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6 **Counsel for Plaintiff**

7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11  
12 AILEEN BROOKS, on behalf of herself  
and all others similarly situated,

13 Plaintiff,

14 v.  
15

16 IT WORKS MARKETING, INC.,  
IT WORKS! GLOBAL, INC., MARK  
17 PENTECOST, and PAUL NASSIF

18 Defendants.  
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Case No: \_\_\_\_\_

**CLASS ACTION**

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF:**

**CAL. BUS. & PROF. CODE §§17200 *et seq.* and**

**CAL. BUS. & PROF. CODE §§17500 *et seq.* and**

**CAL CIV. CODE §§ 1750 *et seq***

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Aileen Brooks, on behalf of herself, all others similarly situated, and the general public,  
2 by and through her undersigned counsel, hereby sues Defendants It Works Marketing, Inc., It Works!  
3 Global, Inc. and Mark Pentecost (collectively “Defendants” or “It Works”), and upon information and  
4 belief and investigation of counsel, alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2) (The  
7 Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000  
8 exclusive of interest and costs and because more than two-thirds of the members of the class defined  
9 herein reside in states other than the states of which Defendants are residents.

10 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff Aileen Brooks  
11 suffered injuries as a result of Defendants’ acts in this District; many of the acts and transactions giving  
12 rise to this action occurred in this District; and Defendants: (1) are authorized to conduct business in this  
13 District and have intentionally availed themselves of the laws and markets of this District through the  
14 distribution and sale of its products in this District, and (2) are subject to personal jurisdiction in this  
15 District.

16 **II. NATURE OF THE ACTION**

17 3. Defendants manufacture, market, distribute, and sell Thermofight pills (“Thermofight”), a  
18 purported “thermogenic weigh loss formula” purchased by Plaintiff.

19 4. It Works engaged in a consistent, long-term effort to fraudulently market Thermofight as  
20 a safe and effective fat burner and rapid weight loss solution on its website and Amazon.com.

21 5. The claims made on the Thermofight’s label, website, and Amazon page are misleading  
22 under California’s Consumer Legal Remedies Act, Unfair Competition Law, and False Advertising Law.  
23 Moreover, the labeling and advertising of Thermofight also violates California’s “baby FDCA” statute,  
24 also known as the Sherman Law.

25 6. Similarly, the claims made on Thermofight’s label, website, and Amazon page throughout  
26 the class period are contrary to those allowed by the Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et*  
27 *seq.* (“FDCA”), and subject any individual manufacturing or selling it to liability for the sale of an  
28 unapproved new drug.

1 7. Defendants' misrepresentations and omissions, described in detail herein, deceive  
2 consumers into believing that Thermofight is a safe and effective rapid weight loss solution and fat burner.

3 8. Plaintiff Aileen Brooks purchased and used Thermofight in reliance upon these deceptive  
4 claims, and with the belief that the product was sold in compliance with state and federal regulations.

5 9. Ms. Brooks used Thermofight as directed, but the product failed to deliver the advertised  
6 benefits.

7 10. This action is brought to remedy Defendants' unfair, deceptive, immoral, and unlawful  
8 conduct. On behalf of the class defined herein, Plaintiff seeks an order compelling It Works to, *inter alia*:  
9 (1) cease marketing and selling Thermofight as an unapproved new drug; (2) conduct a corrective  
10 advertising campaign; (3) destroy all misleading and deceptive materials and products; (4) award Plaintiff  
11 and the Class members restitution; and (5) pay costs, expenses, and reasonable attorney fees.

12 **III. PARTIES**

13 11. Plaintiff Aileen Brooks is a resident of Bakersfield who purchased Thermofight for  
14 personal and household use during the class period defined herein.

15 12. Defendant It Works Marketing, Inc. is a Florida corporation headquartered in Palmetto,  
16 FL. It Works Marketing, Inc. manufactures, markets, distributes, and sells Thermofight.

17 13. Defendant It Works! Global, Inc. is a Florida corporation headquartered in Palmetto, FL.  
18 It Works! Global, Inc. manufactures, markets, distributes, and sells Thermofight.

19 14. Defendant Mark Pentecost is an individual who resides in Florida and is sued in his  
20 individual capacity. Pentecost is the founder and CEO of It Works Marketing, Inc. and It Works! Global,  
21 Inc.

22 15. At all relevant times, Pentecost has aided and abetted the manufacturing, marketing,  
23 distribution, and sale of Thermofight. Pentecost controls the corporate defendants and created them for  
24 the primary purpose of engaging in crime, in particular the sale of illegal products, the sale of fraudulent  
25 weight loss products, and unlawful auto-billing fraud. He runs the corporations for the primary purpose  
26 of engaging in these crimes, and does not observe the corporate formalities of legitimate businesses.

27 16. Paul Nassif is a plastic surgeon and reality show star who resides in Los Angeles County,  
28 California and who co-hosts the E! network shows *Botched* and *Botched by Nature*. Nassif's former wife

1 was one of the “Real Housewives of Beverly Hills.”

2 17. Nassif developed several products for the other defendants and works as a celebrity doctor  
3 endorser, giving them the legitimacy of a product developed by a physician when he knows them to be  
4 ineffective and fraudulently marketed.

5 **IV. PLAINTIFF’S PURCHASE OF THERMOFIGHT**

6 18. Plaintiff Aileen Brooks purchased Thermofight from the It Works website on May 11,  
7 2020. She paid \$39.95 plus shipping and handling for a total of \$48.25.

8 19. When purchasing Thermofight, Plaintiff read and relied on Defendants’ various  
9 representations, described herein, which render Thermofight misleading under California’s Unfair  
10 Competition Law and False Advertising law and further render Thermofight an unlawful, unapproved new  
11 drug.

12 20. Relying on Defendants’ claims, Plaintiff believed that Thermofight would boost her  
13 metabolism, burn fat, and provide rapid weight loss.

14 21. Ms. Brooks used Thermofight as directed, but the product did not deliver the advertised  
15 benefits, nor any results at all.

16 22. Because Plaintiff expected these statements to be true and honest, but they were not, she  
17 did not receive the benefit of her purchases.

18 **V. SPECIFIC MISREPRESENTATIONS, MATERIAL OMISSIONS, AND DRUG CLAIMS**

19 23. During the Class Period, Defendants manufactured, advertised, and sold Thermofight in  
20 packaging bearing misleading claims relating to Thermofight’s efficacy as a fat burner and rapid weight  
21 loss solution. Defendants also made misleading representations relating to Thermofight’s efficacy on their  
22 website and Amazon page.

23 24. Thermofight’s label, website, and Amazon page included the following claims which are  
24 not only false and misleading, but also show that the product is intended to affect the structure and function  
25 of the body, and to cure, mitigate, treat, or prevent disease.

