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Assigned for All Purposes  
Judge Lon F. Hurwitz  
cx-103

6 Attorneys for Plaintiff and the Class  
7

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF ORANGE**

10 PEDRO IBARRA, individually and on behalf of  
all others similarly situated,

Case No. 30-2022-01294748-CU-CR-CXC

11 Plaintiff,

**CLASS ACTION COMPLAINT**

12 v.

13 PHARMAGENICS LLC, and DOES 1 through  
14 10, inclusive,

15 Defendants.  
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1 **I. INTRODUCTION**

2 **Defendant sells a diet pill known as “Dr. Stephanie's Carb & Sugar Blocker” (the**  
3 **“Product”) by falsely claiming that it will cause meaningful and sustainable weight loss by**  
4 **disrupting the digestion of certain foods. Defendant’s claim is false: in fact, the United States**  
5 **Food and Drug Administration has warned that the efficacy claims related to the ingredients in**  
6 **the Product “are not supported by competent and reliable scientific evidence”, “lack**  
7 **substantiation”, and are “false and misleading.”**

8 **As set forth below, Defendant has violated numerous California laws and should be**  
9 **required to stop falsely advertising the product, provide refunds to all consumers, and take other**  
10 **appropriate corrective and remedial actions.**

11 **II. JURISDICTION AND VENUE**

12 1. This Court has jurisdiction over all causes of action asserted herein.

13 2. Venue is proper in this Court because Defendant knowingly engages in activities  
14 directed at consumers in this County and engaged in the wrongful conduct alleged herein against  
15 residents of this County.

16 3. Any out-of-state participants can be brought before this Court pursuant to California’s  
17 “long-arm” jurisdictional statute.

18 **III. PARTIES**

19 4. Plaintiff is a resident and citizen of California.

20 5. Defendant develops, manufactures, promotes, markets, distributes, and/or sells the  
21 Product to consumers in California.

22 6. The above-named Defendant, along with its affiliates and agents, are collectively  
23 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE  
24 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
25 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally  
26 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
27 Complaint to reflect the true names and capacities of the DOE Defendants when such identities  
28 become known.

1           7.       Plaintiff is informed and believes that at all relevant times, every Defendant was acting  
2 as an agent and/or employee of each of the other Defendants and was acting within the course and  
3 scope of said agency and/or employment with the full knowledge and consent of each of the other  
4 Defendants.

5           8.       Plaintiff is informed and believes that each of the acts and/or omissions complained of  
6 herein was made known to, and ratified by, each of the other Defendants.

#### 7   IV.     FACTS

8           9.       On June 17, 2014, the United States Senate Subcommittee on Consumer Protection,  
9 Product Safety, and Insurance held a hearing titled Protecting Consumers from False and Deceptive  
10 Advertising of Weight-Loss Supplement Products. In her opening statement, committee Chair Senator  
11 Claire McCaskill stated that “With so many Americans desperate for anything that might make it  
12 easier to lose weight, it’s no wonder scam artists and fraudsters have turned to the \$60-billion weight-  
13 loss market to make a quick buck.”

14          10.       False advertising of weight-loss products is truly an epidemic. Government regulators  
15 are overwhelmed because “One out of ten fraud claims submitted to the FTC are, in fact, for weight-  
16 loss products.” Indeed, Senator McCaskill stated that “the problem is much larger than any  
17 enforcement agency could possibly tackle on its own. Private stakeholders, companies that sell weight-  
18 loss products, media outlets, and other advertising platforms, as well as consumer watchdogs, must all  
19 do their part to help address this problem.”

20          11.       Plaintiff is a consumer privacy advocate with dual motivations for purchasing the  
21 Product. First, Plaintiff was genuinely interested in using the product as intended. Second, Plaintiff is  
22 a “tester” who works to ensure that companies abide by the obligations imposed by California law. As  
23 someone who advances important public interests at the risk of vile personal attacks, Plaintiff should  
24 be “praised rather than vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir.  
25 2006).

