

1 Nick Suciu III (*pro hac vice* pending)  
2 **BARBAT, MANSOUR & SUCIU PLLC**  
1644 Bracken Road  
3 Bloomfield Hills, MI 48302  
Tel: (313) 303-3472  
4 Email: *nicksuciu@bmslawyers.com*

5 Charles E. Schaffer (*pro hac vice* pending)  
6 **LEVIN SEDRAN & BERMAN, LLP**  
510 Walnut Street, Suite 500  
7 Philadelphia, PA 19106  
Tel: (215) 592-1500, Fax: (215) 592-4663  
Email: *cschaffer@lfsblaw.com*

8 Charles J. LaDuca (*pro hac vice* pending)  
9 Beatrice Yakubu (*pro hac vice* pending)  
10 **CUNEO GILBERT & LADUCA, LLP**  
4725 Wisconsin Avenue NW, Suite 200  
11 Washington, D.C. 20016  
Tel: (202) 789 3960, Fax: (202) 789 1813  
Email: *charles@cuneolaw.com*  
12 Email: *byakubu@cuneolaw.com*

13 Erica C. Mirabella (*pro hac vice* pending)  
14 **MIRABELLA LAW, LLC**  
132 Boylston Street, 5th Floor  
15 Boston, MA 02116  
Tel: (617) 580-8270  
Email: *erica@mirabellaLLC.com*

16 Gayle M. Blatt, SBN 122048  
17 **CASEY GERRY SCHENK**  
18 **FRANCAVILLA BLATT & PENFIELD, LLP**  
110 Laurel Street  
19 San Diego, CA 92101  
Tel: (619) 238-1811, Fax: (619) 544-9232  
Email: *gmb@cglaw.com*

20 Counsel for Plaintiff  
21 and the Proposed Putative Classes

22 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

23 ADRIAN CANIZALEZ, individually  
24 and on behalf of all others similarly  
25 situated,

26 Plaintiff,

27 v.

28 NUTRAKEY, LLC,

Defendant.

CASE NO. '18CV2645 AJB MSB

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 This is a consumer class action brought on behalf of purchasers of NutraKey,  
3 LLC's ("Defendant" or "NutraKey") product, NutraKey Glutamine ("the Product").  
4 Defendant NutraKey engaged in unfair and/or deceptive business practices by  
5 misrepresenting the nature, characteristics, attributes, benefits and quality of the  
6 Product on the Product's labels, and was unjustly enriched thereby.

7 **NATURE OF THE CASE**

8 1. Plaintiff brings this class action individually and on behalf of the Class  
9 defined below against the Defendant to obtain relief, including, among other things,  
10 damages and injunctive relief. Plaintiff and Class members seeks redress for  
11 Defendant's manufacturing, marketing, promotion, distribution and sale of its  
12 Glutamine Product, which Defendant misleadingly claimed was "Essential for Protein  
13 Synthesis," "Stimulates Growth Hormone," and "Reduces Muscle Breakdown." In  
14 fact, the Product provides no such benefits.

15 2. Defendant NutraKey advertises, manufactures, markets, sells and  
16 distributes the Product throughout the United States, including in the State of  
17 California.

18 3. Defendant, like many companies in the bodybuilding supplemental  
19 industry, ignores competent and reliable scientific data about its Product and  
20 constituent ingredients, and promotes, markets and represents the Product provides  
21 benefits or enhancements which the Product cannot and does not provide.

22 4. L-Glutamine ("L-Glutamine" and "Glutamine" as used herein are  
23 synonymous) is the most abundant free amino acid found in human blood, and one of  
24 the individual building blocks that join together to make up proteins in the body.  
25 Glutamine is made in the muscles and is then distributed to various organs in the body  
26 via the bloodstream.

27 5. Glutamine is considered "nonessential" because the human body  
28 produces its own Glutamine.

1           6. While Glutamine naturally found within the body plays a role in certain  
2 mechanisms supporting muscle growth, recovery and may support immunity,  
3 numerous scientific studies have proven that Glutamine supplements provide no  
4 additional benefits.

5           7. Many healthy people however, are under the impression, perpetuated by  
6 dietary supplement manufacturers like Defendant, that a supplemental intake of  
7 Glutamine has beneficial effects. This is frequently the case among athletes and  
8 bodybuilders, who commonly consume Glutamine multiple times a day.

