

Charles C. Weller (SBN: 207034)  
 legal@cweller.com  
 CHARLES C. WELLER, APC  
 11412 Corley Court  
 San Diego, California 92126  
 Tel: 858.414.7465  
 Fax: 858.300.5137

Attorney for Plaintiff Jacob Scheibe

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JACOB SCHEIBE, *individually and on* )  
*behalf of all those similarly situated,* )  
 )  
*Plaintiff,* )  
 )  
 v. )  
 )  
 1ST PHORM INTERNATIONAL, LLC, *a* )  
*Missouri limited liability company,* )  
 )  
*Defendant.* )  
 )

No. **'23CV0215 GPC BLM**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

\_\_\_\_\_  
 Jacob Scheibe ("Plaintiff"), individually and on behalf of all others similarly situated, by and through undersigned counsel, hereby brings this action against 1st Phorm International, LLC ("1st Phorm"), alleging that "Ultra Performance Hydration Sticks" ("the Products"), a dietary supplement manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, is misbranded and falsely advertised, and upon information and belief and investigation of counsel alleges as follows:

**PARTIES**

1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state of California, domiciled in San Diego, California.



1           9. Those contacts include but are not limited to sales of the Products directly to  
2 commercial and individual consumers located in this district, including Plaintiff; shipping the  
3 Products to commercial and individual consumers in this district, including Plaintiff; knowingly  
4 directing advertising and marketing materials concerning the Products into this district through  
5 wires and mails, both directly and through electronic and print publications that are directed to  
6 commercial and individual consumers in this district; and operating an e-commerce web site  
7 that offers the Products for sale to commercial and individual consumers in this district, as well  
8 as offering the Products for sale through third-party e-commerce websites, through both of  
9 which commercial and individual consumers residing in this district have purchased the  
10 Products.  
11

12           10. Defendant knowingly directs electronic activity and ships the Products into this  
13 district with the intent to engage in business interactions for profit, and it has in fact engaged in  
14 such interactions, including the sale of the Products to Plaintiff.  
15

16           11. Defendant also sells the Products to retailers and wholesalers in this district for  
17 the purpose of making the Products available for purchase by individual consumers in this  
18 district.  
19

20           12. Plaintiff's losses and those of other Class members were sustained in this district.

21           13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of  
22 the events or omissions giving rise to Plaintiff's claims occurred within this district.

23           14. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court  
24 maintains personal jurisdiction over Defendant.

## 25   **FACTUAL ALLEGATIONS**

### 26           **A. Consumers Pay A Premium for "Clean Labels."**

27           15. Across the globe, consumers are increasingly attuned to claims that foods are "all-  
28 natural," minimally processed, or otherwise free of artificial flavors and preservatives.

1           16. For example, a 2018 survey by L.E.K. Consulting found that overwhelming  
 2 numbers of consumers were committed or casual adherents to so-called “clean label” food  
 3 attributes: “No artificial ingredients” (69 percent); “No preservatives” (67 percent); or “All-  
 4 natural” (66 percent). These were the three most attractive attributes in the consumer survey.  
 5 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean  
 6 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.  
 7

8           17. This consumer preference has led to an explosion in the category of “clean label”  
 9 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods  
 10 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent  
 11 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See  
 12 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.  
 13

14           18. On or about October 18, 2022, Mr. Scheibe purchased 1st Phorm’s Ultra  
 15 Performance Hydration sticks, mango, watermelon, and citrus flavors, from the company’s  
 16 website (Order No. 1P-121383770499) for \$113.10 inclusive of tax.

17           19. Mr. Scheibe is a student who has recently sought to lose weight and gain muscle.  
 18 He carefully reviews labels, including the Products’ labels, to ensure that he consumes only  
 19 natural ingredients and avoids artificial flavors and ingredients.  
 20

21 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

22           20. Defendant 1st Phorm formulates, manufactures, and sells a dietary supplement  
 23 called “Ultra Performance Hydration Sticks.” These dietary supplement powders purport to  
 24 increase hydration in order to make workouts more effective and efficient and to speed muscle  
 25 recovery and growth.