26 **A. Thermofight’s Packaging**

27 25. An exemplar of Thermofight’s packaging, purchased by Plaintiff, is as follows:  
28



Supplement Facts		
Serving Size: 1 Caplet		
Servings Per Container: 60		
	Amount Per Serving	%DV
Calcium	140 mg	11%
Chromium (as chromium dinicotinate glycinate)	200 mcg	571%
<b>Proprietary Green Tea Blend</b>	437.5 mg	*
Greenselect® Phytosome green tea leaf/sunflower phospholipid complex and green tea leaf extract [provides min. 112.5 mg epigallocatechin-3-O-gallate (EGCG) and 62.5 mg caffeine]		
Green coffee bean extract ( <i>Coffea robusta</i> ) (provides min. 45 mg chlorogenic acids)	100 mg	*
<b>Proprietary Thermogenic Blend</b>	75 mg	*
Jalapeño pepper (fruit), Black pepper (fruit), ginger (root), cinnamon (bark), cayenne pepper (fruit).		

\*Daily value (DV) not established.  
 Other ingredients: Calcium carbonate, microcrystalline cellulose, stearic acid, croscarmellose sodium, hypromellose, silicon dioxide, magnesium stearate, spirulina (color), glycerin, hydroxypropyl cellulose.

26. The specific deceptive and unlawful claims made on Thermofight’s packaging include:

- “Next Gen Fat Burn 2.0”
- “Thermogenic Weight Loss Formula”

27. These claims suggest Thermofight is a safe and effective fat burner and weight loss solution and further render Thermofight a “drug” within the meaning of 21 U.S.C. § 321(g)(1).

**B. It Works Website**

28. The specific deceptive and unlawful claims relating to Thermofight made on Defendants’ website include:

- “extraordinary impact”
- “designed to boost your metabolism and melt away fat.”
- “contains Caffeine and Jalapeno Pepper to help you achieve and maintain an ideal fat-burning mode”
- “Fire up your thermogenic weight loss”
- “Uses a clinically proven weight-loss ingredient that helps you lose an average of 31 pounds in 90 days!”

- 1 • “Activates enhanced thermogenesis and boosts your energy”
- 2 • “Accelerates ketosis by supporting rapid ketone generation”
- 3 • “Packs powerful ingredients like Green Coffee Bean, Chromium, Jalapeno Pepper, and
- 4 increased levels of Caffeine”
- 5 • “Boosts fat, carb, macronutrient, and stored energy metabolism”
- 6 • “Helps keep blood sugar under control and decreases sugar cravings”
- 7 • “Supports energy levels and combats tiredness”
- 8 • “Includes Green Tea, renowned for fat loss and nutritional properties”
- 9 • “simple and convenient way to burn more fat—even without exercise”
- 10 • “powering up your fat metabolism”
- 11 • “Chromium – Boosts metabolism”

12 29. These claims suggest Thermofight can burn fat, increase energy, and provide rapid weight  
13 loss, “even without exercise.” However, Thermofight fails to deliver any of the advertised benefits.  
14 Further, these claims render Thermofight a “drug” within the meaning of 21 U.S.C. § 321(g)(1).

15 30. A true and correct copy of the “Product Info” page from Thermofight, which was  
16 downloaded from Defendants’ website, is attached hereto as **Exhibit 1**.

17 31. Thermofight’s illegal drug promotion and fraud extends to its Amazon product pages.

- 18 • “Activates enhanced thermogenesis and boosts your energy”
- 19 • “Accelerates ketosis by supporting rapid ketone generation”
- 20 • “Increased levels of Caffeine and the addition of Jalapeno Pepper to help you achieve  
21 and maintain an ideal fat-burning mode”

22 32. These claims render Thermofight a “drug” within the meaning of 21 U.S.C. § 321(g)(1).

## 23 **VI. THERMOFIGHT IS FALSE, MISLEADING, AND MISBRANDED.**

24 33. It is unlawful to manufacture or sell any drug that is misbranded. 21 U.S.C. § 331(a), (b),  
25 (c), & (g).

26 34. A drug is misbranded “[i]f its labeling is false or misleading in any particular.”<sup>1</sup> 21 U.S.C.

27 <sup>1</sup> Under the FDCA, “‘labeling’ means all labels and other written, printed, or graphic matters (1) upon any  
28 article or any of its containers or wrappers, or (2) accompanying such article.” 21 U.S.C. § 321(m). This

1 § 352(a)(1).

2 If an article is alleged to be misbranded because the labeling or advertising is misleading,  
3 then in determining whether the labeling or advertising is misleading there shall be taken  
4 into account (among other things) not only representations made or suggested by statement,  
5 word, design, device, or any combination thereof, but also the extent to which the labeling  
6 or advertising fails to reveal facts material in the light of such representations or material  
7 with respect to consequences which may result from the use of the articles to which the  
8 labeling or advertising relates under the conditions of use prescribed in the labeling or  
9 advertising thereof or under such conditions of use as are customary or usual.

10 21 U.S.C.S. § 321(n).

11 35. Defendants’ deceptive acts render the Thermofight label misbranded under Cal. Health &  
12 Saf. Code § 110100 (adopting all FDA labelling regulations as state regulations), § 110398 (“It is unlawful  
13 for any person to advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”), §  
14 111330 (drug label misbranded if false or misleading in any particular), as well as Cal. Bus. & Prof. Code  
15 § 17200 (Unfair Competition Law “Fraudulent” Prong) § 17500 (False Advertising Law) and Cal. Civ.  
16 Code § 1750 (CLRA).

17 36. Because Thermofight claims to treat conditions not amenable to self-diagnosis, directions  
18 are not and likely cannot be written such that a layperson can safely use this product to treat those  
19 conditions. The Thermofight label therefore lacks “adequate directions for use,” rendering the product  
20 misbranded. 21 U.S.C. § 352(f)(1); *see also* 21 C.F.R. § 201.5 (“‘Adequate directions for use’ means  
21 directions under which the layman can use a drug safely and for the purposes for which it is intended.”).

22 37. Plaintiff used Thermofight as directed, but it failed to deliver the advertised benefits.

23 **VII. THERMOFIGHT IS AN UNAPPROVED NEW DRUG.**

24 38. “The term ‘drug’ means . . . (B) articles intended for use in the diagnosis, cure, mitigation,  
25 treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to  
26 affect the structure or any function of the body of man or other animals.” 21 U.S.C. § 321(g)(1). Here,  
27 Thermofight is a drug because it is advertised as a product which will affect the structure or function of  
28 the body or cure, mitigate, treat, or prevent disease.

\_\_\_\_\_ includes websites associated with the products. *See Sandoval v. Pharmicare US, Inc.*, 730 Fed. App’x  
417, 420 (9th Cir. 2018).



1 39. The claims on the packaging and website of Thermofight render it an unapproved new  
2 drug.

