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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

) SECOND 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.);

) 6. and; Restitution.

) 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 SECOND AMENDED COMPLAINT**

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

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

26 3. Defendants made the following false representations through mass media
27 advertising: that “AdvoCare Spark” as a “unique multi-nutrient system that was
28 developed as a nutritional source of energy and enhanced mental focus,” it

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

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

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

24 **JURISDICTION AND VENUE**

25 6. Venue is proper in this Court pursuant to California *Code of Civil Procedure*
26 § 395 as Defendants are foreign entities which have not designated a principal place
27 of business in California. Additionally, Defendants entered into transactions made
28 the subject of this Complaint with Plaintiffs in this county.

1 fictitious names. Plaintiffs are informed, believe, and on that basis allege that these
2 DOE defendants are California residents or corporations or entities doing business
3 in the State of California, and that each is the agent of the other Defendants and that
4 each is responsible for some or all of the acts and omissions alleged herein.
5 Plaintiffs will amend this complaint to show the true names and capacities of these
6 DOE defendants when they have been determined.
7

8 **CLASS ACTION ALLEGATIONS**

9 13. Plaintiffs bring this action as a Class action on behalf of all those
10 similarly situated pursuant to Code of Civil Procedure Section 382 and Civil Code
11 Section 1781, and propose the following Class and sub Classes.
12

- 13 a. All individuals in California who purchased the 24-Day Challenge
14 products within four (4) years of filing this lawsuit.
15 b. A sub Class of all individuals in California who purchased Spark
16 within four (4) years of filing this lawsuit.

17 14. Plaintiffs maintain the right under Rule 3.765(b) of the California
18 Rules of Court amend or modify the class description with greater specificity by
19 further division into subclasses or by limitation to particular issues and to create
20 additional subclasses or classes, if necessary, and to revise these definitions to
21 maintain a cohesive Class that does not require individual inquiry to determine
22 liability.

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

28 16. Each Plaintiff is a member of the Class and Plaintiffs' claims are
typical of the claims of the Class. The exact number of Class members is unknown

1 to Plaintiffs at this time, but is more than sixty for each, and such information can
2 be ascertained through appropriate discovery. All information necessary to identify
3 Class members and the damages suffered by each Class member can be found in
4 records maintained by Advocare and its agents.

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

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

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

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

14 c. Whether Defendants falsely advertised the 24-Day Challenge
15 Products;

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

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

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

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

26 h. Whether Defendants knew or should have known the 24-Day
27 Challenge Products, individually and/or collectively, have, whether used singly or
28

1 in conjunction, do not have the characteristics, uses, benefits, or qualities for which
2 Defendants advertised and marketed the product;

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

5 j. Whether Defendants engaged in false advertising with respect to the
6 24-Day Challenge Products;

7 k. Whether Defendants have violated express and/or implied warranty
8 statutes;

9 l. Whether Defendants have been unjustly enriched;

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

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

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

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

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

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

23 **II. Typicality and Numerosity**

24 18. The claims of the named Plaintiffs are typical of the claims of the
25 putative classes and Defendants' defenses to Plaintiffs' claims are typical of its
26 defenses to the claims of the putative Class. The number of members in each of the
27 putative Class exceeds sixty (60) members.
28

1 **III. Adequate Representation**

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

6 **IV. Superiority**

7 20. The class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy since individual joinder of all members of
9 the Class is impracticable. The interests of judicial economy favor adjudicating the
10 claims for the Plaintiffs’ Class rather than on an individual basis. The class action
11 mechanism provides the benefit of unitary adjudication, economies of scale, and
12 comprehensive supervision by a single court.

13 **FACTUAL ALLEGATIONS**

14 **I. General Facts**

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

27 22. AdvoCare promises consumers that Spark “sharpens mental focus”
28 and that the 24-day challenge, “in conjunction with a healthy diet and exercise, help

1 to rid your body of waste and prepare your body to better absorb nutrients” by
2 providing a mixture of ingredients that, when ingested, significantly improve a
3 consumer’s physiological and mental performance.

