

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JEFFREY FARIS, ANTONIA HAMPTON,  
RAUL ROBLES, and KATHLEEN CANNON,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

BACTOLAC PHARMACEUTICAL, INC.;  
NATURMED, INC. d/b/a INSTITUTE FOR  
VIBRANT LIVING; and INDEPENDENT  
VITAL LIFE, LLC,

Defendants.

**No.**

**CLASS ACTION**  
**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Jeffrey Faris, Antonia Hampton, Raul Robles, and Kathleen Cannon (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this class action individually and on behalf of the Classes defined below (the “Classes” or, collectively, the “Class”) against Bactolac Pharmaceutical, Inc., NaturMed, Inc. d/b/a Institute for Vibrant Living, and Independent Vital Life, LLC (collectively, “Defendants”) to obtain relief, including, *inter alia*, damages and declarative relief.

2. This action is brought to remedy violations of law in connection with Defendants’ manufacture and sale of an inherently defective and dangerous dietary supplement, and their false, misleading, and deceptive marketing of that product. In particular, Defendants manufactured, blended, marketed, and distributed the supplement All Day Energy Greens® as an “all natural

energy drink” that would, *inter alia*, “Naturally Increase[] Energy, Improve Digestion,” and “help[] support healthy digestive function.” In truth, these representations were a sham, and All Day Energy Greens® had none of the qualities touted by Defendants. Instead, it consisted of a dangerous mixture that resulted in serious illness and/or death among those who consumed it.

3. Defendants knew that their dietary supplements contained toxic and/or harmful substances, but failed to inform consumers of that fact and allowed consumers to continue to purchase and ingest their products even after the dangers of consuming All Day Energy Greens® became known. Indeed, Defendants began receiving complaints as early as September 2014 that consumers were becoming seriously ill following consumption of the supplement, yet for nearly eighteen months Defendants made insufficient effort to prevent continued product use. Instead, Defendants continued marketing and distributing the product all the while knowing it was making customers sick.

4. Defendants finally recalled the product on March 18, 2016, nearly eighteen months after they had received notice of the first customer complaints related to the product.

5. For these reasons, and for the reasons set forth herein, Plaintiffs and members of the Class were harmed and suffered actual damages, in that the dietary supplement that they purchased was defective and/or worthless, unfit for its ordinary and intended use, and placed Plaintiffs and the Class at unreasonable risk of injury or death. Plaintiffs and the Class did not receive the benefit of their bargain and did not receive a product that met ordinary consumer expectations.

6. Plaintiffs and the Class therefore bring several claims for relief seeking compensatory and punitive damages, and declarative relief.

7. Further, and in spite of Defendants' belated recall of their defective All Day Energy Greens® product, litigation is necessary in order to ensure that Class Members receive full and fair compensation, under the auspices of court order, for their injuries.

**PARTIES**

8. Plaintiff Jeffrey Faris is an adult citizen of the state of New York and he resides in the city of New York.

9. Plaintiff Antonia Hampton is an adult citizen of the state of Florida and she resides in the city of Wesley Chapel.

10. Plaintiff Raul Robles is an adult citizen of the state of Arizona and he resides in the city of Nogales.

11. Plaintiff Kathleen Cannon is an adult citizen of the state of Washington and she resides in the city of Soap Lake.

12. Defendant Bactolac Pharmaceutical, Inc. ("Bactolac") is a corporation registered in the State of New York with its principal business address located in Hauppauge, New York. Bactolac manufactures products, including dietary supplements, for distribution across the United States, including in the States of New York, Arizona, Florida, and Washington.

13. Defendant Bactolac can be served through its registered agent for service of process, CT Corporation System, 111 Eighth Avenue, Suite 13, New York, New York 10011.

14. Defendant NaturMed, Inc. ("NaturMed") was a corporation registered in the State of Indiana with its principal business address located in Camp Verde, Arizona. NaturMed did business as the Institute for Vibrant Living ("IVL"). NaturMed did business across the United States, including in the States of New York, Arizona, Florida, and Washington.

15. Defendant NaturMed designed, marketed, and sold dietary supplements, including All Day Energy Greens®, Go Ruby Go!®, TriMotion Joint Health Formula, SeaNu Hair™, ProstaEZ, Natto BP Plus™, Reconnect-Hearing Support™, Gluco Harmony®, and Vision Clear®.

16. Defendant Bactolac manufactured and blended some of these products, including All Day Energy Greens®, under an agreement with NaturMed.

17. NaturMed dissolved as a corporation on May 27, 2017.

18. Defendant Independent Vital Life, LLC (“IVL2”) is a limited liability company registered in the state of Delaware with its principal place of business in Camp Verde, Arizona.

19. Defendant IVL2 can be served through its agent of record, Adrienne C. Hanley, 2155 W. State Route 89A, Sedona, Arizona 86336.

20. IVL2 is a mere continuation of NaturMed, and is therefore liable as a successor entity.

21. As set forth in more detail below, on or around April 27, 2017, after several lawsuits were filed against NaturMed alleging its dietary supplements were toxic and/or dangerous, NaturMed began to experience significant financial difficulty. Defendant IVL2 obtained a security interest in NaturMed, liquidated the company, sold NaturMed’s assets to IVL2 for a fraction of their value, and retained key NaturMed personnel in positions of authority, including NaturMed’s founder and part owner, Don Elgie.

22. IVL2, in other words, is the same legal person as NaturMed, having a continued existence under a new name.

### **JURISDICTION AND VENUE**

23. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because Plaintiffs and members of the proposed Plaintiff Class are citizens of

states different from Defendants' home states, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

24. This Court has general jurisdiction over Defendants in this case. Bactolac is domiciled in New York and during the relevant time period underlying this suit, NaturMed (and IVL2, as NaturMed's successor) carried on systematic and continuous business with Bactolac in New York. Indeed, as set forth herein, NaturMed worked in conjunction with Bactolac to manufacture, blend, label, and package All Day Energy Greens® at Bactolac's principal place of business in Hauppauge, New York, and Bactolac delivered the packaged products back to NaturMed's distribution center in Arizona. The ingredients contained in All Day Energy Greens® were jointly devised in New York, and there was a continuous flow of the defective products from New York to Arizona, and then to consumers nationwide.