26           21. The front label (or “principal display panel”) of the Products prominently state  
 27 they are “Naturally Flavored,” with attention drawn to the claim through graphic elements. In  
 28

1 addition, the front label uses depictions of fruits to reinforce the claim that the Products are  
 2 flavored using only natural sources:



1           22. These natural flavoring claims are false. The Products are flavored using an  
2 artificial flavoring, DL malic acid, that is derived from petrochemicals.

3           23. All flavors of the Products state, on the back label, that they contain “malic acid.”  
4 The back labels also state that the Products contain “Natural Flavors.”  
5

6           24. While there is a naturally occurring form of malic acid, it is extremely expensive  
7 to formulate in large quantities and is almost never used in mass-produced food products.  
8 Instead, testing by an independent third-party laboratory has confirmed that the malic acid that  
9 Defendant uses in these Products is DL malic acid, a synthetic substance derived from  
10 petrochemicals.<sup>1</sup>

11           25. This type of malic acid is manufactured in petrochemical plants from benzene or  
12 butane—components of gasoline and lighter fluid, respectively—through a series of chemical  
13 reactions, some of which involve highly toxic chemical precursors and byproducts.  
14

15           26. Fruit flavors in a food are imparted by the interactions between sugars, acids,  
16 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined  
17 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic  
18 acid.

19           27. The quality and consumer acceptability of fruit flavors is based on their perceived  
20 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such  
21 as oranges, lemons, mangoes, and strawberries have their own natural ratio of sugars and acids.  
22

23           28. The DL malic acid used in the Products is used to create, simulate, and/or reinforce  
24 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.  
25  
26  
27

28  

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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1           29. Defendant uses the petrochemical-derived DL malic acid in its Products to create  
2 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,  
3 misbranding the Products and deceiving consumers.

4           30. The ingredients on the Products' label are declared in a way that is misleading and  
5 contrary to law, because Defendant designates the ingredient by its generic name, "malic acid,"  
6 instead of by its specific name, "DL malic acid."  
7

8       **C. Requirements for Labelling**

9           31. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act  
10 ("FDCA") require that a food's label accurately describe the nature of the food product and its  
11 characterizing flavors. 21 C.F.R. § 102.5(a).

12           32. Artificial flavor is defined as "any substance, the function of which is to impart  
13 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible  
14 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy  
15 products, or fermentation products thereof." 21 C.F.R § 101.22(a)(1).  
16

17           33. Natural flavor is defined as "essential oil, oleoresin, essence or extractive, protein  
18 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the  
19 flavoring constituents" from fruits or vegetables, "whose significant function in food is flavoring  
20 rather than nutritional." 21 C.F.R § 101.22(a)(3).  
21

22           34. Any recognizable primary flavor identified directly or indirectly on the front label  
23 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to  
24 as a "characterizing flavor." 21 C.F.R. § 101.22.

25           35. Here, the Products' labels both state the characterizing flavors and reinforce the  
26 claim that this characterizing flavor is achieved by using only natural flavors through use of  
27 depictions of fruits.  
28



1           36. If a food product’s characterizing flavor is not created exclusively by the named  
2 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or  
3 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present  
4 which “simulates, resembles or reinforces” the characterizing flavor, the front label must  
5 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §  
6 101.22(i)(2).  
7

8           37. A food product’s label also must include a statement of the “presence or absence  
9 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such  
10 ingredient(s) or component(s) in the food has a material bearing on price or consumer  
11 acceptance . . . and consumers may otherwise be misled about the presence or absence of the  
12 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.  
13

14           38. Such statement must be in boldface print on the front display panel and of  
15 sufficient size for an average consumer to notice.

16           39. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §  
17 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.

18           40. By changing the ratio between sugars and acids that is naturally found in fruits  
19 such as oranges, lemons, mangoes, and strawberries, the DL malic acid used in the Products  
20 reinforces, simulates, or creates the characterizing flavors, regardless of any other effect it may  
21 have or purpose for which it was included.  
22

23           41. DL malic acid is not a “natural flavor” as this term is defined by federal and state  
24 regulations and is not derived from a fruit or vegetable or any other natural source. The Products  
25 therefore contain artificial flavorings.  
26  
27  
28



1           42. Because the Products contain artificial flavoring, California law requires the  
2 Products to display both front- and back-label disclosures to inform consumers that the Products  
3 are artificially flavored.