3 40. Attached hereto as **Exhibit 2** are FDA Warning Letters relating to similar claims that the  
4 FDA determined are drug claims.

5 41. A “new drug” is any drug “not generally recognized, among experts qualified by scientific  
6 training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use  
7 under the condition prescribed, recommended, or suggested in the labeling thereof . . . .” 21 U.S.C. §  
8 321(p)(1). Here, Thermofight is a “new drug” within the meaning of the FDCA because it is not generally  
9 recognized as safe and effective for the intended uses. *See* Title 21 of the Code of Federal Regulations,  
10 Chapter I, Subchapter D; 21 C.F.R. § 330.1.

11 42. “No person shall introduce or deliver for introduction into interstate commerce any new  
12 drug . . . .” without approval by the FDA. 21 U.S.C § 355(a); *see also* 21 U.S.C. § 331(d).

13 43. Defendants have not received approval from the FDA to sell Thermofight.

14 44. The sale of unapproved new drugs is illegal and dangerous. First, consumers risk  
15 purchasing and using a product that will endanger their health. Second, consumers risk purchasing a  
16 product that will not effectively treat their condition, forgoing actual treatment of that condition in lieu of  
17 an unapproved new drug which may not treat their condition. The FDA’s regulatory regimen helps ensure  
18 that such products are kept away from consumers. Defendants’ failure to comply with these regulations  
19 puts consumers at risk and gives it an unfair advantage over competitors that do commit the time and  
20 expense of complying with such necessary regulations.

21 45. Thermofight does not qualify for the reduced level of regulation applicable to certain  
22 nutrition supplement products for several reasons. The Thermofight label, website, and Amazon page  
23 neither describe the role of any nutrient or dietary ingredient intended to affect the structure or function in  
24 humans, characterize the documented mechanism by which any nutrient or dietary ingredient acts to  
25 maintain such structure or function, nor describes general well-being from consumption of any nutrient or  
26 dietary ingredient. 21 U.S.C. § 343(r)(6)(A).

27 46. The claims on the Thermofight label, website, and Amazon page do not relate to any  
28 classical nutrient deficiency, and Defendant does not have substantiation that its statements are truthful

1 and not misleading pursuant to 21 U.S.C. § 343(r)(6).

2 47. The label of Thermofight states that “This statement has not been evaluated by the Food  
3 and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.”  
4 21 U.S.C. § 343(r)(6)(C).

5 48. California similarly prohibits the sale of unapproved new drugs. Cal. Health & Saf. Code  
6 § 111550.

7 **VIII. DEFENDANTS UTILIZE FAKE AMAZON REVIEWS TO PROMOTE**  
8 **THERMOFIGHT.**

9 49. In addition to deceptively marketing Thermofight through misleading claims, It Works  
10 paid for and procured thousands of fake reviews to promote its products.

11 50. Fake online reviews are considered to be a rapidly growing problem by the FTC.

12 51. As of April 21, 2021, It Works’ Thermofight Amazon page listed a total of 289 customer  
13 reviews.

14 52. ReviewMeta is a program which collects reviews for a particular product on Amazon and  
15 uses a proprietary algorithm and statistical modeling to determine whether or not reviews are credible.

16 53. Overall, It Works’ Thermofight Amazon page failed ReviewMeta’s analysis, and found  
17 that 27% of the reviews provided were deemed probable frauds. Such a high percentage of unreliable  
18 reviewers suggests a campaign of fake reviews. A true and correct copy of the ReviewMeta report for the  
19 Thermofight Amazon page is attached hereto as **Exhibit 3**.

20 **IX. DEFENDANTS EMPLOY UNFAIR AND UNLAWFUL AUTO-BILLING PRACTICES**  
21 **AND “MEMBERSHIP FEES” TO EXTRACT MORE MONEY FROM CONSUMERS.**

22 54. In addition to deceptively marketing Thermofight as a safe and effective weight loss  
23 solution, Defendants utilize unfair auto-billing methods and charge consumers unauthorized  
24 “membership” fees to extract additional money from consumers. This illegal practice includes not just  
25 Thermofight, but a large number of other dubious products such as “slimming” gummy candy, a “Skinny  
26 Wrap” containing seaweed and green tea that supposedly makes the stomach, hips, love handles, thighs,  
27 and arms “tightened, toned, and beautifully smooth”; a “body contouring gel”

28 55. Hidden within what appears to be a normal online retail checkout is the “It Works! Loyal

1 Customer Agreement,” stating any consumer wishing to purchase any It Works! product must either (1)  
2 “make a three (3) consecutive month minimum commitment to a monthly autoshipment order,” or (2)  
3 “enroll by making a \$50 Membership Fee payment.” *See Exhibit 4.*

4 56. Consumers are thus forced into making “a three (3) consecutive month minimum  
5 commitment to a monthly auto-shipment order,” which well exceeds the cost of the “\$50 Membership Fee  
6 payment” that Loyal Customer Agreement policy claims to offer in **Exhibit 4.**

7 57. If a consumer receives an ineffective product from It Works! while enrolled in an auto-  
8 shipment program and wishes to cancel future shipments “prior to completing the three (3) month  
9 minimum commitment,” the consumer is “charged a \$50 Membership Fee.” *See Exhibit 4.*

10 58. Thus, consumers are forced to pay the \$50 Membership Fee upfront, pay for three-months’  
11 worth of ineffective products, or pay the \$50 Membership Fee to get out of their three-month commitment.

12 59. Further, Defendants prevent class members from cancelling auto-billing.

13 60. The Better Business Bureau (“BBB”) notes that It Works! “has failed to resolve underlying  
14 cause(s) of a pattern of complaints.” *See Exhibit 5.* For this reason, the BBB gave It Works! a 1.75/5 star  
15 rating. “The BBB rating is based on information BBB is able to obtain about the business, including  
16 complaints received from the public.” *See Exhibit 5.*

17 61. The BBB

18 has received a pattern of complaints from consumers alleging that after trying to cancel  
19 with the business, they continue to receive additional products. Consumers also state that  
20 they have found additional charges being taken that the business has not informed them  
21 would be occurring. Complaints also allege that the business continues to bill after  
cancellation, and consumers are not informed that there is a \$50.00 cancellation fee.

**Exhibit 5.**

22 62. In the last year alone, the BBB received 190 complaints about It Works!, the vast majority  
23 of which relate to the auto-billing/Membership Fee scheme described above.

24 63. On May 26, 2021, Ellis G filed one such complaint, stating:

25 If [I] could give negative stars, best believe I would. I have just recently gone through some  
26 difficulties due to medical expenses and I notice a \$138 charge trying to go through on my  
27 account. After calling the customer service line, or sad excuse for one, they basically told  
28 me the only options are pay to cancel, or pay and still get a product. And after talking with  
an emotionless supervisor, I'm then told that all they can do at that point is refund me a

1 measly \$88. THAT. IS. NOT. GOOD. ENOUGH. They need to be shut down  
2 IMMEDIATELY as they are money greedy thieves.