9           8. Glutamine supplementation doses range from 2 to 40 grams per day,  
10 which represents 3% to 60% of the recommended intake of amino nitrogen. Defendant  
11 NutraKey intended for consumers to read the representations on the labels of its  
12 Product and believe the ingestion of its Product would provide health benefits such as  
13 muscle recovery, muscle growth and immune support to induce them to purchase the  
14 Products.

15           9. In fact, ingesting Defendant's Product does basically nothing for  
16 recovery from exercise, recovery of muscle tissue<sup>1</sup>, or the ability to decrease muscle  
17 breakdown.<sup>2</sup>

18           10. Defendant is aware its claims are patently false and its Product provides  
19 no benefit to consumers.

20           11. Plaintiff and Class members relied on Defendant's representations, and as  
21 a result of Defendant's failure to properly market and advertise its products, Plaintiff  
22 and the Class have suffered damages.

### 23 **PARTIES**

24           12. At all times relevant hereto, Plaintiff Adrian Canizalez was a citizen of  
25 \_\_\_\_\_

26  
27 <sup>1</sup> "Recovery" in bodybuilding is the process in which fatigued muscles recuperate  
and grow after resistance training.

28 <sup>2</sup> This is often called an "anti-catabolic" effect and refers to the ability of a product to  
prevent or minimize the breakdown of earned muscles during a workout.

1 the State of California.<sup>3</sup> In September 2016, after reading the claims on Defendant’s  
2 Glutamine bottle and in reliance on Defendant’s promises of providing “anti-  
3 catabolic,” “muscle growth,” and “muscle recovery” benefits, purchased 500 grams of  
4 NutraKey Glutamine Max Bioavailability Ultra Micronized Dietary Supplement for  
5 his own use from 619 Muscle in San Diego, California for approximately \$25.99.

6 13. NutraKey, LLC is a company headquartered in Longwood, Florida.  
7 NutraKey, LLC manufactures, develops, sources, markets, and sells nutritional  
8 products and sports supplements.

9 **FACTUAL ALLEGATIONS**

10 14. Defendant’s Product labels clearly state that the Product provides  
11 benefits such as anti-catabolic effects, muscle recovery, and muscle growth:



21 15. NutraKey’s recovery, muscle, and anti-catabolic claims however, are  
22 patently false as demonstrated by the numerous scientific research papers, as alleged  
23 herein.

24 16. For example, in one study, glutamine failed to affect muscle protein  
25  
26  
27

28 <sup>3</sup> Plaintiff is now a resident of Nevada.

1 kinetics of the test subjects.<sup>4</sup>

2 17. In a study involving healthy humans, glutamine was continuously infused  
3 for 2.5 hours at a rate corresponding to 0.4 grams/kg, which revealed that glutamine  
4 supplementation did not stimulate muscle protein synthesis.<sup>5</sup>

5 18. Another study investigated the effect of L-Glutamine supplementation on  
6 the concentrations of glutamine in plasma and muscle tissue of exercise-trained rats,  
7 both immediately and three hours after a single exercise session until exhaustion. In  
8 that study, rats were subjected to 60 minutes of swimming exercise daily for six  
9 weeks. During the final three weeks, one group was given a daily dose of L-Glutamine  
10 (1 gram/kg). The plasma and muscle glutamine levels were higher than placebo during  
11 the post-exhaustive recovery period; however, this increase had no effect on the  
12 exercise swim test to exhaustion performance. Which means that elevations in plasma  
13 and muscle glutamine levels have no benefit on muscle performance.<sup>6</sup>

14 19. An additional study was also conducted to assess the effect of oral  
15 glutamine supplementation combined with resistance training in young adults.  
16 Subjects received either placebo (0.9 grams/kg fat-free mass/day of maltodextrin) or  
17 L-Glutamine (0.9 grams/kg fat-free mass/day) during six weeks of resistance training.  
18 Results showed that muscle strength, torque, fat-free mass, and urinary 3-methyl  
19 histidine (a marker of muscle protein degradation) all significantly increased with  
20 training, but were not different between the groups. This study demonstrated that L-  
21 Glutamine supplementation during resistance training had no significant effect on  
22

23 <sup>4</sup> Gore D., Wolfe R., "Glutamine supplementation fails to affect muscle protein kinetics  
24 in critically ill patients." JPEN J Parenter Enteral Nutr, 2002, 26:342-49.

25 <sup>5</sup> Svanberg E., Moller-Loswick A., Matthews D., Korner U., Lundholm K. "The  
26 effect of glutamine on protein balance and amino acid flux across arm and leg tissues  
27 in healthy volunteers." Clin Physiol, 2001, 4:478-89.

