

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DALE CLAUSEN and TIMOTHY DUNCAN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

WOODBOLT DISTRIBUTION, LLC d/b/a
NUTRABOLT,

Defendant.

Civil Action No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Dale Clausen and Timothy Duncan (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendant Woodbolt Distribution, LLC d/b/a Nutrabolt (“Defendant” or “Nutrabort”). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action lawsuit against Nutrabolt for selling defective dietary supplement products, Scivation-branded Xtend BCAA¹ (“Xtend BCAA” or the “Products”), through its Scivation brand which purports to “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.”² But actually, based on independent, peer-reviewed research, BCAA supplements decrease muscle protein synthesis and are wholly incapable of building muscle on their own. Dr. Robert Wolfe, a

¹ The acronym “BCAA” stands for “branched-chain amino acids.”

² The Products at issue are: Xtend Original BCAA a/k/a Xtend BCAAs, Xtend Elite BCAAs, Xtend Hydrasport BCAAs a/k/a Xtend Sport BCAAs, Xtend Ripped BCAAs, Xtend Energy BCAAs, Xtend Free BCAAs, Xtend Hydration + BCAAs ready to drink bottles.

renowned and highly-respected authority in the area of amino acid metabolism, concludes that consumption of BCAA supplements actually **negatively impacts** muscle protein synthesis due to lack of all essential amino acids (“EAA”), which causes EAAs stored in the muscle to be catabolized, thereby perpetuating a catabolic state of muscle protein breakdown. To build muscle, the body must have an abundant availability of all EAAs, which must be consumed through the diet. Anything less than a full panel of EAAs will grind any increase in muscle protein synthesis to a halt due to lack of sufficient raw materials with which the body can use to build muscle mass. Xtend BCAA contains only three of the nine EAAs, and therefore it cannot, in fact, build muscle. As such, Nutrabolt’s claims that the Products “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.” are false and misleading based on peer-reviewed scientific data. In fact, the Products negatively impact protein synthesis, thereby leaving Plaintiffs and Class members (defined below) in a **worse position than if not taking the product at all**. Plaintiffs bring this class action lawsuit on behalf of themselves and purchasers of the Xtend BCAA dietary supplements.

A. Overview of Amino Acids

2. Amino acids are known as “building blocks” for protein, in that protein is made up of a sequence of amino acids held together by peptide bonds.³

3. A total of twenty amino acids comprise muscle protein.⁴ They are classified as either essential, non-essential, or conditionally essential. Nine of the twenty are known as “essential amino acids” (EAA) because “they cannot be produced by the body in physiologically

³ <https://medlineplus.gov/ency/article/002222.htm> (last visited Sept. 17, 2019)

⁴ Robert R. Wolfe, *Branched-chain Amino Acids And Muscle Protein Synthesis In Humans: Myth Or Reality?* (J. Int’l Society of Sports Nutrition Aug. 22, 2017), at 1 (attached hereto as **Exhibit A**).

significant amounts, and therefore are crucial components of a balanced diet.”⁵ Non-essential amino acids are those produced in the body and therefore are not required to be consumed in the diet.⁶ Conditionally-essential amino acids are those which are usually non-essential except in certain circumstances, such as illness.⁷

Essential	Conditionally Non-Essential	Non-Essential
Histidine	Arginine	Alanine
Isoleucine	Cystine	Asparagine
Leucine	Glutamine	Aspartate
Lysine	Glycine	Glutamate
Methionine	Proline	Serine
Phenylalanine	Tyrosine	
Threonine		
Tryptophan		
Valine		

4. Three of the nine essential amino acids are known as branched-chain amino acids (“BCAAs”), which are leucine, valine, and isoleucine.⁸ They are called “branched-chain amino acids” because of their branched molecular structure.

B. Role of Amino Acids in Muscle Building

5. “Muscle protein is in a constant state of turnover, meaning that protein synthesis is occurring continuously to replace protein lost as a consequence of protein breakdown.”⁹

6. The “anabolic state,” or muscle growth, occurs when the rate of muscle protein synthesis is greater than the rate of protein breakdown.¹⁰

⁵ *Id.*

⁶ <https://medlineplus.gov/ency/article/002222.htm> (last visited Sept. 17, 2019)

⁷ *Id.*

⁸ Ex. A, at 1.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 3.