25. Furthermore, this Court has specific jurisdiction over NaturMed (and IVL2 as NaturMed's successor) because there is an affiliation between this forum and the underlying controversy. The conduct giving rise to the claims pleaded by Plaintiffs and the Class occurred, in significant part, at Bactolac's principal place of business in Hauppauge, New York. Together, Defendants jointly devised a plan to manufacture, blend, label, and package the defective All Day Energy Greens® in this forum. As set forth below, Bactolac manufactured and blended All Day Energy Greens® in this forum using ingredients that were not listed on the product label. Consequently, Defendants' conduct giving rise to Plaintiffs' claims occurred in this judicial district.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Bactolac and IVL2 conduct substantial business in this District, and NaturMed conducted substantial business in this District before it was rendered insolvent; Defendants have caused harm to Plaintiffs and

members of the Class in this District; and a substantial part of the events and omissions giving rise to this action occurred in this District.

27. This Complaint is related to a similar proceeding titled, *Copley et al. v. Bactolac Pharmaceutical, Inc. et al.*, 2:18-cv-00575, filed in this Court on July 13, 2018.

### **FACTUAL BACKGROUND**

28. Before it dissolved in May 2017, NaturMed designed, marketed, distributed, and sold various purportedly healthy dietary supplements, and publicly claimed that it was “passionate about helping people improve their health so they can enjoy their life to the fullest.” NaturMed further claimed that its products “reflect our belief that nutritional support is a key component to achieving lifelong health.”

29. In addition, NaturMed publicly asserted that its products “combined the best of science and nature, giving you the most effective solutions for your health needs.” On its website, NaturMed made the following “promise[s] to you” regarding its products and practices:

- “Featuring pure, all natural ingredients and [*sic*] our entire line of health supplements, is formulated based on the latest scientific research, clinical trials, and case studies.”
- It “regularly conducts Good Manufacturing Practices (GMP) reviews in accordance with FDA standards. Our ingredients are tested and re-tested throughout the production process to verify the highest purity and potency.”
- All its “formulas are manufactured in the USA using only NSF Certified facilities which protects consumers by ensuring that our supplements contain only the ingredients listed on the label in the dosage indicated.”

30. One of the dietary supplement products designed, marketed, distributed, and sold by NaturMed was an “all natural energy drink” called “All Day Energy Greens – Original Hi-Octane Energy Drink for Health & Life” and “All Day Energy Greens Fruity” (hereafter, “All Day Energy Greens”).

31. All Day Energy Greens was a powdered vegetable dietary supplement sold in canisters. One canister of All Day Energy Greens was one month's supply of the product if consumed daily.

32. NaturMed made statements on its website and content packing that All Day Energy Greens contained "no chemical additives," and that it "Naturally Increases Energy, Improves Digestion, [is] Rich in Antioxidant Superfoods, Supports Weight Management" and that it "helps support healthy digestive function."

33. NaturMed's product directions for All Day Energy Greens advised customers, including Plaintiffs, to "Supercharge your energy and overall health with All Day Energy Greens."

34. NaturMed's All Day Energy Greens product directions make the following claims: "This green superfood is a daily dose of veggies—and a whole lot of extra pep—in one glass! JUST ONE TABLESPOON mixed in water or a smoothie makes for a truly delicious and refreshing beverage that exceeds the nutritional equivalent of FIVE servings of vegetables and fruits."

35. Moreover, NaturMed's All Day Energy Greens product directions specifically claim that the product is "one of the most potent, energizing, immune-enhancing drinks available."

36. The above representations are false and materially misleading because All Day Energy Greens contained substances known to be harmful or toxic when ingested by human beings and did not provide any of the benefits advertised by NaturMed. Further, as set forth in detail herein, All Day Energy Greens was manufactured with ingredients that did not comport with the ingredients set forth on its label. Some of the ingredients used to manufacture All Day Energy Greens may cause adverse health effects when consumed by humans. Because All Day Energy

Greens were manufactured using ingredients not identified on the product label, or in the product formula, the product was adulterated and/or misbranded.

*NaturMed's Relationship with Bactolac*

37. Bactolac represents itself as “one of the only turnkey vitamin manufacturers who offer everything, including assistance with Product Testing. . . Formula Development. . . Packaging and label application. . . [and] Taste and Flavoring.” See <http://bactolac.com/productsservices-2> (last visited March 10, 2020).

38. On or about May 13, 2010, NaturMed and Bactolac entered into a manufacturing agreement, pursuant to which Bactolac agreed to manufacture dietary supplements, including All Day Energy Greens, for NaturMed.

39. Under the agreement, NaturMed devised a formula and list of ingredients to be including in its dietary supplements, including All Day Energy Greens, and Bactolac agreed to manufacture and blend the supplement, package it in canisters, affix a label, and ship the supplements back to NaturMed for distribution to consumers. Accordingly, Bactolac was well aware that the dietary supplements it was packaging for NaturMed would be distributed by NaturMed to purchasing customers who expected that the ingredients set forth on the product labels would match the ingredients used by Bactolac in the manufacturing process, and who further expected that each of the ingredients identified on the product label and/or formula would be present in the finished product.

40. NaturMed provided Bactolac with product labels for All Day Energy Greens, and Bactolac affixed these labels to each product container as it was packaged.



41. The product labels for All Day Energy Greens contain a list of ingredients that Defendants NaturMed and Bactolac represented were contained in the All Day Energy Greens product.

42. The manufacturing agreement between NaturMed and Bactolac expressly prohibited Bactolac from using any ingredient in any product that was listed in the Safe Drinking Water and Toxicity Enforcement Act of 1986; was a “new ingredient” as that term is defined in the Dietary Supplement Health & Education Act; or is deemed “adulterated” or is otherwise unlawful to include in a dietary supplement.