28 <sup>6</sup> Rogero M., Tirapequi J., Pedrose R., Castro I., Pires I. "Effect of alanyl-glutamine  
supplementation on plasma and tissue glutamine concentrations in rats submitted to  
exhaustive exercise." Nutrition, 2006, 22:564-71

1 muscle performance, body composition, or muscle protein degradation in young,  
2 healthy adults.<sup>7</sup>

3 20. Moreover, a study was performed to examine the effects of a  
4 combination of effervescent creatine, ribose, and glutamine on muscle strength,  
5 endurance, and body composition in resistance-trained men. Subjects performed  
6 resistance training while ingesting either a placebo or an experimental supplement (5  
7 grams of creatine, 3 grams of glutamine, and 2 grams ribose) for eight weeks. Both  
8 groups significantly improved muscle strength, endurance, and fat-free mass, yet the  
9 groups were not significantly different from one another. Therefore, the experimental  
10 supplement, which included glutamine, was no more effective than placebo in  
11 improving skeletal muscle adaptation to resistance training.<sup>8</sup>

12 21. Another study sought to determine the effects of eight weeks of creatine  
13 monohydrate and glutamine supplementation on body composition and performance  
14 measures. Subjects were randomly assigned to receive either placebo for eight weeks,  
15 creatine monohydrate (0.3 grams/kg/day for one week and then 0.03 grams/kg/day for  
16 seven weeks), or the same dose of creatine in addition to 4 grams of glutamine per day  
17 while engaged in a resistance training program. Body mass and fat-free mass  
18 increased in the creatine and creatine + glutamine groups at a greater rate than with  
19 placebo. Additionally, the two experimental groups underwent a significantly greater  
20 improvement in the initial rate of muscle power production compared to placebo.  
21 These results suggest that the creatine and creatine + glutamine groups were equally  
22 effective in producing skeletal adaptation to resistance training and that glutamine  
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25 <sup>7</sup> Candow D., Chilibeck P., Burke D, Davison K., Smith-Palmer T. "Effect of  
26 glutamine supplementation combined with resistance training in young adults." Eur J  
27 Appl Physiol, 2001, 86:142-49.

28 <sup>8</sup> Falk D., Heelan K., Thyfault J., Koch A. "Effects of effervescent creatine,  
ribose, and glutamine supplementation on muscle strength, muscular endurance, and  
body composition." J Strength Cond Res, 2003, 17:810-16.

1 apparently had no preferential effect in augmenting the results.<sup>9</sup>

2 22. One study was performed to determine if high-dose glutamine ingestion  
3 affected weightlifting performance. In a double-blind, placebo-controlled, crossover  
4 study, resistance trained men performed weightlifting exercises one hour after  
5 ingesting placebo (calorie-free fruit juice) or glutamine (0.3 g/kg) mixed with calorie-  
6 free fruit juice. Results demonstrated no significant differences in weightlifting  
7 performance (maximal repetitions on the bench press and leg press exercises),  
8 indicating that the short-term ingestion of glutamine did not enhance weightlifting  
9 performance in resistance-trained men.<sup>10</sup>

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

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22 <sup>9</sup> Lehmkuhl M., Malone M., Justice B., Trone G., Pistilli E., Vinci D., Haff E.,  
23 Kilgore L., Haff G. "The effects of 8 weeks of creatine monohydrate and glutamine  
24 supplementation on body composition and performance measures." J Strength Cond  
Res, 2003, 17:425-38.

25 <sup>10</sup> Antonio J., Sanders M, Kalman D., Woodgate D., Street C. "The effects of  
26 high-dose glutamine ingestion on weightlifting performance." J Strength Cond Res,  
2002, 16:157-60.

27 <sup>11</sup> Haub M., Potteiger J., Nau K., Webster M., Zebas C. "Acute L-glutamine  
28 ingestion does not improve maximal effort exercise." J Sports Med Phys Fitness,  
1998, 38:240-44.