4           43. The Products have none of the required disclosures regarding the use of artificial  
5 flavors.

6           44. Plaintiff reserves the right to amend this Complaint to add further products that  
7 contain similar label misrepresentations as testing continues.

8           49. Labels are the chief means by which food product manufacturers convey critical  
9 information to consumers, and consumers have been conditioned to rely on the accuracy of the  
10 claims made on these labels. As the California Supreme Court stated in a case involving alleged  
11 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based  
12 on the premise that labels matter, that consumers will choose one product over another similar  
13 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

14           50. Plaintiff reviewed the label on the Products prior to his purchase, and reviewed  
15 the natural flavoring claims being made there and. Consumers such as Plaintiff who viewed the  
16 Products’ labels reasonably understood Defendant’s “Naturally Flavored” statements, as well as  
17 its failure to disclose the use of artificially derived malic acid, to mean that the Products contain  
18 only natural flavorings. This representation was also false.

19           51. Consumers including Plaintiff reasonably relied on Defendant’s statements such  
20 that they would not have purchased the Products from Defendant if the truth about the Products  
21 was known, or would have only been willing to pay a substantially reduced price for the Products  
22 had they known that Defendant’s representations were false and misleading.

1           52. In the alternative, because of its deceptive and false labelling statements,  
2 Defendant was enabled to charge a premium for the Products relative to key competitors'  
3 products, or relative to the average price charged in the marketplace.

4           53. Consumers including Plaintiff especially rely on label claims made by food  
5 product manufacturers such as 1st Phorm, as they cannot confirm or disprove those claims  
6 simply by viewing or even consuming the Products.

7           54. Plaintiff suffered economic injury by Defendant's fraudulent and deceptive  
8 conduct as stated herein, and there is a causal nexus between Defendant's deceptive conduct and  
9 Plaintiff's injury.  
10

11                                   **CLASS ACTION ALLEGATIONS**

12           55. Plaintiff brings this action individually and as representative of all those similarly  
13 situated pursuant to Federal Rule of Civil Procedure 23 on behalf of all consumers nationwide  
14 who purchased the Products within four years prior to the filing of this Complaint, as well as a  
15 California Subclass of consumers in California who purchased the Products within four years  
16 prior to the filing of this Complaint.  
17

18           56. Excluded from the Class and Subclass are Defendant and its affiliates, parents,  
19 subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers  
20 presiding over this matter and the members of their immediate families and judicial staff.  
21

22           57. Plaintiff reserves the right to alter the Class definition, and to amend this  
23 Complaint to add additional Subclasses, as necessary to the full extent permitted by applicable  
24 law.

25           58. Certification of Plaintiff's claims for class-wide treatment is appropriate because  
26 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as  
27  
28

1 individual Class members would use to prove those elements in individual actions alleging the  
2 same claims.

3 59. **Numerosity – Rule 23(a)(1):** The size of the Class is so large that joinder of all  
4 Class members is impracticable. Plaintiff believes and avers there are thousands of Class  
5 members geographically dispersed throughout the state.  
6

7 60. **Existence and Predominance of Common Questions of Law and Fact – Rule**  
8 **23(a)(2), (b)(3):** There are questions of law and fact common to the Class. These questions  
9 predominate over any questions that affect only individual Class members. Common legal and  
10 factual questions and issues include but are not limited to:

- 11 a. Whether the marketing, advertising, packaging, labeling, and other  
12 promotional materials for Defendant’s Products is misleading and deceptive;  
13
- 14 b. Whether a reasonable consumer would understand Defendant’s “Naturally  
15 Flavored” claims to indicate that the Products contained only natural  
16 flavorings, and reasonably relied upon those representations;
- 17 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and  
18 Class members;
- 19 d. the proper amount of damages and disgorgement or restitution;  
20
- 21 e. the proper scope of injunctive relief; and  
22
- 23 f. the proper amount of attorneys’ fees.

