

Electronically Filed by Superior Court of California, County of Orange, 03/20/2023 08:00:00 AM.
30-2023-01313366-CU-MT-CXC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By A. Thau, Deputy Clerk.

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Assigned for all purposes:
Judge Randall J. Sherman
Dept. CX105

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

9 **COUNTY OF ORANGE**

10
11 JERRY AVILES, individually and on behalf of all
others similarly situated,

12 Plaintiff,

13 v.

14 KINGFISHER MEDIA, LLC, a Utah limited
15 liability company; and DOES 1 through 10,
inclusive,

16 Defendants.
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Case No. 30-2023-01313366-CU-MT-CXC

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**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CONSUMER
LEGAL REMEDIES ACT**

I. INTRODUCTION

Defendant sells a line of supplements known as “High T Testosterone Booster” (the “Product”) by falsely claiming that it will boost “Strength, Stamina, Energy, Energy, Vitality, and Male Libido.” In reality, Defendant’s claims have been proven false by overwhelming scientific evidence.

II. JURISDICTION AND VENUE

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

2. Venue is proper in this County in accordance with California Code of Civil Procedure Section 394(b) because “none of the defendants reside in the state.” As such, venue is proper “in any county that the plaintiff may designate in his or her complaint.”

3. Defendant is subject to jurisdiction under California’s “long-arm” statute found at California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes that Defendant generates a minimum of eight percent of its national website sales to Californians, such that the website “is the equivalent of a physical store in California.” Since this case involves false representations made in part on Defendant’s website, California courts can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

III. PARTIES

4. Plaintiff is an individual and a consumer advocate who is a resident of California.

5. Defendant is a Utah for profit entity that develops, manufactures, promotes, markets, distributes and/or sells the Product to consumers nationwide. Defendant describes itself as “the “OG” of natural testosterone boosters, the granddaddy of them all. Hundreds of products have come and gone since the early days when High T was pioneering a new product category, but few can match the longevity, effectiveness, and popularity of the High T family of products.”

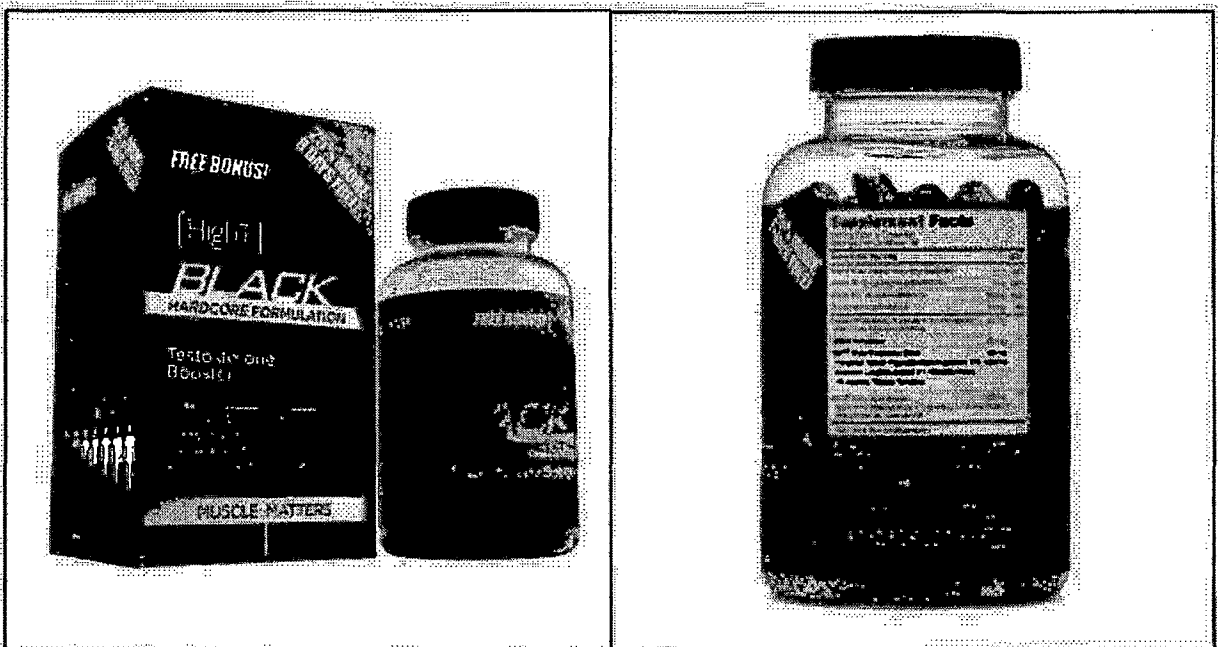
6. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff will amend the Complaint to reflect the true names of the DOE Defendants when such identities