1           24. Another study determined whether oral glutamine, by itself or in  
2 combination with hyperoxia, influenced oxidative metabolism or cycle time-trial  
3 performance in men. Subjects ingested either placebo or 0.125 grams/kg of glutamine  
4 one hour before completing a brief high-intensity time-trial (approximately four  
5 minutes in duration). The results showed no significant difference in pulmonary  
6 oxygen uptake during the exercise test, thereby indicating no effect of glutamine  
7 ingestion either alone or in combination with hyperoxia. Thus, there was no limiting  
8 effect of the tricarboxylic acid intermediate pool size on oxidative metabolism or  
9 performance during exercise.<sup>12</sup>

10           25. All of the above studies show that Glutamine supplementation has no  
11 effect on muscle growth or recovery, or any other type of performance enhancement.  
12 Yet, Defendant made claims for its Glutamine Product of “Anti-catabolic” “Muscle  
13 Growth” and “Muscle Recovery” to mislead consumers into believing the Product  
14 provided such benefits to induce them into purchasing the Product.

15           26. Plaintiff and the Class reasonably believed these claims to mean  
16 Defendant’s Product provided the benefits touted by Defendant, and purchased the  
17 Product based on these misrepresentations and/or omissions.

18           27. Plaintiff and the Class did not receive a product with the value Defendant  
19 promised the Product would have. The Product’s lack of benefits fully diminishes the  
20 value of the Product.

21           28. Plaintiff and Class members were deprived of the benefit of their  
22 bargained-for exchanges, and they suffered damages in an amount to be determined at  
23 trial.

24           29. Plaintiff would not have purchased the Product had he known they did  
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26 \_\_\_\_\_  
27 <sup>12</sup> Marwood S., Botwell J. “No effect of glutamine supplementation and hyperoxia  
28 on oxidative metabolism and performance during high-intensity exercise.” J Sports  
Sci, 2008, 26:1081-90.



1 not provide the health benefits as advertised on the label.

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

5 31. The United States Food and Drug Administration (the “FDA”)  
6 promulgated regulations for compliance with the Federal Food, Drug, and Cosmetic  
7 Act (the “FDCA”) and the Dietary Supplement Health and Education Act (the  
8 “DSHEA”) at 21 C.F.R. § 101, *et seq.* Defendant’s fabricated food Product is  
9 misbranded under 21 C.F.R. § 101, *et seq.*

10 32. The introduction of misbranded food into interstate commerce is  
11 prohibited under the FDCA and all state parallel statutes cited in this Complaint.

12 **JURISDICTION AND VENUE**

13 33. This Court has subject matter jurisdiction over this class action pursuant  
14 to 28 U.S.C. § 1332(d). The matter in controversy, exclusive of interest and costs,  
15 exceeds the sum or value of \$5,000,000 and is a class action in which some members  
16 of the Classes are citizens of States other than the State in which Defendant is  
17 incorporated and has its principal place of business.

18 34. Diversity jurisdiction exists because at the time of purchase, Plaintiff was  
19 a citizen of California and Defendant is a citizen of Florida.

20 35. This Court has personal jurisdiction over Defendant because it conducts  
21 business in California. Defendant has marketed, distributed, and sold the Product in  
22 California. Defendant has sufficient minimum contacts with this State, and/or  
23 sufficiently avails itself to the markets of this State through its sales and marketing  
24 within this State to render the exercise of jurisdiction by this Court permissible.

25 36. This Court has personal jurisdiction over Defendant because it has  
26 continuous and systematic contacts with California. Defendant regularly sells its  
27 products to California residents. Further, in addition to selling the Product in retail  
28 stores in California, this Court has personal jurisdiction over Defendant because its

1 Internet website allows consumers to order and ship the Product anywhere in the  
 2 United States, including in this District.<sup>13</sup> Defendant conducts business throughout the  
 3 United States, including in the State of California and in this District.

4 37. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and  
 5 (c) because a substantial part of the events or omissions giving rise to Plaintiff's  
 6 claims occurred in this District. Venue is also proper under 18 U.S.C. § 1965(a)  
 7 because Defendant transacts substantial business in this District.

### 8 CLASS ACTION ALLEGATIONS

9 38. Plaintiff brings this suit as a class action on behalf of himself and all  
 10 other similarly situated customers pursuant to Fed. R. Civ. P. 23. Plaintiff seeks to  
 11 represent the following Class:

12 **National Class:** All persons in the United States who purchased, not for resale,  
 13 the Product. Excluded from the Class are Defendant, their officers and  
 14 employees, affiliates and any entity in which Defendant has a controlling  
 15 interest. Also excluded are any Judge or Magistrate presiding over this or any  
 16 related action and members of their families; all persons who properly execute  
 17 and file a timely request for exclusion from the Class;

18 **State Subclass:** All persons in the State of California who purchased the  
 19 Product.