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

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

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

16 26. Indeed, AdvoCare state on its website that, AdvoCare relies on
17 the latest scientific knowledge and highest quality ingredients to create safe
18 and effective products. The AdvoCare Science team includes Doctors
19 dedicated to product research & development as well as training and
20 education for AdvoCare Independent Distributors. The science behind
21 AdvoCare products helps improve lives through superior nutrition and
22 wellness.

23 27. The Plaintiffs who purchased and consumed these products
24 found them to be unsafe and ineffective and instead caused them to be sick
25 and not get the promised benefits.

26 28. Although Defendants point to purported scientific studies and
27 research to back up their claims that the unique blend of ingredients is
28 responsible for the claimed superior benefits of using AdvoCare products,

1 the well-regarded scientific journal *Nutrition Reviews* published an
2 evaluation of various studies of energy drink ingredients and their efficacy
3 and found that:

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

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

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

18 30. 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 31. Laura Zavadil, RD, LDN (Registered Dietitian and Licensed
24 Dietitian/Nutritionist) has studied the 24-Day Challenge products concluding that
25 they are “Bad For You.” “Beware of AdvoCare Weight-Loss Supplements,”
26 [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)
27 [AdvoCare-Weight-Loss-Supplements](http://wellness.nifs.org/blog/bid/88985/NIFS-Nutrition-News-Beware-of-AdvoCare-Weight-Loss-Supplements) (accessed on 10/17/2017). After analyzing
28 the promised benefits from Defendants’ advertising, as identified herein, she

1 concludes that the supplements for the “cleanse” phase are “glorified laxatives.”
2 Thus, Defendants’ advertisements of superior benefits are false.

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

12 33. Such deceptive conduct and practices take Defendants’ advertising and
13 marketing beyond mere “puffery” and to an actionable level for deceptive practices
14 and fraud.

15 34. Upon information and belief, AdvoCare spends millions of dollars
16 misleading consumers about the superiority of its products and its products’
17 abilities.

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

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

26 37. Defendants take advantage of numerous marketing platforms in order
27 to ensure their false and deceptive marketing message permeates the general
28 consumer consciousness. Defendants use television advertising, internet marketing,

1 and social media, as well as celebrity sports figure endorsements, and glossy print
2 brochures. Defendants sponsor events such as NCAA College Football games,
3 NASCAR’s Sprint Cup and Nationwide Series, Major League Soccer, and NCAA
4 College Basketball invitational tournaments. Regardless of which marketing
5 avenue reaches a consumer, Defendants drive home the false and deceptive claims
6 of superior results from using AdvoCare’s products through each of its advertising
7 platforms.

8 38. AdvoCare’s marketing promises that “We Build Champions,” that
9 Spark “delivers energy and enhanced mental focus with 20 vitamins, minerals and
10 nutrients,” and its website states, “The science behind AdvoCare products helps
11 improve lives through superior nutrition and wellness.”

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

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

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

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

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

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

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

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

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

27 48. As a result of the foregoing, Defendants’ claims regarding AdvoCare’s
28 Spark and other products are deceptive and misleading. Had Plaintiffs and other

1 members of the proposed Classes been aware of the truth about Defendants'
2 products, they would not have purchased the same, or would not have paid a
3 premium price for the products.

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

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

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

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

19 **II. Plaintiffs' Specific Facts**

20 **a. Plaintiff Michael Tubbs**

21
22 53. Plaintiff Michael Tubbs purchased from Defendants the 24 Day
23 Challenge "bundle." The "24-Day Challenge" is a package that contains the exact
24 same products for each and every purchaser. Doc. 38-1. The 24-Day Challenge
25 Bundle Tubbs purchased contains the following: 24-Day Challenge Daily Guide,
26 One box of Herbal Cleanse; One box of Advocare Fiber, One bottle of OmegaPlex,
27 Two boxes of AdvoCare Spark, One box of MNS 3, C or E, and One box of Meal
28 Replacement Shake. *Id.*

1 54. Plaintiff Tubbs paid Defendants hundreds of dollars for these products
2 and made multiple orders.