24 61. Defendant engaged in a common course of conduct in contravention of the laws  
25 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations  
26 of law, business practices, and injuries are involved. Individual questions, if any, pale by  
27 comparison, in both quality and quantity, to the numerous common questions that predominate  
28

1 this action. The common questions will yield common answers that will substantially advance  
2 the resolution of the case.

3 62. In short, these common questions of fact and law predominate over questions that  
4 affect only individual Class members.

5 63. **Typicality – Rule 23(a)(3):** Plaintiff's claims are typical of the claims of the Class  
6 members because they are based on the same underlying facts, events, and circumstances  
7 relating to Defendant's conduct.

8 64. Specifically, all Class members, including Plaintiff, were harmed in the same way  
9 due to Defendant's uniform misconduct described herein; all Class members suffered similar  
10 economic injury due to Defendant's misrepresentations; and Plaintiff seeks the same relief as  
11 the Class members.

12 65. There are no defenses available to Defendant that are unique to the named  
13 Plaintiff.

14 66. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate  
15 representative of the Class because Plaintiff's interests do not conflict with the Class members'  
16 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress  
17 against Defendant.

18 67. Furthermore, Plaintiff has selected competent counsel who are experienced in  
19 class action and other complex litigation. Plaintiff and Plaintiff's counsel are committed to  
20 prosecuting this action vigorously on behalf of the Class and have the resources to do so.

21 68. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other  
22 available means for the fair and efficient adjudication of this controversy for at least the  
23 following reasons

- 1           a. the damages individual Class members suffered are small compared to the  
2           burden and expense of individual prosecution of the complex and extensive  
3           litigation needed to address Defendant's conduct such that it would be  
4           virtually impossible for the Class members individually to redress the wrongs  
5           done to them. In fact, they would have little incentive to do so given the  
6           amount of damage each member has suffered when weighed against the costs  
7           and burdens of litigation;  
8  
9           b. the class procedure presents fewer management difficulties than individual  
10          litigation and provides the benefits of single adjudication, economies of scale,  
11          and supervision by a single Court;  
12  
13          c. the prosecution of separate actions by individual Class members would create  
14          a risk of inconsistent or varying adjudications, which would establish  
15          incompatible standards of conduct for Defendant; and  
16  
17          d. the prosecution of separate actions by individual Class members would create  
18          a risk of adjudications with respect to them that would be dispositive of the  
19          interests of other Class members or would substantively impair or impede their  
20          ability to protect their interests.

21           69. Unless the Class is certified, Defendant will retain monies received as a result of  
22          its unlawful and deceptive conduct alleged herein.

23           70. Unless a class-wide injunction is issued, Defendant will likely continue to  
24          advertise, market, promote, and sell its Products in an unlawful and misleading manner, as  
25          described throughout this Complaint, and members of the Class will continue to be misled,  
26          harmful, and denied their rights under the law.  
27  
28



1 purchased the Products, entitling Plaintiff and putative class members to an award of punitive  
2 damages under Mo. Rev. Stat §§ 407.025 and 510.265.

3 79. Plaintiff and the putative class members are entitled to an award of punitive  
4 damages in the amount that is five (5) times their actual damages or \$500,000 per violation,  
5 whichever is greater under Mo. Rev. Stat. § 510.265.  
6

7 **COUNT 2**  
8 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**  
9 **SECTION 17200 *et seq.* — “UNFAIR” CONDUCT**  
10 **California Subclass**

11 80. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
12 extent necessary, pleads this cause of action in the alternative.

13 81. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
14 a result of Defendant’s actions as set forth herein.

15 82. Defendant’s actions as alleged in this Complaint constitute “unfair” conduct  
16 within the meaning of California Business and Professions Code Section 17200, *et seq.*

17 83. Defendant’s business practices, as alleged herein, are “unfair” because it fails to  
18 disclose accurately the synthetic flavoring used in the Products.

19 84. As a result of this “unfair” conduct, Plaintiff expended money and engaged in  
20 activities it would not otherwise have spent or conducted.