20 **Consumer Fraud Multi-State Class:** All persons in the States of California,  
 21 Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey,  
 22 New York, and Washington who purchased the Product.<sup>14</sup>

23 39. The exact number of Class members is unknown as such information is  
 24 in the exclusive control of the Defendant. Plaintiff, however, believes that the Class  
 25  
 26  
 27  
 28

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23 <sup>13</sup> See <https://nutrakeyhealth.com/> (Last visited May 31, 2018).

24 <sup>14</sup> The States in the Consumer Fraud Multi-State Class are limited to those States  
 25 with similar consumer fraud laws under the facts of this case: California (Cal. Bus. &  
 26 Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 ILCS  
 27 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.  
 28 Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri  
 (Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New  
 York (N.Y. Gen. Bus. Law § 349, *et seq.*); and Washington (Wash. Rev. Code §  
 19.86.010, *et seq.*).

1 encompasses hundreds of thousands of individuals throughout the United States.  
2 Therefore, the number of persons who are members of the Class described above are  
3 so numerous that joinder of all members in one action is impracticable.

4 40. Questions of law and fact that are common to the entire Class  
5 predominate over individual questions because the actions of Defendant complained  
6 herein were general applicable to the entire Class:

7 41. These legal and factual questions include but are not limited to:

- 8 a. Whether Defendant knew or should have known its statements  
9 regarding the benefits of the Product were false and/or misleading;
- 10 b. Whether Defendant intended to mislead and/or deceive Plaintiff and  
11 Class members about the true benefits of the Product;
- 12 c. Whether Defendant's conduct amounts to violations of numerous state  
13 consumer fraud statutes;
- 14 d. Whether Defendant breached an express warranty to Plaintiff and  
15 Class members;
- 16 e. Whether the Product failed to perform in accordance with the  
17 reasonable expectations of ordinary consumers;
- 18 f. Whether the Product fails to perform as advertised and warranted or  
19 expected by an ordinary consumer;
- 20 g. Whether Defendant's conduct in marketing and selling the Product  
21 involved misrepresentations, intentional omissions, or was otherwise  
22 unfair and deceptive;
- 23 h. Whether Defendant breached any implied warranties to Plaintiff and  
24 Class members;
- 25 i. Whether Defendant has been unjustly enriched;
- 26 j. Whether Plaintiff and Class members suffered damages as a result of  
27 Defendant's misconduct as described herein and, if so, the proper  
28 measure of damages;

1 k. Whether Plaintiff and the Class are entitled to compensatory,  
2 exemplary and statutory damages, and the amount of such damages;  
3 and

4 l. Whether Defendant should be declared financially responsible for  
5 notifying all Class Members about the true nature of the Product.

6 42. Plaintiff's claims are typical of those of other Class members because  
7 Plaintiff and all Class members were injured by the same wrongful practices of the  
8 Defendant as described in this Complaint. Plaintiff's claims arise from the same  
9 practices and course of conduct that gives rise to the claims of all Class members, and  
10 are based on the same legal theories.

11 43. Questions of law or fact common to the Class members predominate and  
12 a class action is superior to other available methods for the fair and efficient  
13 adjudication of this lawsuit, because individual litigation of the claims of all Class  
14 members is economically unfeasible and procedurally impracticable. While the  
15 aggregate damages sustained by Class members are likely to be in the millions of  
16 dollars, the individual damages incurred by each Class member resulting from  
17 Defendant's wrongful conduct are, as a general matter, too small to warrant the  
18 expense of individual suits. The likelihood of individual Class members prosecuting  
19 separate individual claims is remote and, even if every Class member could afford  
20 individual litigation, the court system would be unduly burdened by individual  
21 litigation of such cases. Individualized litigation would also present the potential for  
22 varying, inconsistent, or contradictory judgments and would magnify the delay and  
23 expense to all parties and to the court system resulting from multiple trials on the  
24 same factual issues. Plaintiff knows of no difficulty to be encountered in the  
25 management of this action that would preclude its maintenance as a class action and  
26 certification of the Class under Rule 23(b)(3) is proper.

27 44. Plaintiff has no interests that are contrary to or in conflict with those of  
28 the Class he seeks to represent.

1           45. As a matter of public policy, this consumer matter should proceed as a  
2 consumer class action that will produce several salutary byproducts, including:

- 3           a. A therapeutic effect upon those sellers who indulge in deceptive
- 4                 practices;
- 5           b. Aid to legitimate business enterprises by curtailing illegitimate
- 6                 competition; and
- 7           c. Avoidance to the judicial process of the burden of multiple litigation
- 8                 involving identical claims.

