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

12 MICHAEL TUBBS, EBONY
13 BAKER,

14 Plaintiffs,

15 v.

16 ADVOCARE INTERNATIONAL,
LP & DOES 1-10,

17 Defendants.
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) CASE NO.: 2:17-cv-4454-PSG-AJW

) CLASS ACTION

) THIRD AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF

) 1. Unlawful, Unfair and Fraudulent
Practices (Cal. Bus. & Prof. Code §
17200 *et seq.*);

) 2. Unfair, Deceptive, and Misleading
Advertising (Cal. Bus. & Prof.
Code

) § 17500 *et. seq.*);
3. Breach of Implied Warranty (CAL.
U. COMM. CODE §§ 2314, 2315);

) 4. Breach of Express Warranty (CAL.
U. COM. CODE § 2313);

) 5. Violation of the Consumer Legal
Remedies Act (CAL. CIV. CODE § 1750 *et*
seq.).

) Plaintiffs Demand a Trial By Jury

1 Plaintiffs Michael Tubbs and Ebony Baker (“Plaintiffs”), individually and on
2 behalf of all others similarly situated, bring this putative consumer Class action
3 against Defendants AdvoCare International, LP (“Advocare”) and DOES 1-10,
4 inclusive (hereinafter collectively referred to as “Defendants”), and allege as
5 follows:

6 **SUMMARY OF THE THIRD AMENDED COMPLAINT**

7 1. This action arises from actions and inactions perpetrated by
8 Defendants in the manufacturing, marketing, sales, and distribution of its product
9 line, the “24-Day Challenge,” which Defendants have sold and continue to sell as
10 “a comprehensive supplementation and nutrition program designed to give your
11 body the jumpstart it needs to help you reach your goals.” It is marketed as a
12 “weight management, energy, overall body composition or overall wellness”
13 product. In fact, it is none of these and Defendants’ representations are actually
14 false.

15 2. In the course of manufacturing, marketing, selling, and distributing the
16 24-Day Challenge, and AdvoCare Spark, a product Defendants market as a stand-
17 alone product and as a component of the 24-Day Challenge, Defendants have
18 committed and continue to commit illicit business practices, in violation of
19 California’s *Consumer Legal Remedies Act* (“CLRA,” *Civil Code* §§ 1750-1784),
20 California’s *False Advertising Law* (“FAL,” *Business and Professional Code* §
21 17500-17536), California’s *Unfair Competition Act* (“UCL,” *Business and*
22 *Professions Code* § 17200 *et seq.*), California’s *Sherman Food, Drug, & Cosmetic*
23 *Act* (the “Sherman Law,” *Health & Safety Code* §§ 108975-111915), and
24 California’s warranty laws, by making unlawful claims regarding the 24-Day
25 Challenge, through package labeling and mass media marketing, that are actually
26 false.

27 3. Defendants made the following false representations through mass
28 media advertising: that “AdvoCare Spark” as a “unique multi-nutrient system that

1 was developed as a nutritional source of energy and enhanced mental focus,” it
2 “enhances mental energy and focus,” it contains “more than 20 vitamins, minerals
3 and nutrients that work synergistically to provide a healthy, balanced and effective
4 source of energy that won't overburden or over stimulate your body,” it is a “source
5 of long-lasting energy and heightened mental focus and performance,” and it
6 contains “neuroactive amino acids that help increase your mental focus and
7 alertness by supporting your brain's ability to receive and send
8 messages.”www.advocare.com, Accessed on 8/8/2016. It in fact does none of this
9 as it does not increase mental focus or alertness, the minerals and nutrients do not
10 add anything to an otherwise healthy and balanced meal plan, and do in fact burden
11 and over stimulate one’s body.

12 4. Advocare also markets a 24-day Challenge encompassing additional
13 products, including "AdvoCare Spark", (hereinafter "Spark") which they represent,
14 when consumed in conjunction with a healthy diet and exercise, will help to rid
15 your body of waste and prepare your body to better absorb nutrients.

16 5. Defendants further fail to honor their warranty obligations by
17 providing a product that: (1) fails to pass without objection in the trade under the
18 description provided; (2) is not fit for the ordinary purpose for which such goods
19 are used and marketed; (3) is not fit for the particular purpose for which it was sold;
20 (4) is not adequately contained, packaged, and labeled; (5) does not conform to the
21 promises or affirmations of fact made on the container or label; (6) fails to provide
22 the 100% risk free money back guarantee; (7) fails to provide the free trial period;
23 and/or (8) violates the warranties contained in the California *Uniform Commercial*
24 *Code*, §§ 2313, 2314, and 2315.

25 **JURISDICTION AND VENUE**

26 6. This Court has found it has jurisdiction over this matter for the reasons
27 stated in its Order denying remand, Doc. 41.
28

CLASS ACTION ALLEGATIONS

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2 13. Plaintiffs bring this action as a Class action on behalf of all those
3 similarly situated and propose the following Class and sub Classes.

4 a. All individuals in California who purchased the 24-Day Challenge
5 products within four (4) years of filing this lawsuit.

6 b. A sub Class of all individuals in California who purchased Spark
7 within four (4) years of filing this lawsuit.

8
9 14. Plaintiffs maintain the right to amend or modify the class description
10 with greater specificity by further division into subclasses or by limitation to
11 particular issues and to create additional subclasses or classes, if necessary, and to
12 revise these definitions to maintain a cohesive Class that does not require individual
13 inquiry to determine liability.

14 15. Excluded from the proposed classes are Defendants, any entity in
15 which any Defendant has a controlling interest, any agents, employees, officers and
16 directors of Defendants, any entities or persons currently in bankruptcy, any entity
17 or person whose obligations have been discharged in bankruptcy, and any
18 governmental agency, entity, or judicial officer which presides over this case.

19 16. Each Plaintiff is a member of the Class and Plaintiffs' claims are
20 typical of the claims of the Class. The exact number of Class members is unknown
21 to Plaintiffs at this time, but is more than sixty for each, and such information can
22 be ascertained through appropriate discovery. All information necessary to identify
23 Class members and the damages suffered by each Class member can be found in
24 records maintained by Advocare and its agents.