3 64. On May 19, 2021, JR filed a similar complaint, stating:

4 This company is highly misleading. I signed up for a three month trial of Keto Coffee. You  
5 had to buy a three month subscription for a three month supply. So I tried it and paid  
6 roughly 54\$ for a months supply for three months. Turns out a months supply is 15 packets.  
7 They charge you 50\$ to cancel before the three months is over. Total scam.

8 65. On May 12, 2021, Rebecca S filed complaint stating:

9 I purchased the firming neck cream which broke me out in an itchy rash. I contacted  
10 ItWorks to get a refund or credit. They told me that they don't guarantee their products or  
11 offer a money back guarantee. I also was told that I can't cancel my autoship before my 3rd  
12 shipment or I'll have to pay a \$50 fee. I'm very disappointed and will not order any more  
13 products from this company.

14 66. Similarly, on March 22, 2021, Teresa K complained:

15 My husband and I tried the Slimming gummies. They did not work. We actually gained  
16 weight. It was only a few pounds but still was not what we bought the gummies for to lose  
17 weight. Went to cancel the autoship and was notified my card would be charged the \$50,  
18 well okay. As stated in another review, will pay the \$50 for a product that doesn't work.  
19 Will never use anything from ITWORKS!! again. Thank you for your time. WISH I  
20 COULD GIVE THIS COMPANY A ZERO STAR.

21 67. It Works! utilizes these unfair auto-billing practices and "Membership Fees" to extract  
22 every penny possible from consumers.

23 68. Plaintiff was similarly enrolled in an auto-shipment program without knowledge of her  
24 enrollment.

25 69. When making her initial purchase, Ms. Brooks was not made aware that she had been  
26 signed up for the It Works! Loyal Costumer Membership, any terms of agreement, the auto-shipment  
27 policy, or fees relating to the membership and cancelation. Ms. Brooks did not receive any of this  
28 information until after her purchase of Thermofight was complete.

70. Defendants did not alert Plaintiff that she had fraudulently signed up for It Works! Loyal  
Customer Membership, which requires a minimum auto-shipment agreement of three purchases of  
Thermofight, prior to her initial purchase of the product.

71. In fact, she did not know that she was enrolled in an auto-shipment program until she saw

1 additional charges on her credit card statement and contacted Defendants' customer service line.

2 72. Plaintiff was charged for two months' worth of Thermofight before she realized that she  
3 was fraudulently enrolled in an auto-shipment agreement.

4 73. California's Automatic Purchase Renewal Statute, Cal. Bus. & Prof. Code § 17601  
5 provides:

6 (a) "Automatic renewal" means a plan or arrangement in which a paid subscription or  
7 purchasing agreement is automatically renewed at the end of a definite term for a  
subsequent term.

8 (b) "Automatic renewal offer terms" means the following clear and conspicuous  
9 disclosures:

10 (1) That the subscription or purchasing agreement will continue until the consumer cancels.

11 (2) The description of the cancellation policy that applies to the offer.

12 (3) The recurring charges that will be charged to the consumer's credit or debit card or  
13 payment account with a third party as part of the automatic renewal plan or arrangement,  
and that the amount of the charge may change, if that is the case, and the amount to which  
14 the charge will change, if known.

15 (4) The length of the automatic renewal term or that the service is continuous, unless the  
length of the term is chosen by the consumer.

16 (5) The minimum purchase obligation, if any.

17 (c) "Clear and conspicuous" or "clearly and conspicuously" means in larger type than the  
18 surrounding text, or in contrasting type, font, or color to the surrounding text of the same  
size, or set off from the surrounding text of the same size by symbols or other marks, in a  
19 manner that clearly calls attention to the language. In the case of an audio disclosure, "clear  
and conspicuous" and "clearly and conspicuously" means in a volume and cadence  
20 sufficient to be readily audible and understandable.

21 (d) "Consumer" means any individual who seeks or acquires, by purchase or lease, any  
22 goods, services, money, or credit for personal, family, or household purposes.

23 (e) "Continuous service" means a plan or arrangement in which a subscription or  
purchasing agreement continues until the consumer cancels the service.

24 74. Defendant's auto-billing practices constitute an "automatic renewal" as defined by Cal.  
25 Bus. & Prof. Code § 17601(a).

1 75. The It Works! Loyal Customer Agreement”<sup>2</sup> is an “automatic renewal offer” as defined by  
2 Cal. Bus. & Prof. Code § 17601(b).

3 76. Cal. Bus. & Prof. Code § 17602 provides:

4 (a) It shall be unlawful for any business that makes an automatic renewal offer or  
5 continuous service offer to a consumer in this state to do any of the following:

6 (1) Fail to present the automatic renewal offer terms or continuous service offer terms in a  
7 clear and conspicuous manner before the subscription or purchasing agreement is fulfilled  
8 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity,  
9 to the request for consent to the offer. If the offer also includes a free gift or trial, the offer  
10 shall include a clear and conspicuous explanation of the price that will be charged after the  
11 trial ends or the manner in which the subscription or purchasing agreement pricing will  
12 change upon conclusion of the trial.

13 (2) Charge the consumer’s credit or debit card, or the consumer’s account with a third  
14 party, for an automatic renewal or continuous service without first obtaining the  
15 consumer’s affirmative consent to the agreement containing the automatic renewal offer  
16 terms or continuous service offer terms, including the terms of an automatic renewal offer  
17 or continuous service offer that is made at a promotional or discounted price for a limited  
18 period of time.

19 (3) Fail to provide an acknowledgment that includes the automatic renewal offer terms or  
20 continuous service offer terms, cancellation policy, and information regarding how to  
21 cancel in a manner that is capable of being retained by the consumer. If the automatic  
22 renewal offer or continuous service offer includes a free gift or trial, the business shall also  
23 disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the  
24 automatic renewal or continuous service before the consumer pays for the goods or  
25 services.

26 (b) A business that makes an automatic renewal offer or continuous service offer shall  
27 provide a toll-free telephone number, electronic mail address, a postal address if the seller  
28 directly bills the consumer, or it shall provide another cost-effective, timely, and easy-to-  
use mechanism for cancellation that shall be described in the acknowledgment specified in  
paragraph (3) of subdivision (a).

(c) In addition to the requirements of subdivision (b), a consumer who accepts an automatic  
renewal or continuous service offer online shall be allowed to terminate the automatic  
renewal or continuous service exclusively online, which may include a termination email  
formatted and provided by the business that a consumer can send to the business without  
additional information.

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<sup>2</sup> Exhibit 4 hereto.

