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6 *Attorneys for Plaintiff and the Putative
Classes*

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8 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
9 **WESTERN DIVISION**

10
11 **MICHAEL MERABI**, on behalf of
himself and all others similarly situated,

CASE NO.: 2:21-cv-06753

12 Plaintiff,

CLASS ACTION COMPLAINT

13
14 v.

15 **HARD EIGHT NUTRITION LLC**, a
limited liability company; and **DOES 1**
16 through 10, inclusive,

17 Defendants.

1. Violation of California Consumer Legal Remedies Act
2. Violation of California False Advertising Law
3. Violation of California Unfair Competition Law
4. Breach of Express Warranty
5. Breach of Implied Warranty
6. Intentional Misrepresentation
7. Negligent Misrepresentation
8. Unjust Enrichment
9. Violation of Magnuson-Moss Warranty Act

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23 **DEMAND FOR JURY TRIAL**

1 Plaintiff Michael Merabi (“Plaintiff”), on behalf of himself and all others
2 similarly situated, brings this class action against Defendant Hard Eight Nutrition
3 LLC and Does 1 through 10 (“Defendant”) based on Defendant’s false and
4 deceptive advertising and labeling of its supplements. Plaintiff makes the following
5 allegations based on the investigation of his counsel, and on information and belief,
6 except as to allegations pertaining to Plaintiff individually, which are based on his
7 personal knowledge.

8 **INTRODUCTION**

9 1. This case is predicated on a systemic course of false, misleading, and
10 unlawful conduct: Defendant has grossly exaggerated the number of servings that its
11 supplements can make in order to induce consumer purchases and to charge more
12 for these supplements.

13 2. Throughout the statute of limitations period, Defendant has sold its
14 supplements to consumers based on the representation that they contain enough
15 ingredients to make a specific number of servings. However, pursuant to
16 Defendant’s own instructions, the supplements do not contain nearly enough
17 ingredients to make the number of servings represented. In fact, they can make, on
18 average, just 53.85% of the servings represented.

19 3. Plaintiff and other consumers purchased Defendant’s supplements
20 based on the reasonable belief, derived from Defendant’s own representation made
21 on the packaging itself, that these supplements contained enough ingredients to
22 make the specified number of servings. Had Plaintiff and other consumers known
23 the truth (i.e., that the supplements do not contain enough ingredients to make the
24 specified number of servings), they would not have purchased them or they would
25 have paid less for them (i.e., they have paid a price premium as a result of the
26 deceptive serving representation). Thus, Plaintiff and other consumers have been
27 deceived and have suffered economic injury.

28

1 approximately \$17.96. In purchasing this product, Plaintiff saw and relied on
2 Defendant's representations made on the packaging. Specifically, Plaintiff
3 reasonably believed that the Potassium Chloride 100g supplement contained enough
4 ingredients to make 500 servings because he saw and relied on the representation
5 "**Servings per container: 500**" (emphasis in original) prominently printed on the
6 packaging. Plaintiff's reasonable belief that the Potassium Chloride supplement he
7 purchased could make 500 servings, as expressly represented, was an important
8 factor in his decision to purchase it. Plaintiff would not have purchased the
9 Potassium Chloride supplement, or he would have paid less for it (i.e., he paid a
10 price premium), but for the deceptive serving representation. Therefore, Plaintiff
11 suffered injury in fact and lost money as a result of Defendant's misleading, false,
12 unfair, and deceptive practices, as described herein.

13 9. Plaintiff would like to continue purchasing Defendant's supplements in
14 the future. However, because of the deceptive representations, Plaintiff cannot trust
15 Defendant's serving size representations. In particular, if Plaintiff were to purchase
16 one of Defendant's supplements, such as the Potassium Chloride supplement, he
17 currently believes that it would not be able to make nearly the number of servings
18 represented if he followed Defendant's instructions. As a direct result of Plaintiff's
19 inability to rely on Defendant's advertising or labeling in the future, Plaintiff will
20 not purchase Defendant's products, even though he would like to do so. This is a
21 tangible and ongoing harm. In addition, Class members will continue purchasing
22 Defendant's supplements, reasonably but incorrectly believing that they contain
23 enough product to make the advertised number of servings. Thus, there is also a
24 continuing risk of harm to the Class.

25 10. Defendant is a Nevada limited liability company with its principal
26 place of business in Las Vegas, Nevada. Defendant, which does business as
27 BulkSupplements.com, produces and distributes consumer supplements, some of
28

1 which are at issue in this case. As such, Defendant is responsible for the labeling,
2 marketing, sale, distribution, and unlawful conduct alleged herein.

3 11. The true names and capacities of DOES 1 through 10, inclusive, are
4 unknown to Plaintiff at this time, and Plaintiff therefore sues such DOE defendants
5 under fictitious names. Upon information and belief, each Defendant designated as a
6 DOE is in some manner highly responsible for the occurrences alleged herein, and
7 Plaintiff and Class members' injuries and damages, as alleged herein, were
8 proximately caused by the conduct of such DOE defendants. Plaintiff will seek
9 leave of the Court to amend this Complaint to allege the true names and capacities
10 of such DOE defendants when ascertained.

11 **FACTUAL ALLEGATIONS**

12 **A. The Products at Issue**

13 12. The products at issue include but are not limited to Defendant's
14 Potassium Chloride, Creatine Monohydrate ("Creatine"), L-Citrulline DL-Malate
15 2:1, Beta Alanine, L-Citrulline, Ascorbic Acid (Vitamin C), Taurine,
16 Methylsulfonylmethane ("MSM"), and L-Arginine supplements (hereinafter
17 referred to as the "Product(s)").