26          12.       In enacting the consumer protection statutes at issue, the California legislature chose to  
27 extend protections to all persons and consumers. Indeed, these statutes are largely enforced by civic-  
28 minded “testers” such as Plaintiff. See *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109 (9<sup>th</sup> Cir.



erally discussing value and importance  
s statutes).<sup>1</sup>  
s that it is a “Carb and Sugar Blocker”:



14. In accompanying promotional and marketing materials, Defendant claims:

***"fights glucose spikes, carb absorption, sugar cravings, fat storage"***

<sup>1</sup> Civil rights icon Rosa Parks was acting as a “tester” when she initiated the Montgomery Bus Boycott in 1955, as she voluntarily subjected herself to an illegal practice to obtain standing to challenge the practice in Court. See <https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/> “(Contrary to popular myth, Rosa Parks was not just a tired seamstress who merely wanted to sit down on a bus seat that afternoon. She refused to give up her seat on principle. Parks had long served as the secretary of the Montgomery branch of the NAACP [and] challenging segregation in Montgomery’s transportation system was on the local civil rights agenda for some time.”) (last downloaded November 2022).

1 ***""helps block digestive enzyme that absorbs sugar""***

2  
3 ***""promotes healthy after-meal blood sugar levels""***

4  
5 ***""supports healthy insulin function""***

6  
7 ***""regulates sugar cravings""***

8 15. The above-quoted statements are false, misleading, deceptive, and unlawful. Moreover,  
9 the above-quoted statements create express or implied warranties and Defendant has breached said  
10 warranties for the reasons described herein.

11 16. Defendant's false claims convey that the Product is capable of helping consumers lose  
12 meaningful weight in a sustainable manner. However, these claims, taken individually and especially  
13 in context of the label as a whole, are false and misleading.

14 17. Within the class period, Plaintiff purchased the Product in California based partly upon  
15 the above-referenced efficacy claims. Plaintiff used the Product as directed but did not experience any  
16 of the benefits promised by the Product.

17 18. Numerous randomized, placebo controlled scientific studies demonstrate that the  
18 ingredients in the Product do not provide any meaningful and sustainable weight management benefits  
19 in humans when taken as directed and at safe levels. Indeed, the United States Food and Drug  
20 Administration has warned that the efficacy claims related to the ingredients in the Product "are not  
21 supported by competent and reliable scientific evidence", "lack substantiation", and are "false and  
22 misleading."

23 19. On information and belief, Defendant makes the false and misleading efficacy claims  
24 by purporting to rely on one or more knowingly flawed or discredited clinical trials. This is because  
25 most clinical trials of dietary supplements have flawed methodology that renders them useless in  
26 determining the real value of the studied ingredients, leading to conclusions that lack scientific  
27 meaning, are inaccurate, and defy overwhelming contrary evidence. See  
28

1 [https://www.biospace.com/article/most-vitamin-studies-flawed-oregon-state-university-researcher-](https://www.biospace.com/article/most-vitamin-studies-flawed-oregon-state-university-researcher-reveals/)  
2 [reveals/](https://www.biospace.com/article/most-vitamin-studies-flawed-oregon-state-university-researcher-reveals/) (last downloaded November 2022).

3 V. CLASS ALLEGATIONS

4 20. Plaintiff brings this action individually and on behalf of all others similarly situated (the  
5 “Class”) defined as follows:

6 **All persons who purchased the Product in California for personal use**  
7 **during the Class Period.**

8 A. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the  
9 number to be in the thousands, if not more. The exact identities of Class Members may be ascertained  
10 by the records maintained by Defendant and its authorized retailers.

11 B. COMMONALITY: Common questions of fact and law exist as to all class members,  
12 and predominate over any questions affecting only individual members of the Class. Such common  
13 legal and factual questions, which do not vary between Class members, and which may be determined  
14 without reference to the individual circumstances of any Class Member, include but are not limited to  
15 the following:

- 16 i. Whether Defendant breached any express warranties made to Plaintiff and the Class;  
17 ii. Whether Defendant breached any implied warranties made to Plaintiff and the Class;  
18 iii. Whether Defendant engaged, and continues to engage, in unfair or deceptive acts and  
19 practices in connection with the marketing, advertising, and sales of the Product;  
20 iv. Whether Defendant violated other consumer protection statutes, false advertising statutes,  
21 or state deceptive business practices statutes;  
22 v. The proper amount of restitution, damages, and punitive damages; and  
23 vi. The proper injunctive relief, including a corrective advertising campaign.

