trial, according
3 to proof.

4 7. The California Superior Court also has jurisdiction in this matter because there
5 is no federal question at issue, as the issues herein are based solely on California or New York
6 statutes and law.

7 8. The Court has personal jurisdiction over Defendants because they have
8 purposely availed themselves of the benefits and privileges of conducting business activities
9 within California as the Products are widely and intentionally sold throughout California.

10 9. Venue is proper in San Diego County because plaintiff Renee Shoaf resides in
11 San Diego, California, and a substantial part of the events or omissions giving rise to the
12 claims occurred in San Diego.

13 **PARTIES**

14 10. Plaintiff Renee Shoaf is a resident of San Diego, California and a citizen of
15 California.

16 11. Plaintiff Pamela Parra is a resident of Island Park, New York and a citizen of
17 New York.

18 12. Windmill Health Products, LLC is a New Jersey limited liability company, with
19 its principal place of business at 6 Henderson Drive, West Caldwell, NJ 07006. Windmill
20 Health Products manufactures, markets, and/or sells the Dietworks Products.

21 13. Vitaquest, Intl., LLC is a Delaware limited liability company with its principal
22 place of business located at 8 Henderson Drive, West Caldwell, NJ 07006. Vitaquest, Intl.,
23 LLC is the owner of the “DietWorks” trademark, under which the DietWorks Garcinia
24 Cambogia are currently sold.

25 **FACTS**

26 **I. Scientific Research Demonstrates that Garcinia Cambogia Extract (HCA) Is Not**
27 **Effective in Aiding Weight Loss, Reducing Body Fat, Curbing or Suppressing**
28 **Appetite, or Burning Fat**

EXHIBIT A
- 17 -

1 14. Numerous randomized, placebo controlled scientific studies demonstrate that
2 *Garcinia Cambogia* extract or hydroxycitric acid (“HCA”) does not provide weight-loss
3 benefits in humans.

4 15. In 1998, Dr. Steven Heymsfield and his colleagues published the first study to
5 “examine the effectiveness of hydroxycitric acid for weight loss and fat mass reduction in a
6 rigorous controlled trial.”¹

7 16. Dr. Heymsfield and his team of researchers specifically noted that, at that time,
8 the “evidence of human hydroxycitric acid efficacy for weight control is based largely on
9 studies with small sample sizes, studies that failed to include a placebo-treated group, and use
10 of inaccurate measures of body lipid change.” Their “investigation was designed to overcome
11 limitations of earlier studies and examine the effectiveness of hydroxycitric acid for weight
12 loss and fat mass reduction in a rigorous controlled trial.”²

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

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

21 19. “Specifically, body weight and fat mass change during the 12-week study period
22 did not differ significantly between placebo and treatment groups.”
23

24
25 ¹ S. Heymsfield et al., *Garcinia Cambogia (Hydroxycitric Acid) as a potential antiobesity*
agent, 280 J. Am. Med. Assoc. 1596, 1596 (1998).

26 ² *Id.*

27 ³ *Id.*

28 ⁴ *Id.* at 1599.

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

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

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

10 23. In addition, the study found that Garcinia Cambogia had no effect on fat loss.⁸
11 Rather, “the percentage of fat mass differences also was nonsignificant,” and “in no case did
12 analysis indicate any statistically significant effect for the active compound to produce a
13 different percentage of body fat mass loss than the placebo.”⁹

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

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

20 26. The authors of the study noted that “[t]here are reports to support the role of (-)-
21 HCA in promoting weight loss during a de novo lipogenic state in rodent studies, however,
22

23 ⁵ *Id.* at 1598.

24 ⁶ *Id.*

25 ⁷ *Id.*

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.* at 1599.

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

1 most people taking these weight loss supplements are not consuming diets that produce
2 substrate de novo lipogenesis.”¹² Therefore, they designed their study to examine “the effect
3 of (–)-HCA on the regulation of metabolism in humans consuming a typical Western diet
4 (approx. 30 ± 35% total calories as fat).”¹³

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

8 28. The study found no effect on fat metabolism and “[b]ody weight did not change
9 over the course of the study.”¹⁵

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

12 30. Therefore, the authors concluded that “the inability to demonstrate metabolic
13 changes consistent with citrate lyase inhibition suggests that this mechanism is not operable
14 to promote weight reduction”¹⁷

15 31. In 2000, the American Journal of Clinical Nutrition published a study that found
16 that “HCA, even when provided in large quantities, does not increase total fat oxidation in
17 vivo.”¹⁸

18 32. The “study showed that large doses of G. Cambogia extract [(18 ± 0.4 g HCA)]
19 do get absorbed in the intestine and can lead to a substantial increase in plasma HCA
20 concentrations. However, this does not affect fat and carbohydrate oxidation rates.”¹⁹

22 ¹² *Id.* at 868.

23 ¹³ *Id.*

24 ¹⁴ *Id.*

25 ¹⁵ *Id.* at 870.

26 ¹⁶ *Id.* at 872.

27 ¹⁷ *Id.* at 873.

28 ¹⁸ Van Loon L et al., *Effects of acute (–)-hydroxycitrate supplementation on substrate metabolism at rest and during exercise in humans*, 72 *Am. J. Clin. Nutr.* 1445, 1445 (2000).

¹⁹ *Id.* at 1449.

1 33. “Accordingly, a direct effect of HCA on fat oxidation seems unlikely to
2 contribute to its claimed antiobesity or ergogenic potential.”²⁰

3 34. Thus, the authors “conclude[d] that plasma HCA availability does not increase
4 energy expenditure or stimulate skeletal muscle fat oxidation.”²¹

5 35. In 2001, a study published in the International Journal of Obesity that tested the
6 effect of SuperCitrimax HCA, found that “Two-week supplementation with HCA . . . did not
7 result in increased satiety, fat oxidation, 24 h EE [energy expenditure] or BW [body weight]
8 loss.”²²

9 36. The study employed a “double-blind, placebo-controlled, randomized, cross-
10 over design” and specifically examined the effects of HCA *alone* and HCA in combination
11 with medium-chain triglycerides on “satiety, fat oxidation, energy expenditure and body
12 weight.”²³

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

15 38. The authors specifically noted that “BW [body weight] reduction was not
16 different between treatments,” and that “no difference in body fat loss was found between
17 treatments.”²⁵

18 39. In addition, “[t]he results did not support the hypothesis that HCA
19 supplementation may be effective on appetite and weight control by increasing fat
20 oxidation.”²⁶

21
22 ²⁰ *Id.*

23 ²¹ *Id.* at 1448.

24 ²² E. Kovacs et al., *The effects of 2-week ingestion of (–)-hydroxycitrate and (–)-*
25 *hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy*
expenditure and body weight, 25 *Int. J. Obes.* 1087, 1087 (2001).

26 ²³ *Id.* at 1088.

27 ²⁴ *Id.* at 1087.

28 ²⁵ *Id.* at 1091.

²⁶ *Id.* at 1087.