9           46. Defendant has acted or refused to act on grounds generally applicable to  
10 all members of the Class, thereby making appropriate final injunctive relief or  
11 corresponding declaratory relief with regard to Class members as a whole and  
12 certification of the Class under rule 23(b)(2) proper.

13   **COUNT I**

14                           **VIOLATION OF STATE CONSUMER FRAUD ACTS**

15                           **(On behalf of the Consumer Fraud Multi-State Class)**

16           47. Plaintiff re-alleges and incorporates by reference the allegations  
17 contained in all preceding paragraphs as though set forth fully herein.

18           48. Plaintiff asserts this cause of action on behalf of himself and the Class  
19 members.

20           49. The Consumer Fraud Acts of the States in the Consumer Fraud Multi-  
21 State Class<sup>15</sup> prohibit the use of unfair or deceptive business practices in the conduct

22  
23  
24 <sup>15</sup> The States in the Consumer Fraud Multi-State Class are limited to those States  
25 with similar consumer fraud laws under the facts of this case: California (Cal. Bus. &  
26 Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 ILCS  
27 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.  
28 Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri  
(Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New  
York (N.Y. Gen. Bus. Law § 349, *et seq.*); and Washington (Wash. Rev. Code §  
19.86.010, *et seq.*).

6

1 of trade or commerce.

2 50. Under the State Consumer Fraud Acts, Defendant's misleading  
3 marketing representations regarding the benefits of their Product are unfair, deceptive,  
4 and unconscionable.

5 51. Defendant violated State Consumer Fraud Acts by engaging in fraudulent  
6 and deceptive marketing practices by purposefully misleading consumers to believe  
7 that by using their Product they would achieve anti-catabolic effects, muscle recovery,  
8 immune support, and muscle growth.

9 52. Defendant's acts and practices as alleged in the foregoing paragraphs  
10 were false, misleading, deceptive, and unfair to consumers, in violation of various  
11 State Consumer Fraud Acts.

12 53. Plaintiff relied on Defendant's misrepresentations that its Product would  
13 help them achieve the aforementioned benefits. Had Defendant disclosed to Plaintiff  
14 and Class members that its Product did not provide the advertised benefits, Plaintiff  
15 and Class members would not have purchased Defendant's Product.

16 **COUNT II**

17 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,**

18 **BUSINESS AND PROFESSIONS CODE § 17500, et seq.**

19 **(In the Alternative of Count I and on behalf of the California Subclass)**

20 54. Plaintiff re-alleges and incorporates by reference the allegations  
21 contained in all preceding paragraphs as though set forth fully herein.

22 55. In violation of California Business & Professions Code § 17500, *et seq.*,  
23 Defendant has disseminated or caused to be disseminated deceptive advertising  
24 misrepresentations, omissions and practices as described herein. These statements are  
25 actionable violations of § 17500 in that Defendant expressly states that the Product  
26 has attributes which they do not possess.

27 56. At all times relevant, Defendant knew or, upon reasonable investigation,  
28 could have ascertained that its labeling, advertising, marketing, and promotion of its

1 Product was untrue, deceptive, and misleading.

2 57. Defendant's untrue, deceptive, and misleading labeling, advertising,  
3 marketing, and promotion of its Product has continued throughout the Class period,  
4 and is continuing as of the present date.

5 58. As detailed above, Plaintiff suffered injury in fact and a loss of money or  
6 property as a result of Defendant's acts and practices, which violate § 17500, *et seq.*

7 59. Pursuant to California Business & Professions Code § 17535, Plaintiff  
8 and members of the Class seek, and are entitled to:

- 9 a. an order enjoining Defendant from continuing to make false and  
10 misleading statements concerning the Product;  
11 b. restitution and disgorgement of any and all excessive amounts paid to  
12 Defendant or its agents;  
13 c. equitable relief pursuant to CAL. CIV. PROC. CODE § 384; and  
14 d. pre- and post-judgment interest at the highest rate allowable by law;  
15 and payment of attorney's fees and costs pursuant to, *inter alia*, CAL.  
16 CIV. PROC. CODE § 1021.5, the common fund and private attorney  
17 general doctrines.

18 60. As a result of Defendant's violations of the false advertising statute,  
19 Plaintiff and Class members are entitled to equitable relief as the Court deems  
20 appropriate.