24 C. TYPICALITY: As a person who purchased the product for personal use and used it as  
25 directed, Plaintiff is asserting claims that are typical of the Class.

26 D. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members  
27 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals  
28

1 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion  
2 would otherwise be improper are excluded.

3 E. SUPERIORITY: A class action is superior to other available methods of adjudication  
4 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even  
5 if every Class Member could afford individual litigation, the court system could not. It would be  
6 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

7 **VI. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Violations of the Unfair Competition Law,**

10 **Cal. Bus. & Prof. Code §§ 17200 et seq.**

11 21. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et  
12 seq., proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act  
13 or practice and unfair, deceptive, untrue or misleading advertising.

14 22. The acts alleged herein are “unlawful” under the UCL in that they violate at least the  
15 following laws:

- 16 i. By knowingly and intentionally concealing from Plaintiff and the other Class members that  
17 the Product cannot provide the advertised weight management or weight-loss benefits  
18 while obtaining money from Plaintiff and the Classes;
- 19 ii. By misrepresenting the nature of the Product and the Product’s effectiveness at providing  
20 the weight management and weight-loss benefits;
- 21 iii. By engaging in the conduct giving rise to the claims asserted in this complaint;
- 22 iv. By violating California Civil Code §§ 1709-1711 by making affirmative  
23 misrepresentations about the Product;
- 24 v. By violating California Civil Code §§ 1709-1711 by suppressing material information  
25 about the Product;
- 26 vi. By violating the California Commercial Code for breaches of express and implied  
27 warranties.
- 28 vii. By violating Cal. Bus. & Prof. Code § 12606.2 and 21 C.F.R. § 100.100;



- viii. By violating the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;
- ix. By violating the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;
- x. By violating the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 et seq.

23. Such conduct is ongoing and continues to this date.

**SECOND CAUSE OF ACTION**

**Violations of the False Advertising Law,**

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

24. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

25. The FAL provides that “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

26. As alleged herein, the advertisements, labeling, policies, acts, and practices of Defendant relating to the advertising of the Product are untrue and misleading.

27. Plaintiff has standing to pursue this claim as Plaintiff suffered injury in fact as a result of Defendant’s actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Product in reliance on Defendant’s false and misleading labeling claims that the Product, among other things, aids in weight management.

28. Defendant profited from its sale of the falsely and deceptively advertised Product to unwary consumers.

29. As a result, Plaintiff, the Class, and the general public are entitled to public injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.



1 30. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of themselves and the  
2 Class, seek an order enjoining Defendant from continuing to engage in deceptive business practices,  
3 false advertising, and any other act prohibited by law, including those set forth in this Complaint.

4 **THIRD CAUSE OF ACTION**

5 **Violations of the Consumer Legal Remedies Act,**

6 **Cal. Civ. Code §§ 1750 et seq.**

7 31. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
8 forth in full herein.

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

11 33. Defendant's false and misleading labeling and other policies, acts, and practices were  
12 designed to, and did, induce the purchase and use of the Product for personal, family, or household  
13 purposes by Plaintiff and Class Members, and violated and continue to violate the following sections  
14 of the CLRA:

- 15 i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do  
16 not have; and
  - 17 ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they  
18 are of another;
- 19

20 34. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised  
21 Product to unwary consumers. Defendant's wrongful business practices constituted, and constitute, a  
22 continuing course of conduct in violation of the CLRA.

23 35. Pursuant to §1782 of the CLRA, by this Complaint Plaintiff has notified Defendant in  
24 writing of the particular violations of §1770 of the CLRA and demanded that Defendant rectify the  
25 actions described above by providing monetary relief, agreeing to be bound by its legal obligations,  
26 and giving notice to all affected customers of its intent to do so.

27 36. If Defendant does not comply within 30 days, this Complaint shall be deemed to  
28 include a request for monetary damages as set forth herein. Until such time, this Complaint seeks

1 only injunctive relief for Defendant’s violations of the CLRA and not damages under §§ 1770 and  
2 1782.