18 13. The Products are sold across the United States primarily through
19 Defendant's e-commerce website (www.bulksupplements.com), as well as through
20 third-party retailers.

21 **B. Defendant Grossly Overstates the Number of Servings the Products** 22 **Can Make**

23 14. Defendant represents on the packaging of each of the Products that they
24 contain enough ingredients to make a specified number of servings. These serving
25 representations are grossly exaggerated and likely to mislead reasonable consumers
26 into believing the Products can make significantly more servings than they actually
27 can.

28 15. Images of the some of the Products' packaging are depicted below:

1 **Figure 1.a: Potassium Chloride 100 g**



2
3
4
5
6 **Potassium Chloride**

7
8 **100g (3.5oz)**

9

SUPPLEMENT FACTS		
Serving Size: 200 milligrams		
Servings per container: 500		
Amount Per Serving	% Daily Value	
Potassium (as Potassium Chloride)	105mg	2%

10 **Free of:** Sugar, soy, dairy, yeast, gluten, or additives

11 **Suggested Use:** As a dietary supplement, take 200 mg (about 1/10) once daily, or as directed by a physician.

12 Store in a dry, cool, dark place.

13 **Other Ingredients:** None

14 **Figure 1.b: Potassium Chloride 100 g**

15 **Frequently Bought Together**



Total price: \$34.88 USD

[Add selected to cart](#)

- 20 **This item: Potassium Chloride** 100 Grams (3.5 oz) \$11.96 USD
- 21 Magnesium Glycinate 100 Grams (3.5 oz) \$11.96 USD
- 22 Magnesium Citrate 100 Grams (3.5 oz) \$10.96 USD

23 **Supplement Facts**

24

Serving Size: 200 milligrams		
Servings Per Container: -		
Amount Per Serving	% Daily Value	
Potassium (as Potassium Chloride)	105 mg	2%

25 **Other Ingredients:** None

26 **Free of:** Sugar, Soy, Dairy, Yeast, Gluten, Additives

27 **Suggested Use:** As a dietary supplement, take 200 mg (about 1/10 tsp) once daily, or as directed by a physician.

1 **Figure 2: Creatine 100 g**

2

3 

4 **Creatine Monohydrate**

5 **(Micronized)**

6 **100g (3.5oz)**

7

8

9 **SUPPLEMENT FACTS**

10 **Serving Size:** 5 grams
Servings per container: 20

Amount Per Serving	% Daily Value
Creatine Monohydrate	5 g

11 *Daily Value not established.

12 **Other Ingredients:** None

13 **Free of:** Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

14 **Suggested Use:** As a dietary supplement, take 5g (about 2 tsp) preferably before a workout, or as directed by a physician. Individual needs may vary. Drink plenty of water.

15 Store in a dry, cool place

14 **Figure 3: L-Citrulline DL-Malate 2:1 100 g**

15

16 

17 **L-Citrulline DL-Malate 2:1**

18 **100g (3.5oz)**

19

20

21

22 **SUPPLEMENT FACTS**

23 **Serving Size:** 3000 milligrams
Servings per container: 33

Amount Per Serving	% Daily Value
L-Citrulline	2000 mg
DL-Malate	1000 mg

24 *Daily Value not established.

25 **Other Ingredients:** None

26 **Free of:** Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

27 **Suggested Use:** As a dietary supplement, take 3000 mg (about 1 1/4 tsp) once or twice daily, or as directed by a physician.

28 Store in a dry, cool place

1 **Figure 4: Beta Alanine 100 g**



Beta Alanine

100g (3.5oz)

SUPPLEMENT FACTS	
Serving Size: 600 milligrams	
Servings per container: 167	
Amount Per Serving	% Daily Value
Beta Alanine	600mg *
*Daily Value not established.	

Free of: Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

Suggested Use: As a dietary supplement, take 600mg (about 1/4 tsp) up to three times daily, or as directed by a physician.

Store in a dry, cool place

Other Ingredients: None

14 **Figure 5: L-Citrulline 100 g**



L-Citrulline

100g (3.5oz)

SUPPLEMENT FACTS	
Serving Size: 3 grams	
Servings per container: 33	
Amount Per Serving	% Daily Value
L-Citrulline	3 g *
*Daily Value not established.	

Free of: Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

Suggested Use: As a dietary supplement, take 3g (about 1/2 tbsp) once or twice daily, or as directed by a physician.

Store in a dry, cool place

Other Ingredients: None

1 **Figure 6: Ascorbic Acid (Vitamin C) 100 g**



2
3
4
5
6 **Ascorbic Acid**
7 **(Vitamin C)**

8 **100g (3.5oz)**

9

SUPPLEMENT FACTS		
Serving Size: 750 milligrams		
Servings per container: 133		
Amount Per Serving	% Daily Value	
Vitamin C (as ascorbic acid)	750 mg	833%

10 **Suggested Use:** As a dietary supplement, take 750mg (1/6 tsp) up to four times daily or as directed by a physician.

11 Store in a dry, cool place

12 **Free of:** Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

13 **Other Ingredients:** None

14
15 **Figure 7: Taurine 100 g**

16 **Taurine**

17
18
19 **100g (3.53oz)**

20

SUPPLEMENT FACTS	
Serving Size: 500 milligrams	
Servings per container: 200	
Amount Per Serving	% Daily Value**
Taurine... 500 mg	*
<small>*Daily Value not established. **Based on 2,000 calorie diet</small>	

21 **Other Ingredients:** None

22 **Free of:** Sugar, soy, dairy, yeast, gluten or additives

23 **Directions:**
As a dietary supplement, take 500 mg (rounded 1/8 tsp) twice daily, or as directed by a physician.