21 **COUNT III**

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

23 **CALIFORNIA CIVIL CODE §1750 *et seq.***

24 **(On behalf of the California SubClass)**

25 61. Plaintiff re-alleges and incorporates by reference the allegations  
26 contained in all preceding paragraphs as though set forth fully herein.

27 62. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury  
28 in fact and lost money or property as a result of Defendant's actions.

1           63. This cause of action is brought pursuant to the California Consumers  
2 Legal Remedies Act (“CLRA”), Civil Code 1750 *et seq.* Plaintiff brings this action on  
3 his own behalf and on behalf of the Class members, all of whom are similarly situated  
4 consumers within the meaning of CAL. CIV. CODE. § 1761(d).

5           64. The acts and practices described in this Complaint were intended to result  
6 in the sale of goods, specifically NutraKey Glutamine, in consumer transactions.  
7 Defendant has violated, and continues to violate, the CLRA, CAL. CIV. CODE. §1770,  
8 including but not limited to subdivisions (a)(5), (a)(7), and (a)(16) by:

- 9           a. Representing that the Product has characteristics, as described herein,  
10 which they do not have.  
11           b. Representing that the Product is of a particular standard or quality,  
12 when it is of another.  
13           c. Representing that the Product was supplied in accordance with  
14 previous representations, when it was not.

15           65. Plaintiff and the Class members have suffered damage as a result of these  
16 violations.

17           66. Defendant, directing such conduct in this judicial district, misled  
18 consumers and concealed material facts concerning the Product even though  
19 Defendant was well aware of the true facts when Plaintiff purchased the Product.

20           67. Defendant’s misrepresentations and omissions described in the preceding  
21 paragraphs were at a minimum made without the use of reasonable procedure adopted  
22 to avoid such errors.

23           68. Defendant, directly or indirectly, has engaged in substantially similar  
24 conduct with respect to Plaintiff and each member of the Class.

25           69. Unless Defendant is enjoined from engaging in such wrongful actions  
26 and conduct in the future, members of the consuming public will be further damaged  
27 by Defendant’s conduct.

28           70. Pursuant to Civ. Code 1782, Plaintiff notified Defendant in writing of the



1 particular violations of Section 1770 of the CLRA (the “Notice”) and demanded,  
2 among other things, that Defendant cease making the misrepresentations alleged  
3 herein and provide restitution to members of the Class. Plaintiff sent Notice by means  
4 of certified U.S. Mail, return-receipt requested, to Defendant at its principal place of  
5 business on or around April 2, 2018. Defendant failed to respond. Thus, Plaintiff seeks  
6 actual and punitive damages in accordance with Civil Code § 1782(a) & (d).

#### 7 COUNT IV

#### 8 BREACH OF EXPRESS WARRANTY

#### 9 (On Behalf of the National Class and the California Subclass)

10 71. Plaintiff re-alleges and incorporates by reference the allegations  
11 contained in all preceding paragraphs as though set forth fully herein.

12 72. Plaintiff and the National Class members formed a contract with  
13 Defendant at the time they purchased the Product. The terms of the contract included  
14 the promises and affirmations of fact made by Defendant on the Product’s packaging  
15 and through marketing and advertising, as described above. This labeling, marketing  
16 and advertising constitute express warranties and became part of the basis of the  
17 bargain, and are part of the standardized contract between Plaintiff and the members  
18 of the National Class and Defendant.

19 73. Defendant labeled, distributed, marketed, promoted, sold and otherwise  
20 released into the stream of commerce, its Product as described herein, to consumers,  
21 including Plaintiff.

22 74. Defendant breached its express warranties about the Product because  
23 Defendant’s statements about the Product were false and the Product does not  
24 conform to Defendant’s affirmations and promises described above.

25 75. As a direct, foreseeable and proximate result of Defendant’s breaches of  
26 express warranties, Plaintiff and National Class members suffered economic losses  
27 when Plaintiff and Class members purchased the Product in reasonable reliance upon  
28 the express warranties.

**COUNT V**

**BREACH OF IMPLIED WARRANTY**

**(On Behalf of the National Class and California Subclass)**

1  
2  
3  
4 76. Plaintiff re-alleges and incorporates by reference each of the allegations  
5 contained in all of the preceding paragraphs of this Complaint as though set forth fully  
6 herein.

7 77. Plaintiff asserts this cause of action on behalf of himself and the Class  
8 members.

9 78. The Product are goods and Defendant is a merchant with respect thereto,  
10 within the meaning of the Uniform Commercial Code, as adopted in California.