1 40. To the contrary, “no effect of HCA on fat oxidation or 24 h energy expenditure
2 was found.”²⁷

3 41. Further, “There was no difference in SMR [sleeping metabolic rate], RMR
4 [resting metabolic rate], DIT [diet-induced thermogenesis] and AEE [activity-induced energy
5 expenditure] between treatments.”²⁸

6 42. Put simply, “HCA was not effective.”²⁹

7 43. A 2011 study published in the Nutrition Journal found that Garcinia Cambogia
8 extract supplementation “failed to promote weight-loss or any clinically significant change
9 in % body fat.”³⁰

10 44. The randomized double-blind placebo-controlled trial found that “GCE
11 supplementation was not effective in promoting weight-loss in overweight individuals.”³¹

12 45. “In agreement with past studies the present study provided no evidence that
13 [garcinia cambogia extract] GCE supplementation can modify calorie intake in overweight
14 individuals consuming their habitual diet.”³²

15 46. Like the previous studies, “neither EGML nor GCE supplementation alone can
16 promote weight-loss in overweight individuals.”³³

17 47. These studies, all of which were controlled human trials, affirmatively
18 demonstrate that Garcinia Cambogia extract (HCA) does not and cannot aid in weight loss or
19 appetite control.
20
21

22 ²⁷ *Id.* at 1092.

23 ²⁸ *Id.* at 1091.

24 ²⁹ *Id.* at 1093.

25 ³⁰ Kim et al., *Does Glycine max leaves or Garcinia Cambogia promote weight-loss or lower
26 plasma cholesterol in overweight individuals: a randomized control trial*, 10 Nutr. J. 94, 94
(2011).

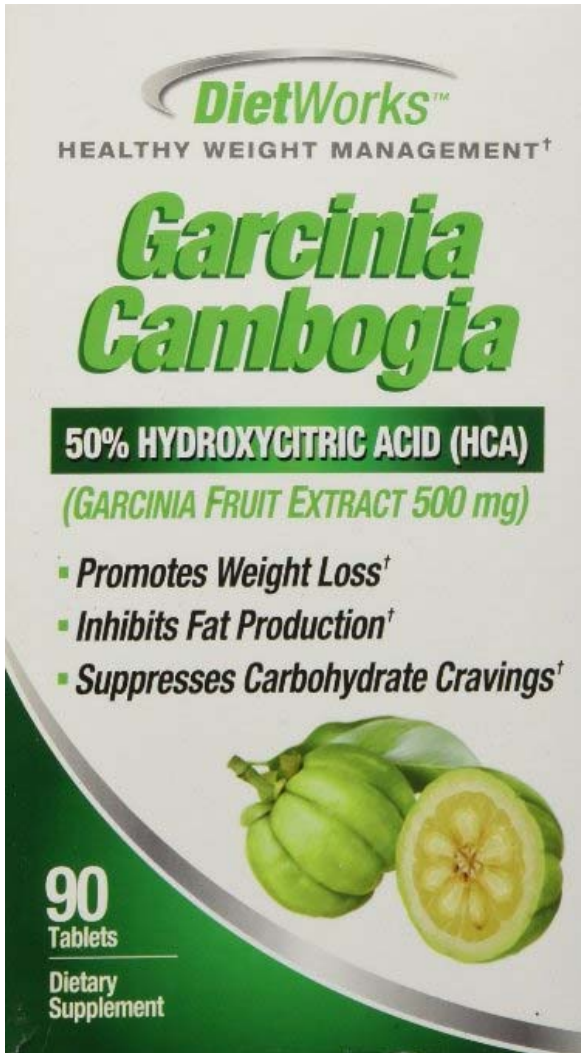
26 ³¹ *Id.* at 101.

27 ³² *Id.* at 102.

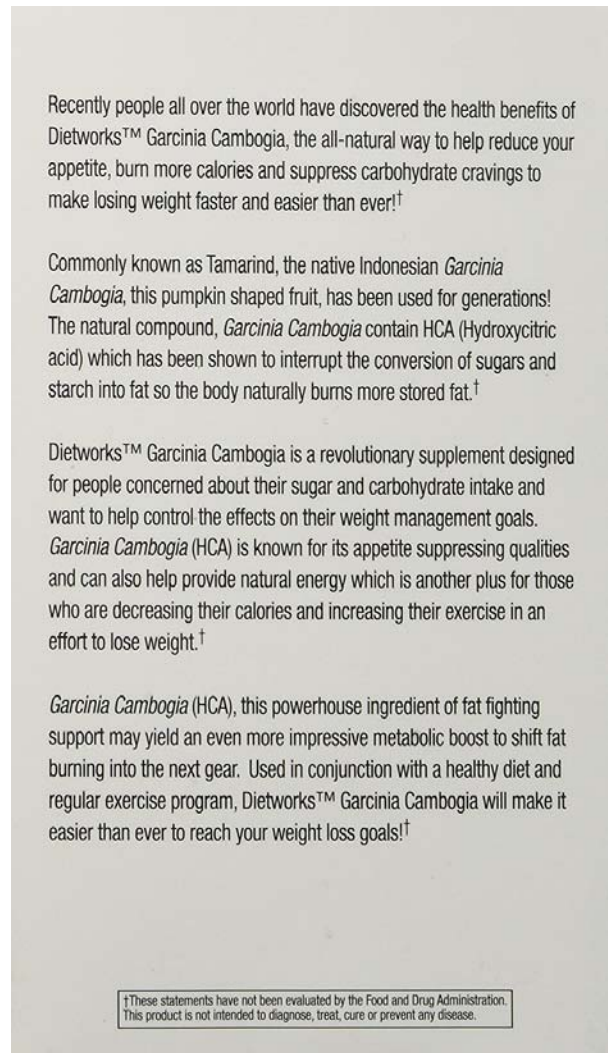
28 ³³ *Id.*

1 **II. The Composition of the DietWorks Garcinia Cambogia Products**

2 48. Although the Products are composed of a single purportedly active ingredient
3 (as described in more detail below), Defendants market and sell Dietworks Garcinia
4 Cambogia standardized to “50% HYDROOXYTRIC ACID (HCA)” (Figures 1a & 1b) and a
5 “60% HCA” (Figures 2a & 2b).³⁴ See also Attachments 1 & 2 for more complete exemplars.



22 Figure 1a.



23 Figure 1b.

24
25 ³⁴ Although Dietworks Garcinia Cambogia 60% HCA contains small amounts of potassium
26 and calcium, they are not intended to or claimed to provide independent weight-benefits, but
27 rather reduce the bitter taste of Hydroxycitric Acid and increase solubility. As the label itself
28 makes clear (Figure 2b), Defendants are claiming that HCA is “responsible for garcinia
cambogia’s powerful weight management properties.”

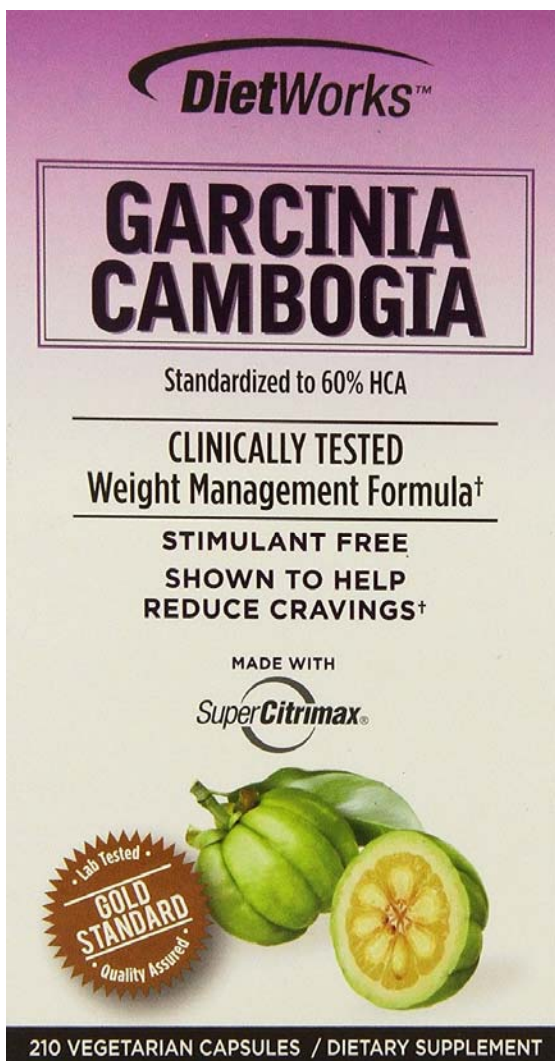


Figure 2a.