1 (d) In the case of a material change in the terms of the automatic renewal or continuous  
2 service that has been accepted by a consumer in this state, the business shall provide the  
3 consumer with a clear and conspicuous notice of the material change and provide  
4 information regarding how to cancel in a manner that is capable of being retained by the  
5 consumer.

6 (e) The requirements of this article shall apply only prior to the completion of the initial  
7 order for the automatic renewal or continuous service, except as follows:

8 (1) The requirement in paragraph (3) of subdivision (a) may be fulfilled after completion  
9 of the initial order.

10 (2) The requirement in subdivision (d) shall be fulfilled prior to implementation of the  
11 material change.

12 77. Defendants' auto-billing practices violate Cal. Bus. & Prof. Code § 17602(a) because the

13 It Works! Loyal Customer Agreement

14 fail[s] to present the automatic renewal offer terms or continuous service offer terms in a  
15 clear and conspicuous manner before the subscription or purchasing agreement is fulfilled  
16 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity,  
17 to the request for consent to the offer.

18 78. Specifically, the auto-billing provisions in the It Works! Loyal Customer Agreement are  
19 not "clearly and conspicuously" disclosed because they are not set forth

20 in larger type than the surrounding text, or in contrasting type, font, or color to the  
21 surrounding text of the same size, or set off from the surrounding text of the same size by  
22 symbols or other marks, in a manner that clearly calls attention to the language.

23 Cal. Bus. & Prof. Code § 17601(c); Rather, the auto-renewal offer terms appear in the same font size and  
24 typeface as the rest of the Loyal Customer Service Agreement.

25 79. Though the auto-renewal offer terms are not "clearly and conspicuously" disclosed in the  
26 Loyal Customer Agreement as required, other terms within the Agreement are "clearly and  
27 conspicuously" disclosed.

28 80. For example, the following provision from the Agreement is set forth in bolded font and  
all capital letters:

**PLEASE NOTE: LOYAL CUSTOMERS MAY PURCHASE PRODUCT FOR  
PERSONAL USE ONLY AND MAY NOT RESELL THE PRODUCT FOR ANY  
REASON. ONLY IT WORKS! INDEPENDENT DISTRIBUTORS ARE  
AUTHORIZED TO SELL IT WORKS! PRODUCTS. ANYONE OTHER THAN A  
CURRENT IT WORKS! INDEPENDENT DISTRIBUTOR FOUND TO BE**



1       **SELLING OR ADVERTISING IT WORKS! PRODUCTS WILL IMMEDIATELY**  
2       **HAVE THEIR RIGHTS TO BUY PRODUCTS TERMINATED.**

3       **Exhibit 4** (Loyal Customer Agreement).

4       81. Defendants also violate Cal. Bus. & Prof Code § 17602(b) because they

5       Charge the consumer's credit or debit card, or the consumer's account with a third party,  
6       for an automatic renewal or continuous service without first obtaining the consumer's  
7       affirmative consent to the agreement containing the automatic renewal offer terms or  
8       continuous service offer terms, including the terms of an automatic renewal offer or  
9       continuous service offer that is made at a promotional or discounted price for a limited  
10       period of time.

11       82. In Ms. Brooks' case, she did not know she was being continually charged until she saw the  
12       charge for a second bottle of Thermofight on her credit card statement.

13       83. Defendants also violate Cal. Bus. & Prof Code § 17602(c) because "consumer[s] who  
14       accept[]" Defendants' "automatic renewal [or] continuous service offer online" are not "allowed to  
15       terminate the automatic renewal or continuous service exclusively online, which may include a  
16       termination email formatted and provided by the business that a consumer can send to the business without  
17       additional information."

18       84. In Ms. Brooks case, she was required to call Defendants' customer service department in  
19       order to cancel her auto-renewal.

20       **X.       DEFENDANTS' PRACTICES ARE "UNFAIR" WITHIN THE MEANING OF THE**  
21       **CALIFORNIA UNFAIR COMPETITION LAW.**

22       85. Defendants' practices as described herein are "unfair" within the meaning of the California  
23       Unfair Competition Law because their conduct is immoral, unethical, unscrupulous, and substantially  
24       injurious to consumers, and the utility of this conduct to Defendants does not outweigh the gravity of the  
25       harm to Defendants' victims.

26       86. In particular, while Defendants' use of fraudulent advertising to sell an unlawful product  
27       may have had some utility to Defendants in that it allows it to realize higher profit margins than if it did  
28       not use fraudulent advertising tactics, this utility is small and far outweighed by the gravity of the  
      economic harm Defendants inflicts upon consumers. Further, the injury to consumers from Defendants'  
      practices is substantial, not outweighed by benefits to consumers or competition, and not an injury that



1 consumers themselves could reasonably have avoided.

2 87. Additionally, while Defendants' practice of enrolling consumers in auto-billing programs  
3 without complying with Cal. Bus. & Prof Code § 17600 *et seq.* may have had some utility to Defendants  
4 in the form of increase profits, this utility is small and far outweighed by the gravity of the economic harm  
5 Defendants inflicts upon consumers. Further, the injury to consumers from Defendants' practices is  
6 substantial, not outweighed by benefits to consumers or competition, and not an injury that consumers  
7 themselves could reasonably have avoided.

8 **XI. DEFENDANTS' PRACTICES ARE "UNLAWFUL" UNDER THE UNFAIR**  
9 **COMPETITION LAW.**

10 88. Defendants' practices as described herein are "unlawful" within the meaning of the  
11 California Unfair Competition Law because the marketing, sale, and distribution Thermofight violates the  
12 Federal Food, Drug, and Cosmetic Act, as well as California's Sherman Food, Drug, and Cosmetic Law.

13 89. Defendants' conduct described herein is "unlawful" because it violated the following  
14 portions of the Federal Food, Drug, and Cosmetic Act ("FDCA"):

- 15 • **21 U.S.C. § 331(a)**, prohibiting the "introduction or delivery for introduction into  
16 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is  
17 adulterated or misbranded";  
18 • **21 U.S.C. § 331(b)**, prohibiting the "adulteration or misbranding of any food, drug,  
19 device, tobacco product, or cosmetic in interstate commerce";  
20 • **21 U.S.C. § 352(f)(1)**, requiring drugs to have adequate directions for use  
21 • **21 U.S.C. § 355(a)**, prohibiting the sale of unapproved new drugs.