25 **I. Common Questions of Law and Fact Predominate**

26 17. There are questions of law and fact common and of general interest to
27 the Classes. These common questions of law and fact predominate over any
28 questions affecting only individual members of the Class. Said common questions
include, but are not limited to, the following:

1 a. Whether Defendants omitted material information from its
2 marketing of the 24-Day Challenge Products (which include Spark);

3 b. Whether Defendants provided inaccurate material information in
4 its marketing of the 24-Day Challenge Products (which include Spark);

5 c. Whether Defendants falsely advertised the 24-Day Challenge
6 Products;

7 d. Whether Defendants' mass media advertising and/or the
8 packaging for the 24-Day Challenge Products is misleading and deceptive;

9 e. Whether Defendants falsely claim that the 24-Day Challenge
10 Products, individually and/or collectively, are "clinically tested" and/or
11 "medically approved;"

12 f. Whether Defendants' labeling and/or packaging for the 24-Day
13 Challenge Products is misleading, false, and/or illegal;

14 g. Whether Defendants represent to consumers that the 24-Day
15 Challenge Products, individually and/or collectively, have, whether used
16 singly or in conjunction, a characteristic, use, benefit, or quality that the
17 product does not have;

18 h. Whether Defendants knew or should have known the 24-Day
19 Challenge Products, individually and/or collectively, have, whether used
20 singly or in conjunction, do not have the characteristics, uses, benefits, or
21 qualities for which Defendants advertised and marketed the product;

22 i. Whether Defendants engaged in unfair, unlawful, and/or
23 fraudulent business practices in marketing and distributing the 24-Day
24 Challenge Products;

25 j. Whether Defendants engaged in false advertising with respect to
26 the 24-Day Challenge Products;

27 k. Whether Defendants have violated express and/or implied
28 warranty statutes;

1 l. Whether Defendants have been unjustly enriched;

2 m. The nature and extent of damages and other remedies to which
3 the wrongful conduct of Defendants entitle the Plaintiffs and Class members;

4 n. Whether members of the Class are likely to be deceived by
5 Defendants' representations, concealments, and non-disclosures concerning
6 the 24-Day Challenge Products;

7 o. Whether Defendants' representations, concealments, and non-
8 disclosures concerning the 24-Day Challenge Products violate the CLRA,
9 FAL, and/or the UCL;

10 p. Whether the Class is entitled to injunctive relief prohibiting the
11 challenged wrongful practices and enjoining such practices in the future;

12 q. Whether the Class is entitled to punitive damages; and,

13 r. Whether Plaintiffs and the Class are entitled to attorney's fees
14 and expenses; and, in what amount.

15 **II. Typicality and Numerosity**

16 18. The claims of the named Plaintiffs are typical of the claims of the
17 putative classes and Defendants' defenses to Plaintiffs' claims are typical of its
18 defenses to the claims of the putative Class. The number of members in each of the
19 putative Class exceeds sixty (60) members.

20 **III. Adequate Representation**

21 19. Plaintiffs will fairly and adequately protect the interests of the
22 members of the Classes and have no interest antagonistic to those of other Class
23 members. Plaintiffs have retained Class counsel competent to prosecute Class
24 actions and such Class counsel are financially able to represent the classes.

25 **IV. Superiority**

26 20. The class action is superior to other available methods for the fair and
27 efficient adjudication of this controversy since individual joinder of all members of
28 the Class is impracticable. The interests of judicial economy favor adjudicating the

1 claims for the Plaintiffs’ Class rather than on an individual basis. The class action
2 mechanism provides the benefit of unitary adjudication, economies of scale, and
3 comprehensive supervision by a single court.

4 **FACTUAL ALLEGATIONS**

5 **I. General Facts**

6 21. In today’s world, members of the general public need and/or perceive
7 themselves as being in need of, products that provide boosts of energy to cope with
8 the demands and stresses of daily jobs, family, and social life. While a simple cup
9 of coffee, or other source of caffeine, has for generations been seen as a way to
10 begin the day, stimulate energy, or provide relief from fatigue, in recent years a new
11 category of beverages, commonly referred to as “energy drinks,” has come to the
12 market and battled for market share by marketing and promoting such drinks as
13 superior sources of energy and a way to enhance mental and physical performance
14 via unique blends of ingredients, or additional ingredients beyond caffeine.
15 AdvoCare’s Spark energy supplement is one such product. However, it is now
16 coming to light that such products actually do not provide any superior benefits
17 over just ingesting caffeine, and they certainly do not justify their premium prices.

18 22. AdvoCare promises consumers that Spark “sharpens mental focus”
19 and that the 24-day challenge, “in conjunction with a healthy diet and exercise, help
20 to rid your body of waste and prepare your body to better absorb nutrients” by
21 providing a mixture of ingredients that, when ingested, significantly improve a
22 consumer’s physiological and mental performance.

23 23. AdvoCare’s Spark further promises that, Spark is a unique blend of 20
24 vitamins, minerals and nutrients that work synergistically to provide a healthy and
25 balanced source of energy. Spark contains an effective amount of caffeine to give
26 you a quick boost, B vitamins to enhance your body’s natural ability to produce and
27 sustain its own energy, and neuroactive amino acids that help increase your mental
28 focus and alertness.

1 24. Spark’s ingredients include caffeine and taurine, an ingredient alleged
2 to provide extra stimulation, although scientific research strongly questions
3 taurine’s benefits.

4 25. AdvoCare bases its claims upon and touts “scientific knowledge” it
5 claims demonstrates the superior nature of AdvoCare branded products.

6 26. Indeed, AdvoCare state on its website that, “AdvoCare relies on the
7 latest scientific knowledge and highest quality ingredients to create safe and
8 effective products. The AdvoCare Science team includes Doctors dedicated to
9 product research & development as well as training and education for AdvoCare
10 Independent Distributors. The science behind AdvoCare products helps improve
11 lives through superior nutrition and wellness.”

12 27. The Plaintiffs who purchased and consumed these products found them
13 to be unsafe and ineffective and instead caused them to be sick and not get the
14 promised benefits. As is explained below, Plaintiffs found Defendants’
15 representations and statements regarding their products to be actually false, not
16 merely unsubstantiated.

17 28. As background, and not an allegation that Defendants’ claims were
18 merely unsubstantiated, Plaintiffs provide the following facts.

19 29. Although Defendants point to purported scientific studies and research
20 to back up their claims that the unique blend of ingredients is responsible for the
21 claimed superior benefits of using AdvoCare products, the well-regarded scientific
22 journal *Nutrition Reviews* published an evaluation of various studies of energy drink
23 ingredients and their efficacy and found that:

24 With the exception of some weak evidence for glucose and guarana extract,
25 there is an overwhelming lack of evidence to substantiate claims that
26 components of [energy drinks], **other than caffeine**, contribute to the
27 enhancement of physical or cognitive performance.

28 Tom M. McLellan, et al., “Do Energy Drinks Contain Active Components Other
Than Caffeine?”, *Nutrition Reviews*, Vol. 70, pp. 730-44 (2012) (emphasis added).