43. Bactolac, in turn, represented to NaturMed that all products purchased and delivered pursuant to the agreement would be manufactured and packaged in accordance with NaturMed’s specifications, would be merchantable, and would be free from defects in workmanship and materials.

44. In addition, Bactolac expressly represented and warranted to NaturMed that each product it delivered would comply with the applicable product specifications.

45. Bactolac manufactured and blended dietary supplement products, including All Day Energy Greens, at its facility in Hauppauge, New York.

46. Bactolac procured the raw materials that were to be included in All Day Energy Greens and blended the ingredients together in large mixers.

47. Bactolac personnel chose the raw ingredients and measured the volumes of each ingredient that its employees then placed into the mixers.

48. Once the ingredients were mixed into a powder, Bactolac employees filled canisters with the powder, affixed the appropriate label, sealed the canister, and prepared the canisters for shipment back to NaturMed’s distribution facility in Arizona.

49. Bactolac knew and understood that the dietary supplements it shipped back to NaturMed, including All Day Energy Greens, would ultimately be distributed to NaturMed's customers for ingestion.

50. When NaturMed received orders for All Day Energy Greens from its customers, NaturMed shipped the canisters it received from Bactolac. NaturMed has claimed it did not open the canisters before they were shipped to the customers. Accordingly, NaturMed did not spot-test the All Day Energy Greens to ensure the product it received from Bactolac met the product labeling.

*Problems with All Day Energy Greens Arise*

51. In 2014, there was an increase in customer demand for All Day Energy Greens. As a result, NaturMed placed more orders with Bactolac than it had previously.

52. By no later than early September 2014, NaturMed became aware of increasing customer complaints regarding All Day Energy Greens. These customer complaints primarily concerned reports of gastrointestinal distress that followed consumption of All Day Energy Greens.

53. After NaturMed told Bactolac about this increase in complaints, Bactolac's president, Dr. Pailla M. Reddy, told NaturMed that "All Day Energy Greens and All Day Energy Greens Fruity produced for NaturMed and in accordance with the formula provided by NaturMed, are produced, tested, and held in compliance with FDA cGMP 21 C.F.R. part 111 standards and are safe for human consumption."

54. NaturMed was suspicious that Bactolac was contaminating the product, however, and in December 2014, it monitored Bactolac's manufacturing process in its facility on Long

Island. At this time, NaturMed attempted to confirm that raw materials Bactolac was using matched the product label.

55. Nonetheless, NaturMed claims that Bactolac refused to fully cooperate with its investigation into the customer complaints. Bactolac refused to provide paper work requested by NaturMed and was reluctant to supply NaturMed with certificates identifying the raw materials that were used. NaturMed claims that it could not track the source of Bactolac's raw materials to ensure they were genuine and of good quality.

56. Because of its suspicions, as well as Bactolac's reluctance to cooperate, NaturMed began looking for manufacturers to replace Bactolac. Although it approached several manufacturers, none could manufacture All Day Energy Greens for the price offered by Bactolac. Ultimately, despite the price increase, NaturMed stopped using Bactolac to manufacture All Day Energy Greens in July 2015.

57. After switching to a new manufacturer, NaturMed claims that it noticed an 80% reduction in customer complaints by late 2015.

58. Nonetheless, and despite its suspicions, at no time in 2014 and 2015 did NaturMed notify or warn its customer base that All Day Energy Greens may cause gastrointestinal distress. At no time in 2014 and 2015 did NaturMed attempt to recall the All Day Energy Greens products manufactured by Bactolac. Indeed, even after it observed a drastic decrease in customer complaints, NaturMed provided its customers with no warnings and made no attempt to recover unused All Day Energy Greens until March 2016.

***NaturMed Issued a Recall of All Day Energy Greens but Failed to Disclose that the Product was Dangerous***

59. Beginning at least as early as 2014, and continuing through at least late 2015, the product labels for All Day Energy Greens do not comply with the ingredients on the product label.

60. Indeed, various lots of All Day Energy Greens manufactured between mid-2014 and mid-2015 contain non-label ingredients, which can cause nausea, vomiting, diarrhea, dehydration, coma, and death, and also do not contain certain ingredients required by the product formula.

61. Plaintiffs purchased canisters of All Day Energy Greens that contained ingredients that did not comport with the product label because they contained non-label ingredients and/or did not include certain ingredients required by the product formula.

62. On March 18, 2016, NaturMed issued a recall of its All Day Energy Greens product manufactured and distributed nationwide between July 17, 2014 and July 21, 2015, due to reported gastrointestinal distress.

63. In connection with this recall, NaturMed sent letters to consumers who purchased All Day Energy Greens directly from NaturMed. The letter stated that “a voluntary recall has been initiated as a precaution due to some reported cases of gastrointestinal distress possibly associated with consumption of a product you purchased from us.”

64. In reality, All Day Energy Greens was hazardous for human consumption and could cause severe, chronic illness, bodily impairment, and death—none of which were disclosed to consumers.

65. Furthermore, the recall did not explain that NaturMed suspected Bactolac of contaminating the All Day Energy Greens product. The notice was, instead, written in such a way as to minimize the danger posed by consuming any All Day Energy Greens product.

66. NaturMed did not otherwise publicize the All Day Energy Greens recall, either by publishing notice of the recall on its website or in other publicly accessible print or online sources.

67. Furthermore, NaturMed knew that direct purchasers of the product commonly resold All Day Energy Greens, yet it made no effort to notify those indirect purchasers.

68. NaturMed informed some, but not all, known retailers that it was recalling its All Day Energy Greens products. Even where it informed a retailer, however, NaturMed did not explain the danger that the product ultimately posed to consumers.

69. In total, NaturMed recalled 99 lots of All Day Energy Greens and All Day Energy Greens Fruity manufactured by Bactolac between July 2014 and July 2015.

70. After it was sued by individuals who suffered gastrointestinal distress, NaturMed finally (and belatedly) decided to conduct a more thorough investigation of the extent of its products' contamination.

71. NaturMed conducted DNA plant species testing of All Day Energy Greens, which revealed that Bactolac included ingredients in All Day Energy Greens and All Day Energy Greens Fruity that were not disclosed on the label.