7. For muscle building to occur by way of stimulation of muscle protein synthesis, there must be an “abundant availability of all EAAs.”¹¹ This is because muscle cannot be built without the necessary raw materials, to wit all EAAs.

8. For this reason, protein sources containing adequate amounts of all nine essential amino acids are known as “complete proteins.”¹²

9. BCAAs, however, are not “complete proteins” because they are comprised of only three of the nine essential amino acids. As such, a nutritional supplement containing only BCAAs cannot build muscle, because there is not an “abundant availability of all EAAs” required to build muscle. In short, “[m]uscle protein synthesis will be limited by the lack of availability of any of the EAAs. . . .”¹³

10. When insufficient EAAs are consumed, the only potential source for EAAs for muscle protein synthesis are those derived from muscle protein breakdown, and therefore “it is impossible for muscle protein synthesis to exceed the rate of muscle protein breakdown when the precursors are derived entirely from protein breakdown, and thus an anabolic state cannot occur in the absence of exogenous amino acid intake.”¹⁴

C. Xtend BCAA Does Not Build Muscle Via Enhanced Muscle Protein Synthesis

11. “The sale of BCAAs as nutritional supplements has become a multi-million dollar business.”¹⁵ “At the center of the marketing for these products is the widely-believed claim that consumption of BCAAs stimulates muscle protein synthesis, and as a result elicits an anabolic

¹¹ *Id.*

¹² <https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/protein.html> (last visited Sept. 17, 2019)

¹³ Ex. A, at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

response.”¹⁶ However, recent peer-reviewed research has determined that these marketing claims are false and misleading.

1. **Dr. Robert Wolfe’s Peer-Reviewed Study Finds BCAA Supplements Do Not Build Muscle And Actually Decrease Muscle Protein Synthesis**

12. Dr. Robert Wolfe is a highly-regarded researcher in his field. He has published 452 peer-reviewed research articles, 126 review articles, and three books. His papers have been cited 50,663 times.¹⁷ Dr. Wolfe has performed extensive research in the field of muscle metabolism.

13. In August of 2017, Dr. Wolfe published a peer-reviewed study in the Journal of the International Society of Sports Nutrition entitled *Branched-chain amino acids and muscle protein synthesis in humans: myth or reality?* Dr. Wolfe performed a review of both the theoretical considerations and empirical research relating to BCAAs, and concluded that “the claim that consumption of dietary BCAAs stimulates muscle protein synthesis or produces an anabolic response in human subjects is unwarranted.”¹⁸

14. As to the theoretical considerations, Dr. Wolfe explained that in order for the body to reach an anabolic state (*i.e.* where the rate of muscle protein synthesis exceeds the rate of muscle protein breakdown), there must be an abundance of all nine EAAs, not just the three BCAAs.¹⁹ “Muscle protein synthesis will be limited by the lack of availability of any of the EAAs, whereas a shortage of [non-essential amino acids] can be compensated for by increased de novo production of the deficient [non-essential amino acids].”²⁰

¹⁶ *Id.*

¹⁷ See <http://aging.uams.edu/dr-robert-r-wolfe/> (last visited Sept. 17, 2019)

¹⁸ Ex. A, at 1.

¹⁹ *Id.* at 3.