1 30. In 2012, the well-respected International Journal of Sport Nutrition
2 and Exercise Metabolism published a study that confirmed that “acute ingestion of
3 AdvoCare Spark, a low-calorie caffeine-aurine energy drink, did not improve
4 repeated sprint times or anaerobic power...[and] the interaction effect between
5 caffeine habituation and the beverage [Advocare Spark] was significant, suggesting
6 that caffeine-naïve participants received more of an ergogenic benefit from the
7 energy drink than those who were accustomed to caffeine.” Exh. A. Acute Effects
8 of a Caffeine-Taurine Energy Drink on Repeated Spring Performance of American
9 College Football Players, Nnamdi Gwacham et. al., Int. J. of Sport Nutrition and
10 Exercise Metabolism: 2012, 22, 109-116. Thus, it is the caffeine alone, not the
11 additional ingredients in AdvoCare Spark that provided the energy benefits. This
12 study shows the promised benefits made to Plaintiffs below are false.

13 31. Dr. Randall Tackett, a pharmacologist and toxicologist with over 35
14 years of experience in pharmacology, toxicology, medical research, and public
15 health confirmed the results of the above cited Gwacham study as they relate to
16 Plaintiffs. Exh. B. He reviewed the ingredients in Advocare Spark, Advocare
17 advertisements on Advocare’s website, relevant scientific literature, the Third
18 Amended Complaint including the benefits promised by Advocare, and concluded
19 that the promised “mental alertness” is most likely related to the intake of caffeine
20 and not any other ingredient in Advocare Spark. *Id.* Finally, he concludes that the
21 “benefit:risk of using Spark [is] unfavorable.” *Id.*

22 32. Specifically, he concluded that although touted by Advocare Spark as
23 an ingredient that raises mental alertness, taurine is maintained at stable levels in
24 the brain and that “an increase in blood taurine levels secondary to dietary
25 supplementation would unlikely result in a sudden influx of taurine to the brain.”
26 *Id.* He further concludes that the additional ingredients in Spark are water soluble
27 and that a normal balanced diet would provide the necessary nutrients and that the
28 additional nutrients contained within Advocare Spark “would be excreted through

1 the urine” providing “no benefit to the body.” *Id.* Specifically, he concludes that
2 the “excess [ingredients] provides no benefit to the body.” *Id.* Finally, he concludes
3 that “Sparks actions are attributed to the caffeine in the product” and that “Spark
4 does not have any benefit that would be more so than ingesting the approximate
5 amount of caffeine in a typical cup of coffee.” *Id.* Accordingly, Advocare Spark
6 provides none of the promised benefits, its promised benefits are false, and Spark is
7 merely another source of caffeine which can be consumed in other far less
8 expensive forms.

9
10 33. The New York Times published an article titled “Energy Drinks
11 Promise Edge, but Experts Say Proof is Scant” (Barry Meier, January 1, 2013),
12 citing widespread scientific and governmental criticism of the notion that energy
13 drinks provide any more benefit than the average dose of caffeine consumed from a
14 cup of coffee. The article notes that Massachusetts congressman Edward J. Markey
15 has called for a U.S. government investigation into the energy drink industry’s
16 marketing claims.

17
18 34. The European Food Safety Authority concluded in 2011 that there is a
19 lack of scientific support for the claimed benefits of taurine, a key ingredient of
20 AdvoCare’s Spark energy supplement, stating it could find no cause and effect
21 relationship between taurine and its purported benefits. European Food Safety
22 Authority, EFSA Journal 2011; 9(4):2035.

23
24 35. Laura Zavadil, RD, LDN (Registered Dietitian and Licensed
25 Dietitian/Nutritionist) has studied the 24-Day Challenge products concluding that
26 they are “Bad For You.” “Beware of AdvoCare Weight-Loss Supplements,”
27 [http://wellness.nifs.org/blog/bid/88985/NIFS-Nutrition-News-Beware-of-](http://wellness.nifs.org/blog/bid/88985/NIFS-Nutrition-News-Beware-of-AdvoCare-Weight-Loss-Supplements)
28 AdvoCare-Weight-Loss-Supplements (accessed on 10/17/2017). After analyzing
the promised benefits from Defendants’ advertising, as identified herein, she
concludes that the supplements for the “cleanse” phase are “glorified laxatives.”
Thus, Defendants’ advertisements of superior benefits are false.

1 36. After studying the ingredients of Spark, registered nurse Katy
2 Haldiman, MS (Masters of Science), RN, has stated that Spark is not healthy. “Why
3 ‘Getting Sparked Up’ With Advocare Is Not Healthy,”
4 <http://thepaleonurse.com/why-getting-sparked-up-with-advocare-is-not-healthy/>. It
5 “contains toxic, low quality ingredients that ignore the bio individuality of people’s
6 nutrient needs and fails to address the underlying root causes of a lack of energy
7 and fatigue.” She further states that Spark contains low quality ingredients,
8 potentially toxic ingredients, as well more than 2,000% of some daily suggested
9 doses of some ingredients.

10 37. Such deceptive conduct and practices take Defendants’ advertising and
11 marketing beyond mere “puffery” and to an actionable level for deceptive practices
12 and fraud.

13 38. Upon information and belief, AdvoCare spends millions of dollars
14 misleading consumers about the superiority of its products and its products’
15 abilities.

16 39. Defendants’ prodigious advertising, marketing, and promotional
17 spending has misled customers into believing that AdvoCare’s Spark and other
18 products are superior products, worthy of a premium price, and have the ability to
19 “sharpen[] mental focus” and provide energy and vitality.

20 40. The New York Times article pointed out that energy drinks are really
21 just “caffeine delivery systems” and manufacturers of energy drinks do not want to
22 claim their products are the equivalent of a cup of coffee or a “NoDoz” tablet
23 “because that is not a very sexy sales message.”

24 41. Defendants take advantage of numerous marketing platforms in order
25 to ensure their false and deceptive marketing message permeates the general
26 consumer consciousness. Defendants use television advertising, internet marketing,
27 and social media, as well as celebrity sports figure endorsements, and glossy print
28 brochures. Defendants sponsor events such as NCAA College Football games,

1 NASCAR's Sprint Cup and Nationwide Series, Major League Soccer, and NCAA
2 College Basketball invitational tournaments. Regardless of which marketing
3 avenue reaches a consumer, Defendants drive home the false and deceptive claims
4 of superior results from using AdvoCare's products through each of its advertising
5 platforms.

6 42. AdvoCare's marketing promises that "We Build Champions," that
7 Spark "delivers energy and enhanced mental focus with 20 vitamins, minerals and
8 nutrients," and its website states, "The science behind AdvoCare products helps
9 improve lives through superior nutrition and wellness."

10 43. These statements and AdvoCare's marketing materials all promote the
11 false message that the products improve performance and/or mental acuity, such
12 that a reasonable consumer would be led to believe that AdvoCare branded
13 products are a superior way for a consumer to gain energy, obtain and maintain
14 wellness, and/or enhance performance, thereby misleading consumers that these are
15 superior products, of a superior nature, and worthy of a premium price.