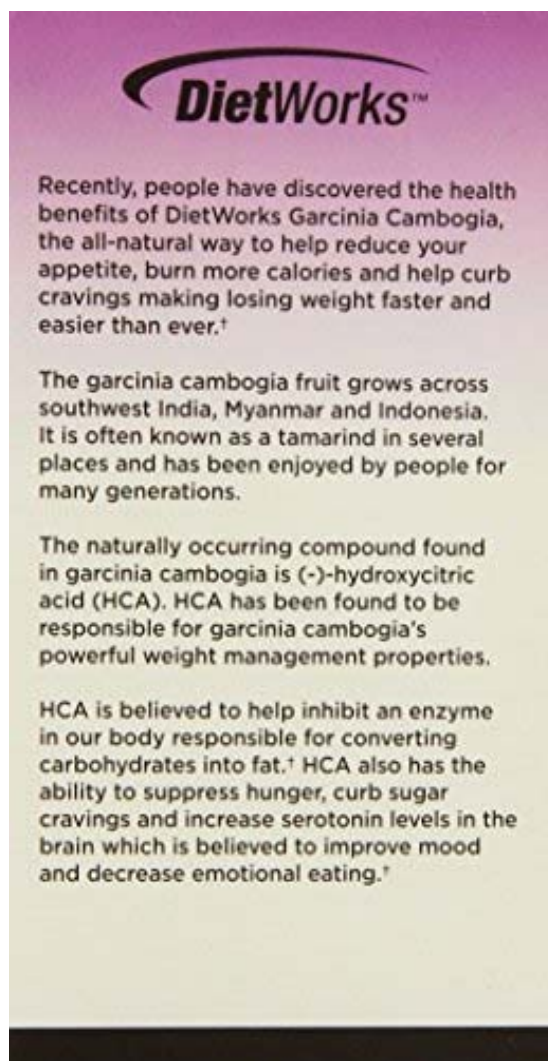


Figure 2b.

49. The Products are sold in either 500 mg tablets or capsules of Garcinia Cambogia Extract and therefore are represented to contain 250mg and 300mg of HCA respectively.

II. Defendants' Sale and Marketing of DietWorks Garcinia Cambogia

50. Defendants have distributed, marketed, and sold the DietWorks Garcinia Cambogia Products on a nationwide basis, including in California and New York, for at least the past several years.

51. The Products are sold at major retailers such as Walmart, Target, Rite-Aid and Costco.

1 **IV. Defendants Market DietWorks Garcinia Cambogia with False and**
2 **Misleading Labeling Claims**

3 52. Through various statements made on the Dietworks Garcinia Cambogia labeling
4 (Figures 1a & 1b and Figures 2a & 2b), Defendants market DietWorks Garcinia Cambogia
5 as highly effective in aiding weight-loss, appetite control, and burning and reducing fat,
6 among other dietary benefits, despite that research indicates HCA does not provide such
7 benefits.

8 53. As described below, the claims Defendants place on the labeling of DietWorks
9 Garcinia Cambogia, individually and in combination, convey that DietWorks Garcinia
10 Cambogia is highly effective dietary aid, which is misleading because HCA does not provide
11 the claimed benefits. These claims are likely to mislead reasonable consumers..

12 **A. Misleading Claims on Dietworks Garcinia Cambogia 50% HCA**

13 54. **Misleading “DietWorks” Claim.** The very brand name “DietWorks” conveys
14 to consumers that Dietworks Garcinia Cambogia is an effective dietary aid that will actually
15 “work” and help consumers lose weight or provide other dietary benefits. This claim,
16 individually and especially in context of the label as a whole, is misleading because scientific
17 evidence demonstrates that the lone “active” ingredient in Dietworks Garcinia Cambogia,
18 HCA, does not provide any weight-loss benefits.

19 55. **Misleading “HEALTHY WEIGHT MANAGEMENT” Claim.** This claim
20 conveys that Dietworks Garcinia Cambogia is capable of aiding consumers to lose weight
21 and will actually help consumers lose weight. This claim, individually and especially in
22 context of the label as a whole, is misleading because scientific evidence demonstrates that
23 the lone “active” ingredient in Dietworks Garcinia Cambogia, HCA, does not provide any
24 weight-loss or other dietary benefits.

25 56. **Misleading “Promotes Weight Loss” Claim.** This claim conveys that
26 Dietworks Garcinia Cambogia is capable of aiding consumers lose weight and will actually
27 help consumers lose weight. This claim, individually and especially in context of the label as
28

1 a whole, is misleading because scientific evidence demonstrates that the lone “active”
2 ingredient in Dietworks Garcinia Cambogia, HCA, does not provide any weight-loss benefits.

3 **57. Misleading “Inhibits Fat Production” Claim.** This claim conveys that
4 Dietworks Garcinia Cambogia will inhibit fat production and therefore help consumers
5 reduce body fat and lose weight. This claim, individually and especially in context of the
6 label as a whole, is misleading because scientific evidence demonstrates that the lone “active”
7 ingredient in Dietworks Garcinia Cambogia, HCA, does not inhibit fat production or reduce
8 body fat.

9 **58. Misleading “The natural compound, Garcinia Cambogia contain HCA
10 (Hydroxycitric acid) which has been shown to interrupt the conversion of sugars and
11 starch into fat so the body naturally burns more stored fat” Claim.** Likewise, this claim
12 conveys that Dietworks Garcinia Cambogia will inhibit fat production and therefore help
13 consumers reduce body fat and lose weight. This claim, individually and especially in context
14 of the label as a whole, is misleading because scientific evidence demonstrates that the lone
15 “active” ingredient in Dietworks Garcinia Cambogia, HCA, does not inhibit fat production
16 or reduce body fat.

17 **59. Misleading “Suppresses Carbohydrate Cravings” Claim.** This claim
18 conveys that Dietworks Garcinia Cambogia will aid in weight loss by reducing appetite or
19 carbohydrate cravings. This claim, individually and especially in context of the label as a
20 whole, is misleading because scientific evidence demonstrates that the lone “active”
21 ingredient in Dietworks Garcinia Cambogia, HCA, does not suppress appetite or otherwise
22 affect appetite variables.

23 **60. Misleading “Recently people all over the world have discovered the health
24 benefits of DietWorks Garcinia Cambogia, the all-natural way to help reduce your
25 appetite, burn more calories and suppress carbohydrate cravings to make losing weight
26 faster and easier than ever!” Claim.** This claim conveys that Dietworks Garcinia Cambogia
27 will help consumers lose weight faster by reducing or suppressing appetite and cravings, and
28 burning more calories or increasing metabolism. This claim, individually and especially in

1 context of the label as a whole, is misleading because scientific evidence demonstrates that
2 the lone “active” ingredient in Dietworks Garcinia Cambogia, HCA, does not aid weight loss,
3 suppress appetite or otherwise affect appetite variables, or burn more calories.