²⁰ *Id.*

15. When less than a full panel of EAAs are ingested (such as when ingesting a BCAA supplement), the only source of EAA precursors for muscle protein synthesis are those derived from muscle breakdown, which means that muscle is being broken down to provide EAAs for protein synthesis, rendering it impossible for the body to reach an anabolic state. Dr. Wolfe explains that “it is impossible for muscle protein synthesis to exceed the rate of muscle protein breakdown when the precursors are derived entirely from protein breakdown, and thus an anabolic state cannot occur in the absence of exogenous amino acid intake.”²¹

16. Dr. Wolfe then reviewed the empirical evidence from human studies involving the effects of BCAA consumption, which revealed that “BCAA infusion **not only fails to increase the rate of muscle protein synthesis in human subjects, but actually reduces the rate of muscle protein synthesis** and the rate of muscle protein turnover.”²²

17. Dr. Wolfe concluded:

When all evidence and theory is considered together, it is reasonable to conclude that there is no credible evidence that ingestion of a dietary supplement of BCAAs alone results in a physiologically significant stimulation of muscle protein. **In fact, available evidence indicates that BCAAs actually decrease muscle protein synthesis.** All EAAs must be available in abundance for increased anabolic signaling to translate to accelerated muscle protein synthesis.²³

2. **Other Scholars Agree That BCAA Supplements Do Not Build Muscle**

18. Researchers at the Gatorade Sports Science Institute reached an identical conclusion to that of Dr. Wolfe regarding the effects of BCAA supplements on muscle protein synthesis. The study concluded that there is “no reason to consume BCAA supplements for

²¹ *Id.*

²² *Id.* at 5.

²³ *Id.* at 6.

enhanced stimulation of [muscle protein synthesis] and/or decreased [muscle protein breakdown].”²⁴ The researchers further explained:

The claims for [BCAA] products are based on a wide range of mechanisms: from enhanced muscle protein synthesis (MPS) and decreased muscle protein breakdown (MPB) to protection of the immune system, increased fat oxidation and decreased muscle soreness, among many others. The physiological rationale for these claims, let alone robust evidence from well-controlled human studies, is often weak, if not completely lacking.²⁵

19. Dr. Susan Kleiner, a scientist, researcher, and consultant, also concurred with Dr. Wolfe and explained that she does not recommend BCAA supplements, and states that “it may be appropriate to let clients know that BCAA supplementation may decrease their [muscle protein synthesis] and turnover, making them certainly not helpful, and possibly harmful, to their goals.”²⁶

20. Dr. Jose Antonio, CEO of the International Society of Sports Nutrition noted that “BCAAs should not be marketed as a muscle building supplement”²⁷

21. Dr. Stuart Phillips of McMaster University states: “Bottom line: If you’re taking in adequate protein [(i.e. a full panel of EAAs)], then BCAAs are a complete waste of money.”²⁸

3. Nutrabolt’s Misrepresentations

22. Despite the findings of Dr. Wolfe and other researchers, Nutrabolt continues to misrepresent that its Xtend BCAA Products “Support Muscle Growth,” “Support Recovery,”

²⁴ <https://www.gssiweb.org/sports-science-exchange/article/branched-chain-amino-acid-supplementation-to-support-muscle-anabolism-following-exercise> (last visited Sept. 17, 2019).

²⁵ *Id.*

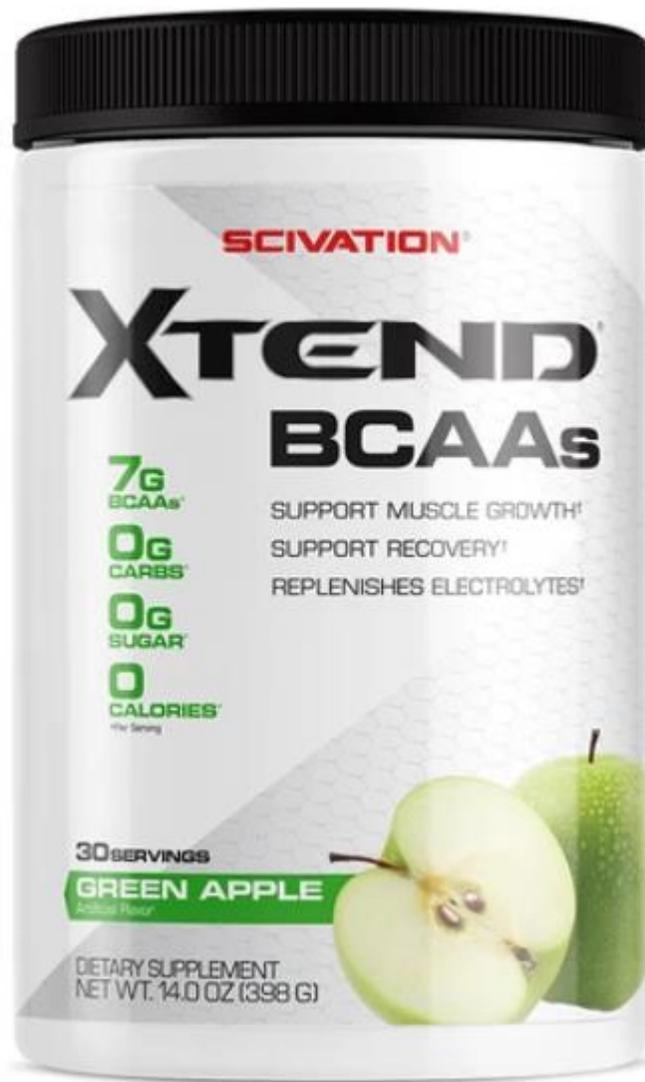
²⁶ <https://www.nutraingredients-usa.com/Article/2017/08/24/Limited-evidence-backs-BCAA-s-muscle-building-benefits-says-new-study#> (last visited Sept. 17, 2019).