16 44. Plaintiffs were lured into becoming consumers of AdvoCare products
17 by its marketing message, delivered via its packaging, website, advertisements, and
18 promotional events. Plaintiffs have regularly purchased and consumed AdvoCare
19 products and, specifically, its Spark energy supplement because of Defendants'
20 marketing message and themes.

21 45. Despite the medium that AdvoCare has used to deliver its marketing
22 message, the theme has been the same, such that any one of these marketing and
23 promotional mediums has influence over the consumer, including Plaintiffs and
24 Class Members, such that a consumer would make the decision to buy the products
25 in the first place, or to pay a premium for the products over less expensive sources of
26 "energy" due to the products' purported superior nature.

27 46. AdvoCare delivers the same or substantially similar marketing and
28 advertising claims and themes across each of its product divisions sold in the

1 United States. AdvoCare’s Spark energy supplement is marketed the same for all
2 variations of it, with only slight editing of the marketing materials to account for
3 flavor varieties. Thus, consumers such as Plaintiff(s) and Class Members have
4 been misled and deceived in the same manner no matter which variety or size
5 product he or she bought.

6 47. AdvoCare’s products, including specifically its Spark energy
7 supplement, do not provide any more benefit to a consumer than a cup of coffee.

8 48. Given the ingredients of Spark, AdvoCare knows or should have
9 known that these claims are false because no ingredient provides benefits in
10 addition to what a simple cup of coffee provides.

11 49. Advocare persistently and pervasively markets its products as a
12 superior source of “energy” worthy of a premium price over a cup of coffee or other
13 sources of caffeine.

14 50. A single “pouch” of AdvoCare’s Spark, which is mixed with eight
15 ounces of water for drinking, costs approximately \$1.64 and contains 120 mg of
16 caffeine, whereas a regular strength tablet of NoDoz costs approximately \$.15 and
17 contains 200 mg of caffeine. A seven ounce cup of drip coffee contains
18 approximately 115 to 175 mg of caffeine, depending on the blend. Even a twelve
19 ounce serving of Starbuck’s coffee costs \$1.85 and contains approximately 235 mg
20 of caffeine, far more than AdvoCare’s Spark.

21 51. Thus, AdvoCare’s Spark delivers less of the ingredient (caffeine)
22 scientific studies maintain provides the benefits claimed by AdvoCare for a
23 substantially higher price than consumers could spend on alternative sources of
24 caffeine.

25 52. As a result of the foregoing, Defendants’ claims regarding AdvoCare’s
26 Spark and other products are deceptive and misleading. Had Plaintiffs and other
27 members of the proposed Classes been aware of the truth about Defendants’
28

1 products, they would not have purchased the same, or would not have paid a
2 premium price for the products.

3 53. Indeed, Defendants were in a superior position to know, and did know,
4 that its claims and advertisements were deceptive and false and they failed to
5 inform consumers that their Spark branded energy drinks and other products cannot
6 and do not perform as advertised and promised.

7 54. Instead, Defendants allow their deceptive and misleading marketing to
8 permeate the consumer advertising consciousness and perpetuate Defendants' false
9 claims and promises.

10 55. Because of such deceptive practices and conduct, Defendants
11 command a substantial premium for their products over readily available and much
12 lower priced sources of caffeine that provide the same or substantially similar
13 results. Thus, Defendants reap profits on products where consumers are induced to
14 pay an unwarranted, substantial premium.

15 56. All conditions precedent necessary for the filing of this Complaint
16 have been satisfied and/or such conditions have been waived by the conduct of
17 Defendants.

18 **II. Plaintiffs' Specific Facts**

19 57. As is explained below, Plaintiffs' personal experiences demonstrate
20 that Defendants' advertising was actually false, not merely unsubstantiated.

21 **a. Plaintiff Michael Tubbs**

22 58. In late April 2015 Plaintiff Michael Tubbs purchased from Defendants
23 the 24 Day Challenge "bundle." The "24-Day Challenge" is a package that
24 contains the exact same products for each and every purchaser. Doc. 38-1. The 24-
25 Day Challenge Bundle Tubbs purchased contains the following: 24-Day Challenge
26 Daily Guide, One box of Herbal Cleanse; One box of Advocare Fiber, One bottle of
27 OmegaPlex, Two boxes of AdvoCare Spark, One box of MNS 3, C and E, and One
28 box of Meal Replacement Shake. *Id.*

1 59. Plaintiff Tubbs paid Defendants at least three hundred dollars (likely
2 far more) for these products and made multiple orders.

3 60. Plaintiff Tubbs ingested caffeine in a normal manner and
4 recommended doses from products other than Advocare.

5 61. After consuming the products as directed, he experienced none of the
6 advertised and promised benefits, rendering each of Advocare’s claims actually
7 false.

8 62. In the months leading up to April 2015, Defendants advertised to
9 Plaintiff Tubbs through its website (www.advocare.com), its printed literature, its
10 product packaging, and emails, that if he purchased and consumed the 24-Day
11 Challenge products they would “restart his metabolism” and that they were a
12 “magical solution that would kick start his body to where it was when he was
13 younger and healthier.”

14 63. Plaintiff Tubbs was influenced to buy these products by the promise
15 that the 24-Day Challenge products would “restart his metabolism” and would
16 “kick start his body.”

17 64. Plaintiff Tubbs, after consuming the products as directed by
18 Defendants, did not experience a restarting of his metabolism nor did his body get
19 “kick start[ed] to where it was when he was younger and healthier.” In fact, after
20 consuming these products as directed his metabolism decreased and he gained
21 weight (2-5 pounds per week), did not feel younger but rather felt older and more
22 sluggish, felt less healthy because his heart raced unexpectedly and at times when
23 he should have been resting, and his pulse rate and blood pressure increased within
24 a few minutes after consuming the products.

25 65. The weight gain continued until Plaintiff Tubbs gained more than 8
26 pounds and it was lost only after Plaintiff Tubbs stopped using Defendants’
27 products. Similarly, the feeling of sluggishness combined with racing heart,
28 increased pulse rate and blood pressure began within minutes after Plaintiff Tubbs

1 first consumed Defendants' products. When Plaintiff Tubbs stopped using
2 Defendants' products, his racing heart, increased pulse rate and blood pressure
3 began to retreat to normal healthy adult levels within two days of stopping. After
4 consuming Defendants' products, the above described adverse events lasted on each
5 occasion for approximately 60-90 minutes. During this time, Plaintiff Tubbs
6 personally experienced increasing tightness in his chest, neck and throat. Based on
7 prior experience measuring his pulse rate, Plaintiff Tubbs estimates that his normal
8 resting pulse rate of 80-90 bpm increased to approximately 110-120 bpm while
9 taking Defendants' products. Based on his prior experience with caffeinated
10 beverages, Plaintiff Tubbs believes the ingredient that was responsible for these
11 phenomena was high levels of caffeine.