4 **61. Misleading “Dietworks Garcinia Cambogia is a revolutionary supplement**
5 **designed for people concerned about their sugars and carbohydrate intake and want to**
6 **help control the effects on their weight management goals” Claim.** This claim conveys
7 that Dietworks Garcinia Cambogia is a highly effective supplement that will aid weight loss
8 by reducing appetite or carbohydrate cravings. This claim, individually and especially in
9 context of the label as a whole, is misleading because scientific evidence demonstrates that
10 the lone “active” ingredient in Dietworks Garcinia Cambogia, HCA, does not suppress
11 appetite or otherwise affect appetite variables.

12 **62. Misleading “Garcinia Cambogia (HCA) is known for its appetite**
13 **suppressing qualities and can also help provide natural energy which is another plus for**
14 **those who are decreasing their calories and increasing their exercise in an effort to lose**
15 **weight” Claim.** This claim conveys that Dietworks Garcinia Cambogia will aid weight loss
16 by suppressing appetite. This claim, individually and especially in context of the label as a
17 whole, is misleading because scientific evidence demonstrates that the lone “active”
18 ingredient in Dietworks Garcinia Cambogia, HCA, does not suppress appetite or otherwise
19 affect appetite variables.

20 **63. Misleading “Garcinia Cambogia (HCA), this powerhouse ingredient of fat**
21 **fighting support may yield an even more impressive metabolic boost to shift fat burning**
22 **into the next gear” Claim.** This claim conveys that Dietworks Garcinia Cambogia is a highly
23 effective supplement that will aid weight loss and significantly reduce body fat by increasing
24 metabolism and burning more fat. This claim, individually and especially in context of the
25 label as a whole, is misleading because scientific evidence demonstrates that the lone “active”
26 ingredient in Dietworks Garcinia Cambogia, HCA, does not aid weight loss, reduce body fat
27 or burn more fat.

1 64. **Misleading “Used in conjunction with a healthy diet and regular exercise**
2 **program, Diet Works Garcinia Cambogia will make it easier than ever to reach your**
3 **weight loss goals!” Claim.** This claim conveys that Dietworks Garcinia Cambogia is a highly
4 effective supplement that will increase weight loss. This claim, individually and especially in
5 context of the label as a whole, is misleading because scientific evidence demonstrates that
6 the lone “active” ingredient in Dietworks Garcinia Cambogia, HCA, does not aid weight loss.

7 **B. Misleading Claims on Dietworks Garcinia Cambogia 60% HCA**

8 65. **Misleading “DietWorks” Claim.** The very brand name “DietWorks” conveys
9 to consumers that Dietworks Garcinia Cambogia is an effective dietary aid that will actually
10 “work” and help consumers lose weight or provide other dietary benefits. This claim,
11 individually and especially in context of the label as a whole, is misleading because scientific
12 evidence demonstrates that the lone “active” ingredient in Dietworks Garcinia Cambogia,
13 HCA, does not provide any weight-loss benefits.

14 66. **Misleading “CLINICALLY TESTED WEIGHT MANAGEMENT**
15 **FORMULA” Claim.** This claim conveys that Dietworks Garcinia Cambogia is proven to be
16 effective by reliable scientific research and therefore will also be effective in providing the
17 claimed weight loss, appetite suppressing, and fat burning or inhibiting properties. This claim,
18 taken individually and especially in context of the label as a whole, is misleading because
19 while the effects of HCA may have been tested, reliable scientific evidence demonstrates that
20 it is *ineffective* in providing the benefits claimed by Defendants on the labeling of DietWorks
21 Garcinia Cambogia.

22 67. **Misleading “Lab Tested” Claim.** This claim likewise conveys that Dietworks
23 Garcinia Cambogia is proven to be effective by reliable scientific research and therefore will
24 also be effective in providing the claimed weight loss, appetite suppressing, and fat burning
25 or inhibiting properties. This claim, taken individually and especially in context of the label
26 as a whole, is misleading because while the effects of HCA may have been tested, reliable
27 scientific evidence demonstrates that it is *ineffective* in providing the benefits claimed by
28 Defendants on the labeling of DietWorks Garcinia Cambogia.

1 68. **Misleading “GOLD STANDARD” Claim.** This claim conveys that Dietworks
2 Garcinia Cambogia is not only highly effective in aiding weight loss and providing other
3 dietary benefits, but is more effective in doing so than other brands. This claim, taken
4 individually and especially in context of the label as a whole, is misleading because scientific
5 evidence demonstrates that the Product’s lone “active” ingredient, HCA, is incapable of
6 providing any weight-loss benefits.

7 69. **Misleading “SHOWN TO HELP REDUCE CRAVINGS” Claim.** This claim
8 conveys that Dietworks Garcinia Cambogia will aid in weight loss by reducing appetite or
9 cravings. This claim, individually and especially in context of the label as a whole, is
10 misleading because scientific evidence demonstrates that the lone “active” ingredient in
11 Dietworks Garcinia Cambogia, HCA, does not suppress appetite or otherwise affect appetite
12 or hunger variables.

13 70. **Misleading “Recently, people have discovered the health benefits of
14 DietWorks Garcinia Cambogia, the all-natural way to help reduce your appetite, burn
15 more calories and help curb cravings making losing weight faster and easier than ever”
16 Claim.** This claim conveys that Dietworks Garcinia Cambogia will help consumers lose
17 weight faster by reducing or suppressing appetite and cravings, and burning more calories or
18 increasing metabolism. This claim, individually and especially in context of the label as a
19 whole, is misleading because scientific evidence demonstrates that the lone “active”
20 ingredient in Dietworks Garcinia Cambogia, HCA, does not aid weight loss, suppress appetite
21 or otherwise affect appetite variables, or burn more calories.

22 71. **Misleading “The naturally occurring compound found in garcinia
23 cambogia is (-)-hydroxycitric acid (HCA). HCA has been found to be responsible for
24 garcinia cambogia’s powerful weight management properties” Claim.** This claim
25 conveys that Dietworks Garcinia Cambogia by virtue of its HCA content will provide weight
26 loss benefits and will be highly effective in doing so. This claim, individually and especially
27 in context of the label as a whole, is misleading because as alleged herein scientific evidence
28 demonstrates that the lone “active” ingredient in Dietworks Garcinia Cambogia, HCA, does

1 not aid weight loss, reduce body fat, burn more fat, suppress appetite, curb cravings, or
 2 provide other dietary benefits, much less is it highly effective in doing so.

3 72. **Misleading “HCA is believed to inhibit an enzyme in our body responsible**
 4 **for converting carbohydrates into fat. HCA also has the ability to suppress hunger, curb**
 5 **sugar cravings and increase serotonin levels in the brain which is believed to improve**
 6 **mood and decrease emotional eating” Claim.** This claim conveys that HCA, the lone
 7 “active” ingredient in Dietworks Garcinia Cambogia has a proven mechanism of action that
 8 prevents the conversion of carbohydrates into fat and thereby will reduce body fat and aid
 9 weight loss and that it will actually suppress hunger and curb cravings leading to further
 10 weight loss. This claim, individually and especially in context of the label as a whole, is
 11 misleading because the scientific evidence alleged herein demonstrates that the lone “active”
 12 ingredient in Dietworks Garcinia Cambogia, HCA, does not reduce body fat, suppress
 13 appetite or reduce hunger or otherwise aid weight loss.