²⁷ *Id.*

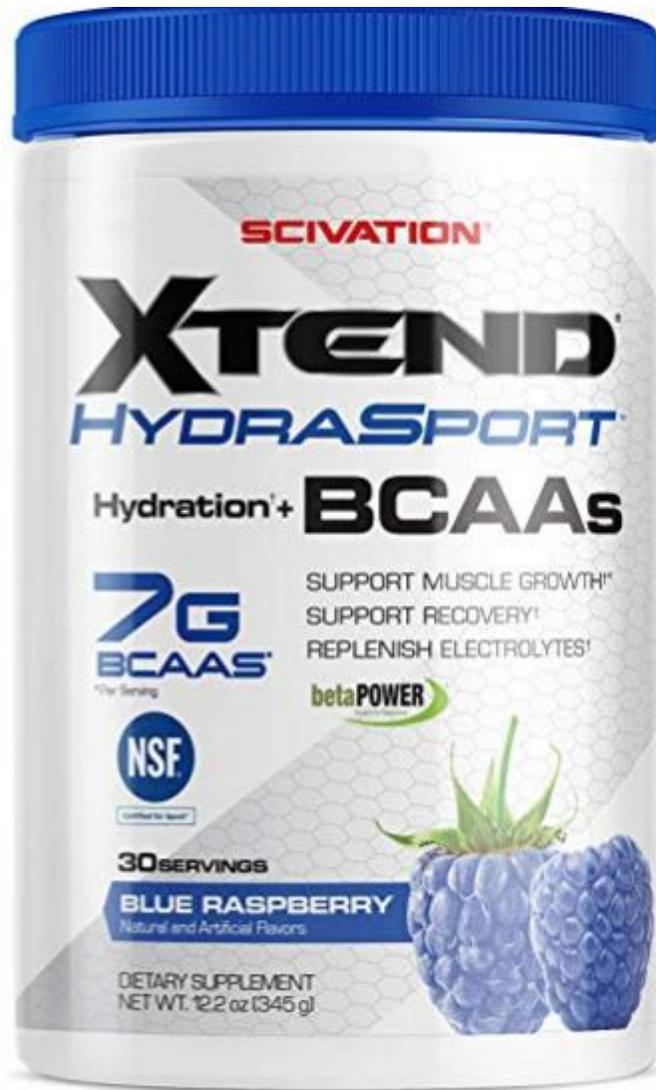
²⁸ <https://www.menshealth.com/nutrition/a19545329/branched-chain-amino-acids/> (last visited Sept. 17, 2019).

“support muscle recovery and growth,” and support “muscle growth and repair” (the “Misrepresentations”). Each of the Misrepresentations appear on the product’s label.