72. The All Day Energy Greens label listed 34 plant species. DNA testing, however, identified over 92 plant species in All Day Energy Greens. In some tested lots, 15 of the ingredients that were supposed to be in the product were not detected at all.

73. A former Bactolac employee has since testified under oath that during the relevant time period, his supervisors instructed him to blend in certain added ingredients to make All Day Energy Greens appear greener.

74. This employee also testified that he was instructed to blend in ingredients such as Spirulina, Barley Grass, and/or Aloe Vera to make All Day Energy Greens appear greener.

75. All Day Energy Greens Fruity calls for pineapple to be blended into the product. The Bactolac employee testified, however, that because pineapple is an expensive raw ingredient,

he was often instructed to add pineapple powder instead, which is cheaper, or something else entirely, such as apple or orange.

76. The addition of alternative ingredients was an act of fraud. Each time Bactolac shipped canisters of All Day Energy Greens to NaturMed, it provided signed certificates representing that it had strictly adhered to the product label in the manufacturing process. At least one Bactolac employee has testified that he routinely signed these certificates knowing the representations were untrue because Bactolac managers instructed him to do so.

77. The Bactolac employee further testified to conditions in Bactolac's facility that were unsanitary, and did not comply with relevant health and safety standards. Equipment used to blend the products was not properly cleaned, allowing dirt and bacteria to be introduced into the mixing area and potentially contaminating the blend.

78. Although NaturMed received increasing customer complaints beginning in 2014, it did not sufficiently conduct an investigation of Bactolac's practices until long after its March 2016 recall. Indeed, these steps were not taken until NaturMed had been sued by customers it sickened.

***Plaintiffs' Purchase and Use of All Day Energy Greens***

79. Plaintiff Jeffrey Faris purchased one or more canisters of All Day Energy Greens directly from NaturMed in 2014 or 2015, with purchase and delivery occurring in the state of New York. Mr. Faris purchased the supplement to improve his health, and in purchasing the product he relied on representations from Defendants that it was safe, effective, immune-enhancing, and beneficial.

80. Mr. Faris did not experience any health benefits from his consumption of All Day Energy Greens.

81. On March 18, 2016, Mr. Faris was sent a recall notice via U.S. Mail from NaturMed informing him that the All Day Energy Greens he purchased in 2014 were subject to NaturMed's product recall.

82. Plaintiff Antonia Hampton purchased one or more canisters of All Day Energy Greens directly from NaturMed in 2014 and 2015, with purchase and delivery occurring in the state of Florida. Ms. Hampton purchased the supplement to improve her health, and in purchasing the product she relied on representations from Defendants that it was safe, effective, immune-enhancing, and beneficial.

83. After consuming All Day Energy Greens, Ms. Hampton experienced abdominal pain and discomfort, as well as other physical symptoms of gastrointestinal illness. These symptoms were so significant they required Ms. Hampton to seek treatment from multiple physicians.

84. On March 18, 2016, Ms. Hampton was sent a recall notice via U.S. Mail from NaturMed informing her that the All Day Energy Greens she purchased in 2014 and 2015 were subject to NaturMed's product recall.

85. Plaintiff Raul Robles purchased one or more canisters of All Day Energy Greens directly from NaturMed in 2015, with purchase and delivery occurring in the state of Arizona. Mr. Robles purchased the supplement to improve his health, and in purchasing the product he relied on representations from Defendants that it was safe, effective, immune-enhancing, and beneficial.

86. After consuming All Day Energy Greens, Mr. Robles experienced abdominal pain and discomfort, as well as other physical symptoms of gastrointestinal illness. These symptoms were so significant they required Mr. Robles to seek treatment from his physician.

87. On March 18, 2016, Mr. Robles was sent a recall notice via U.S. Mail from NaturMed informing him that the All Day Energy Greens he purchased in 2015 were subject to NaturMed's product recall.

88. Plaintiff Kathleen Cannon purchased one or more canisters of All Day Energy Greens directly from NaturMed in either 2014 or 2015, with purchase and delivery occurring in the state of Washington. Ms. Cannon purchased the supplement to improve her health, and in purchasing the product she relied on representations from Defendants that it was safe, effective, immune-enhancing, and beneficial.

89. On March 18, 2016, Ms. Cannon was sent a recall notice via U.S. Mail from NaturMed informing her that the All Day Energy Greens she purchased in either 2014 or 2015 were subject to NaturMed's product recall.

*NaturMed's Attempt to Evade Liability*

90. In 2016 and 2017, several lawsuits were filed against NaturMed alleging personal injury and wrongful death caused by consumption of All Day Energy Greens.

91. These lawsuits imposed a significant financial burden on NaturMed.

92. NaturMed was also the subject of multiple investigations into its business practices, which imposed further financial burden.

93. By early 2017, NaturMed owed its secured lender, Fifth Third Bank, over \$5 million.

94. On April 21, 2017, NaturMed defaulted on this loan.

95. Six days later, on April 27, 2017, IVL2 was incorporated in the state of Delaware by Don Elgie. Mr. Elgie was the founder of NaturMed and, although he had sold a controlling stake in the company, Elgie remained a part owner of NaturMed through a company he owned,



Direct Technologies. Mr. Elgie also had a seat on the NaturMed board of directors, in which he placed Jay White, a close colleague and the co-founder of NaturMed.

96. On May 10, 2017, Elgie and IVL2 purchased Fifth Third Bank's security interest in NaturMed for \$1 million, a fraction of its worth.

97. That same day, NaturMed and IVL2 entered into a forbearance agreement that obligated NaturMed to hire a "qualified chief restructuring officer reasonably acceptable" to IVL2 whose job would be to decide whether to liquidate NaturMed.

98. Because he was a part owner of NaturMed, as well as founder and owner of IVL2, Elgie was on both sides of this forbearance agreement.

99. The forbearance agreement was executed by Elgie on behalf of IVL2.

100. On May 12, 2017, NaturMed engaged Elgie as its chief restructuring officer with responsibility to evaluate and decide whether to liquidate NaturMed.