1 become known.

2 IV. FACTS

3 7. Plaintiff is a consumer advocate with dual motivations for purchasing the Product.
 4 First, Plaintiff was genuinely interested in using the product as directed and obtaining the promised
 5 results, and Plaintiff's desire to obtain the advertised benefits of the Product was a substantial,
 6 meaningful factor in Plaintiff's decision to purchase the product. Second, Plaintiff is a "tester" who
 7 works to ensure that companies abide by the obligations imposed by California law. As someone who
 8 advances important public interests at the risk of vile personal attacks, Plaintiff should be "praised
 9 rather than vilified." *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

10 8. An example of the front and back labels of the Product are as follows:



22 9. The accompanying marketing materials of the Product found at
 23 <https://hightproducts.com/products/high-t-black-hardcore-formula-120ct> claim that the Product
 24 "provides increased strength, stamina, and energy with faster recovery time. It's positive improvements
 25 to male libido are a welcomed side effect."

26 10. Defendant's efficacy claims are not simply unsubstantiated; they have been proven to
 27 false by the overwhelming weight of scientific evidence. Numerous scientific studies conclusively
 28 prove that the ingredients in the Product do not and cannot the promised benefits.

11. If and when the Court deems it appropriate (and subject to any required protective order), Plaintiff will submit a non-exhaustive list of clinical studies demonstrating the falsity of Defendant's efficacy claims, along with a brief summary of the key findings of each study.

12. Plaintiff purchased the Product in substantial part based upon the above-referenced efficacy claims. Plaintiff used the Product as directed but did not experience any of the benefits promised by the Product.

13. The "Who, What, When, Where, and How of the misconduct" is as follows:

- a. The "Who": The party responsible for promulgating the false efficacy claims is Defendant Kingfisher Media LLC of Utah.
- b. The "What": The claims on the label of Defendant's product and accompanying marketing materials that the product will "increase strength, stamina, and energy with faster recovery time. It's positive improvements to male libido are a welcomed side effect."
- c. The "When": The false claims were made throughout the class period, and Plaintiff purchased the product in 2022;
- d. The "Where": Plaintiff purchased the product at GNC in California.
- e. The "How": By making demonstrably false claims that its product provides "strength, stamina, energy, and libido" benefits that it does not and cannot provide, Defendant has illegally collected millions of dollars from unsuspecting consumers.

V. CLASS ALLEGATIONS

14. Plaintiff brings this action individually and on behalf of all others similarly situated (the "Class") defined as follows:

All persons within California who purchased the Product for personal use during the Class Period.

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

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17. Defendant's false and misleading labeling and advertising was designed to, and did, induce the purchase and use of the Product for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

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

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

19. Contemporaneous with the filing of this Complaint, Plaintiff provided notice in accordance with section 1782 of the CLRA and demanded that Defendant rectify the actions described above. Notwithstanding anything to the contrary herein, at this time Plaintiff only seeks injunctive relief pursuant to Cal. Civ. Code § 1782(d). Plaintiff will amend the Complaint to include a request for damages if Defendant does not provide a timely and complete "correction, repair, or replacement" within 30 days.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant for:

- i. Appropriate class certification and management orders;
- ii. Actual, statutory and punitive damages;
- iii. An award of attorneys' fees and costs; and
- iv. All other relief at law or in equity as may be proper.

Dated: March 19, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott J. Ferrell
Attorneys for Plaintiff