23. Indeed, the front label panel of Xtend BCAAs prominently states “Support Muscle Growth” and “Support Recovery:”



24. The front panel of Xtend HydraSport BCAAs prominently states the same:



25. The Xtend BCAA labels indicate to the consumer that use of the Products will lead to muscle growth through increased muscle protein synthesis.

26. But, as discussed above, those label claims are false. According to independent research by Dr. Wolfe, “the claim that consumption of dietary BCAAs stimulates muscle protein synthesis or produces an anabolic response in human subjects is unwarranted.”²⁹ Further,

²⁹ Ex. A, at 2.

according to Dr. Wolfe, studies in human subjects “**have reported decreases, rather than increases, in muscle protein synthesis after intake of BCAAs.**”³⁰

27. Plaintiffs assert claims on behalf of themselves and a nationwide class and New York subclass of purchasers of the Products for violation of New York General Business Law §§ 349 and 350, violation of the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, *et seq.*, breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, and fraud.

THE PARTIES

28. Plaintiff Dale Clausen is a citizen of New York who resides in New York, New York. In 2018, Mr. Clausen purchased two containers of Nutrabolt’s Xtend BCAA product for approximately \$39.98 (approximately \$19.99 per bottle) from amazon.com. At all times, Mr. Clausen used the product as directed on the label. The Xtend BCAA supplement he purchased prominently displayed on the package “Support Muscle Growth” and “Support Recovery.” Mr. Clausen saw these representations prior to and at the time of purchase, and understood them as representations and warranties that the product would, in fact, “Support Muscle Growth” and “Support Recovery.” He relied on these representations and warranties in deciding to purchase Nutrabolt’s Xtend BCAA product, and these representations and warranties were part of the basis of the bargain in that he would not have purchased Nutrabolt’s Xtend BCAA product if he had known that it would not, in fact, “Support Muscle Growth” and “Support Recovery.”

29. Ultimately, Nutrabolt’s Xtend BCAA powder product was worthless (and certainly worth less than its misrepresentations suggested) because it does not, in fact, “Support Muscle Growth” and “Support Recovery.” In fact, it actually reduces the rate of muscle protein

³⁰ *Id.* At 8.

synthesis and the rate of muscle protein turnover. Further, because the Product does not contain all nine EAAs, it cannot build muscle.

30. Plaintiff Timothy Duncan is a citizen of New Jersey who resides in Elizabeth, New Jersey. In 2019, Mr. Duncan purchased Nutrabolt's Xtend BCAA product for approximately \$27.99 from a GNC location in New York, New York. At all times, Mr. Duncan used the product as directed on the label. The Xtend BCAA supplement he purchased prominently displayed on the package that it would support "muscle growth and repair." Mr. Duncan saw these representations prior to and at the time of purchase, and understood them as representations and warranties that the product would, in fact, support "muscle growth and repair." He relied on these representations and warranties in deciding to purchase Nutrabolt's Xtend BCAA product, and these representations and warranties were part of the basis of the bargain in that he would not have purchased Nutrabolt's Xtend BCAA product if he had known that it would not, in fact, support "muscle growth and repair."

31. Ultimately, Nutrabolt's Xtend BCAA product was worthless (and certainly worth less than its misrepresentations suggested) because it does not, in fact, support "muscle growth and repair." In fact, it actually reduces the rate of muscle protein synthesis and the rate of muscle protein turnover. Further, because the Product does not contain all nine EAAs, it cannot build muscle.

32. Defendant Woodbolt Distribution, LLC d/b/a Nutrabolt is a Delaware Corporation with its principal place of business at 3891 South Traditions Drive, Bryan, Texas 77807. Nutrabolt is engaged in the manufacturing, processing, packaging, and distribution of Xtend BCAA products. Nutrabolt sells Xtend BCAA products throughout New York and the entire United States.

JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiffs, as well as most members of the proposed class, are citizens of states different from Defendant. This Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

34. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because Plaintiff Clausen is a citizen of New York and resides in this District, and because both Plaintiffs purchased Xtend BCAA products in this District. Moreover, Defendant distributed, advertised, and sold Xtend BCAA products, which are the subject of the present complaint, in this District.