12 66. In the months leading up to April 2015, Defendants also advertised to
13 Plaintiff Tubbs through email and promotional paper brochures that after
14 purchasing and consuming the 24 Day Challenge products, "he was going to feel
15 wonderful and have a new outlook on life."

16 67. Plaintiff Tubbs was influenced to buy these products by the promise
17 that the 24-Day Challenge products would make him "feel wonderful and have a
18 new outlook on life."

19 68. Plaintiff Tubbs, after consuming the products as directed by
20 Defendants, did not experience the promised benefit, the claims of which were
21 actually false. In fact, he felt worse, became sullen, felt sick to his stomach, and
22 lost work because of consuming the products. These feelings began within minutes
23 after Plaintiff Tubbs first consumed Defendants' products and continued for
24 approximately three weeks, ebbing and flowing in direct correlation with his
25 consumption of Defendants' products. When Plaintiff Tubbs stopped using
26 Defendants' products, it took him two days for his stomach to feel normal and to
27 return to his normal cheerful self. During this time Plaintiff Tubbs lost work,
28 approximately two days, because he was unable to focus on his job. Based on his

1 prior experience with caffeinated beverages, Plaintiff Tubbs believes the ingredient
2 that was responsible for these phenomena was high levels of caffeine.

3 69. Specifically with respect to Spark, one of the 24-Day Challenge
4 products Plaintiff Tubbs purchased and consumed, in the months leading up to
5 April 2015, Defendants advertised to him through its website (www.advocare.com)
6 and the product's label that purchasing and consuming it would: "sharpen mental
7 focus" and provide "long lasting energy."

8 70. After purchasing Spark and ingesting it as directed by Defendants,
9 Plaintiff Tubbs's mental focus was not sharpened and he did not have long lasting
10 energy. In fact, after consuming Spark, Tubbs was jittery and could not focus
11 feeling as if he was too "wired" and unable to focus. This is the opposite of what
12 he was promised. Furthermore, he experienced a quick burst of energy after
13 consuming Spark but was quickly left without energy feeling tired, contrary to the
14 advertisements from Defendants. This feeling began within minutes of consuming
15 Defendants' product and lasted on each occasion for approximately 60 minutes,
16 after which Plaintiff Tubbs remained unable to focus on simple tasks for between
17 45-90 minutes. Approximately 45-90 minutes after ingestion, he was able to focus
18 more. Plaintiff Tubbs' experienced this ebb and flow of focus consistently
19 throughout his approximate three week regular ingestion of Advocare Spark. After
20 stopping the ingestion of Advocare Spark, Plaintiff Tubbs, within 45-90 minutes,
21 returned to his normal self and was able to focus more and since stopping the
22 ingestion of Advocare Spark has been able to focus normally. During this
23 approximately three week prolonged regular ingestion of Advocare Spark Plaintiff
24 Tubbs consumed no non-Advocare supplements nor changed his habits leading to
25 the conclusion that the ill effects were the result of Advocare Spark. Based on his
26 prior experience with caffeinated beverages, Plaintiff Tubbs believes the ingredient
27 that was responsible for these phenomena was high levels of caffeine.
28

1 71. Specifically with respect to the Meal Replacement Shakes, one of the
2 24-Day Challenge products Plaintiff Tubbs purchased and consumed, in the months
3 leading up to April 2015, Defendants advertised to him through its website
4 (www.advocare.com) and its product labelling that it was a “quick and complete
5 great tasting nutrition.”

6 72. Plaintiff Tubbs consumed the Meal Replacement Shakes as directed
7 but did find the Shakes to not taste good and not a complete source of nutrition.
8 In fact, Defendants own directions for use of the 24-Day Challenge state that all the
9 products must be used together, contrary to the promise that the Shakes were
10 “complete...nutrition.”

11 73. Plaintiff Tubbs also purchased from Defendants a product called
12 Advocare Slam, a product similar to an energy drink. In the months leading up to
13 April 2015, Defendants advertised to him through its website (www.advocare.com)
14 and its printed promotional literature that it was a “high powered portable energy
15 source that sharpens mental focus.” This influenced his decision to purchase
16 Advocare Slam.

17 74. After consuming Advocare Slam as directed, Plaintiff Tubbs did not
18 experience a sharpening of mental focus and instead experienced a jittery feeling
19 and lack of mental focus because he felt too “hyped up.” This is contrary to the
20 advertised benefit. This feeling began within minutes of consuming Defendants’
21 product and lasted on each occasion for approximately 60 minutes, after which
22 Plaintiff Tubbs remained unable to focus on simple tasks for between 45-90
23 minutes. When not taking Advocare Slam, Plaintiff Tubbs was able to concentrate
24 on simple tasks. After stopping the ingestion of Advocare Slam, Plaintiff Tubbs,
25 within 45-90 minutes, returned to his normal self and was able to be more calm and
26 focused and since stopping the ingestion of Advocare Slam has been able to focus
27 normally. Based on his prior experience with caffeinated beverages, Plaintiff Tubbs
28

1 believes the ingredient that was responsible for these phenomena was high levels of
2 caffeine.

3 75. Plaintiff Tubbs also purchased and consumed “catalyst pills” from
4 Defendants. In the months leading up to April 2015, Defendants advertised them
5 on their website (www.advocare.com) as supporting “muscle tone” and “enhancing
6 strength and energy.” This influenced his decision to buy the catalyst pills.

7 76. Plaintiff Tubbs did not experience any increased “muscle tone” nor
8 “enhance[ed] strength and energy.” In fact, after consuming the pills, he became
9 lethargic, catatonic, and lost strength and tone. Specifically, Plaintiff Tubbs was
10 unable to exercise on at least two several occasions after taking Defendants’
11 “catalyst pills” due to feelings of lethargy and weakness, he was unable to complete
12 weight and cardio exercises at their normal intensity and duration, and noticeably
13 lost muscle tone. His bench pressing and cardiovascular exercises decreased in
14 total weight and duration and did not increase as advertised. This is consistent with
15 the findings of the Gwacham study results. These feelings and effects began
16 shortly after Plaintiff began consuming the “catalyst pills” and lasted until Plaintiff
17 stopped taking Defendants’ products. Thus, the advertisements were false.

18 77. None of the Defendants’ products purchased and consumed by
19 Plaintiff Tubbs provided him the promised benefits.