14 73. In sum, the claims on the labels of Diet Works Garcinia Cambogia 50% HCA
 15 and 60% HCA convey the concrete overall message that the Product, by means of its HCA
 16 content, will be powerful and effective in helping consumers lose weight, control, suppress,
 17 or curb their appetite, and burn and reduce body fat. Defendants intended consumers to rely
 18 upon this message, which is false and misleading for the reasons stated herein.

19 **V. The Labeling of the DietWorks Garcinia Cambogia Violates California, New**
 20 **York, and Federal Statutes and Regulations**

21 **A. Any Violation of Federal Food Labeling Statutes or Regulations is a**
 22 **Violation of California and New York Law**

23 74. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health
 24 & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has adopted the federal
 25 food and dietary supplement labeling requirements as its own. *See id.* § 110665 (“Any food
 26 is misbranded if its labeling does not conform with the requirements for nutrition labeling as
 27 set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation
 28 adopted pursuant thereto.”); *id.* § 110670 (“Any food is misbranded if its labeling does not

1 conform with the requirements for nutrient content or health claims as set forth in Section
2 403(r) (21 U.S.C. Sec. 343(r)) of the federal act and the regulations adopted pursuant
3 thereto.”).

4 75. Similarly, New York’s Agriculture and Markets Law similarly incorporates the
5 FDCA’s labeling provisions found in 21 C.F.R. part 101. *See* N.Y. Comp. Codes R. & Regs,
6 title 1, § 259.1 [“1 N.Y.C.R.R. § 259.1”]. *See also* 1 N.Y.C.R.R. § 201.

7 76. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes
8 state regulations, such as the Sherman Law and New York Agriculture and Markets Law, that
9 are “identical to the requirement[s]” of the FDCA and federal regulations. *See* 21 U.S.C. §
10 343-1.

11 77. Because the New York Agriculture and Markets Law’s and the Sherman Law’s
12 requirements are identical to the requirements of the Federal Food, Drug, and Cosmetic Act
13 and FDA regulations they are explicitly authorized by the FDCA.

14 **C. DietWorks Garcinia Cambogia’s False and Misleading Labeling Claims**
15 **Render it Misbranded Under New York, California, and Federal Law**

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

18 79. Defendant’s deceptive statements described herein violate N.Y. Agric. & Mkts.
19 Law § 201, Cal. Health & Safety Code § 110660, and 21 U.S.C. § 343(a), which deem a food
20 or dietary supplement misbranded if its labeling is “false or misleading in any particular.”

21 80. Further, Defendants’ labeling of DietWorks Garcinia Cambogia is misleading,
22 and thus misbranded, because “it fails to reveal facts that are material in light of other
23 representations.” 21 C.F.R § 1.21.

24 **D. DietWorks Garcinia Cambogia is Misbranded Because it Makes**
25 **Unauthorized Structure Function Claims**

26 81. DietWorks Garcinia Cambogia is further misbranded because its label bears
27 structure function claims even though DietWorks Garcinia Cambogia does not meet the
28 requirements to make such claims.

1 82. Specifically, the statements “WEIGHT MANAGEMENT,” “WEIGHT LOSS,”
 2 “INHIBITS FAT PRODUCTION,” “SUPPRESSES CARBOHYDRATE CRAVINGS,”
 3 “REDUCE CRAVINGS,” “CURB APPETITE,” “reduce your appetite,” “burn more
 4 calories,” “help curb cravings,” “losing weight faster,” “inhibit an enzyme in our body
 5 responsible for converting carbohydrates into fat,” “suppress hunger,” “curb sugar cravings,”
 6 “increase serotonin levels,” “improve mood,” “decrease emotional eating,” “interrupt the
 7 conversion of sugars and starch into fat,” “burns more stored fat,” “appetite suppressing,”
 8 “provide natural energy,” and “lose weight,” are structure function claims.

9 83. These claims violate Cal. Health & Safety Code § 110670 and 1 N.Y.C.R.R. §
 10 259.1 that incorporate the federal requirements under 21 C.F.R. 101.93 and 21 U.S.C.
 11 343(r)(6) because the weight of scientific evidence does not support these claims as being
 12 “truthful and not misleading” as required.

13 84. To the contrary, scientific evidence, as alleged herein, affirmatively
 14 demonstrates that HCA—the only purportedly active ingredient in DietWorks Garcinia
 15 Cambogia—is incapable of providing these benefits.

16 85. DietWorks Garcinia Cambogia is thus “misbranded” and violates the California
 17 Sherman Law and the New York Agriculture and Markets Law.

18 **VI. Plaintiffs’ Purchase, Reliance, and Injury**

19 86. Mrs. Shoaf purchased DietWorks Garcinia Cambogia 50% HCA and 60% HCA
 20 several times during the period, and she believes her first purchase was in or around Spring
 21 2014. She made her purchases from Walmart locations at 605 Fletcher Parkway, El Cajon,
 22 CA 92020 and at 550 Grossmont Center Drive, La Mesa, CA 91942, and the Walgreens at
 23 8766 Navajo Road, San Diego, CA 92119, for approximately \$20.

24 87. When deciding to purchase DietWorks Garcinia Cambogia, Mrs. Shoaf read and
 25 relied on the labeling claims on the DietWorks Garcinia Cambogia 60% HCA, including, to
 26 the best of her recollection, the following:

- 27 a. “CLINICALLY TESTED WEIGHT MANAGEMENT FORMULA”
- 28 b. “SHOWN TO HELP REDUCE CRAVINGS”

1 c. “Lab Tested”

2 d. “GOLD STANDARD”

3 e. “Recently, people have discovered the health benefits of DietWorks
4 Garcinia Cambogia, the all-natural way to help reduce your appetite, burn more
5 calories and help curb cravings making losing weight faster and easier than ever.”

6 f. “The naturally occurring compound found in garcinia cambogia is (-)-
7 hydroxycitric acid (HCA). HCA has been found to be responsible for garcinia
8 cambogia’s powerful weight management properties.”

9 g. “HCA is believed to inhibit an enzyme in our body responsible for
10 converting carbohydrates into fat. HCA also has the ability to suppress hunger, curb
11 sugar cravings and increase serotonin levels in the brain which is believed to improve
12 mood and decrease emotional eating.”

13 88. When deciding to purchase DietWorks Garcinia Cambogia, Mrs. Shoaf read and
14 relied on the labeling claims on the DietWorks Garcinia Cambogia 50% HCA, including, to
15 the best of her recollection, the following:

16 a. “HEALTHY WEIGHT MANAGEMENT”

17 b. “Promotes Weight Loss”

18 c. “Inhibits Fat Production”

19 d. “Suppresses Carbohydrate Cravings”

20 e. “Recently people all over the world have discovered the health benefits of
21 DietWorks Garcinia Cambogia, the all-natural way to help reduce your appetite, burn
22 more calories and suppress carbohydrate cravings to make losing weight faster and
23 easier than ever!”

24 f. “The natural compound, Garcinia Cambogia contain HCA (Hydroxycitric
25 acid) which has been shown to interrupt the conversion of sugars and starch into fat so
26 the body naturally burns more stored fat.”

27 g. “Dietworks Garcinia Cambogia is a revolutionary supplement designed
28 for people concerned about their sugars and carbohydrate intake and want to help

1 control the effects on their weight management goals. Garcinia Cambogia (HCA) is
2 known for its appetite suppressing qualities and can also help provide natural energy
3 which is another plus for those who are decreasing their calories and increasing their
4 exercise in an effort to lose weight.”