CLASS REPRESENTATION ALLEGATIONS

35. Plaintiffs seek to represent a class defined as all persons in the United States who purchased Nutrabolt's Xtend BCAA products (the "Nationwide Class"). Excluded from the Nationwide Class are persons who made such purchase for purpose of resale, Defendant, Defendant's officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by Defendant, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant's officers and/or directors, the judge assigned to this action, and any member of the judge's immediate family.

36. Plaintiff also seeks to represent a subclass of all persons who purchased Nutrabolt's Xtend BCAA products in New York (the "New York Subclass").

37. Members of the Nationwide Class and New York Subclass are so numerous that their individual joinder herein is impracticable. Defendant's annual sales of Xtend BCAA are in the millions of dollars; thus, members of the Nationwide Class number in the hundreds of thousands and members of the New York Subclass number in the tens of thousands. The precise number of Class members and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

38. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: whether Xtend BCAA products actually "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," and support "muscle growth and repair."

39. The claims of the named Plaintiffs are typical of the claims of the Nationwide Class and New York Subclass in that the named Plaintiffs were exposed to and relied on Defendant's false and misleading marketing of Xtend BCAA products and suffered a loss as a result of their Xtend BCAA purchases.

40. Plaintiffs are adequate representatives of the Nationwide Class and New York Subclass because their interests do not conflict with the interests of the Class members they seek to represent, they have retained competent counsel experienced in prosecuting consumer class actions, and they intend to prosecute this action vigorously. The interests of the Nationwide Class and New York Subclass members will be fairly and adequately protected by Plaintiffs and their counsel.

41. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Nationwide Class and New York Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)

42. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

43. Plaintiffs bring this claim individually and on behalf of the members of the proposed New York Subclass against Defendant.

44. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misrepresenting that Xtend BCAA products would "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," and support "muscle growth and repair."

45. The foregoing deceptive acts and practices were directed at consumers.

46. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics of Xtend BCAA to induce consumers to purchase the same.

47. Plaintiffs and members of the New York Subclass were injured because (a) they would not have purchased Xtend BCAA products had they known that they would not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair,” (b) they overpaid for Xtend BCAA products because they are sold at a price premium, and (c) Xtend BCAA products did not have the characteristics, uses, or benefits promised, namely that they do not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” or support “muscle growth and repair.” As a result, Plaintiffs and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Xtend BCAA products or in the difference in value between Xtend BCAA products as warranted and Xtend BCAA products as actually sold.

48. On behalf of themselves and other members of the Class and New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys’ fees.

COUNT II
(False Advertising, New York Gen. Bus. Law § 350)

49. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

50. Plaintiffs bring this claim individually and on behalf of the members of the proposed New York Subclass against Defendant.

51. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

52. The foregoing advertising was directed at consumers and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

53. These misrepresentations have resulted in consumer injury or harm to the public interest.

54. Plaintiffs and members of the New York Subclass were injured because (a) they would not have purchased Xtend BCAA products had they known that they would not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair,” (b) they overpaid for Xtend BCAA products because they are sold at a price premium, and (c) Xtend BCAA products did not have the characteristics, uses, or benefits promised, namely that they do not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.” As a result, Plaintiffs and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Xtend BCAA products or in the difference in value between Xtend BCAA products as warranted and Xtend BCAA products as actually sold.

55. On behalf of themselves and other members of the New York Subclass, Plaintiffs seek to enjoin the unlawful acts and practices described herein, to recover actual damages or five hundred dollars per violation, whichever is greater, three times actual damages and reasonable attorneys’ fees.

COUNT III
(Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*)

56. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

57. Plaintiffs brings this claim individually and on behalf of the members of the Proposed Nationwide Class and New York Subclass against Defendant.

58. Xtend BCAA products are consumer products as defined by 15 U.S.C. § 2301(1).

59. Plaintiffs and members of the Nationwide Class and New York Subclass are consumers as defined by 15 U.S.C. § 2301(3).