20 78. Unless Defendants are estopped from continuing their illegal actions,
21 Plaintiff Tubbs may be harmed in the future if he were to decide to purchase
22 additional 24-Day Challenge products based on false and deceptive advertising and
23 marketing.

24 **b. Plaintiff Ebony Baker**

25 79. In approximately April 2015, Plaintiff Ebony Baker purchased from
26 Defendants the 24 Day Challenge “bundle.” The “24-Day Challenge” is a package
27 that contains the exact same products for each and every purchaser. Doc. 38-1.
28 The 24-Day Challenge Bundle Baker purchased contains the following: 24-Day

1 Challenge Daily Guide, One box of Herbal Cleanse; One box of Advocare Fiber,
2 One bottle of OmegaPlex, Two boxes of AdvoCare Spark, One box of MNS 3, C
3 and E, and One box of Meal Replacement Shake. *Id.*

4 80. Plaintiff Ebony Baker spent over two hundred dollars on the products.

5 81. Plaintiff Baker ingested caffeine in a normal manner and in the
6 recommended doses from products other than Advocare.

7 82. Plaintiff Baker followed Defendants' instructions and consumed the
8 24-Day Challenge Products, including Spark, as directed for 20 days. She was
9 unable to complete the last four days because she became physically and mentally
10 ill as a result of consuming the products. She consumed no other products at the
11 same time that were not previously in her diet leading to the conclusion that the
12 adverse results she experienced were the result of the only change in her life: the
13 addition of the products.

14 83. While consuming the 24-Day Challenge products she attempted to
15 work out, build muscle, tone her body, and improve her outlook on life, all
16 promises by Defendants, but she received none of those benefits. Instead, she lost
17 energy to work out, was unable to build muscle tone, and became so ill that she had
18 to tell her trainer that she was unable to continue to work out while taking the 24-
19 Day Challenge products. Specifically, Plaintiff Ebony Baker typically worked out
20 2-3 times per week before taking Defendants' products, but could not exercise at all
21 after she began taking Defendants' products. This lasted until two days after
22 Plaintiff Ebony Baker stopped taking Defendants' 24-Day Challenge products on
23 day 20. This is consistent with the findings of the Gwacham study results. After
24 day 20 and when she was no longer consuming Defendants' products, she was able
25 to restart her normal workout routine within 2 days of stopping the ingestion of
26 Defendants' products.

27 84. Specifically with respect to Spark, one of the 24-Day Challenge
28 products Plaintiff Baker purchased and consumed, in the weeks leading up to April

1 2015, Defendants advertised to her through their website (www.advocare.com) and
2 printer promotional literature that purchasing and consuming it would: “sharpen
3 mental focus” and provide “long lasting energy.”

4 85. After purchasing Spark and ingesting it as directed by Defendants,
5 Plaintiff Baker’s mental focus was not sharpened and she did not have long lasting
6 energy. In fact, after consuming Spark, she was jittery, was unable to complete her
7 normal workout routine due feeling ill, could not focus feeling as if she was scatter-
8 brained, and her heart beat uncontrollably fast requiring her to sit down for
9 extended periods of time. This is the opposite of what she was promised.

10 86. Within minutes of consuming Spark, she experienced a quick burst of
11 energy, which lasted for approximately 20 minutes, after which she remained
12 unable to focus on simple tasks for between 45-90 minutes. She was quickly left
13 without energy feeling tired, contrary to the advertisements from Defendants. The
14 feeling of no energy lasted until the next morning when she felt normal energy.

15 87. Approximately 45-90 minutes after ingestion, she was able to focus
16 more. Plaintiff Baker experienced this ebb and flow of focus consistently
17 throughout her approximate two-three week regular ingestion of Advocare Spark.
18 After stopping the ingestion of Advocare Spark, Plaintiff Baker, within 45-90
19 minutes, returned to her normal self and was able to focus more and since stopping
20 the ingestion of Advocare Spark has been able to focus normally.

21 88. During this approximately two-three week prolonged regular ingestion
22 of Advocare Spark Plaintiff Baker consumed no non-Advocare supplements nor
23 changed her other habits leading to the conclusion that the ill effects were the result
24 of Advocare Spark.

25 89. Unless Defendants are estopped from continuing their illegal actions,
26 Plaintiff Baker may be harmed in the future if she were to decide to purchase
27 additional 24-Day Challenge products based on false and deceptive advertising and
28 marketing.

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FIRST CAUSE OF ACTION
UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES
(Cal. Bus. & Prof. § 17200, et seq.)

90. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in the Complaint, as though fully set forth herein.

91. Plaintiffs bring this claim individually, on behalf of the Classes and on behalf of the general public.

92. Through the conduct and scheme described herein, and particularly through the marketing and selling of 24-Day Challenge Products to Plaintiffs and members of the public, Defendants engaged in unlawful, deceptive, and unfair business acts within the meaning of California *Business and Professions Code* § 17200*et seq.* Defendants' acts and practices offend an established public policy, and Defendants engage in immoral, un-ethical, oppressive, and unscrupulous activities that are substantially injurious to consumers including Plaintiffs.

93. Plaintiffs and the Class members were misled into purchasing 24-Day Challenge Products by Defendants' deceptive conduct as alleged herein. Plaintiffs and the Class members were subject to Defendants' mass media advertising which included but was not limited to statements that the 24-Day Challenge Products would enhance mental energy and focus, were healthy, would not overburden or overstimulate their body, and would provide a consistent energy source that would not burn out. Plaintiffs relied upon such advertising in agreeing to pay for the products, thereby suffering economic damage.

94. Defendants have unlawfully manufactured, packaged, labeled and/or distributed the 24-Day Challenge Products in violation of California *Health & Safety Code*, in that:

a. Defendants have disseminated false advertisements of the 24-Day Challenge Products in that the product advertising and packaging

1 contain false and/or misleading statements as to the purported ability of these
2 products to do what Defendants claim they do, in violation of California
3 *Health & Safety Code* §§ 110290 and 110390 *et seq.*

4 b. The 24-Day Challenge Products are misbranded because their
5 labeling does not conform with the requirements for nutrition labeling as
6 required by California Health & Safety Code §§ 110665 and 110705;

7 c. The 24-Day Challenge Products are misbranded because their
8 labeling does not conform with the requirements for nutrient content or
9 health claims as required by California Health & Safety Code § 110670;

10 d. The 24-Day Challenge Products are unlawfully labeled in
11 violation of California Health & Safety Code § 114089;

12 e. The 24-Day Challenge Products are unlawfully labeled in
13 violation of California law as the labeling is false and/or misleading in
14 claiming that the product is recommended and approved by a scientific and
15 medical advisory board; and

16 f. The 24-Day Challenge Products are unlawfully labeled in
17 violation of California law as the labeling and marketing suggests that the
18 product is safe and effective for its intended use when such evidence has not
19 been established.