3 55. After consuming the products as directed, he experienced none of the
4 advertised and promised benefits.

5 56. Defendants advertised to Plaintiff Tubbs that if he purchased and
6 consumed the 24-Day Challenge products they would “restart his metabolism” and
7 that they were a “magical solution that would kick start his body to where it was
8 when he was younger and healthier.”

9 57. Plaintiff Tubbs was influenced to buy these products by the promise
10 that the 24-Day Challenge products would “restart his metabolism” and would
11 “kick start his body.”

12 58. Plaintiff Tubbs, after consuming the products as directed by
13 Defendants, did not experience a restarting of his metabolism nor did his body get
14 “kick start[ed] to where it was when he was younger and healthier.” In fact, after
15 consuming these products as directed he gained weight, did not increase his
16 metabolism, did not feel younger but rather felt older and more sluggish, felt less
17 healthy because his heart raced, and his blood pressure increased after consuming
18 the products.

19 59. Defendants also advertised to Plaintiff Tubbs that after purchasing and
20 consuming the 24 Day Challenge products, “he was going to feel wonderful and
21 have a new outlook on life.”

22 60. Plaintiff Tubbs was influenced to buy these products by the promise
23 that the 24-Day Challenge products would make him “feel wonderful and have a
24 new outlook on life.”

25 61. Plaintiff Tubbs, after consuming the products as directed by
26 Defendants, did not experience the promised benefit. In fact, he felt worse, became
27 sullen, felt sick to his stomach, and lost work because of consuming the products.
28

1 62. Specifically with respect to Spark, one of the 24-Day Challenge
2 products Plaintiff Tubbs purchased and consumed, Defendants advertised to him
3 that purchasing and consuming it would: “sharpen mental focus” and provide “long
4 lasting energy.”

5 63. After purchasing Spark and ingesting it as directed by Defendants,
6 Plaintiff Tubbs’s mental focus was not sharpened and he did not have long lasting
7 energy. In fact, after consuming Spark, Tubbs was jittery and could not focus
8 feeling as if he was too “wired” and unable to focus. This is the opposite of what
9 he was promised. Furthermore, he experienced a quick burst of energy after
10 consuming Spark but was quickly left without energy feeling tired, contrary to the
11 advertisements from Defendants.

12 64. Specifically with respect to the Meal Replacement Shakes, one of the
13 24-Day Challenge products Plaintiff Tubbs purchased and consumed, Defendants
14 advertised to him that it was a “quick and complete great tasting nutrition.”

15 65. Plaintiff Tubbs consumed the Meal Replacement Shakes as directed
16 but did found the Shakes to not taste good and not a complete source of nutrition.
17 In fact, Defendants own directions for use of the 24-Day Challenge state that all the
18 products must be used together, contrary to the promise that the Shakes were
19 “complete...nutrition.”

20 66. Plaintiff Tubbs also purchased from Defendants a product called
21 Advocare Slam, a product similar to an energy drink. Defendants advertised to him
22 that it was a “high powered portable energy source that sharpens mental focus.”
23 This influenced his decision to purchase Advocare Slam.

24 67. After consuming Advocare Slam as directed, Plaintiff Tubbs did not
25 experience a sharpening of mental focus and instead experienced a jittery feeling
26 and lack of mental focus because he felt too “hyped up.” This is contrary to the
27 advertised benefit.
28

1 68. Plaintiff Tubbs also purchased and consumed “catalyst pills” from
2 Defendants. Defendants advertised them as supporting “muscle tone” and
3 “enhancing strength and energy.” This influenced his decision to buy the catalyst
4 pills.

5 69. Plaintiff Tubbs did not experience any increased “muscle tone” nor
6 “enhance[ed] strength and energy.” In fact, after consuming the pills, he became
7 lethargic, catatonic, and lost strength and tone.

8 70. None of the Defendants’ products purchased and consumed by
9 Plaintiff Tubbs provided him the promised benefits.