24

US STANDARD MEASURING SPOONS	
Spoon Size (rounded)	milligrams
1/16 teaspoon	227
1/8 teaspoon	454
1/4 teaspoon	908

25 **Storage:** Keep dry, cool & dark

26 **Distributed Exclusively by:**
BulkSupplements.com
7511 Eastgate Road
Henderson, NV 89011

27 **Warning:**
This product is not intended for use by those with a serious medical condition or pregnant or lactating women. Consult your physician before use.

28 **Lot Number:**
Best Before:

KEEP OUT OF REACH OF CHILDREN!

1 **Figure 8: MSM 100 g**



MSM
(Methylsulfonylmethane)

100g (3.5oz)

SUPPLEMENT FACTS	
Serving Size: 1500 milligrams	
Servings per container: 67	
Amount Per Serving	% Daily Value
Methylsulfonylmethane	1500 mg *
*Daily Value not established.	

Free of: Added Sugar, Soy, Dairy, Gluten, Additives

Suggested Use: As a dietary supplement, take 1500 mg (about 1/2 tsp) one to three times daily, or as directed by a physician.

Store in a dry, cool place

Other Ingredients: None

15 **Figure 9: L-Arginine 100 g**



L-Arginine Base

100g (3.5oz)

SUPPLEMENT FACTS	
Serving Size: 1000 milligrams	
Servings per container: 100	
Amount Per Serving	% Daily Value
L-Arginine	1000 mg *
*Daily Value not established.	

Free of: Added Sugar, Soy, Dairy, Yeast, Gluten, Additives

Suggested Use: As a dietary supplement, take 1000mg (about 1/3 tsp) up to three times daily, or as directed by a physician.

Store in a dry, cool place

Other Ingredients: None

28

1 16. Defendant states on the packaging of the Potassium Chloride 100g
2 supplement: “**Servings per container: 500**”. The packaging instructs consumers to
3 “take 200 mg (about 1/10) once daily”. *See* Figure 1.a.

4 17. None of the Products come with scoopers or measuring spoons.
5 Reasonable consumers understand a teaspoon to be the unit of measurement based
6 on how consumers take supplements. On the same webpage of Defendant’s e-
7 commerce website, immediately below images of the Potassium Chloride
8 supplement, it also confirms that the teaspoon is the unit of measurement—i.e.,
9 Defendant’s instructions are to take 1/10 of a teaspoon. *See* Figure 1.b. Moreover,
10 the only other plausible unit of measurement would be a tablespoon, and if a
11 consumer were to use a tablespoon, he or she would get one-third *fewer* servings
12 (one tablespoon equals three teaspoons).

13 18. One teaspoon of the Potassium Chloride supplement weighs
14 approximately 5.69 grams. In turn, 1/10 of 5.69 grams is 569 milligrams. The actual
15 serving size is 200 milligrams.¹ $200 \text{ milligrams} / 569 \text{ milligrams} = 35.15\%$. In other
16 words, a consumer following Defendant’s serving instructions will only be able to
17 make 35.15% of the servings represented on the packaging.

18 19. The same shortfall is reached by comparing the aggregate servings of
19 the Potassium Chloride supplement. In order to make 500 servings, there would
20 need to be 284,500 milligrams [$569 \text{ milligrams} \times 500 \text{ servings}$]. However, there are
21 only 100,000 milligrams in the 100 g package. This also yields just 35.15%
22 [$100,000 \text{ milligrams} / 284,500 \text{ milligrams}$].

23
24
25 ¹ Consumers can reasonably expect to take supplements in the serving amounts as
26 represented on the packaging. A consumer derives no value from taking
27 unnecessary and excessive amounts of product per serving. While this case does
28 not involve any claims for personal injury, increased serving sizes could have
negative value, as excessive amounts of the supplements at issue here can even be
dangerous.

1 20. In sum, if a consumer reasonably follows Defendant’s instructions, the
2 Product will yield 175.75 servings, which is equivalent to just 35.15% of the
3 represented number of servings. Defendant’s representation that the Potassium
4 Chloride 100g supplement makes 500 servings is therefore false, deceptive, and
5 misleading.

6 21. The same deceptive serving representations apply to the other Products
7 as set forth below.

8 22. The Creatine supplement states that one serving is “about 2 tsp”. *See*
9 Figure 2. In turn, two teaspoons of Creatine are approximately 8.50 grams. The
10 actual serving size is 5 grams. $5 \text{ grams} / 8.50 \text{ grams} = 58.82\%$. Thus, a consumer
11 following Defendant’s serving instructions will only be able to make 58.82% of the
12 servings represented on the packaging of the Creatine supplement.

13 23. The L-Citrulline DL-Malate 2:1 supplement states that one serving is
14 “about 1 ¼ tsp”. *See* Figure 3. In turn, one and one-quarter teaspoon of L-Citrulline
15 DL-Malate is 5.6 grams. The actual serving size is 3 grams. $3 \text{ grams} / 5.6 \text{ grams} =$
16 53.57% . Thus, a consumer following Defendant’s serving instructions will only be
17 able to make 53.57% of the servings represented on the packaging of the L-
18 Citrulline DL-Malate 2:1 supplement.

19 24. The Beta Alanine supplement states that one serving constitutes “about
20 1/4 tsp”. *See* Figure 4. In turn, one-quarter teaspoon of Beta Alanine is 1.4 grams
21 (1400 milligrams). The actual serving size is 0.6 grams, or 600 milligrams. 600
22 $\text{milligrams} / 1400 \text{ milligrams} = 42.86\%$. Thus, a consumer following Defendant’s
23 serving instructions will only be able to make 42.86% of the servings represented on
24 the packaging of the Beta Alanine supplement.