60. Defendant is a supplier and/or warrantor as defined in 15 U.S.C. § 2301(4) and (5).

61. In connection with the sale of Xtend BCAA products, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), including that the Products would “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.”

62. Defendant breached the written warranties because each of the express warranties is provably false and misleading. Xtend BCAA products do not stimulate muscle protein synthesis sufficient to build muscle or produce an anabolic response in human subjects, but actually reduce the rate of muscle protein synthesis and the rate of muscle protein turnover.

63. By reason of Defendant’s breach of the express written warranties involving Xtend BCAA products, Defendant has violated the statutory rights due Plaintiffs and members of the Nationwide Class and New York Subclass pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, thereby damaging Plaintiffs and members of the Nationwide Class and New York Subclass.

64. Plaintiff and members of the Nationwide Class and New York Subclass were injured as a direct and proximate result of Defendant's breach because they would not have purchased Xtend BCAA products if they had known the truth about the Products, or would have paid substantially less for them.

65. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and members of the Nationwide Class and New York Subclass are entitled to recover the damages caused to them by Defendant's breaches of written warranties, which damages constitute the full purchase price of Xtend BCAA products. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and members of the Nationwide Class and New York Subclass are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and members of the Nationwide Class and New York Subclass for and in connection with the commencement and prosecution of this action.

66. Prior to filing this action, Plaintiffs, by and through their counsel, provided Defendant with written notice of their claims pursuant to 15 U.S.C. § 2310(e) and also notified Defendant that they were acting on behalf of a Class defined as all persons in the United States who purchased Xtend BCAA products.

COUNT IV
(Breach Of Express Warranty)

67. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

68. Plaintiffs brings this claim individually and on behalf of the members of the proposed Nationwide Class and New York Subclass against Defendant.

69. On September 16, 2019, Plaintiffs provided Defendant with notice of this claim by letter that complied in all respects with U.C.C. § 2-607(3)(a). The September 16, 2019 letter is attached hereto as **Exhibit B**.

70. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that Xtend BCAA products would “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.”

71. In fact, Xtend BCAA products do not stimulate muscle protein synthesis sufficient to induce muscle gain or produce an anabolic response in human subjects. They actually reduce the rate of muscle protein synthesis and the rate of muscle protein turnover.

72. As a direct and proximate cause of Defendant’s breach of express warranty, Plaintiffs and members of the New York Subclass were injured because (a) they would not have purchased Xtend BCAA products had they known that they would not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair,” (b) they overpaid for Xtend BCAA products because they are sold at a price premium, and (c) Xtend BCAA products did not have the characteristics, uses, or benefits promised, namely that they do not “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” or support “muscle growth and repair.” As a result, Plaintiffs and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Xtend BCAA products or in the difference in value between Xtend BCAA products as warranted and Xtend BCAA products as actually sold.

COUNT V
(Breach Of Implied Warranty Of Merchantability)

73. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

74. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class and New York Subclass against Defendant.

75. On September 16, 2019, Plaintiffs provided Defendant with notice of this claim by letter that complied in all respects with U.C.C. § 2-607(3)(a). *See* Ex. B.

76. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that Xtend BCAA would “Support Muscle Growth,” “Support Recovery,” “support muscle recovery and growth,” and support “muscle growth and repair.”

77. Defendant breached the warranty implied in the contract for the sale of Xtend BCAA products because they could not pass without objection in the trade under the contract description, the goods were not of fair and average quality within the description, and the goods were unfit for their intended and ordinary purpose because Xtend BCAA products do not stimulate muscle protein synthesis sufficient to build muscle or produce an anabolic response in human subjects. As a result, Plaintiffs and the Nationwide Class and New York Subclass members did not receive the goods as impliedly warranted by Defendant to be merchantable.

78. Plaintiffs and the Nationwide Class and New York Subclass members purchased Xtend BCAA products in reliance upon Defendant’s skill and judgment and the implied warranties of fitness for the purpose.

79. The Xtend BCAA products were not altered by Plaintiffs or the Nationwide Class or New York Subclass members.

80. The Xtend BCAA products were defective when they left the exclusive control of Defendant.

81. Defendant knew Xtend BCAA products would be purchased and used without additional testing by Plaintiffs and the Nationwide Class and New York Subclass members.