11 79. Defendant developed, manufactured, distributed, marketed, advertised,  
12 and/or sold the Product directly to or for the purpose of their eventual sale to end users  
13 for consumption.

14 80. Defendant impliedly warranted to Plaintiff and Class members, prior to  
15 their purchase of the Product, that the Product was merchantable and reasonably fit for  
16 the purposes for which such products are used, and that the product be acceptable in  
17 trade for the product description.

18 81. Plaintiff and Class members relied on Defendant's skill and judgment in  
19 selecting Defendant's product to purchase. Moreover, Plaintiff and Class members  
20 relied on statements made on Defendant's packaging, container, and/or label, that the  
21 Product provides benefits such as anti-catabolic effects, muscle recovery, and muscle  
22 growth.

23 82. Defendant breached its duty by selling to Plaintiff and Class Members a  
24 Product that was not merchantable. In fact, the Product is unfit for its intended use  
25 and not of merchantable quality, in that it does not provide anticatabolic, muscle  
26 recovery, and muscle growth benefits.

27 83. The Product is unfit for its ordinary purpose and of nonmerchantable  
28 quality because it does not conform to the promises and/or affirmations of fact found

1 on the Product's containers or labels.

2 84. Defendant breached its implied warranties by including false promises or  
3 affirmations of fact on the Product's labels and/or containers.

4 **COUNT VI**

5 **UNJUST ENRICHMENT**

6 **(In the Alternative to Count III on Behalf of the National Class and**  
7 **California Subclass)**

8 85. Plaintiff re-alleges and incorporates by reference the allegations  
9 contained in all preceding paragraphs as though set forth fully herein.

10 86. Plaintiff and the National Class have unintentionally conferred  
11 substantial benefits on the Defendant by purchasing their Product.

12 87. Defendant knew or should have known that the payments they received  
13 were given and received with the expectation that Plaintiff and the Class members  
14 were purchasing the Product with an expectation of receiving the advertised benefits.

15 88. Because of Defendant's wrongful activities, they have unlawfully  
16 received Plaintiff and Class members' monies through corporate revenues, salaries  
17 and other financial benefits.

18 89. Defendant, having retained the monies unjustly enriched them, should be  
19 required by the Court to account to Plaintiff and the Class for their unjust enrichment  
20 and the profits earned thereafter such monies.

21 90. As a direct and proximate result of Defendant's wrongful conduct and  
22 unjust enrichment, Plaintiff and Class members have suffered damages in an amount  
23 to be determined at trial.

24 91. Defendant should be required to disgorge all monies, profits and gains  
25 which they have obtained or will unjustly obtain in the future at the expense of  
26 Plaintiff's and National Class members'.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays that this case be certified and maintained as a  
3 class action and for a judgment to be entered upon Defendant as follows:

- 4 A. Appointing Plaintiff as the representative of the Class and his counsel as  
5 Class counsel;
- 6 B. For economic and compensatory damages on behalf of Plaintiff and all  
7 Class members;
- 8 C. For actual damages sustained;
- 9 D. For all other actual, general, special, incidental, statutory, punitive, and  
10 consequential damages to which Plaintiff and Class members are entitled;
- 11 E. For injunctive relief, compelling Defendants to cease their unlawful  
12 actions and to account to Plaintiff for their unjust enrichment;
- 13 F. For reasonable attorneys' fees, reimbursement of all costs for the  
14 prosecution of this action, and pre-judgment and post-judgment interest;  
15 and
- 16 G. For such other and further relief this Court deems just and appropriate.  
17  
18  
19

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff respectfully demands a trial by jury on all issues within the instant so  
22 triable.

23 Dated: November 19, 2018 CASEY GERRY SCHENK  
24 FRANCAVILLA BLATT & PENFIELD, LLP

25  
26 By: s/Gayle M. Blatt  
27 GAYLE M. BLATT  
28 *gmb@cglaw.com*  
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ADRIAN CANIZALEZ, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) CASEY GERRY SCHENK FRANCAVILLA BLATT & PENFIELD, LLP 110 Laurel Street San Diego, CA 92101

DEFENDANTS

NUTRAKEY, LLC,

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

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

Attorneys (If Known)

'18CV2645 AJB MSB

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

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

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

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

VI. CAUSE OF ACTION

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

28 U.S.C. § 1332(d)
Brief description of cause: defective product - consumer protection

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/19/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Gayle M. Blatt

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
  
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
  
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
  
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
  
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.