21 85. Defendant’s wrongful business practices alleged herein constituted, and continue  
22 to constitute, a continuing course of unfair competition since it continues to market and sell its  
23 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,  
24 oppressive, unscrupulous and/or substantially injurious to its customers.

25 86. Defendant publicly disseminated untrue or misleading representations regarding  
26 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care  
27 should have known, were untrue or misleading.  
28



1           87. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order  
 2 of this court enjoining Defendant from continuing to engage in “unfair” business practices and  
 3 any other act prohibited by law, including those acts set forth in this Complaint, and further seek  
 4 all other relief allowable under Business and Professions Code Section 17200, *et seq.*

5  
 6                                   **COUNT 3**  
 7                   **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**  
 8                   **SECTION 17200 *et seq.* — “FRAUDULENT” CONDUCT**  
 9                   **California Subclass**

10           88. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
 11 extent necessary, plead this cause of action in the alternative.

12           89. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
 13 a result of Defendant’s actions as set forth above.

14           90. Defendant’s actions as alleged in this Complaint constitute “fraudulent” conduct  
 15 within the meaning of California Business and Professions Code Section 17200 *et seq.*

16           91. Defendant’s business practices, as alleged herein, are “fraudulent” because it fails  
 17 to disclose accurately the synthetic flavoring used in the Products.

18           92. As a result of this “fraudulent” conduct, Plaintiff expended money and engaged in  
 19 activities it would not otherwise have spent or conducted.

20           93. Defendant’s wrongful business practices alleged herein constituted, and continue  
 21 to constitute, a continuing course of unfair competition since it continues to market and sell its  
 22 products in a manner that offends public policy and/or in a fashion that is immoral, unethical,  
 23 oppressive, unscrupulous and/or substantially injurious to its customers.

24           94. Defendant publicly disseminated untrue or misleading representations regarding  
 25 the flavoring label claims of its Products, which it knew, or in the exercise of reasonable care  
 26 should have known, were untrue or misleading.  
 27  
 28



1           103. Pursuant to Business and Professions Code Section 17203, Plaintiff seeks an order  
2 of this court enjoining Defendant from continuing to engage in “unlawful” business practices  
3 and any other act prohibited by law, including those acts set forth in this Complaint, and further  
4 seeks all other relief allowable under Business and Professions Code Section 17200, *et seq.*  
5

6                                   **COUNT 5**  
7                                   **VIOLATION OF CALIFORNIA BUSINESS &**  
8                                   **PROFESSIONS CODE SECTION 17500 *et seq.***  
9                                   **California Subclass**

10           104. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
11 extent necessary, pleads this cause of action in the alternative.

12           105. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as  
13 a result of Defendant’s actions as set forth above.

14           106. Defendant engaged in advertising and marketing to the public and offered for sale  
15 advertising services on a nationwide basis, including in California.

16           107. Defendant engaged in the advertising and marketing alleged herein with the intent  
17 to directly or indirectly induce the sale of the Products to consumers.

18           108. Defendant’s advertisements and marketing representations regarding the  
19 characteristics of the Products were false, misleading, and deceptive as set forth above.

20           109. At the time it made and disseminated the statements alleged herein, Defendant  
21 knew or should have known that the statements were untrue or misleading, and acted in violation  
22 of Business and Professions Code Section 17500, *et seq.*

23           110. Plaintiff seeks injunctive relief and all other relief allowable under Business and  
24 Professions Code Section 17500, *et seq.*  
25  
26  
27  
28

**COUNT 6**  
**VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT,**  
**CAL. CIV. CODE § 1750 *ET SEQ.***  
**California Subclass**

45. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

46. Plaintiff is a “consumer” within the meaning of the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1761(d).

47. The sale of Defendant’s Products to Plaintiff and Class members was a “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

48. The Products purchased by Plaintiff and Class members are “goods” within the meaning of the CLRA, Cal. Civ. Code § 1761(a).

49. As alleged herein, Defendant’s business practices are a violation of the CLRA because Defendant deceptively failed to reveal facts that are material in light of the flavoring representations that were made by Defendant on the labels of its Products.