5 h. “Garcinia Cambogia (HCA), this powerhouse ingredient of fat fighting
6 support may yield an even more impressive metabolic boost to shift fat burning into
7 the next gear. Used in conjunction with a healthy diet and regular exercise program,
8 Diet Works Garcinia Cambogia will make it easier than ever to reach your weight loss
9 goals!”

10 89. Ms. Parra believes she purchased a bottle of DietWorks Garcinia Cambogia 50%
11 HCA in or around March 2016 from the Walmart store located at 1220 Old Country Road,
12 Westbury, NY 11590, for approximately \$11.

13 90. When deciding to purchase DietWorks Garcinia Cambogia, Ms. Parra read and
14 relied on claims on the label of the DietWorks Garcinia Cambogia including, to the best of
15 her recollection, the following claims:

- 16 a. “HEALTHY WEIGHT MANAGEMENT”
- 17 b. “Promotes Weight Loss”
- 18 c. “Inhibits Fat Production”
- 19 d. “Suppresses Carbohydrate Cravings”
- 20 e. “Recently people all over the world have discovered the health benefits of
21 DietWorks Garcinia Cambogia, the all-natural way to help reduce your appetite, burn
22 more calories and suppress carbohydrate cravings to make losing weight faster and
23 easier than ever!”
- 24 f. “The natural compound, Garcinia Cambogia contain HCA (Hydroxycitric
25 acid) which has been shown to interrupt the conversion of sugars and starch into fat so
26 the body naturally burns more stored fat.”
- 27 g. “Dietworks Garcinia Cambogia is a revolutionary supplement designed
28 for people concerned about their sugars and carbohydrate intake and want to help

1 control the effects on their weight management goals. Garcinia Cambogia (HCA) is
2 known for its appetite suppressing qualities and can also help provide natural energy
3 which is another plus for those who are decreasing their calories and increasing their
4 exercise in an effort to lose weight.”

5 h. “Garcinia Cambogia (HCA), this powerhouse ingredient of fat fighting
6 support may yield an even more impressive metabolic boost to shift fat burning into
7 the next gear. Used in conjunction with a healthy diet and regular exercise program,
8 Diet Works Garcinia Cambogia will make it easier than ever to reach your weight loss
9 goals!”

10 91. Based on these representations, Plaintiffs believed DietWorks Garcinia
11 Cambogia was capable of providing and would be highly effective in providing dietary
12 benefits and would help them lose weight, and suppress or control their appetite, and burn
13 fat.

14 92. When purchasing DietWorks Garcinia Cambogia, Plaintiffs were seeking a
15 product that had the qualities described on the DietWorks Garcinia Cambogia labeling,
16 namely, an effective weight-loss supplement that aids in weight loss, suppresses appetite, and
17 burns fat.

18 93. The representations on the DietWorks Garcinia Cambogia labeling were and are
19 false and misleading, and had the capacity, tendency, and likelihood to confuse or confound
20 Plaintiffs and other consumers acting reasonably (including the putative Class) because, as
21 described in detail herein, DietWorks Garcinia Cambogia cannot deliver the purported
22 benefits and is no more effective than a placebo.

23 94. Plaintiffs acted reasonably in relying on the DietWorks Garcinia Cambogia
24 labeling claims suggesting that it is an effective dietary aid that Defendants intentionally
25 placed on the DietWorks Garcinia Cambogia labeling with the intent to induce average
26 consumers into purchasing it.

1 95. Instead of receiving a product that had “powerful” dietary properties, DietWorks
2 Garcinia Cambogia Products that Plaintiffs and the Class received do not and cannot deliver
3 the claimed benefits.

4 96. DietWorks Garcinia Cambogia, which has the sole intended purpose as a dietary
5 or weight-loss aid, is worthless since it is incapable of providing any such benefits.

6 97. Plaintiffs paid more for Diet Works Garcinia Cambogia, and would only have
7 been willing to pay less, or unwilling to purchase it at all, absent the false and misleading
8 labeling statements complained of herein.

9 98. For these reasons, DietWorks Garcinia Cambogia was worth less than what
10 Plaintiffs paid.

11 99. Plaintiffs would not have purchased DietWorks Garcinia Cambogia if they knew
12 that DietWorks Garcinia Cambogia was misbranded pursuant to California, New York, and
13 FDA regulations or that the labeling claims were false or misleading.

14 100. Plaintiffs would not have purchased the DietWorks Garcinia Cambogia if they
15 knew that the labeling claims were false or misleading, or that DietWorks Garcinia Cambogia
16 is incapable of providing the claimed benefits.

17 101. Plaintiffs lost money as a result of Defendants’ deceptive claims and practices
18 in that they did not receive what they paid for when purchasing the DietWorks Garcinia
19 Cambogia.

20 102. Plaintiffs detrimentally altered their position and suffered damages in an amount
21 equal to the amount they paid for the DietWorks Garcinia Cambogia.

22 103. The senior officers and directors of Defendants allowed DietWorks Garcinia
23 Cambogia to be sold with full knowledge or reckless disregard that the challenged claims are
24 fraudulent, unlawful, and misleading.

25 **CLASS ACTION ALLEGATIONS**

26 104. California Code of Civil Procedure section 382 provides that “when the question
27 is one of a common or general interest, of many persons, or when the parties are numerous,
28

1 and it is impracticable to bring them all before the court, one or more may sue or defend for
2 the benefit of all.”

3 105. While reserving the right to redefine or amend the class definition prior to
4 seeking class certification, plaintiffs bring this suit as a class action pursuant to Cal. Code
5 Civ. P. § 382 on behalf of themselves and a Class of all persons in California and New York
6 who on or after August 21, 2013 (the “Class Period”), purchased, for personal or household
7 use, and not for resale or distribution purposes the DietWorks Garcinia Cambogia Products
8 (the “Class”).

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

12 107. Questions of law and fact common to Plaintiffs and the Class include:

13 a. whether Defendants communicated a message regarding weight-loss, and
14 appetite-control or suppression, fat-burning, or other dietary benefits of the
15 DietWorks Garcinia Cambogia through the packaging;

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

18 c. whether the challenged claims discussed above are false, misleading, or
19 reasonably likely to deceive a reasonable consumer;

20 d. whether Defendants’ conduct violates public policy;

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

23 f. whether the DietWorks Garcinia Cambogia is misbranded;

24 g. the proper amount of damages, including punitive damages;

25 h. the proper amount of restitution;

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

27 and

28 j. the proper amount of attorneys’ fees.

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

3 109. Plaintiffs' claims are typical of Class Members' claims because they are based
4 on the same underlying facts, events, and circumstances relating to Defendants' conduct.
5 Specifically, all Class Members, including Plaintiffs, were subjected to the same misleading
6 and deceptive conduct when they purchased DietWorks Garcinia Cambogia, and suffered
7 economic injury because DietWorks Garcinia Cambogia was and is misrepresented. Absent
8 Defendants' business practice of deceptively and unlawfully labeling DietWorks Garcinia
9 Cambogia, Plaintiffs and Class Members would not have purchased DietWorks Garcinia
10 Cambogia.

11 110. Plaintiffs will fairly and adequately represent and protect the interests of the
12 Class, have no interests incompatible with the interests of the Class, and have retained counsel
13 competent and experienced in class action litigation, and specifically in litigation involving
14 the false and misleading advertising.