25 25. The L-Citrulline supplement states that one serving constitutes “about
26 1/2 tbsp”. *See* Figure 5. In turn, half of one tablespoon of L-Citrulline is 5.80 grams.
27 The actual serving size is 3 grams. $3 \text{ grams} / 5.80 \text{ milligrams} = 51.72\%$. Thus, a
28

1 consumer following Defendant's serving instructions will only be able to make
2 51.72% of the servings represented on the packaging of the L-Citrulline supplement.

3 26. The Ascorbic Acid (Vitamin C) supplement states that one serving
4 constitutes "1/6 tsp". *See* Figure 6. In turn, one-sixth teaspoon of Ascorbic Acid (Vit
5 C) is 0.75 grams (750 milligrams). The actual serving size is 1.07 grams, or 1070
6 milligrams. $750 \text{ milligrams} / 1070 \text{ milligrams} = 70.09\%$. Thus, a consumer
7 following Defendant's serving instructions will only be able to make 70.09% of the
8 servings represented on the packaging of the Ascorbic Acid (Vit C) supplement.

9 27. The Taurine supplement states that one serving constitutes "rounded
10 1/8 tsp". *See* Figure 7. In turn, a rounded one-eighth teaspoon of Taurine is 1.10
11 grams (1100 milligrams). The actual serving size is 0.5 grams, or 500 milligrams.
12 $500 \text{ milligrams} / 1100 \text{ milligrams} = 45.45\%$. Thus, a consumer following
13 Defendant's serving instructions will only be able to make 45.45% of the servings
14 represented on the packaging of the Taurine supplement.

15 28. The MSM supplement states that one serving constitutes "about 1/2
16 tsp". *See* Figure 8. In turn, half of one teaspoon of MSM is 2.70 grams (2700
17 milligrams). The actual serving size is 1.50 grams, or 1500 milligrams. 1500
18 $\text{milligrams} / 2700 \text{ milligrams} = 55.56\%$. Thus, a consumer following Defendant's
19 serving instructions will only be able to make 55.56% of the servings represented on
20 the packaging of the MSM supplement.

21 29. The L-Arginine supplement states that one serving constitutes "about
22 1/3 tsp". *See* Figure 9. In turn, one-third teaspoon of L-Arginine is 1.40 grams (1400
23 milligrams). The actual serving size is 1.00 grams, or 1400 milligrams. 1000
24 $\text{milligrams} / 1400 \text{ milligrams} = 71.43\%$. Thus, a consumer following Defendant's
25 serving instructions will only be able to make 71.43% of the servings represented on
26 the packaging of the L-Arginine supplement.

27 30. Defendant places a materially identical representation on the packaging
28 of all the Products, although the number of represented servings of course varies

1 based on the package size (e.g., 250g, 500g, 1kg, 5kg). Calculations by Product and
 2 size are set forth in the following chart:

3	Product	Net Weight	Servings Represented	Servings Yielded	Percentage Servings Yielded
4	Potassium Chloride	100 g	500	176	35.15%
5	Potassium Chloride	250 g	1250	439	35.15%
6	Potassium Chloride	500 g	2500	879	35.15%
7	Potassium Chloride	1 kg	5000	1758	35.15%
8	Creatine	100 g	20	12	58.82%
9	Creatine	250 g	50	29	58.82%
10	Creatine	500 g	100	59	58.82%
11	Creatine	1 kg	200	118	58.82%
12	L-Citrulline DL-Malate 2:1	100 g	33	18	53.57%
13	L-Citrulline DL-Malate 2:1	250 g	83	44	53.57%
14	L-Citrulline DL-Malate 2:1	500 g	167	89	53.57%
15	L-Citrulline DL-Malate 2:1	1 kg	333	178	53.57%
16	Beta Alanine	100 g	167	72	42.86%
17	Beta Alanine	250 g	417	179	42.86%
18	Beta Alanine	500 g	833	357	42.86%
19	Beta Alanine	1 kg	1667	714	42.86%
20	L-Citrulline	100 g	33	17	51.72%
21	L-Citrulline	250 g	83	43	51.72%
22	L-Citrulline	500 g	167	86	51.72%
23	L-Citrulline	1 kg	333	172	51.72%
24	Ascorbic Acid (Vitamin C)	100 g	133	93	70.09%
25	Ascorbic Acid (Vitamin C)	250 g	333	233	70.09%
26	Ascorbic Acid (Vitamin C)	500 g	667	468	70.09%
27	Ascorbic Acid (Vitamin C)	1 kg	1333	934	70.09%
28	Taurine	100 g	200	91	45.45%
	Taurine	250 g	500	227	45.45%
	Taurine	500 g	1000	455	45.45%
	Taurine	1 kg	2000	909	45.45%
	MSM	100 g	67	37	55.56%
	MSM	250 g	167	93	55.56%
	MSM	500 g	333	185	55.56%

1	MSM	1 kg	667	371	55.56%
2	L-Arginine	100 g	100	71	71.43%
3	L-Arginine	250 g	250	179	71.43%
4	L-Arginine	500 g	500	357	71.43%
5	L-Arginine	1 kg	1000	714	71.43%

6 31. As evident from the chart above, each and every one of the Products
 7 contains substantially less ingredients than needed to make the recommended
 8 number of servings promised on the packaging. On average, there is a shortfall of
 9 53.85%, revealing a systematic course of unlawful conduct by Defendant to deceive
 10 and shortchange consumers.