50. Defendant’s ongoing failure to provide material facts about its Products on its labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- a. Defendant’s acts and practices constitute misrepresentations that its Products have characteristics, benefits, or uses which they do not have;
- b. Defendant misrepresented that its Products are of a particular standard, quality, and/or grade, when they are of another;
- c. Defendant’s acts and practices constitute the advertisement of goods, without the intent to sell them as advertised;
- d. Defendant’s acts and practices fail to represent that transactions involving its Products involve actions that are prohibited by law, particularly the use of misleading nutritional labelling; and

1 e. Defendant's acts and practices constitute representations that its Products have  
2 been supplied in accordance with previous representations when they were not.

3 51. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,  
4 entitling them to injunctive relief, disgorgement, and restitution.

5 52. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the  
6 particular violations of the CLRA described herein and demanded Defendant rectify the actions  
7 described above by providing complete monetary relief, agreeing to be bound by their legal  
8 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this  
9 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.  
10

11 53. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled  
12 to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such  
13 damages include, without limitation, monetary losses and actual, punitive, and consequential  
14 damages, in an amount to be proven at trial.  
15

16 54. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin  
17 publication of misleading and deceptive nutritional labels on Defendant's Products and to  
18 recover reasonable attorneys' fees and costs.

19 **COUNT 7**  
20 **UNJUST ENRICHMENT**  
21 **National Class**

22 55. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
23 extent necessary, pleads this cause of action in the alternative.

24 56. Defendant, through its marketing and labeling of the Products, misrepresented and  
25 deceived consumers regarding the flavoring in the Products.

26 57. Defendant did so for the purpose of enriching itself and it in fact enriched itself  
27 by doing so.  
28







- 1 e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;
- 2 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts
- 3 awarded; and
- 4
- 5 g. Such other relief as the Court may deem just and proper.

6 TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

7 /s/ Charles C. Weller  
Charles C. Weller (Cal. SBN: 207034)  
8 Attorney for Plaintiff

9 CHARLES C. WELLER, APC  
11412 Corley Court  
10 San Diego, California 92126  
Tel: 858.414.7465  
11 Fax: 858.300.5137

12 February 6, 2023

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jacob Scheibe, individually and on behalf of those  
similarlv situated

(b) County of Residence of First Listed Plaintiff San Diego, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Charles C. Weller, CHARLES WELLER APC, 11412  
Corley Ct., San Diego CA 92126, (858) 414-7465

DEFENDANTS

1st Phorm International, LLC

County of Residence of First Listed Defendant Clayton MO  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'23CV0215 GPC BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question  
(U.S. Government Not a Party)

X 4 Diversity  
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div>PERSONAL INJURY</div> <div><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel &amp; Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice</div> <div>CIVIL RIGHTS</div> <div><input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education</div>	<div>PERSONAL INJURY</div> <div><input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div><input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div> <div>LABOR</div> <div><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div><input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions</div>	<div><input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157</div> <div>INTELLECTUAL PROPERTY RIGHTS</div> <div><input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016</div> <div>SOCIAL SECURITY</div> <div><input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</div> <div>FEDERAL TAX S UTS</div> <div><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</div>	<div><input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes</div>
REAL PROPERTY	CIVIL RIGHTS	PERSONAL INJURY	LABOR	OTHER STATUTES
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<div>Other Civil Rights</div> <div><input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education</div>	<div>PERSONAL INJURY</div> <div><input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div><input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div> <div>LABOR</div> <div><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div><input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions</div>	<div><input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157</div> <div>INTELLECTUAL PROPERTY RIGHTS</div> <div><input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016</div> <div>SOCIAL SECURITY</div> <div><input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</div> <div>FEDERAL TAX S UTS</div> <div><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</div>	<div><input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes</div>

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. section 1332

Brief description of cause:  
Consumer protection claim for misbranded dietary supplements

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
\$5,000,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
2/6/2023

SIGNATURE OF ATTORNEY OF RECORD  
/s/ Charles C. Weller

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.  
(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)  
(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.