101. Elgie immediately decided to liquidate NaturMed's assets and noticed a UCC sale for May 26, 2017.

102. On May 26, 2017, IVL2 purchased NaturMed's assets for a fraction of their worth.

103. This financial transaction was a fraudulent attempt to escape NaturMed's financial liability and transfer the assets of NaturMed to IVL2.

104. Indeed, according to the sworn testimony of NaturMed's corporate designee in other litigation, NaturMed "dissolved" on May 27, 2017, the day after the UCC sale took place.

105. On May 28, 2017, the day after NaturMed dissolved, Elgie and IVL2 commenced operating NaturMed's old business.

106. IVL2 operates at NaturMed's former location, 661 E. Howards Road, Camp Verde, Arizona.

107. IVL2 retained many key personnel from NaturMed, including NaturMed's director of operations.

108. Because NaturMed did business as the Institute for Vibrant Living, with the initials "IVL," IVL2 was able to conveniently retain its initials, logo, and continue to seamlessly operate its website, [www.ivlproducts.com](http://www.ivlproducts.com). IVL2 continues to sell NaturMed's products, which still bear NaturMed's "Institute for Vibrant Living" brand.

109. This includes All Day Energy Greens and All Day Energy Greens Fruity, which are marketed and sold in packaging that is substantially similar to the packaging used by NaturMed.

110. The IVL2 website carried over customer reviews that pre-date its ownership of NaturMed and continues to contain customer account information from the Institute for Vibrant Living.

111. IVL2, in short, transferred all of NaturMed's assets and operations in an effort to continue NaturMed's operations but avoid its financial liability.

112. IVL2 has made every effort to benefit from the reputation established by NaturMed. In addition to maintaining NaturMed's logo and website, [www.ivlproducts.com](http://www.ivlproducts.com) still contains customer reviews that pre-date IVL's ownership of NaturMed's products.

113. IVL2 facilitated a seamless transfer of NaturMed's business, with no interruption in business operations. IVL2 is therefore liable to whatever extent NaturMed is liable in this case, for it is a mere continuation of NaturMed.

114. Since NaturMed's dissolution and IVL2's continuation of NaturMed's business, multiple lawsuits have been filed against one or more Defendants herein. Defendants have thus had sufficient notice of the claims against them. Rather than attempting to resolve any of the class members' claims, Defendants have attempted to evade responsibility for their misconduct. Indeed,

NaturMed has gone to such lengths to evade responsibility that it fraudulently transferred its assets to an ostensibly separate company. In addition, individual class members, including some Plaintiffs, have sent some or all Defendants notice of their claims. In each such instance, Plaintiffs have received no satisfactory response.

### **CLASS ACTION ALLEGATIONS**

115. Plaintiffs bring this lawsuit as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

116. Plaintiffs assert claims on behalf of a nationwide class, defined as:

**Nationwide Class:** All persons in the United States who purchased one or more canisters of All Day Energy Greens from one of the 99 lots that were recalled by NaturMed on March 18, 2016.

117. Plaintiffs also assert claims on behalf of separate statewide classes for the states of Arizona, Florida, New York, and Washington.

118. The proposed statewide classes are defined as:

**Statewide Arizona Class:** All citizens of Arizona who purchased one or more canisters of All Day Energy Greens from one of the 99 lots that were recalled by NaturMed on March 18, 2016.

**Statewide Florida Class:** All citizens of Florida who purchased one or more canisters of All Day Energy Greens from one of the 99 lots that were recalled by NaturMed on March 18, 2016.

**Statewide New York Class:** All citizens of New York who purchased one or more canisters of All Day Energy Greens from one of the 99 lots that were recalled by NaturMed on March 18, 2016.

**Statewide Washington Class:** All citizens of Washington who purchased one or more canisters of All Day Energy Greens from one of the 99 lots that were recalled by NaturMed on March 18, 2016.

119. Excluded from the Nationwide and Statewide Classes are (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; and (3) governmental entities. Plaintiffs reserve the right to amend the definition of any Class if discovery and further investigation reveal that the Class should be expanded, divided into subclasses, or modified in any other way.

#### **Numerosity**

120. Although the exact number of class members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these class members in a single action will provide substantial benefits to all parties and to the Court. Class members are readily identifiable from information in Defendants' possession, custody or control, or from sources accessible through discovery.

#### **Typicality**

121. The claims of the representative Plaintiffs are typical of the claims of the Classes in that the representative Plaintiffs, like all class members, purchased All Day Energy Greens that were falsely marketed, manufactured, distributed, and sold by Defendants. The representative

Plaintiffs, like all class members, have been damaged by Defendants' misconduct in that they have purchased a defective and/or unsafe product that was falsely marketed as a healthy dietary supplement. Furthermore, the factual bases of Defendants' misconduct are common to all class members and represent a common thread of misconduct resulting in injury to all class members.

### **Adequate Representation**

122. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective and falsely marketed products.

123. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to the Classes.

### **Predominance of Common Issues**

124. There are numerous questions of law and fact common to Plaintiffs and class members that predominate over any question affecting only individual class members, the answers to which will advance resolution of the litigation as to all class members. These common legal and factual issues include:

- a. whether All Day Energy Greens contains dangerous substances not fit for human consumption;
- b. whether Defendants knew or should have known that All Day Energy Greens contained dangerous substances not fit for human consumption;
- c. whether All Day Energy Greens were manufactured using non-label ingredients and/or did not contain certain ingredients required by the product formula;