82. The Xtend BCAA products were defectively designed and unfit for their intended purpose, and Plaintiffs and the Nationwide Class and New York Subclass members did not receive the goods as warranted.

83. As a direct and proximate cause of Defendant's breach of implied warranty, Plaintiffs and members of the Nationwide Class and New York Subclass were injured because (a) they would not have purchased Xtend BCAA products had they known that they would not "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," and support "muscle growth and repair," (b) they overpaid for Xtend BCAA products because they are sold at a price premium, and (c) Xtend BCAA products did not have the characteristics, uses, or benefits promised, namely that they do not "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," and support "muscle growth and repair." As a result, Plaintiffs and members of the Nationwide Class and New York Subclass have been damaged either in the full amount of the purchase price of the Xtend BCAA products or in the difference in value between Xtend BCAA products as warranted and Xtend BCAA products as actually sold.

COUNT VI
(Unjust Enrichment)

84. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

85. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class and New York Subclass against Defendant.

86. Plaintiffs and the Nationwide Class and New York Subclass members conferred benefits on Defendant by purchasing Xtend BCAA products.

87. Defendant has been unjustly enriched by retaining the revenues derived from Plaintiffs and the Nationwide Class and New York Subclass members' purchases of Xtend BCAA

products. Retention of those monies under these circumstances is unjust and inequitable because Defendant's sale of Xtend BCAA products resulted in purchasers being denied the full benefit of their purchase because Xtend BCAA products do not "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," or support "muscle growth and repair."

88. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiffs and the Nationwide Class and New York Subclass members is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the Nationwide Class and New York Subclass members for its unjust enrichment, as ordered by the Court.

COUNT VII
(Fraud)

89. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

90. Plaintiffs bring this claim individually and on behalf of the members of the proposed Nationwide Class and New York Subclass against Defendant.

91. As discussed above, Defendant provided Plaintiff and the Nationwide Class and New York Subclass members with false or misleading material information and failed to disclose material facts about Xtend BCAA products, including but not limited to the fact that it does not "Support Muscle Growth," "Support Recovery," "support muscle recovery and growth," or support "muscle growth and repair," but actually reduces the rate of muscle protein synthesis and the rate of muscle protein turnover. These misrepresentations and omissions were made with knowledge of their falsehood.

92. Dr. Wolfe's study was published in August of 2017, and has been widely publicized in the nutrition and fitness community. Despite the fact that this study has been published for over two years, and that other researchers and fitness professionals have joined Dr.

Wolfe in concluding that BCAAs, on their own, are ineffective for stimulating muscle growth via increased protein synthesis, Defendant continues to sell its Xtend BCAA products to unsuspecting customers. In short, Defendant continues to sell products that cannot do what they claim to do based on scientific research which has been widely available for over two years. In fact, the research suggests that the Xtend BCAA products actually reduce protein synthesis and perpetuates a catabolic state, directly contrary to the claims on the label. The misrepresentations and omissions made by Defendant, upon which Plaintiffs and Nationwide Class and New York Subclass members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class and New York Subclass members to purchase the Xtend BCAA products.

93. The fraudulent actions of Defendant caused damage to Plaintiffs and the Nationwide Class and New York Subclass members, who are entitled to damages and other legal and equitable relief as a result.

RELIEF DEMANDED

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

A. For an order certifying the Nationwide Class and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Nationwide Class and New York Subclass and Plaintiffs' attorneys as Class Counsel to represent the Nationwide Class and New York Subclass members;

B. For an order declaring that the Defendant's conduct violates the statutes referenced herein;

C. For an order finding in favor of Plaintiffs, the Nationwide Class, and the New York Subclass on all counts asserted herein;

D. For compensatory, punitive, and statutory damages in amounts to be determined by the Court and/or jury;

- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper; and
- H. For an order awarding Plaintiffs and the Nationwide Class and New York Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action and issues so triable.

Dated: September 23, 2019

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta

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