11 **C. The False and Deceptive Serving Size Representation Harms Consumers**

12 32. Plaintiff and other consumers purchased the Products relying on
 13 Defendant’s serving size representations on the Products’ packaging.

14 33. Plaintiff’s and consumers’ reasonable belief that the Products are able
 15 to make the represented number of servings was a significant factor in each of their
 16 decisions to purchase the Products.

17 34. Plaintiff and Class members did not know, and had no reason to know,
 18 that the Products’ labeling vastly overstates the number of servings they are able to
 19 make. At the time of purchase, a reasonable consumer cannot measure or calculate
 20 how many servings the Products can make. Nor are reasonable consumers expected
 21 to keep track of the precise number of servings—particularly over a period of time.

22 35. As the entity responsible for the development, manufacturing,
 23 packaging, advertising, distribution and sale of the Products, Defendant knew or
 24 should have known that each of the Products falsely and deceptively overstates the
 25 number of servings that can be made.

26 36. Defendant also knew or should have known that Plaintiff and other
 27 consumers, in purchasing the Products, would rely on Defendant’s serving size
 28 representations. Nonetheless, Defendant deceptively advertises the Products in order

1 to deceive consumers into believing they are getting considerably more of the
2 Product than they are paying for.

3 37. Consumers are willing to pay more for the Products based on the belief
4 that the Products contain enough ingredients to make the represented number of
5 servings. Plaintiff and other consumers would have paid significantly less for the
6 Products (i.e., they paid a price premium), or would not have purchased them at all,
7 had they known that they were getting fewer servings than what they were
8 promised.

9 38. By analogy, if a consumer purchased a six-pack of soda, but only
10 received three cans of soda, he would only be receiving 50% of what he paid for.
11 The situation here is no different in terms of financial harm to the consumer. The
12 only difference is that, due to the nature of the Products, Defendant is able to
13 conceal the gross shortfall because reasonable consumers do not keep track of the
14 number of servings they can make over a period of time.

15 39. Therefore, Plaintiff and other consumers purchasing the Products have
16 suffered injury in fact and lost money as a result of Defendant's false and deceptive
17 practices, as described herein.

18 **CLASS ACTION ALLEGATIONS**

19 40. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all
20 other applicable laws and rules, individually, and on behalf of all members of the
21 following Classes:

22 **Nationwide Class**

23 All persons who purchased any of the Products in the United States within the
24 applicable statute of limitations period.

25 **California Subclass**

26 All persons who purchased any of the Products in the state of California
27 within the applicable statute of limitations period.

28

1 **California Consumer Subclass**

2 All persons who purchased any of the Products in the state of California, for
3 personal, family, or household purposes, within the applicable statute of
4 limitations period.

5 41. Excluded from the Classes are the following individuals and/or entities:
6 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
7 former employees, and any entity in which Defendant has a controlling interest; all
8 individuals who make a timely election to be excluded from this proceeding using
9 the correct protocol for opting out; and all judges assigned to hear any aspect of this
10 litigation, as well as their immediate family members.

11 42. Plaintiff reserves the right to modify or amend the definition of the
12 proposed Classes and/or add subclasses before the Court determines whether
13 certification is appropriate.

14 43. Plaintiff is a member of the Nationwide Class, the California Subclass,
15 and the California Consumer Subclass.

16 44. Numerosity: The proposed Classes are so numerous that joinder of all
17 members would be impractical. The Products are sold throughout the United States
18 and the State of California. The number of individuals who purchased the Products
19 during the relevant time period is at least in the thousands. Accordingly, Class
20 members are so numerous that their individual joinder herein is impractical. While
21 the precise number of Class members and their identities are unknown to Plaintiff at
22 this time, these Class members are identifiable and ascertainable.

23 45. Common Questions Predominate: There are questions of law and fact
24 common to the proposed Classes that will drive the resolution of this action and will
25 predominate over questions affecting only individual Class members. These
26 questions include, but are not limited to, the following:
27
28

- 1 a. Whether Defendant misrepresented material facts and/or failed to
- 2 disclose material facts in connection with the packaging, marketing,
- 3 distribution, and sale of the Products;
- 4 b. Whether Defendant's use of false or deceptive packaging and
- 5 advertising constituted false or deceptive advertising;
- 6 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent
- 7 business practices;
- 8 d. Whether Defendant's unlawful conduct, as alleged herein, was
- 9 intentional and knowing;
- 10 e. Whether Plaintiff and the Classes are entitled to damages and/or
- 11 restitution, and in what amount;
- 12 f. Whether Defendant is likely to continue using false, misleading or
- 13 unlawful conduct such that an injunction is necessary; and
- 14 g. Whether Plaintiff and the Classes are entitled to an award of
- 15 reasonable attorneys' fees, interest, and costs of suit.

16 46. Defendant has engaged in a common course of conduct giving rise to
17 violations of the legal rights sought to be enforced uniformly by Plaintiff and Class
18 members. Similar or identical statutory and common law violations, business
19 practices, and injuries are involved. The injuries sustained by members of the
20 proposed Classes flow, in each instance, from a common nucleus of operative fact,
21 namely, Defendant's deceptive packaging and advertising of the Products. Each
22 instance of harm suffered by Plaintiff and Class members has directly resulted from
23 a single course of illegal conduct. Each Class member has been exposed to the same
24 deceptive practice, as each of the Products: (a) bear the materially same serving
25 amount representations, and (b) do not contain enough ingredients to make
26 anywhere close to the represented serving amount. Therefore, individual questions,
27 if any, pale in comparison to the numerous common questions presented in this
28 action.