- d. whether Defendants knew or should have known that All Day Energy Greens contained non-label ingredients and/or did not contain certain ingredients required by the product formula;
- e. whether Defendants had a duty to disclose the ingredients and/or contents of All Day Energy Greens to Plaintiffs and the Classes, including the fact that it contained dangerous and/or non-label substances;
- f. whether Defendants had a duty to disclose to Plaintiffs and the Classes that All Day Energy Greens did not contain certain ingredients required by the product formula;
- g. whether Defendants had a duty to continuously monitor and/or test that All Day Energy Greens were not defectively manufactured and/or blended, and whether Defendants failed to fulfill this duty by, *inter alia*, neglecting to test the product after it was packaged for delivery;
- h. whether Defendants omitted and/or failed to disclose material facts concerning All Day Energy Greens to Plaintiffs and class members, including the fact that it contained dangerous and/or non-label substances;
- i. whether Defendants violated their duty to warn Plaintiffs and the class members of the risks of consuming All Day Energy Greens, including the risks associated with the substances contained therein;
- j. whether Defendants warranted and/or represented to Plaintiffs and the Class that All Day Energy Greens was fit for human consumption, safe, free from defects, and that the supplement was manufactured using the ingredients on the

label, and whether Defendants violated this warranty by delivering a defective and unsafe dietary supplement to Plaintiffs and the Class;

- k. whether All Day Energy Greens is a defective product or an unreasonably dangerous product; and
- l. whether the All Day Energy Greens manufactured and sold during the class period was adulterated and/or misbranded.

### **Superiority**

125. Plaintiffs and class members have all suffered harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

126. Absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual class members' claims, it is likely that only a few class members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Defendants' misconduct will go without a remedy.

127. Class treatment of common questions of law and fact would also be a superior method to individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants, and will promote consistency and efficiency of adjudication.

128. Classwide declaratory relief is appropriate under Rule 23(b)(1) and (b)(2) because Defendants have acted on grounds that apply generally to the Classes, and inconsistent adjudications with respect to Defendants' liability would establish incompatible standards and substantially impair or impede the ability of class members to protect their interests. Plaintiffs seek

a judicial declaration that Defendants sold untested, contaminated, adulterated, and potentially deadly dietary supplements.

## **CLAIMS FOR RELIEF**

### **CLAIM I**

#### **Violation of the Arizona Consumer Fraud Act (ARIZ. REV. STAT. § 44-1521 *et seq.*)**

129. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

130. This claim is brought on behalf of Plaintiff Raul Robles and members of the Arizona statewide class.

131. Plaintiff Raul Robles and Defendants are “persons” within the meaning of the Arizona Consumer Fraud Act (“Arizona CFA”), ARIZ. REV. STAT. § 44-1521(6).

132. All Day Energy Greens dietary supplements are “merchandise” within the meaning of ARIZ. REV. STAT. § 44-1521(5).

133. The Arizona CFA provides that “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, . . . misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale . . . of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be unlawful practice.” ARIZ. REV. STAT. § 44-1522(A).

134. Defendants’ actions, as set forth herein, occurred in the conduct of trade or commerce.

135. In the course of their business, Defendants concealed the true nature and safety risks posed by consumption of All Day Energy Greens, and otherwise engaged in activities with a



tendency or capacity to deceive. Defendants engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of All Day Energy Greens. For example, the fact that All Day Energy Greens was not fit for human consumption, and that consumption of All Day Energy would not result in “immune-enhancing” effects and/or promote healthy digestive function would be material to a reasonable consumer. So too would it be material that All Day Energy Greens was not blended as labeled and/or packaged.

136. By failing to disclose and by actively concealing these material facts to consumers, including Plaintiffs, Defendants engaged in unfair and deceptive business practices in violation of the Arizona CFA.

137. In the course of Defendants’ business, they willfully failed to disclose and actively concealed the safety risks posed by consumption of All Day Energy Greens.

138. Defendants knew or should have known that their conduct violated the Arizona CFA.

139. Defendants had a duty to disclose the true nature of and risks posed by consumption of All Day Energy Greens because Defendants (i) possessed exclusive knowledge regarding the safety risks and ineffectiveness of All Day Energy Greens; (ii) intentionally concealed the foregoing from Plaintiffs; and (iii) made incomplete representations about the safety and effectiveness of All Day Energy Greens, while purposefully withholding material facts from Plaintiffs that contradicted those representations.

140. Because of Defendants' unlawful concealment, Plaintiffs were deprived the benefit of their bargain when they purchased All Day Energy Greens. Indeed, had Plaintiffs been aware of the defects in the dietary supplements, they would not have purchased them.

141. As a direct and proximate result of Defendants' violations of the Arizona CFA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged herein. Plaintiffs seek monetary relief against Defendants in an amount to be determined at trial. Plaintiffs also seek punitive damages because Defendants engaged in aggravated and outrageous conduct with an evil mind, and also seek any other just and proper relief available under the Arizona CFA.

## **CLAIM II**

### **Violation of New York General Business Law (N.Y. GEN. BUS. LAW § 349 *et seq.*)**

142. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

143. This claim is brought on behalf of Plaintiff Jeffrey Faris and members of the New York statewide class.

144. Plaintiffs are "persons" within the meaning of N.Y. GEN. BUS. LAW § 349.

145. Bactolac is a "person[]," "firm[]," "corporation[]," or "association[]" within the meaning of N.Y. GEN. BUS. LAW § 349.

146. New York General Business Law § 349 ("NYGBL § 349") prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York. Bactolac's conduct, as described herein, constitutes "deceptive acts and practices" within the meaning of this statute. Further, Bactolac's deceptive acts and practices, which were intended to mislead consumers who were attempting to purchase dietary supplements that would contribute to their health and well-being, was consumer-oriented conduct.

147. Bactolac violated the NYGBL when it defectively manufactured and/or blended All Day Energy Greens, and applied packaging labels that were false and/or materially misleading. Bactolac then represented, through warranties and other express representations set forth herein that All Day Energy Greens had characteristics and benefits that the product did not actually have.

148. Bactolac violated the NYGBL when it falsely represented, through warranties and other express representations that All Day Energy Greens was of a certain quality or standard when it was not.

149. Bactolac violated the NYGBL by concealing and/or failing to disclose to Plaintiffs and the Class the defects associated with All Day Energy Greens.

150. Bactolac violated the NYGBL by actively misrepresenting in, and/or concealing and omitting from, its communications and/or representations, material information regarding All Day Energy Greens. The material information included:

- a. that All Day Energy Greens, as blended, was not fit for human consumption and, indeed, was potentially toxic; and
- b. that the defective nature of All Day Energy Greens would not become apparent until after a consumer ingested the product.