10 71. Unless Defendants are estopped from continuing their illegal actions,
11 Plaintiff Tubbs may be harmed in the future if he were to decide to purchase
12 additional 24-Day Challenge products based on false and deceptive advertising and
13 marketing.

14 **b. Plaintiff Ebony Baker**

15 72. Plaintiff Ebony Baker purchased from Defendants the 24 Day
16 Challenge “bundle.” The “24-Day Challenge” is a package that contains the exact
17 same products for each and every purchaser. Doc. 38-1. The 24-Day Challenge
18 Bundle Baker purchased contains the following: 24-Day Challenge Daily Guide,
19 One box of Herbal Cleanse; One box of Advocare Fiber, One bottle of OmegaPlex,
20 Two boxes of AdvoCare Spark, One box of MNS 3, C or E, and One box of Meal
21 Replacement Shake. *Id.*

22 73. Plaintiff Ebony Baker spent over \$200 on the products.

23 74. Plaintiff Baker followed Defendants’ instructions and consumed the
24 24-Day Challenge Products, including Spark, as directed for 20 days. She was
25 unable to complete the last four days because she became physically and mentally
26 ill as a result of consuming the products.

27 75. While consuming the 24-Day Challenge products she attempted to
28 work out, build muscle, tone her body, and improve her outlook on life, all

1 promises by Defendants, but she received none of those benefits. Instead, she
2 became so ill that she had to tell her trainer that she was unable to continue to work
3 out while taking the 24-Day Challenge products.

4 76. Specifically with respect to Spark, one of the 24-Day Challenge
5 products Plaintiff Baker purchased and consumed, Defendants advertised to her that
6 purchasing and consuming it would: “sharpen mental focus” and provide “long
7 lasting energy.”

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

14 78. Although, she experienced a quick burst of energy after consuming
15 Spark, she was quickly left without energy feeling tired, contrary to the
16 advertisements from Defendants.

17 79. Unless Defendants are estopped from continuing their illegal actions,
18 Plaintiff Baker may be harmed in the future if she were to decide to purchase
19 additional 24-Day Challenge products based on false and deceptive advertising and
20 marketing.

21
22 **FIRST CAUSE OF ACTION**

23 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES**

24 *(Cal. Bus. & Prof. § 17200, et seq.)*

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

27 81. Plaintiffs bring this claim individually, on behalf of the Classes and on
28 behalf of the general public.

1 82. Through the conduct and scheme described herein, and particularly
2 through the marketing and selling of 24-Day Challenge Products to Plaintiffs and
3 members of the public, Defendants engaged in unlawful, deceptive, and unfair
4 business acts within the meaning of California *Business and Professions Code* §
5 17200*et seq.* Defendants' acts and practices offend an established public policy, and
6 Defendants engage in immoral, un-ethical, oppressive, and unscrupulous activities
7 that are substantially injurious to consumers including Plaintiffs.

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

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

19 a. Defendants have disseminated false advertisements of the 24-Day
20 Challenge Products in that the product advertising and packaging contain false
21 and/or misleading statements as to the purported ability of these products to do
22 what Defendants claim they do, in violation of California *Health & Safety Code* §§
23 110290 and 110390 *et seq.*

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

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

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

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

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

12 85. Plaintiffs and other Class members were misled and, because
13 misrepresentations and omission were uniform and material, believed the
14 Defendants' statements.

15 86. Plaintiffs request that this Court enter such orders or judgments as may
16 be necessary to restore to any person money and interest which may have been
17 acquired by means of such unfair practices as provide in *Bus. & Prof. Code* §
18 17203, and for such other relief as set forth below.

19 87. Plaintiffs reserve the right to allege other violations which constitute
20 other unlawful business acts or practices. Upon information and belief, Defendants'
21 wrongful conduct in violation of § 17200, *et seq.* is ongoing and continues to this
22 date.

23 88. There were reasonably available alternatives to further Defendants'
24 legitimate business interests, other than the conduct described herein.