15 111. Class treatment is superior to other options for resolution of the controversy
16 because the relief sought for each Class Member is small such that, absent representative
17 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

18 112. Questions of law and fact common to the Class predominate over any questions
19 affecting only individual Class Members.

20 113. Defendants have acted on grounds applicable to the Class, thereby making
21 appropriate final injunctive and declaratory relief concerning the Class as a whole.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

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

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

26 **(By the California Class)**

27 114. Plaintiff Shoaf realleges and incorporates the allegations elsewhere in the
28 Complaint as if set forth in full herein.

1 115. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”
2 Cal. Bus. & Prof. Code § 17200.

3 116. The acts, omissions, misrepresentations, practices, and non-disclosures of
4 Defendants as alleged herein constitute business acts and practices.

5 **Fraudulent**

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

8 118. As set forth herein, Defendants’ claims relating to DietWorks Garcinia
9 Cambogia are likely to mislead reasonable consumers to believe DietWorks Garcinia
10 Cambogia can provide weight-loss, appetite-control or suppression, and fat-burning benefits,
11 when DietWorks Garcinia Cambogia cannot.

12 **Unlawful**

13 119. The acts alleged herein are “unlawful” under the UCL in that they violate at least
14 the following laws:

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

20 **Unfair**

21 120. Defendants’ conduct with respect to the labeling, advertising, and sale of
22 DietWorks Garcinia Cambogia was unfair because Defendants’ conduct was immoral,
23 unethical, unscrupulous, or substantially injurious to consumers and the utility of their
24 conduct, if any, does not outweigh the gravity of the harm to their victims.

25 121. Defendants’ conduct with respect to the labeling, advertising, and sale of
26 DietWorks Garcinia Cambogia was and is also unfair because it violates public policy as
27 declared by specific constitutional, statutory or regulatory provisions, including but not
28 limited to the Consumers Legal Remedies Act, the False Advertising Law, portions of the

1 Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug,
2 and Cosmetic Law.

3 122. Defendants' conduct with respect to the labeling, advertising, and sale of
4 DietWorks Garcinia Cambogia was and is also unfair because the consumer injury was
5 substantial, not outweighed by benefits to consumers or competition, and not one consumers
6 themselves could reasonably have avoided.

7 123. Defendants profited from their sale of the falsely, deceptively, and unlawfully
8 advertised DietWorks Garcinia Cambogia to unwary consumers.

9 124. Plaintiff and Class Members are likely to continue to be damaged by
10 Defendants' deceptive trade practices, because Defendants continue to disseminate
11 misleading information. Thus, injunctive relief enjoining Defendants' deceptive practices is
12 proper.

13 125. Defendants' conduct caused and continues to cause substantial injury to Plaintiff
14 and the other Class Members. Plaintiff has suffered injury in fact as a result of Defendants'
15 unlawful conduct.

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

19 127. Plaintiff and the Class also seek an order for disgorgement and restitution of all
20 monies from the sale of Defendants' Diet Works Garcinia Cambogia, which may have been
21 unjustly acquired through acts of unlawful competition.

22 **SECOND CAUSE OF ACTION**

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

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

25 **(By the California Class)**

26 128. Plaintiff Shoaf realleges and incorporates the allegations elsewhere in the
27 Complaint as if set forth in full herein.

28 EXHIBIT A

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1 129. The False Advertising Law (“FAL”) provides that “[i]t is unlawful for any
2 person, firm, corporation or association, or any employee thereof with intent directly or
3 indirectly to dispose of real or personal property or to perform services” to disseminate any
4 statement “which is untrue or misleading, and which is known, or which by the exercise of
5 reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code §
6 17500.

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

10 131. As alleged herein, the advertisements, labeling, policies, acts, and practices of
11 Defendants relating to DietWorks Garcinia Cambogia misled consumers acting reasonably
12 as to the effectiveness of the weight-management and appetite-control properties of
13 DietWorks Garcinia Cambogia.

14 132. Plaintiff suffered injury in fact as a result of Defendants’ actions as set forth
15 herein because they purchased DietWorks Garcinia Cambogia in reliance on Defendants’
16 false and misleading labeling claims suggesting that DietWorks Garcinia Cambogia, among
17 other things, can provide weight-loss, appetite-control, and fat-burning benefits.

18 133. Defendants’ business practices as alleged herein constitute deceptive, untrue,
19 and misleading advertising pursuant to the FAL because Defendants have advertised
20 DietWorks Garcinia Cambogia in a manner that is untrue and misleading, which Defendants
21 knew or reasonably should have known, and omitted material information from its
22 advertising.

23 134. Defendants profited from their sale of the falsely and deceptively advertised
24 DietWorks Garcinia Cambogia to unwary consumers.

25 135. As a result, Plaintiff, the Class, and the general public are entitled to injunctive
26 and equitable relief, restitution, and an order for the disgorgement of the funds by which
27 Defendants were unjustly enriched.

1 136. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of herself and
2 the Class, seeks an order enjoining Defendants from continuing to engage in deceptive
3 business practices, false advertising, and any other act prohibited by law, including those set
4 forth in this Complaint.

5 **THIRD CAUSE OF ACTION**

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

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

8 **(By the California Class)**

9 137. Plaintiff Shoaf realleges and incorporates the allegations elsewhere in the
10 Complaint as if set forth in full herein.

11 138. The Consumer Legal Remedies Act (“CLRA”) prohibits deceptive practices in
12 connection with the conduct of a business that provides goods, property, or services primarily
13 for personal, family, or household purposes.

14 139. Defendants’ false and misleading labeling and other policies, acts, and practices
15 were designed to, and did, induce the purchase and use of DietWorks Garcinia Cambogia for
16 personal, family, or household purposes by Plaintiff and Class Members, and violated and
17 continue to violate the following sections of the CLRA:

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

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

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

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

26 140. Defendants profited from the sale of the falsely, deceptively, and unlawfully
27 advertised DietWorks Garcinia Cambogia to unwary consumers.

1 141. As a result, Plaintiff and the Class have suffered harm, and therefore seek, (a)
2 actual damages in the amount of the total retail sales price of the DietWorks Garcinia
3 Cambogia sold throughout the Class Period to all Class Members, and (b) punitive damages
4 in an amount sufficient to deter and punish, (c) injunctive relief in the form of modified
5 advertising and a corrective advertising plan, and (d) restitution.

6 142. Defendants' wrongful business practices constituted, and constitute, a
7 continuing course of conduct in violation of the CLRA.

8 143. Pursuant to California Civil Code § 1782 Plaintiffs notified Defendants, in
9 writing by certified mail, return receipt requested of their claims and the particular violations
10 of § 1770 of the Act, but they failed to remedy the violations within 30 days thereafter.

11 144. Because Defendants failed to implement remedial measures, Plaintiff, on behalf
12 of herself and the Class, seek injunctive relief under Civil Code § 1782(d), as well as actual
13 and punitive damages, including attorneys' fees.

14 145. In compliance with Cal. Civ. Code § 1780(d), Plaintiff's affidavit of venue is
15 filed concurrently herewith, attached to the Complaint. *See* Attachment 3.