151. As a direct and proximate cause of Bactolac's violations of the NYGBL, Plaintiffs and members of the Class have suffered injury in fact and/or actual damage, in that they purchased a dietary supplement that was defective, not fit for human consumption, and that would not produce the results promised by the product advertising, marketing, and representations.

152. Pursuant to NYGBL § 349(h), Plaintiffs, on behalf of themselves and all others similarly situated, seek monetary relief against Bactolac measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$50 for

each Plaintiff and member of the Class. Because Bactolac’s conduct was committed willfully and knowingly, Plaintiffs are entitled to recover three times actual damages, up to \$1,000, for each Plaintiff and Class member.

153. Plaintiffs also seek punitive damages, attorneys fees, and any other just and proper relief available under NYGBL § 349.

### **CLAIM III**

#### **Violation of the Florida Deceptive and Unfair Trade Practices Act**

**(FLA. STAT. § 501.201 *et seq.*)**

154. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

155. This claim is brought on behalf of Plaintiff Antonia Hampton and members of the Florida statewide class.

156. Plaintiff Antonia Hampton and all other Florida class members are “consumers” within the meaning of FLA. STAT. § 501.203(7).

157. All Day Energy Greens is a “thing of value” within the meaning of FLA. STAT. § 501.203(9).

158. At all times relevant hereto, Defendants were engaged in “trade or commerce” within the meaning of FLA. STAT. § 501.203(8).

159. The Florida Deceptive and Unfair Trade Practice Act (“FDUTPA”) provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” FLA. STAT. § 501.204(1). By misrepresenting the actual ingredients of its All Day Energy Greens product, manufacturing the product with unsafe ingredients, and falsely promoting All Day Energy Greens

as a safe and healthy product that would contribute to specific outcomes, Defendants engaged in unconscionable, unfair, and deceptive acts and practices prohibited by the FDUTPA.

160. Defendants misrepresented the ingredients, safety, and health benefits of All Day Energy Greens when in fact they knew that All Day Energy Greens was not healthy or safe, and would not deliver the benefits that were advertised.

161. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff and the statewide class, about the true safety and reliability of All Day Energy Greens.

162. Defendants made material statements about the health benefits of All Day Energy Greens that were either false or misleading.

163. Because Defendants fraudulently and/or negligently concealed the true nature of All Day Energy Greens, they deprived Plaintiff and the statewide class of the benefit of their bargain. Had Plaintiff and the statewide class been aware of the defect in the product, they would not have purchased the defective All Day Energy Greens.

164. As a direct and proximate result of Defendants' violations of the FDUTPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged herein.

165. Pursuant to FLA. STAT. § 501.211(2), Plaintiffs seek actual damages, in addition to attorney's fees and court costs as provided in FLA. STAT. § 501.2105.

#### **CLAIM IV**

##### **Violation of the Washington Consumer Protection Act**

**(WASH. REV. CODE § 19.86 *et seq.*)**

166. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

167. This claim is brought on behalf of Plaintiff Kathleen Cannon and the Washington statewide class.

168. Plaintiff and other members of the class are “person[s]” as defined in WASH. REV. CODE § 19.86.010(1).

169. Defendants are “persons” within the meaning of WASH. REV. CODE § 19.86.010(1) who conducted “trade” and “commerce” within the meaning of WASH. REV. CODE § 19.86.010(2).

170. The Washington Consumer Protection Act (“Washington CPA”) declares “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” WASH. REV. CODE § 19.86.020. Defendants violated the Washington CPA by engaging in unfair and deceptive acts or practices, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of All Day Energy Greens, which had the capacity or tendency to deceive Plaintiff and the Washington statewide class members; (2) representing that All Day Energy Greens supplements were of a particular standard, quality, and grade even though Defendants knew they were not; (3) advertising All Day Energy Greens with the intent not to sell the supplement as advertised; and (4) failing to disclose material information concerning All Day Energy Greens that was known to Defendants at the time of advertisement or sale with the intent to induce Plaintiff and the Washington statewide class to purchase the dietary supplement.

171. The Washington CPA is to be “liberally construed that its beneficial purposes may be served.” WASH. REV. CODE § 19.86.920.

172. In the course of their business, Defendants concealed the safety risks associated with consumption of All Day Energy Greens, and otherwise engaged in activities with a tendency

to deceive. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of material facts with intent that others would rely upon such concealment, suppression or omission, in connection with the sale of All Day Energy Greens.

173. By representing that All Day Energy Greens was safe for human consumption and that consumption would lead to certain specific positive health outcomes, all the while knowing this to be false, Defendants' conduct constitutes an unfair practice in trade or commerce and an unfair method of competition that is contrary to the public interest and therefore violates the Washington CPA.

174. Defendants' actions injured Plaintiff and other members of the class, and Defendants are liable under the Washington CPA.

175. In the course of Defendants' business, they willfully failed to disclose and actively concealed the dangerous risk posed by consumption of All Day Energy Greens.

176. Defendants' unfair or deceptive acts or practices were likely to and did deceive reasonable consumers, including Plaintiff, about the safety and efficacy of All Day Energy Greens.

177. Defendants knew or should have known that their conduct violated the Washington CPA.

178. Defendants owed Plaintiff and the Washington statewide class a duty to disclose the true nature and safety risks posed by consumption of All Day Energy Greens because Defendants (i) possessed exclusive knowledge about the risks and inefficacy of All Day Energy Greens; (ii) intentionally concealed the foregoing from Plaintiff; and (iii) made incomplete representations about the safety, reliability, and content of All Day Energy Greens, while purposefully withholding material facts from Plaintiff that contradicted these representations.

179. As a result of Defendants' conduct, as described herein, Plaintiff and the Washington statewide class members were deprived the benefit of their bargain and were induced to purchase a product that had no value. Had Defendants not concealed the true nature and quality of All Day Energy Greens, Plaintiff and the Washington statewide class members would not have purchased the dietary supplement.