22 90. Defendants' conduct described herein also violates multiple provisions of California law  
23 including, *inter alia*:

- 24 • **Cal. Health & Saf. Code § 110100 *et seq.***, which adopts all FDA labeling regulations  
25 as state regulations;  
26 • **Cal. Health & Saf. Code § 111330**, "Any drug or device is misbranded if its labeling  
27 is false or misleading in any particular.";  
28 • **Cal. Health & Saf. Code § 110398**, "It is unlawful for any person to advertise any  
food, drug, device, or cosmetic that is adulterated or misbranded.";

- 1 • **Cal. Health & Saf. Code § 111440**, “It is unlawful for any person to manufacture, sell,  
2 deliver, hold, or offer for sale any drug or device that is misbranded.”;
- 3 • **Cal. Health & Saf. Code § 111445**, “It is unlawful for any person to misbrand any  
4 drug or device.”;
- 5 • **Cal. Health & Saf. Code § 111450**, “It is unlawful for any person to receive in  
6 commerce any drug or device that is misbranded or to deliver or proffer for delivery  
7 any drug or device.”;
- 8 • **Cal. Health & Saf. Code § 111550**, prohibiting sale of new drug unless approved  
9 under 21 U.S.C. § 355;
- 10 • **Cal. Civ. Code § 1770(a)**, prohibiting misleading practices in relation to the sale of  
11 goods;
- 12 • **Cal. Bus. & Prof. Code § 17500 *et seq.***, prohibiting false or misleading advertising;
- 13 • **Cal. Bus. & Prof. Code § 17200 *et seq.***, prohibiting fraudulent business activity.

14 91. The fraudulent marketing and advertising of Thermofight constitutes a violation of the  
15 FDCA and the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

16 92. Defendants’ practices are further unlawful because they violate Cal. Bus. & Prof. Code §  
17 17602(a) because the It Works Loyal Customer Agreement constitutes an “auto-renewal offer” within the  
18 meaning of Cal. Bus. & Prof. Code § 17601, but the terms of the offer are not “clearly and conspicuously”  
19 in “larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of  
20 the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner  
21 that clearly calls attention to the language.”

22 93. Defendants’ practices also violate Cal. Bus. & Prof. Code § 17602(b) because Defendants  
23 Charge the consumer’s credit or debit card, or the consumer’s account with a third party,  
24 for an automatic renewal or continuous service without first obtaining the consumer’s  
25 affirmative consent to the agreement containing the automatic renewal offer terms or  
26 continuous service offer terms, including the terms of an automatic renewal offer or  
27 continuous service offer that is made at a promotional or discounted price for a limited  
28 period of time.

94. Defendants also violate Cal. Bus. & Prof Code § 17602(c) because “consumer[s] who  
accept[]” Defendants’ “automatic renewal or continuous service offer online” are not “allowed to  
terminate the automatic renewal or continuous service exclusively online, which may include a  
termination email formatted and provided by the business that a consumer can send to the business without

1 additional information.”

2 95. Defendants’ unlawful acts allowed it to sell more units of the Thermofight than it would  
3 have otherwise, and at a higher price and higher margin.

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

7 97. Plaintiff also seeks an order for the disgorgement and restitution of all revenue received by  
8 Defendants from the sale of Collagen Peptides.

9 **XII. RELIANCE AND INJURY**

10 98. When purchasing Thermofight, Plaintiff was seeking products of particular qualities,  
11 including a product that safely and effectively boost her metabolism, burn fat, control blood sugar levels,  
12 and provide rapid weight loss.

13 99. Plaintiff read and relied on, for her Thermofight purchase, the product’s packaging and the  
14 misrepresentations made by It Works on Defendants’ website and the efficacy messages they conveyed,  
15 which were substantial factors in her purchase.

16 100. Plaintiff further relied on the reviews posted on It Works’ Thermofight product page, many  
17 of which were fake or altered.

18 101. Plaintiff purchased Thermofight believing it had the qualities she sought based on the  
19 product’s deceptive labeling and website and the natural assumption that products sold in stores and online  
20 by large companies would deliver advertised benefits, such as those touted on the packaging of  
21 Thermofight. The purchased product was instead unsatisfactory to her for the reasons described herein.

22 102. Plaintiff purchased Thermofight instead of competing products based on the false  
23 statements and misrepresentations described herein.

24 103. Plaintiff suffered economic injury when she purchased Thermofight because it did not  
25 provide the advertised benefits, and she would not have purchased it absent Defendants’ unlawful conduct.

26 104. Thermofight was offered for sale in violation of California and federal law and has a value  
27 of \$0 because it is both illegal and ineffective.

28 105. Plaintiff would not have purchased Thermofight had she known that it was offered for sale

1 in violation of California and federal law.

2 106. When Plaintiff purchased Thermofight, she was unaware that she would be subject to  
3 Defendants' unlawful auto-renewal practices described herein.

4 107. Had Ms. Brooks known that Defendants would utilize these unfair and unlawful auto-  
5 renewal practices to extract additional money from her, she would not have purchased Thermofight.

6 **XIII. CLASS ACTION ALLEGATIONS**

7 108. Plaintiff brings this action on behalf of herself and all others similarly situated (the  
8 "Class"), excluding Defendants' officers, directors, and employees, and the Court, its officers, and its  
9 families.

10 109. The Thermofight Class is defined as follows:

11 All individuals who purchased Thermofight in the United States for their own personal or  
12 household use, and not for resale, from September 1, 2017 to the present.

13 110. The Automatic Billing Class is defined as follows:

14 All individuals Defendants charged under their automatic renewal program in the United  
15 States from September 1, 2017 to the present.

16 111. Questions of law and fact common to Plaintiff and the Class include:

- 17 a. Whether Defendants communicated efficacy messages through Thermofight's  
18 labeling, packaging, and website;
- 19 b. Whether those messages were material, or likely to be material, to a reasonable  
20 consumer;
- 21 c. Whether those messages were false, at variance with the truth, misleading, likely to  
22 deceive, and/or had the capacity to deceive the public and/or a reasonable  
23 consumer;
- 24 d. Whether Defendants' conduct was immoral, unethical, unscrupulous, or  
25 substantially injurious to consumers;
- 26 e. Whether Thermofight is an unapproved new drug;
- 27 f. Whether the slight utility Defendants realize as a result of their conduct outweighs  
28 the gravity of the harm the conduct causes to its victims;
- g. Whether Defendants' conduct violated public policy as declared by specific

1 constitutional, statutory, or regulatory provisions;

2 h. Whether the injury to consumers from Defendants' practices is substantial;

3 i. Whether Defendants fraudulently omitted material information in advertising  
4 Thermofight as safe and effective;

5 j. Whether Defendants sold and distributed Thermofight to the public in misleading  
6 packaging that was likely to deceive the public;

7 k. Whether the Class is entitled to restitution and attorneys' fees and costs, injunctive,  
8 and/or any other relief;

9 l. Whether Defendants' conduct was knowing, or whether Defendants reasonably  
10 should have known of the conduct;

11 m. Whether Defendants' conduct constitutes violations of the California's False  
12 Advertising Law;

13 n. Whether Defendants' conduct constitutes a violation of the unlawful prong of  
14 California's Unfair Competition Law;

15 o. Whether Defendants acted willfully, recklessly, negligently, or with gross  
16 negligence in violation of the law as alleged herein;

17 p. Whether any applicable statute of limitations should be tolled on behalf of the  
18 Class;

19 q. Whether members of the Class are entitled to restitution and, if so, the correct  
20 measure of restitution;

21 r. Whether members of the Class are entitled to an injunction and, if so, its terms; and

22 s. Whether members of the Class are entitled to any further relief.