16 **FOURTH CAUSE OF ACTION**

17 **Breach of Express Warranties,**

18 **Cal. Com. Code § 2313(1)**

19 **(By the California Class)**

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

22 147. Through the DietWorks Garcinia Cambogia labeling, Defendants made
23 affirmations of fact or promises, or description of goods, which were "part of the basis of the
24 bargain," in that Plaintiff and the Class purchased DietWorks Garcinia Cambogia in
25 reasonable reliance on those statements. Cal. Com. Code § 2313(1). Specifically, Defendants
26 crated warranties regarding DietWorks Garcinia Cambogia through the claims on the label of
27 the DietWorks Garcinia Cambogia, specifically described above in paragraphs 54 through
28 72.

1 148. Defendants breached the express warranties by selling DietWorks Garcinia
2 Cambogia, which does not and cannot provide the promised benefits.

3 149. That breach actually and proximately caused injury in the form of the lost
4 purchase price that Plaintiff and Class members paid for DietWorks Garcinia Cambogia.

5 **FIFTH CAUSE OF ACTION**

6 **Breach of Implied Warranty of Merchantability,**

7 **Cal. Com. Code § 2314**

8 **(By the California Class)**

9 150. Plaintiff Shoaf realleges and incorporates the allegations elsewhere in the
10 Complaint as if set forth in full herein.

11 151. Defendants, through their acts and omissions set forth herein, in the sale,
12 marketing, and promotion of DietWorks Garcinia Cambogia, made representations to
13 Plaintiffs and the Class suggesting that, among other things, DietWorks Garcinia Cambogia
14 can aid weight loss, appetite control, and reduce or burn body fat.

15 152. Plaintiffs and the Class bought DietWorks Garcinia Cambogia manufactured,
16 advertised, and sold by Defendants, as described herein.

17 153. Defendants are merchants with respect to the goods of this kind which were sold
18 to Plaintiffs and the Class, and there was, in the sale to Plaintiffs and other consumers, an
19 implied warranty that those goods were merchantable.

20 154. However, Defendants breached that implied warranty in that DietWorks
21 Garcinia Cambogia provides no weight-loss or appetite-control benefits, as set forth in detail
22 herein.

23 155. As an actual and proximate result of Defendants' conduct, Plaintiffs and the
24 Class did not receive goods as impliedly warranted by Defendants to be merchantable in that
25 they did not conform to promises and affirmations made on the container or label of the goods.

26 156. Plaintiff and Class have sustained damages as a proximate result of the foregoing
27 breach of implied warranty in the amount of the DietWorks Garcinia Cambogia's purchase
28 price.

1 **SIXTH CAUSE OF ACTION**

2 **Unfair and Deceptive Business Practices,**

3 **N.Y. Gen. Bus. L. § 349**

4 **(By the New York Class)**

5 157. Plaintiff Parra realleges and incorporates the allegations elsewhere in the
6 Complaint as if set forth in full herein.

7 158. Defendants' conduct constitutes deceptive acts or practices of false advertising
8 in the conduct of business, trade or commerce or on the furnishing of services in New York,
9 which affects the public interest under N.Y. Gen. Bus. L. § 349.

10 159. As alleged herein, by advertising, marketing, distributing and selling DietWorks
11 Garcinia Cambogia to Plaintiff and the other Class Members with false or misleading claims
12 and representations, Defendants engaged in, and continue to engage in, deceptive acts and
13 practices.

14 160. Defendants' conduct was materially misleading to Plaintiff and the Class.
15 During the Class Period, as described above, Defendants carried out a plan, scheme and
16 course of conduct which was consumer oriented.

17 161. As a direct and proximate result of Defendants' violation of N.Y. Gen. Bus. L.
18 § 349, Plaintiff and the Class were injured and suffered damages.

19 162. The injuries to Plaintiff and the Class were foreseeable to Defendants and, thus
20 Defendants' actions were unconscionable and unreasonable.

21 163. Defendants are liable for damages sustained by Plaintiff and the Class to the
22 maximum extent allowable under N.Y. Gen. Bus. L. § 349.

23 164. Pursuant to N.Y. Gen. Bus. L. § 349(h), Plaintiff and the Class seek an Order
24 enjoining Defendants from continuing to engage in unlawful acts or practices, false
25 advertising, and any other acts prohibited by law, including those set forth in this Complaint.

26 **SEVENTH CAUSE OF ACTION**

27 **False Advertising, N.Y. Gen. Bus. L. § 350**

28 **(By the New York Class)**

1 165. Plaintiff Parra realleges and incorporates the allegations elsewhere in the
2 Complaint as if set forth in full herein.

3 166. Defendants have engaged and are engaging in consumer-oriented conduct which
4 is deceptive or misleading in a material way, constituting false advertising in the conduct of
5 any business, trade, or commerce, in violation of N.Y. Gen. Bus. L. § 350.

6 167. As a result of Defendants' false advertising, Plaintiffs and the Class have
7 suffered and continue to suffer substantial injury, including damages, which would not have
8 occurred but for the false and deceptive advertising, and which will continue to occur unless
9 Defendants are permanently enjoined by this Court.

10 168. Plaintiff, on behalf of herself and the Class, seeks actual damages for
11 Defendants' breach of warranty.

12 **EIGHTH CAUSE OF ACTION**

13 **Breach of Express Warranty**

14 **(By the New York Class)**

15 169. Plaintiff Parra realleges and incorporates the allegations elsewhere in the
16 Complaint as if set forth in full herein.

17 170. In selling DietWorks Garcinia Cambogia to Plaintiff and the Class, Defendants
18 made affirmations of fact or promises that DietWorks Garcinia Cambogia was a highly
19 effective weight-loss supplement, as well as related affirmations of fact, promises, and
20 descriptions, described in paragraphs 54 through 72, which formed part of the basis of the
21 bargain.

22 171. Defendants thus expressly warranted the goods sold.

23 172. DietWorks Garcinia Cambogia, however, does not live up to these affirmations
24 of fact, promises, and descriptions, causing the breach of warranty when Plaintiff and other
25 consumers purchased DietWorks Garcinia Cambogia.

26 173. That breach actually and proximately caused injury in the form of the lost
27 purchase price that Plaintiff and the Class paid for DietWorks Garcinia Cambogia.

28 EXHIBIT A

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1 174. Plaintiff, on behalf of herself and the Class, seeks actual damages for
2 Defendants' breach of warranty.

3 **PRAYER FOR RELIEF**

4 175. Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated and
5 the general public, pray for judgment against Defendants as to each and every cause of action,
6 and the following remedies:

7 A. An Order declaring this action to be a proper class action, appointing
8 Plaintiffs as class representatives, and appointing undersigned counsel as class counsel;

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

10 C. An Order compelling Defendants to destroy all misleading and deceptive
11 advertising materials and DietWorks Garcinia Cambogia labels, and to recall all
12 offending DietWorks Garcinia Cambogia products;

13 D. An Order compelling Defendants to conduct a corrective advertising
14 campaign;

15 E. An Order requiring Defendants to disgorge all monies, revenues, and
16 profits obtained by means of any wrongful act or practices;

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

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

23 H. An award of attorneys' fees and costs; and

24 I. Any other and further relief that the Court deems necessary, just, or
25 proper.

26 **JURY DEMAND**

27 176. Plaintiffs hereby demand a trial by jury on all issues so triable.



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2 Dated: August 20, 2017

3 **THE LAW OFFICE OF PAUL K. JOSEPH, PC**

4 **PAUL K. JOSEPH**

5 *paul@pauljosephlaw.com*

6 4125 W. Point Loma Blvd., No. 206

7 San Diego, CA 92110

8 Phone: (619) 767-0356

9 Fax: (619) 331-2943

10 ***Attorney for Plaintiffs and the Proposed Class***