180. As a direct and proximate result of Defendants' violations of the Washington CPA, Plaintiff and the Washington statewide class members have suffered injury-in-fact and/or actual damage.

181. Plaintiff and other members of the class are entitled to actual and treble damages, as well as attorney's fees under WASH. REV. CODE § 19.86.090.

## **CLAIM V**

### **Fraudulent Concealment**

182. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

183. This claim is brought on behalf of Plaintiffs and each of the statewide classes identified herein.

184. As alleged herein, All Day Energy Greens was manufactured with ingredients that posed health risks rendering the product unfit for human consumption.

185. Defendants owed a duty to Plaintiffs and members of the statewide classes to disclose all material facts, including the actual ingredients contained in All Day Energy Greens, as well as the risks associated with consumption of All Day Energy Greens. Defendants had a duty to disclose information because it was known and/or accessible only to Defendants; Defendants had superior knowledge and access to the facts; and Defendants knew the facts were not known



to, or reasonably discoverable by Plaintiffs. Defendants also bore a duty because they made affirmative representations about the quality, health benefits, and safety of All Day Energy Greens, and these representations were misleading, deceptive, and incomplete without the disclosure of the defects in the product. Defendants failed to make the disclosures and/or concealed material information they were under a duty to provide. Indeed, had they accurately disclosed the ingredients of All Day Energy Greens and the risks posed by consumption of All Day Energy Greens, Plaintiffs and members of the statewide classes would not have purchased the product.

186. Furthermore, Defendants knew or should have known that All Day Energy Greens did not fulfill the representations made on its label and/or in Defendants' advertisements, and that the product was not blended as labeled. Defendants knew or should have known that All Day Energy Greens was not safe for human consumption and could cause detrimental health outcomes.

187. Defendants actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits, and did so at the expense of Plaintiffs and members of the statewide classes.

188. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiffs and the statewide class members sustained damage because they purchased a worthless and/or defective product.

189. Accordingly, Defendants are liable to Plaintiffs in an amount to be proven at trial.

190. Moreover, Defendants acted and/or failed to act with reckless disregard for the safety and well-being of Plaintiffs and the statewide class members, and Plaintiffs are therefore entitled to an award of exemplary and punitive damages for their misconduct, as well as any other just and proper relief, which amount is to be determined according to proof.

## **CLAIM VI**

### **Negligent Misrepresentation**

191. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

192. This claim is brought on behalf of Plaintiffs and each of the statewide classes identified herein.

193. Defendants owed a duty of care to Plaintiffs and the statewide class members to ensure all dietary supplements it sold were free from dangerous and/or non-label contaminants, would not cause deleterious and harmful effects upon consumption, and would produce the benefits advertised by Defendants. Defendants further owed a duty to Plaintiffs and the statewide class members to convey accurate and complete information concerning the content, risks and dangers associated with the purchase and consumption of All Day Energy Greens.

194. Even though Defendant Bactolac did not sell All Day Energy Greens directly to Plaintiffs and the class members, it nonetheless owed those consumers a duty because it knew they were intended beneficiaries of the statements appearing on All Day Energy Greens' labels and marketing materials and it knew that Plaintiffs and the statewide class members would be exposed to the contents of the All Day Energy Greens' canisters. Bactolac knew full well that it was manufacturing products meant to be sold to consumers, and it nonetheless knowingly and recklessly used harmful and/or non-label ingredients in its blending process that did not appear on the label, in contravention of law.

195. Defendants breached their duties by selling All Day Energy Greens containing contaminations that are harmful and deleterious, failing to use proper manufacturing and production practices, using ingredients that were not listed on the product label, failing to perform appropriate quality testing and control, failing to properly investigate reports of contamination,

illness and/or death, failing to conform to the product label, and failing to adequately warn consumers of the dangers of All Day Energy Greens.

196. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiffs and the statewide class members have suffered injuries, damages, and losses as alleged herein.

## **CLAIM VII**

### **Unjust Enrichment**

197. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

198. This claim is brought on behalf of Plaintiffs and each of the statewide classes identified herein.

199. In the alternative to the claims identified above, Plaintiff allege that they have no adequate remedy at law and bring this unjust enrichment claim.

200. Plaintiffs and members of the statewide classes conferred a monetary benefit on Defendants in the form of monies paid for All Day Energy Greens.

201. Plaintiffs and members of the statewide classes received no benefit from Defendants' sale of a defective, contaminated supplement.

202. Under principles of equity and good conscience, Defendants should not be permitted to retain money belonging to Plaintiffs and statewide class members because Defendants did not provide the product for which the money was tendered. Indeed, it would be inequitable for Defendants to retain the benefit they gained at the expense of Plaintiffs and the statewide class members.

203. Defendants should be compelled to disgorge into a common fund for the benefit of Plaintiffs and class members all unlawful or inequitable proceeds received by Defendants.

204. A constructive trust should be imposed upon all unlawful or inequitable sums received by Defendants traceable to Plaintiffs and members of the statewide classes.

**PRAYER FOR RELIEF**

Plaintiffs, on behalf of themselves and all Class members, request the Court to enter judgment against Defendants as follows:

A. An order certifying this action as a class action under Federal Rule of Civil Procedure 23, defining the Classes as requested herein, appointing the undersigned interim class counsel, and finding that Plaintiffs are proper representatives of the Classes requested herein.

B. An order granting actual damages, punitive damages, statutory damages, exemplary damages, equitable relief, restitution, disgorgement of profits, attorneys' fees, statutory costs, and such further relief as is just and proper.

C. A judicial declaration that Defendants sold untested, contaminated, and potentially deadly dietary supplements.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: March 12, 2020

New York, New York

Respectfully submitted,

/s/ James J. Bilsborrow  
James J. Bilsborrow  
Katherine L. Hansson  
Weitz & Luxenberg PC  
700 Broadway  
New York, NY 10003  
Tel: (212) 558-5500  
Fax: (212) 344-5461

*Attorneys for Plaintiffs*