23 112. By purchasing Thermofight, all Class members were subjected to the same wrongful  
24 conduct.

25 113. Because all Subclass members were enrolled in an unlawful and unfair auto-renewal  
26 program, they were all subjected to the same wrongful conduct.

27 114. Absent Defendants' material deceptions, misstatements, and omissions, and unlawful sale,  
28 distribution, and marketing of Thermofight, Plaintiff and other Class members would not have purchased

1 Thermofight.

2 115. Plaintiff's claims are typical of Class's claims and the Subclass's claims.

3 116. All Class members were subjected to the same economic harm when they purchased  
4 Thermofight and suffered economic injury.

5 117. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that  
6 are incompatible with the interests of the Class, and has retained counsel competent and experienced in  
7 class litigation.

8 118. The Class is sufficiently numerous, as it includes thousands of individuals who purchased  
9 Thermofight during the Class Period.

10 119. The Subclass is sufficiently numerous, as it includes thousands of individuals who  
11 purchased Thermofight and were enrolled in an unfair and unlawful auto-renewal program during the  
12 Class Period.

13 120. Class representation is superior to other options for the resolution of the controversy. The  
14 relief sought for each Class member is small, as little as \$50 for some Class members. Absent the  
15 availability of class action procedures, it would be infeasible for Class members to redress the wrongs  
16 done to them.

17 121. Defendants have acted on grounds applicable to the Class, thereby making final injunctive  
18 relief or declaratory relief appropriate concerning the Class as a whole.

19 122. Questions of law and fact common to the Class predominate over any questions affecting  
20 only individual members.

21 **XIV. CAUSES OF ACTION**

22 **First Cause of Action**

23 **California Unfair Competition Law, Unlawful Prong**

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

25 123. In this and every cause of action, Plaintiff realleges and incorporates the preceding  
26 allegations as if fully set forth herein.

27 124. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as  
28 alleged herein constitute "unlawful" business acts and practices in that Defendants' conduct violates the

1 California False Advertising Law, and the California Consumer Legal Remedies Act, as alleged herein.

2 125. Defendants' conduct is further "unlawful" because it violated the following portions of the  
3 Federal Food, Drug, and Cosmetic Act ("FDCA"):

- 4 • **21 U.S.C. § 331(a)**, prohibiting the "introduction or delivery for introduction into  
5 interstate commerce of any food, drug, device, tobacco product, or cosmetic that is  
6 adulterated or misbranded";
- 7 • **21 U.S.C. § 331(b)**, prohibiting the "adulteration or misbranding of any food, drug,  
8 device, tobacco product, or cosmetic in interstate commerce";
- 9 • **21 U.S.C. § 352(f)(1)**, requiring drugs to have adequate directions for use;
- **21 U.S.C. § 355(a)**, prohibiting the sale of unapproved new drugs.

10 126. Defendants' conduct also violates other provisions of California law including, *inter alia*:

- 11 • **Cal. Health & Saf. Code § 110100 et seq.**, which adopts all FDA regulations as state  
12 regulations;
- 13 • **Cal. Health & Saf. Code § 111330**, "Any drug or device is misbranded if its labeling  
14 is false or misleading in any particular.";
- 15 • **Cal. Health & Saf. Code § 110398**, "It is unlawful for any person to advertise any  
16 food, drug, device, or cosmetic that is adulterated or misbranded.";
- 17 • **Cal. Health & Saf. Code § 111440**, "It is unlawful for any person to manufacture, sell,  
18 deliver, hold, or offer for sale any drug or device that is misbranded.";
- 19 • **Cal. Health & Saf. Code § 111445**, "It is unlawful for any person to misbrand any  
20 drug or device.";
- 21 • **Cal. Health & Saf. Code § 111450**, "It is unlawful for any person to receive in  
22 commerce any drug or device that is misbranded or to deliver or proffer for delivery  
23 any drug or device.";
- **Cal. Health & Saf. Code § 111550**, prohibiting sale of new drug unless approved  
under 21 U.S.C. § 355;
- **Cal. Civ. Code § 1770(a)**, prohibiting misleading practices in relation to the sale of  
goods;
- **Cal. Bus. & Prof. Code § 17500 et seq.**, prohibiting false or misleading advertising;
- **Cal. Bus. & Prof. Code § 17200 et seq.**, prohibiting fraudulent business activity.

24 127. The challenged labeling statements made by Defendants thus constituted violations of the  
25 FDCA and the Sherman Law and, as such, violated the "unlawful" prong of the UCL.

26 128. Defendants leveraged their deception to induce Plaintiff and members of the Class to  
27 purchase products that were of lesser value and quality than advertised.

28 129. The fraudulent marketing of Thermofight described herein constitutes a violation of the

1 FDCA and the Sherman Law and, as such, violated the “unlawful” prong of the UCL.

2 130. Had Plaintiff known that Thermofight was offered for sale in violation of California and  
3 federal regulations, she would not have purchased it.

4 131. Plaintiff suffered injury in fact and lost money or property as a result of Defendants’  
5 deceptive advertising: she was denied the benefit of the bargain when she decided to purchase Thermofight  
6 over competing products, which are legal, less expensive, and do not make misleading or false drug claims  
7 on their packaging.

8 132. Defendants’ practices are further unlawful because they violate Cal. Bus. & Prof. Code §  
9 17602(a) because the It Works Loyal Customer Agreement constitutes an “auto-renewal offer” within the  
10 meaning of Cal. Bus. & Prof. Code § 17601, but the terms of the offer are not “clearly and conspicuously”  
11 in “larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of  
12 the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner  
13 that clearly calls attention to the language.”

14 133. Defendants’ practices also violate Cal. Bus. & Prof. Code § 17602(b) because Defendants  
15 [c]harge the consumer’s credit or debit card, or the consumer’s account with a third party,  
16 for an automatic renewal or continuous service without first obtaining the consumer’s  
17 affirmative consent to the agreement containing the automatic renewal offer terms or  
18 continuous service offer terms, including the terms of an automatic renewal offer or  
19 continuous service offer that is made at a promotional or discounted price for a limited  
20 period of time.

21 134. Defendants also violate Cal. Bus. & Prof Code § 17602(c) because “consumer[s] who  
22 accept[ ]” Defendants’ “automatic renewal or continuous service offer online” are not “allowed to  
23 terminate the automatic renewal or continuous service exclusively online, which may include a  
24 termination email formatted and provided by the business that a consumer can send to the business without  
25 additional information.”