1 53. The Products are “goods” within the meaning of Cal. Civ. Code §
2 1761(a), and the purchases of such Products by Plaintiff and members of the
3 California Consumer Subclass constitute “transactions” within the meaning of Cal.
4 Civ. Code § 1761(e).

5 54. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
6 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
7 quantities which they do not have” By marketing the Products with their current
8 packaging, Defendant has represented and continues to represent that the Products
9 have characteristics (i.e., contain enough ingredients to make a specified number of
10 servings) that they do not have. Therefore, Defendant has violated section 1770(a)(5)
11 of the CLRA.

12 55. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or
13 services are of a particular standard, quality, or grade, or that goods are of a
14 particular style or model, if they are of another.” By marketing the Products with
15 their current packaging, Defendant has represented and continues to represent that the
16 Products are of a particular standard (i.e., contain enough ingredients to make a certain
17 number of servings) which they do not possess. Therefore, Defendant has violated
18 section 1770(a)(7) of the CLRA.

19 56. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
20 with intent not to sell them as advertised.” By marketing the Products as containing
21 enough ingredients to make a specified number of servings, but not intending to sell the
22 Products as such Defendant has violated section 1770(a)(9) of the CLRA.

23 57. At all relevant times, Defendant has known or reasonably should have
24 known that the Products did not and do not contain enough ingredients to make the
25 represented number of servings, and that Plaintiff and other members of the
26 California Consumer Subclass would reasonably and justifiably rely on the
27 packaging in purchasing the Products.

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1 58. Plaintiff and members of the California Consumer Subclass have
2 justifiably relied on Defendant’s misleading representations when purchasing the
3 Products. Moreover, based on the materiality of Defendant’s misleading and
4 deceptive conduct, reliance may be presumed or inferred for Plaintiff and members
5 of California Consumer Subclass.

6 59. Plaintiff and members of the California Consumer Subclass have
7 suffered and continue to suffer injuries caused by Defendant because they would
8 have paid significantly less for the Products, or would not have purchased them at
9 all, had they known that the Products contain a substantially deficient amount of
10 ingredients to make the promised number of servings.

11 60. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a
12 declaration of venue, attached hereto as Exhibit A to this Complaint.

13 61. On May 20, 2021, Plaintiff sent a notice letter by certified mail to
14 Defendant of his intent to pursue claims under, *inter alia*, the CLRA, and an
15 opportunity to cure, consistent with Cal. Civ. Code § 1782. Defendant received this
16 notice and demand letter on or about May 24, 2021.

17 62. Because Defendant has failed to fully rectify or remedy the damages
18 caused after waiting more than the statutorily required 30 days after it received the
19 foregoing notice and demand letters, Plaintiff is timely filing this Complaint for
20 damages as permitted under Cal. Civ. Code § 1782(d).

21 63. Plaintiff requests that this Court enjoin Defendant from continuing to
22 violate the CLRA as discussed herein and/or from violating the CLRA in the future
23 and to order restitution to Plaintiff and the Class. Plaintiff also requests an award of
24 actual and punitive damages, attorneys’ fees and costs, and any other relief that the
25 Court deems proper, pursuant to California Civil Code § 1780(a).

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SECOND CLAIM FOR RELIEF
Violation of California’s False Advertising Law
California Business & Professions Code § 17500, *et seq*
(For the California Subclass and California Consumer Subclass)

64. Plaintiff repeats the allegations contained in paragraphs 1-50 above as if fully set forth herein.

65. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass and California Consumer Subclass against Defendant pursuant to California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq*.

66. The FAL makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

67. Defendant has represented and continues to represent to the public, including Plaintiff and members of both Classes, through its deceptive packaging, that the Products contain enough ingredients to make substantially more servings than they can actually make. Because Defendant has disseminated misleading information regarding the Products, and Defendant knows, knew, or should have known through the exercise of reasonable care that the representations were and continue to be misleading, Defendant has violated the FAL.

68. As a result of Defendant’s false advertising, Defendant has and continues to unlawfully obtain money from Plaintiff and members of both Classes.

69. Plaintiff requests that this Court cause Defendant to restore this fraudulently obtained money to him and members of both Classes, to disgorge the profits Defendant made on these transactions, and to enjoin Defendant from

1 violating the FAL or violating it in the same fashion in the future as discussed
2 herein. Otherwise, Plaintiff and members of both Classes may be irreparably harmed
3 and/or denied an effective and complete remedy if such an order is not granted.

4 **THIRD CLAIM FOR RELIEF**
5 **Violation of California’s Unfair Competition Law (“UCL”),**
6 **California Business & Professions Code § 17200, *et seq.***
(For the California Subclass and California Consumer Subclass)

7 70. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
8 if fully set forth herein.

9 71. Plaintiff brings this claim individually and on behalf of the members of
10 the proposed California Subclass and California Consumer Subclass against
11 Defendant.

12 72. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part,
13 that “unfair competition shall mean and include unlawful, unfair or fraudulent
14 business practices and unfair, deceptive, untrue or misleading advertising”

15 73. Under the UCL, a business act or practice is “unlawful” if it violates
16 any established state or federal law. Defendant’s false and misleading advertising of
17 the Products was and continues to be “unlawful” because it violates the CLRA, the
18 FAL, and other applicable laws as described herein. As a result of Defendant’s
19 unlawful business acts and practices, Defendant has unlawfully obtained money
20 from Plaintiff, and members of the Classes.