3 **FOURTH CAUSE OF ACTION**

4 **Breach of Express Warranties,**

5 **Cal. Com. Code § 2313(1)**

6 37. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
7 forth in full herein.

8 38. Through the Product’s label and advertising, Defendant made affirmations of fact or  
9 promises, or description of goods, described above, which were “part of the basis of the bargain,” in  
10 that Plaintiff and the Class purchased the Product in reasonable reliance on those statements. Cal.  
11 Com. Code § 2313(1).

12 39. The foregoing representations were material and were a substantial factor in causing  
13 the harm suffered by Plaintiff and the Class because they concerned alleged efficacy of the Product  
14 regarding the ability to aid with weight management.

15 40. These representations had an influence on consumers’ decisions in purchasing the  
16 Product.

17 41. Defendant made the above representations to induce Plaintiff and the members of Class  
18 to purchase the Product. Plaintiff and the Class members relied on the representations when  
19 purchasing Defendant’s product.

20 42. Defendant breached the express warranties by selling a Product that does not and  
21 cannot provide the promised benefits.

22 43. That breach actually and proximately caused injury in the form of the lost purchase  
23 price that Plaintiff and Class members paid for the Product.

24 **FIFTH CAUSE OF ACTION**

25 **Breach of Implied Warranties,**

26 **Cal. Com. Code § 2314**

27 44. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
28 forth in full herein.

1 45. Defendant, through its acts and omissions set forth herein, in the sale, marketing, and  
2 promotion of the Product, made representations to Plaintiff and the Class that, among other things, the  
3 Product would aid in weight management.

4 46. Plaintiff and the Class bought the Product manufactured, advertised, and sold by  
5 Defendant, as described herein.

6 47. Defendant is a merchant with respect to the goods of this kind which were sold to  
7 Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an implied warranty  
8 that those goods were merchantable.

9 48. However, Defendant breached that implied warranty in that the Product does not aid in  
10 weight management.

11 49. As an actual and proximate result of Defendant's conduct, Plaintiff and the Class did  
12 not receive goods as impliedly warranted by Defendant to be merchantable in that it did not conform  
13 to promises and affirmations made on the container or label of the goods nor is it fit for its ordinary  
14 purpose, aiding in weight management.

15 50. Plaintiff and Class have sustained damages as a proximate result of the foregoing  
16 breach of implied warranty in the amount of the Product's purchase price.

17 **VII. PRAYER FOR RELIEF**


18 Wherefore, Plaintiff, on behalf of himself, all others similarly situated, and the general public,  
19 pray for judgment against Defendant as to each and every cause of action, including:

- 20 i. An order certifying this action as a class action pursuant to Federal Rules of Civil  
21 Procedure 23(b)(1), 23(b)(2), and/or 23(b)(3);
- 22 ii. An order maintaining this action as a class action and/or an order maintaining a particular  
23 issue class action pursuant to Federal Rule of Civil Procedure 23(c)(4);
- 24 iii. An order requiring Defendant to bear the costs of class notice;
- 25 iv. An order appointing Plaintiff as the class representatives and Pacific Trial Attorneys as  
26 Class Counsel;
- 27 v. An order compelling Defendant to conduct a corrective advertising campaign;
- 28

- 1 vi. An order compelling Defendant to destroy all misleading and deceptive advertising
- 2 materials and product labels, and to recall all offending Products;
- 3 vii. An order awarding disgorgement of Defendant's profits that were obtained from its ill-
- 4 gotten gains in connection with its sales of the Product to Plaintiff and the class members;
- 5 viii. An order awarding restitution in the amount of the purchase price paid by the class
- 6 members for the Product;
- 7 ix. An award for punitive damages;
- 8 x. An award of attorneys' fees and costs; and
- 9 xi. An order providing for all other such further relief as may be just and proper.

10  
11 Dated: December 2, 2022

PACIFIC TRIAL ATTORNEYS, APC

12 By:   
13 Scott. J. Ferrell  
14 Attorneys for Plaintiff