26 135. Defendants’ unlawful acts allowed it to sell more units of the Thermofight than it would  
27 have otherwise, and at a higher price, and higher margin.

28 136. Had Plaintiff been aware of Defendants’ false and misleading advertising tactics and  
unlawful auto-billing practices, she would not have purchased Thermofight, and had Defendants not



1 advertised it in a fraudulent manner, Plaintiff would have paid less for it.

2 **Second Cause of Action**

3 **California Unfair Competition Law, Fraudulent Prong**

4 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

5 137. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act  
6 or practice.”

7 138. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as  
8 alleged herein constitute “fraudulent” business acts and practices in that Defendants’ conduct has a  
9 likelihood, capacity or tendency to deceive Plaintiff, the Class, and the general public.

10 139. Defendants leveraged their deception to induce Plaintiff and members of the Class to  
11 purchase products that were of lesser value and quality than advertised.

12 140. Plaintiff suffered injury in fact and lost money or property as a result of Defendants’  
13 deceptive advertising: she was denied the benefit of the bargain when she decided to purchase Thermofight  
14 over competing products, which are legal, less expensive, and do not make misleading or false drug claims  
15 on their packaging.

16 141. Had Plaintiff been aware of Defendants’ false and misleading advertising tactics, she would  
17 not have purchased Thermofight, and had Defendants not advertised it in a fraudulent manner, Plaintiff  
18 would have paid less for it.

19 **Third Cause of Action**

20 **California Unfair Competition Law, Unfair Prong**

21 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

22 142. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as  
23 alleged herein constitute “unfair” business acts and practices because Defendants’ conduct is:

- 24
- 25 • immoral, unethical, unscrupulous, and offends public policy;
  - 26 • the gravity of Defendants’ conduct outweighs any conceivable benefit of such  
27 conduct; and
  - 28 • the injury to consumers caused by Defendants’ conduct is substantial, not  
outweighed by any countervailing benefits to consumers or competition, and not  
one that consumers themselves could reasonably have avoided.

1 143. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining  
2 Defendants from continuing to conduct business through unlawful, unfair, and fraudulent acts and  
3 practices; requiring Defendants to commence a corrective advertising campaign; and awarding the class  
4 restitution of all monies from the sale of Thermofight.

5 **Fourth Cause of Action**

6 **California False Advertising Law**

7 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

8 144. In violation of Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the advertisements, labeling,  
9 policies, acts, and practices described herein were designed to, and did, result in the purchase and use of  
10 Thermofight without the knowledge that the products make misleading and unapproved claims.

11 145. Defendants knew and reasonably should have known that the claims made on  
12 Thermofight's label, packaging, and website were untrue and misleading.

13 146. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and  
14 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were  
15 unjustly enriched.

16 147. Plaintiff seeks an order enjoining Defendants from continuing to conduct business through  
17 unlawful, unfair, and fraudulent acts and practices; requiring Defendants to commence a corrective  
18 advertising campaign; awarding Plaintiff and the class restitution of all monies from the sale of  
19 Thermofight in an amount of \$5 million or a greater amount to be proven at trial, actual and punitive  
20 damages, and interest to Plaintiff, an incentive award to Plaintiff in conjunction with a class award or  
21 injunction, and for attorney fees and costs to be awarded by the Court in accordance with applicable law,  
22 including the Private Attorney General Statute.

23 **Fifth Cause of Action**

24 **California Consumer Legal Remedies Act**

25 **Cal. Civ. & Prof. Code §§ 1750, *et seq.***

26 148. The CLRA prohibits deceptive practices in connection with the conduct of a business that  
27 provides goods, property, or services primarily for personal, family, or household purposes.

28 149. Defendants' policies, acts and practices were designed to, and did, result in the purchase

1 and use of Thermofight for personal, family, or household purposes, and violated and continue to violate  
2 the following sections of the CLRA:

- 3 • **Cal. Civ. Code § 1770(a)(5)**, representing that goods have characteristics, uses,  
4 or benefits which they do not have;
- 5 • **Cal. Civ. Code § 1770(a)(7)**, representing that goods are of a particular standard,  
6 quality, or grade if they are of another;
- 7 • **Cal. Civ. Code § 1770(a)(9)**, advertising goods with intent not to sell them as  
8 advertised; and
- 9 • **Cal. Civ. Code § 1770(a)(16)**, representing the subject of a transaction has been  
10 supplied in accordance with a previous representation when it has not.

11 150. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and  
12 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were  
13 unjustly enriched.

14 151. As a further result, Plaintiff and the Class have suffered damages, and because the conduct  
15 was deliberate, immoral, oppressive, made with malice and contrary to public policy, they are entitled to  
16 punitive or exemplary damages.

17 152. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified Defendants in writing by  
18 certified mail of the particular violations of § 1770 of the Act as to Thermofight and demanded that  
19 Defendants rectify the problems associated with the actions detailed above and give notice to all affected  
20 consumers of its intent to so act.

21 153. Defendants received Plaintiff's written notice on April 19, 2021.

## 22 **XV. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public,  
24 prays for judgment against Defendants as follows:

- 25 a. An order confirming that this class action is properly maintainable as a class action  
26 as defined above, appointing Plaintiff Aileen Brooks and her undersigned counsel  
27 to represent the Class, and requiring Defendants to bear the cost of class notice;
- 28 b. An order requiring Defendants pay \$500 in restitution, damages, and interest to  
Plaintiff;

- 1 c. An order requiring Defendants pay \$5 million or a greater amount to be proven at  
2 trial in restitution to Class members, and \$2000 to Plaintiff as an incentive award,  
3 or such greater amount the Court deems fair and reasonable;
- 4 d. An order requiring Defendants to disgorge any benefits received from Plaintiff and  
5 its unjust enrichment realized as a result of its improper and misleading advertising,  
6 marketing, sale, and distribution of Thermofight;
- 7 e. An Order declaring the conduct complained of herein violates the Unfair  
8 Competition Law;
- 9 f. An order requiring Defendants to cease and desist its deceptive, unconscionable,  
10 and fraudulent practices;
- 11 g. An order requiring Defendants to engage in a corrective advertising campaign;
- 12 h. An award of prejudgment and post judgment interest;
- 13 i. An award of attorney fees and costs of \$500,000, or such greater amount the Court  
14 awards as fair and reasonable; and
- 15 j. Such other and further relief as this Court may deem just, equitable or proper.

16 **XVI. JURY DEMAND**

17 Plaintiff requests a trial by jury.

18 DATED: September 3, 2021

Respectfully Submitted,

19 /s/ Gregory S. Weston

20 **THE WESTON FIRM**

GREGORY S. WESTON

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23 **Counsel for Plaintiff**