21 74. Under the UCL, a business act or practice is “unfair” if the Defendant’s
22 conduct is substantially injurious to consumers, offends public policy, and is
23 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing
24 such acts or practices are outweighed by the gravity of the harm to the alleged
25 victims. Defendant’s conduct was and continues to be of no benefit to purchasers of
26 the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who
27 rely on the packaging. Deceiving consumers as to how many servings the Products
28 can make is of no benefit to consumers. Therefore, Defendant’s conduct was and

1 continues to be “unfair.” As a result of Defendant’s unfair business acts and
2 practices, Defendant has and continues to unfairly obtain money from Plaintiff, and
3 members of both Classes.

4 75. Under the UCL, a business act or practice is “fraudulent” if it actually
5 deceives or is likely to deceive members of the consuming public. Defendant’s
6 conduct here was and continues to be fraudulent because it has the effect of
7 deceiving consumers into believing that the Products contain enough ingredients to
8 make substantially more servings than they can actually make. Because Defendant
9 misled Plaintiff and members of both Classes, Defendant’s conduct was
10 “fraudulent.” As a result of Defendant’s fraudulent business acts and practices,
11 Defendant has and continues to fraudulently obtain money from Plaintiff and
12 members of both Classes.

13 76. Plaintiff requests that this Court cause Defendant to restore this
14 unlawfully, unfairly, and fraudulently obtained money to him, and members of both
15 Classes, to disgorge the profits Defendant made on these transactions, and to enjoin
16 Defendant from violating the UCL or violating it in the same fashion in the future as
17 discussed herein. Otherwise, Plaintiff and members of both Classes may be
18 irreparably harmed and/or denied an effective and complete remedy if such an order
19 is not granted.

20 **FOURTH CLAIM FOR RELIEF**

21 **Breach of Express Warranty**

22 *(For the California Subclass and California Consumer Subclass)*

23 77. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
24 if fully set forth herein.

25 78. Plaintiff brings this claim individually and on behalf of the members of
26 the proposed California Subclass and California Consumer Subclass against
27 Defendant.

28 79. California’s express warranty statute provides that “(a) Any affirmation

1 of fact or promise made by the seller to the buyer which relates to the goods and
2 becomes part of the basis of the bargain creates an express warranty that the goods
3 shall conform to the affirmation or promise,” and “(b) Any description of the goods
4 which is made part of the basis of the bargain creates an express warranty that the
5 goods shall conform to the description.” Cal. Com. Code § 2313.

6 80. Defendant has expressly warranted on the Products’ packaging that
7 they can make a specific number of servings. For example, Defendant expressly
8 states on the packaging of the 100 g Potassium Chloride supplement: “**Servings per**
9 **container: 500**”. However, as alleged herein, this express representation is patently
10 false, as this Product can only make 175.75 servings, or 35.15% of the servings
11 promised by Defendant. All of the other varieties and sizes of the Products contain
12 materially identical express representations that are false.

13 81. These representations about the Products: (a) are affirmations of fact or
14 promises made by Defendant to consumers that the Products contain enough
15 ingredients to make a specific number of servings; (b) became part of the basis of
16 the bargain to purchase the Products when Plaintiff and other consumers relied on
17 the representation; and (c) created an express warranty that the Products would
18 conform to the affirmations of fact or promises. In the alternative, the
19 representations about the Products are descriptions of goods which were made as
20 part of the basis of the bargain to purchase the Products, and which created an
21 express warranty that the Products would conform to the product description.

22 82. Plaintiff and members of the Classes reasonably and justifiably relied
23 on the foregoing express warranties, believing that the Products did in fact conform
24 to those warranties.

25 83. Defendant has breached the express warranties made to Plaintiff and
26 members of the Classes by failing to manufacture the Products with enough
27 ingredients to make the specific number of servings that were expressly warranted
28 on the packaging.

1 84. Plaintiff and members of the Classes paid a premium price for the
2 Products but did not obtain the full value of the Products as represented. If Plaintiff
3 and members of the Classes had known of the true nature of the Products, they
4 would not have been willing to pay the premium price associated with the Products.

5 85. As a result, Plaintiff and members of the Classes suffered injury and
6 deserve to recover all damages afforded under the law.

7 86. Within a reasonable amount of time after Plaintiff discovered that
8 Defendant did in fact breach the express warranty, Plaintiff notified Defendant of
9 the breach.

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FIFTH CLAIM FOR RELIEF
Breach of Implied Warranty
(For the California Subclass and California Consumer Subclass)

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13 87. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
14 if fully set forth herein.

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15 88. Plaintiff brings this claim individually and on behalf of the members of
16 the proposed California Subclass and California Consumer Subclass against
17 Defendant.

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18 89. California’s implied warranty of merchantability statute provides that
19 “a warranty that the goods shall be merchantable is implied in a contract for their
20 sale if the seller is a merchant with respect to goods of that kind.” Cal. Com. Code §
21 2314(1).

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22 90. California’s implied warranty of merchantability statute also provides
23 that “[g]oods to be merchantable must be at least such as . . . (f) conform to the
24 promises or affirmations of fact made on the container or label if any.” Cal. Com.
25 Code § 2314(2)(f).

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26 91. Defendant is a merchant with respect to the sale of Products. Therefore,
27 a warranty of merchantability is implied in every contract for sale of the Products to
28 California consumers.

1 representations and would be induced to act thereon in making purchase decisions.

2 99. At all relevant times when such misrepresentations were made,
3 Defendant knew that the representations were misleading, or have acted recklessly
4 in making the representations, without regard to the truth.

5 100. Defendant intends that Plaintiff and other consumers rely on these
6 representations, as evidenced by Defendant intentionally and conspicuously placing
7 the misleading representations on the Products' packaging.