25 89. Defendants' actions, claims, nondisclosures, and misleading
26 statements, as alleged in this Complaint, likely to deceive Plaintiffs and the public,
27 and were intended to deceive Plaintiffs and members of the public. Plaintiffs and
28 Class members have in fact been deceived and have relied on Defendants'

1 representations and omissions. This reliance has caused harm to Plaintiffs and Class
2 members. Plaintiffs and Class members have suffered injury in fact and lost money
3 as a result of Defendants' unlawful, unfair, and fraudulent practices.

4 90. As a result of its deception, Defendants have reaped unjust revenue
5 and profit. Restitution is, therefore, appropriate and the Plaintiffs ask that this Court
6 order restitution. Further, upon information and belief, unless restrained and
7 enjoined, Defendants will continue to engage in the above-described conduct.
8 Accordingly, injunctive relief is appropriate.

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

12 92. Plaintiffs engaged counsel to prosecute this action and are entitled to
13 recover costs and reasonable attorneys' fees according to proof at trial.
14

15 **SECOND CAUSE OF ACTION**

16 **UNFAIR, DECEPTIVE AND MISLEADING ADVERTISING**

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

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

20 94. Plaintiffs bring this claim individually, on behalf of the Class and on
21 behalf of the general public.

22 95. Through the conduct and scheme described herein, and particularly
23 through the marketing of 24-Day Challenge Products to Plaintiffs and members of
24 the public, Defendants engaged in unlawful, deceptive, and unfair business acts
25 within the meaning of California *Business and Professions Code* § 17500 *et seq.*
26 Defendants' acts and practices offend an established public policy, and Defendants
27 engage in immoral, unethical, oppressive, and unscrupulous activities that are
28 substantially injurious to consumers including Plaintiffs.

1 96. Defendants engaged in the deceptive conduct alleged herein, which
2 included deceptive and untrue advertisements regarding the 24-Day Challenge
3 products and representations made to induce the public to purchase the products.

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

9 98. Defendants made and disseminated false and misleading statements to
10 Plaintiffs and members of the public regarding the nature, purpose, and effect of the
11 24-Day Challenge Products. Defendants created false impressions which it failed
12 to correct, and concealed material information regarding the products.

13 99. Defendants were aware or should have been aware by the exercise of
14 reasonable care that the representations were untrue and/or misleading.

15 100. Plaintiffs reserve the right to allege other violations which constitute
16 other unlawful business acts or practices. Upon information and belief, Defendants'
17 wrongful conduct in violation of § 17500. *et seq.* is ongoing and continues to this
18 date.

19 101. There were reasonably available alternatives to further Defendants'
20 legitimate business interests, other than the conduct described herein.

21 102. Defendants' actions, claims, nondisclosures, and misleading
22 statements, as alleged in this Complaint, likely to deceive Plaintiffs and the public,
23 and were intended to deceive Plaintiffs and members of the public. Plaintiffs and
24 Class members have in fact been deceived and have relied on Defendants'
25 representations and omissions. This reliance has caused harm to Plaintiffs and Class
26 members. Plaintiffs and Class members have suffered injury in fact and lost money
27 as a result of Defendants' unlawful, unfair, and fraudulent practices.
28

1 115. Defendants guaranteed the health benefits and especially the mental
2 benefits of using the products.

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

8 117. The defect in the products existed prior to delivery of the product to
9 Plaintiffs and the Class members.

10 118. Plaintiffs and Class members have incurred damages as described
11 herein as a direct and proximate result of the defective products and Defendants'
12 and Does 1 through 10's breach of the express warranties, in that the Plaintiffs and
13 the Class have paid the purchase price for the defective products. Plaintiffs, on
14 behalf of themselves and the Class members, have demanded that Defendants
15 correct the defect and Defendants have failed and/or refused. Plaintiffs and the
16 Class members are entitled to a refund of the purchase price of the product,
17 consequential and incidental damages, costs and expense, including attorneys' fees.
18

19
20 **FIFTH CAUSE OF ACTION**
21 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

22 ***(CAL. CIV. CODE § 1750 et seq.)***

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

25 120. Plaintiffs bring this claim individually, on behalf of the Class and on
26 behalf of the general public.