20 95. Plaintiffs and other Class members were misled and, because
21 misrepresentations and omission were uniform and material, believed the
22 Defendants' statements.

23 96. Plaintiffs request that this Court enter such orders or judgments as may
24 be necessary to restore to any person money and interest which may have been
25 acquired by means of such unfair practices as provide in *Bus. & Prof. Code* §
26 17203, and for such other relief as set forth below.

27 97. Plaintiffs reserve the right to allege other violations which constitute
28 other unlawful business acts or practices. Upon information and belief, Defendants'

1 wrongful conduct in violation of § 17200, *et seq.* is ongoing and continues to this
2 date.

3 98. There were reasonably available alternatives to further Defendants'
4 legitimate business interests, other than the conduct described herein.

5 99. Defendants' actions, claims, nondisclosures, and misleading
6 statements, as alleged in this Complaint, likely to deceive Plaintiffs and the public,
7 and were intended to deceive Plaintiffs and members of the public. Plaintiffs and
8 Class members have in fact been deceived and have relied on Defendants'
9 representations and omissions. This reliance has caused harm to Plaintiffs and Class
10 members. Plaintiffs and Class members have suffered injury in fact and lost money
11 as a result of Defendants' unlawful, unfair, and fraudulent practices.

12 100. As a result of its deception, Defendants have reaped unjust revenue
13 and profit. Restitution is, therefore, appropriate and the Plaintiffs ask that this Court
14 order restitution. Further, upon information and belief, unless restrained and
15 enjoined, Defendants will continue to engage in the above-described conduct.
16 Accordingly, injunctive relief is appropriate.

17 101. Plaintiff and Class Members have suffered injury in fact and lost
18 money and/or property as a result of Defendants' and Does 1 through 10's unlawful
19 business acts and practices by engaging in the above-described conduct.

20 102. Plaintiffs engaged counsel to prosecute this action and are entitled to
21 recover costs and reasonable attorneys' fees according to proof at trial.

22
23 **SECOND CAUSE OF ACTION**

24 **UNFAIR, DECEPTIVE AND MISLEADING ADVERTISING**

25 ***(Cal. Bus. & Prof. § 17500, et seq.)***

26 103. Plaintiffs adopt, re-allege and incorporate herein each and every
27 allegation in the Complaint, as though fully set forth herein.
28

1 104. Plaintiffs bring this claim individually, on behalf of the Class and on
2 behalf of the general public.

3 105. Through the conduct and scheme described herein, and particularly
4 through the marketing of 24-Day Challenge Products to Plaintiffs and members of
5 the public, Defendants engaged in unlawful, deceptive, and unfair business acts
6 within the meaning of California *Business and Professions Code* § 17500 *et seq.*
7 Defendants' acts and practices offend an established public policy, and Defendants
8 engage in immoral, unethical, oppressive, and unscrupulous activities that are
9 substantially injurious to consumers including Plaintiffs.

10 106. Defendants engaged in the deceptive conduct alleged herein, which
11 included deceptive and untrue advertisements regarding the 24-Day Challenge
12 products and representations made to induce the public to purchase the products.

13 107. Defendants' advertisements claimed that the 24-Day Challenge
14 Products would enhance mental energy and focus, were healthy, would not
15 overburden or overstimulate their body, and would provide a consistent energy
16 source that would not burn out. Plaintiffs relied upon such advertising in agreeing
17 to pay for the products, thereby suffering economic damage.

18 108. Defendants made and disseminated false and misleading statements to
19 Plaintiffs and members of the public regarding the nature, purpose, and effect of the
20 24-Day Challenge Products. Defendants created false impressions which it failed
21 to correct, and concealed material information regarding the products.

22 109. Defendants were aware or should have been aware by the exercise of
23 reasonable care that the representations were untrue and/or misleading.

24 110. Plaintiffs reserve the right to allege other violations which constitute
25 other unlawful business acts or practices. Upon information and belief, Defendants'
26 wrongful conduct in violation of § 17500. *et seq.* is ongoing and continues to this
27 date.
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1 111. There were reasonably available alternatives to further Defendants’
2 legitimate business interests, other than the conduct described herein.

3 112. Defendants’ actions, claims, nondisclosures, and misleading
4 statements, as alleged in this Complaint, likely to deceive Plaintiffs and the public,
5 and were intended to deceive Plaintiffs and members of the public. Plaintiffs and
6 Class members have in fact been deceived and have relied on Defendants’
7 representations and omissions. This reliance has caused harm to Plaintiffs and Class
8 members. Plaintiffs and Class members have suffered injury in fact and lost money
9 as a result of Defendants’ unlawful, unfair, and fraudulent practices.

10 113. Defendants’ actions, claims, nondisclosures, and misleading
11 statements, as alleged in this Complaint, are likely to deceive Plaintiffs and the
12 public, and were intended to deceive Plaintiffs and members of the public.
13 Plaintiffs have in fact been deceived and have relied on Defendants’ representations
14 and omissions. This reliance has caused harm to Plaintiffs and Plaintiffs have
15 suffered injury in fact and lost money as a result of Defendants unlawful, unfair,
16 and fraudulent practices.

17 114. Plaintiff and Class Members have suffered injury in fact and lost
18 money and/or property as a result of Defendants’ and Does 1 through 10’s unfair,
19 deceptive, and misleading advertising by engaging in the above-described conduct.

20 115. As a result of its deception, Defendants have been able to reap unjust
21 revenue and profit. Restitution is therefore appropriate and the Plaintiffs asks that
22 Court order restitution. Further, upon information and belief, unless restrained and
23 enjoined, Defendants will continue to engage in the above-described conduct.
24 Accordingly, injunctive relief is appropriate.
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THIRD CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY

(CAL. U. COMM. CODE §§ 2314, 2315 and Common Law)

116. Plaintiffs adopt, re-allege and incorporate herein each and every allegation in the Complaint, as though fully set forth herein.

117. Plaintiffs bring this claim individually, on behalf of the Class and on behalf of the general public.

118. The 24-Day Challenge Products were sold with the implied warranty of merchantability that the product would pass without objection in the trade, is fit for the ordinary purpose for which it is used, is adequately contained, packaged, and labeled, and conforms to the promises or affirmations of fact made on the container and label. The 24-Day Challenge Products do not meet with foregoing criteria.

119. The 24-Day Challenge Products were sold with the implied warranty of fitness in that Defendants had reason to know of the particular purpose for which the product was required (i.e., as a nutrient to make one healthier and more mentally focused) and Plaintiffs and the Class members relied upon Defendants' advertised skill and judgment to furnish suitable goods. It is not suitable for the purpose for which it was required and sold.