8 101. Plaintiff and members of the Classes have reasonably and justifiably
9 relied on Defendant's intentional misrepresentations when purchasing the Products,
10 and had the correct facts been known, would not have purchased them at the prices
11 at which they were offered.

12 102. Therefore, as a direct and proximate result of Defendant's intentional
13 misrepresentations, Plaintiff and members of the Classes have suffered economic
14 losses and other general and specific damages, including but not limited to the
15 amounts paid for the Products, and any interest that would have accrued on those
16 monies, all in an amount to be proven at trial.

17 **SEVENTH CLAIM FOR RELIEF**
18 **Negligent Misrepresentation**
(for the Classes)

19 103. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
20 if fully set forth herein.

21 104. Plaintiff brings this claim individually and on behalf of the members of
22 the proposed Classes against Defendant.

23 105. Defendant marketed the Products in a manner indicating that they
24 contain enough ingredients to make a specific number of servings. However, the
25 Products cannot make anywhere close to the represented number of servings.
26 Therefore, Defendant has made misrepresentations about the Products.

27 106. Defendant's misrepresentations regarding the Products are material to a
28 reasonable consumer because they relate to the amount of product the consumer is

1 receiving and paying for. A reasonable consumer would attach importance to such
2 representations and would be induced to act thereon in making purchase decisions.

3 107. At all relevant times when such misrepresentations were made,
4 Defendant knew or had been negligent in not knowing that that the Products did not
5 contain enough ingredients to make the specified number of servings. Defendant had
6 no reasonable grounds for believing its misrepresentations were not false and
7 misleading.

8 108. Defendant intends that Plaintiff and other consumers rely on these
9 representations, as evidenced by Defendant intentionally and conspicuously placing
10 the misleading representations on the packaging.

11 109. Plaintiff and members of the Classes have reasonably and justifiably
12 relied on Defendant's negligent misrepresentations when purchasing the Products,
13 and had the correct facts been known, would not have purchased them at the prices
14 at which they were offered.

15 110. Therefore, as a direct and proximate result of Defendant's negligent
16 misrepresentations, Plaintiff and members of the Classes have suffered economic
17 losses and other general and specific damages, including but not limited to the
18 amounts paid for the Products, and any interest that would have accrued on those
19 monies, all in an amount to be proven at trial.

20 **EIGHTH CLAIM FOR RELIEF**
21 **Quasi Contract/Unjust Enrichment/Restitution**
22 ***(for the Classes)***

23 111. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
24 if fully set forth herein.

25 112. Plaintiff brings this claim individually and on behalf of the members of
26 the proposed Classes against Defendant.

27 113. As alleged herein, Defendant has intentionally and recklessly made
28 misleading representations to Plaintiff and members of the Classes to induce them to

1 purchase the Products. Plaintiff and members of the Classes have reasonably relied
2 on the misleading representations and have not received all of the benefits promised
3 by Defendant. Plaintiff and members of the Classes therefore have been induced by
4 Defendant’s misleading and deceptive representations about the Products, and paid
5 more money to Defendant for the Products than they otherwise would and/or should
6 have paid.

7 114. Plaintiff and members of the Classes have conferred a benefit upon
8 Defendant as Defendant has retained monies paid to them by Plaintiff and members
9 of the Classes.

10 115. The monies received were obtained under circumstances that were at
11 the expense of Plaintiff and members of the Classes—i.e., Plaintiff and members of
12 the Classes did not receive the full value of the benefit conferred upon Defendant.

13 116. Therefore, it is inequitable and unjust for Defendant to retain the profit,
14 benefit, or compensation conferred upon them without paying Plaintiff and the
15 members of the Classes back for the difference of the full value of the benefits
16 compared to the value actually received.

17 117. As a direct and proximate result of Defendant’s unjust enrichment,
18 Plaintiff and members of the Classes are entitled to restitution, disgorgement, and/or
19 the imposition of a constructive trust upon all profits, benefits, and other
20 compensation obtained by Defendant from its deceptive, misleading, and unlawful
21 conduct as alleged herein.

22 **NINTH CLAIM FOR RELIEF**
23 **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.***
24 **Implied Warranty of Merchantability Under California Law**
(for the Nationwide Class)

25 118. Plaintiff repeats the allegations contained in paragraphs 1-50 above as
26 if fully set forth herein.

27 119. Plaintiff brings this claim individually and on behalf of the proposed
28 Nationwide Class.

1 C. An award of injunctive and other equitable relief as is necessary to
2 protect the interests of Plaintiff and the Classes, including, *inter alia*, an order
3 prohibiting Defendant from engaging in the unlawful act described above;

4 D. An award to Plaintiff and the proposed Classes of restitution and/or
5 other equitable relief, including, without limitation, restitutionary disgorgement of
6 all profits and unjust enrichment that Defendant obtained from Plaintiff and the
7 proposed Classes as a result of its unlawful, unfair and fraudulent business practices
8 described herein;

9 E. An award of all economic, monetary, actual, consequential, and
10 compensatory damages caused by Defendant’s conduct;

11 F. An award of punitive damages;

12 G. An award to Plaintiff and his counsel of reasonable expenses and
13 attorneys’ fees;

14 H. An award to Plaintiff and the proposed Classes of pre and post-
15 judgment interest, to the extent allowable; and

16 I. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Classes, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August 20, 2021

THE WAND LAW FIRM, P.C.

By: /s/ Aubry Wand

Aubry Wand

CUSTODIO & DUBEY, LLP

By: /s/ Robert Abiri

Attorneys for Plaintiff and the Putative Classes