27 121. Plaintiffs and the Class are individuals who purchased goods (i.e., 24-
28 Day Challenge Products) for personal use.

1 122. Defendants have represented that the 24-Day Challenge Products have
2 characteristics, uses, benefits, and/or qualities that the products do not have.

3 123. Plaintiffs and the Class have each been directly and proximately
4 injured by the conduct of the Defendants, and such injury includes payment for the
5 24-Day Challenge Products they purchased.

6 124. Plaintiffs, contemporaneously with the filing of the initial Complaint
7 in this action, provided Defendants notice of their Consumer Legal Remedies Act
8 claims, on behalf of themselves and the Class members, through a Notice as
9 required by California Consumer Legal Remedies Act. On March 22, 2017, more
10 than thirty (30) days prior to the filing of this Amended Complaint Defendant
11 received notice from the Plaintiffs of the particular alleged violations of Section
12 1750 et seq.

13 125. The Court should enjoin Defendants and Does 1 through 10 from any
14 further sales, marketing, or advertisement of the 24-Day Challenge Products which
15 contain the misrepresentations detailed herein as to the standards, characteristics,
16 uses, benefits, and/or qualities of the products. Plaintiffs request that this Court
17 enter a permanent injunction enjoining Defendants, and their agents, servants,
18 employees, and all persons acting under or in concert with them, to cease and desist
19 from the following acts: (a) selling, marketing, or advertising the 24-Day Challenge
20 Products in the illegal manner they are now doing; (b) selling, marketing, or
21 advertising the 24-Day Challenge Products in the illegal manner they are now doing
22 without any adequate and reliable scientific basis for such claims; (c) selling,
23 marketing, or advertising the 24-Day Challenge Products as a supplement or drug
24 that has specific medicinal benefits; (d) selling, marketing, or advertising the 24-
25 Day Challenge Products with any representation or suggestion that a scientific and
26 medical review board has approved or recommended the products for use; (e)
27 concealing information regarding the true nature and origin of the herbal nutrients
28 contained in the 24-Day Challenge Products; (f) selling, marketing, or advertising

1 that the 24-Day Challenge Products are guaranteed in any way; (g) engaging in any
2 of the illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct
3 described herein; and (h) engaging in any other conduct found by the Court to be
4 illegal, fraudulent, misleading, unlawful, unfair and/or deceptive conduct.

5 126. Plaintiffs and Class members have incurred damages as described
6 herein as a direct and proximate result of the defective products and Defendants'
7 and Does 1 through 10's violations of the Consumer Legal Remedies Act. Plaintiff
8 and Class members demand actual damages, restitution, punitive damages, and any
9 other relief the Court deems proper. Plaintiffs, on behalf of themselves and the
10 Class members, have demanded that Defendants correct the defect and Defendants
11 have failed and/or refused. Plaintiffs and the Class members are entitled to a refund
12 of the purchase price of the product, consequential and incidental damages, costs
13 and expense, including attorneys' fees, and any other relief the Court deems proper.

14 **SIXTH CAUSE OF ACTION**

15 **COMMON LAW RESTITUTION FOR UNJUST ENRICHMENT**

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

18 128. To the extent necessary, this claim is pled in the alternative to those
19 claims asserted on behalf of the putative Class and/or is asserted on behalf of
20 Plaintiffs alone.

21 129. Defendants have benefit and have been unjustly enriched by their
22 wrongful conduct alleged herein. Defendants have sold the 24-Day Challenge
23 Products to Plaintiffs and the Class based upon deceptive conduct and
24 misrepresentations as to the uses and qualities which the product does not possess
25 and which Defendants were, and still are, aware the product does not possess.

26 130. Defendants have knowledge of this benefit, and have voluntarily
27 accepted and retained this benefit.
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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: October 18, 2017

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

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CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of October, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s CM/ECF System.

/s/ Steven W. Ritcheson
Steven W. Ritcheson