120. The defects in the 24-Day Challenge Products existed prior to the delivery of the product to Plaintiffs and the Class members.

121. Plaintiffs and the Class members have incurred damages as described herein as a direct and proximate result of the defective product and Defendants' and Does 1 through 10's breach of the implied warranties, in that Plaintiffs and the Class members paid the purchase price for the defective product. Plaintiffs, on behalf of themselves and the Class members, have demanded that Defendants correct the defect and Defendants have failed and/or refused. Plaintiffs and the Class members are entitled to a refund of the purchase price of the products,

1 consequential and incidental damages, costs and expenses, including attorney's
2 fees.

3
4 **FOURTH CAUSE OF ACTION**
5 **BREACH OF EXPRESS WARRANTY**
6 ***(CAL. U. COM. CODE § 2313)***

7 122. Plaintiffs adopt, re-allege and incorporate herein each and every
8 allegation in the Complaint, as though fully set forth herein.

9 123. Plaintiffs bring this claim individually, on behalf of the Class and on
10 behalf of the general public.

11 124. The 24-Day Challenge Products were sold with an express warranty as
12 Defendants made express affirmations of fact and promises regarding the health
13 benefits of the products.

14 125. Defendants guaranteed the health benefits and especially the mental
15 benefits of using the products.

16 126. They were sold with an express warranty because Defendants' express
17 description of the product on the packaging and in mass media advertising was
18 intended to become part of the basis of the bargain. The 24-Day Challenge
19 Products are not suitable for the purpose for which they were required and sold as
20 the products do not in fact benefit one's health as described.

21 127. The defect in the products existed prior to delivery of the product to
22 Plaintiffs and the Class members.

23 128. Plaintiffs and Class members have incurred damages as described
24 herein as a direct and proximate result of the defective products and Defendants'
25 and Does 1 through 10's breach of the express warranties, in that the Plaintiffs and
26 the Class have paid the purchase price for the defective products. Plaintiffs, on
27 behalf of themselves and the Class members, have demanded that Defendants
28 correct the defect and Defendants have failed and/or refused. Plaintiffs and the

1 Class members are entitled to a refund of the purchase price of the product,
2 consequential and incidental damages, costs and expense, including attorneys' fees.
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4 **FIFTH CAUSE OF ACTION**
5 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**
6 ***(CAL. CIV. CODE § 1750 et seq.)***

7 129. Plaintiffs adopt, re-allege and incorporate herein each and every
8 allegation in the Complaint, as though fully set forth herein.

9 130. Plaintiffs bring this claim individually, on behalf of the Class and on
10 behalf of the general public.

11 131. Plaintiffs and the Class are individuals who purchased goods (i.e., 24-
12 Day Challenge Products) for personal use.

13 132. Defendants have represented that the 24-Day Challenge Products have
14 characteristics, uses, benefits, and/or qualities that the products do not have.

15 133. Plaintiffs and the Class have each been directly and proximately
16 injured by the conduct of the Defendants, and such injury includes payment for the
17 24-Day Challenge Products they purchased.

18 134. Plaintiffs, contemporaneously with the filing of the initial Complaint
19 in this action, provided Defendants notice of their Consumer Legal Remedies Act
20 claims, on behalf of themselves and the Class members, through a Notice as
21 required by California Consumer Legal Remedies Act. On March 22, 2017, more
22 than thirty (30) days prior to the filing of this Amended Complaint Defendant
23 received notice from the Plaintiffs of the particular alleged violations of Section
24 1750 et seq.

25 135. The Court should enjoin Defendants and Does 1 through 10 from any
26 further sales, marketing, or advertisement of the 24-Day Challenge Products which
27 contain the misrepresentations detailed herein as to the standards, characteristics,
28 uses, benefits, and/or qualities of the products. Plaintiffs request that this Court

1 enter a permanent injunction enjoining Defendants, and their agents, servants,
2 employees, and all persons acting under or in concert with them, to cease and desist
3 from the following acts: (a) selling, marketing, or advertising the 24-Day Challenge
4 Products in the illegal manner they are now doing; (b) selling, marketing, or
5 advertising the 24-Day Challenge Products in the illegal manner they are now doing
6 without any adequate and reliable scientific basis for such claims; (c) selling,
7 marketing, or advertising the 24-Day Challenge Products as a supplement or drug
8 that has specific medicinal benefits; (d) selling, marketing, or advertising the 24-
9 Day Challenge Products with any representation or suggestion that a scientific and
10 medical review board has approved or recommended the products for use; (e)
11 concealing information regarding the true nature and origin of the herbal nutrients
12 contained in the 24-Day Challenge Products; (f) selling, marketing, or advertising
13 that the 24-Day Challenge Products are guaranteed in any way; (g) engaging in any
14 of the illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct
15 described herein; and (h) engaging in any other conduct found by the Court to be
16 illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct.

17
18 136. Plaintiffs and Class members have incurred damages as described
19 herein as a direct and proximate result of the defective products and Defendants'
20 and Does 1 through 10's violations of the Consumer Legal Remedies Act. Plaintiff
21 and Class members demand actual damages, restitution, punitive damages, and any
22 other relief the Court deems proper. Plaintiffs, on behalf of themselves and the
23 Class members, have demanded that Defendants correct the defect and Defendants
24 have failed and/or refused. Plaintiffs and the Class members are entitled to a refund
25 of the purchase price of the product, consequential and incidental damages, costs
26 and expense, including attorneys' fees, and any other relief the Court deems proper.

27 137.

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REQUEST FOR JUDGMENT

1 Plaintiffs asks for judgment against Defendants and each of them, in its and
2 the putative Class's favor as follows:

3 1. For an order certifying this action as a Class action;

4 2. For actual and compensatory damages in such amount as the Court or
5 jury deems just and proper;

6 3. For attorney's fees and costs for all causes of action alleged herein for
7 which such amounts are permissible under applicable law, including California
8 Code of Civil Procedure § 1021.5, in such amount as the Court or jury deems just
9 and proper;

10 4. For prejudgment interest;

11 5. For an order requiring Defendants to provide notice to the Class and to
12 pay for such notice;

13 6. For imposition of a constructive trust, recessionary relief, injunctive
14 relief, including prohibition of Defendants' unfair, illegal and fraudulent business
15 practices set forth herein, and including restitution and disgorgement of ill-gotten
16 profits; and

17 7. All other relief which the Court and/or jury deems equitable and just.
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DEMAND FOR JURY TRIAL

Plaintiffs on his own behalf and on behalf of the putative Class, demands a jury trial in the above captioned matter.

DATED: January 19, 2018

/s/ Steven W. Ritcheson
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* Pro Hac Vice Motion to be
Filed