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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MISTY CHOO and DIANNE E. LEE,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WELLNx LIFE SCIENCES, INC. and
PLATINUM US DISTRIBUTION,
INC. d/b/a WELLNx LIFE
SCIENCES, USA,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiffs Misty Choo and Dianne E. Lee (“Plaintiffs”), by and through their undersigned counsel, bring this action on their own behalf and on behalf of a Class of persons and entities defined herein against Defendant, Wellnx Life Sciences, Inc. and Defendant, Platinum US Distribution, Inc. d/b/a Wellnx Life Sciences, USA

1 (collectively, “Defendants” or “Wellnx”), and, for their Complaint, alleges upon
2 information and belief and based on the investigation to date of their counsel, as follows:
3

4 **INTRODUCTION**

5 1. This is a class action brought individually by Plaintiffs Misty Choo and
6 Dianne E. Lee, on behalf of themselves and a class of persons similarly situated (the
7 “Class” or “Classes” or “Class Members”), who purchased the weight-loss dietary
8 supplement Nature’s Science “100% Pure Garcinia Cambogia” (“Product”). Plaintiffs
9 allege that Defendants’ efficacy claims for the Product are false and misleading and that
10 Defendants do not provide the represented amount of the active ingredient, hydroxycitric
11 acid (“HCA”), in the Product.
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15 2. Sales of retail diet pills, combined with meal replacements, are in the
16 billions of dollars in the United States on an annual basis.
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18 3. Defendants advertise, manufacture, market, sell and distribute the Product
19 that is sold in the growing and extremely competitive diet/weight-loss dietary supplement
20 industry as “made with 100% pure natural ingredients” that unlike competitors’ products
21 “is made with premium garcinia cambogia that supplies 60% HCA, which is the active
22 weight loss component of garcinia cambogia” and claim that their Product has “5 times
23 MORE Garcinia Cambogia than the competitor” (but it lists no “competitor” on their
24 label).
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1 4. Defendants claim their Product is an effective weight-loss dietary
2 supplement and encourage consumers to “Start Losing Weight Today!” Although
3 Defendants boast about the Product’s efficacy on their labeling and in their advertising,
4 none of the promised benefits is or can be delivered by the Product.
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19 5. To make matters worse, Defendants only provide approximately 26% of the
20 amount of HCA claimed on the Product label.
21

22 6. In late 2012, Dr. Mehmet Oz (“Dr. Oz.”) of the highly popular TV show,
23 “The Dr. Oz Show,” claimed on his website that Garcinia Cambogia was the “Newest,
24 Fastest Fat-Buster” and declared on his TV show, “Thanks to brand new scientific
25 research, I can tell you about a revolutionary fat buster” with the words “No Exercise. No
26 Diet. No Effort” on the screen behind him.
27
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1 7. In June 2014, Dr. Oz’s representations regarding weight-loss products,
2
3 including Garcinia Cambogia, were called into question by the United States Senate’s
4 Subcommittee on Consumer Protection, Product Safety, and Insurance, where Dr. Oz was
5 called to testify.
6

7 8. When presented with studies refuting the efficacy of Garcinia Cambogia, Dr.
8 Oz testified that he could not be held responsible for what companies say about their
9 products, and that he has toned down some of his language and will publish a list of
10 products he believes can actually help people lose weight.
11

12 9. With all the hype surrounding this new “miracle” diet pill, many dietary
13 supplement manufacturers, including Defendants, decided to exploit this opportunity to
14 make money off the unassuming consumer, regardless of the science refuting their claims
15 regarding the Product.
16
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18 10. As a result of Defendants’ unfair, deceptive, fraudulent, and misleading
19 practices, Plaintiffs and Class Members did not receive the benefit of their bargain
20 because they were deceived into purchasing the Product which they would not otherwise
21 have purchased, or would have purchased at a substantially lower price than that charged
22 by Defendants.
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JURISDICTION AND VENUE

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3 11. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
4 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
5 \$5,000,000.00 and is a class action in which there are in excess of 100 class members,
6
7 several of whom are citizens of a state different from Defendants.

8
9 12. This Court has personal jurisdiction over Defendants because Defendants are
10 authorized to conduct and do business in California, including this District. Defendants
11 marketed, promoted, distributed, and sold the Product in California, and Defendants have
12 sufficient minimum contacts with this State and/or sufficiently availed themselves of the
13 markets in this State through their promotion, sales, distribution, and marketing of the
14 Product within this State, including this District, to render the exercise of jurisdiction by
15 this Court permissible.
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19 13. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
20 because a substantial part of the events giving rise to California Plaintiff Misty Choo’s
21 claims occurred while she resided in this judicial district. Venue is also proper under 18
22 U.S.C. §1965(a) because Defendants transact substantial business in this District.
23

24 14. This Court has subject matter jurisdiction of this action pursuant to the Class
25 Action Fairness Act, 28 U.S.C. § 1332(d)(2), because the amount in controversy exceeds
26 \$5,000,000.00, exclusive of interests and costs, and many Members of the proposed Class
27 are citizens of states different from that of the Defendants.
28

FACTUAL ALLEGATIONS

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3 20. Plaintiff Misty Choo, a resident and citizen of Chico, Butte County,
4 California, purchased the Nature’s Science 100% Garcinia Cambogia Product in or
5 around 2015 from Ebay.com, and paid approximately \$19.99 for the Product. Prior to
6 purchasing the Product, she read and relied on the advertising claims made by Defendants
7 as described herein, and purchased the Product under the belief that it would help her lose
8 weight as advertised. After ingesting this supplement as directed, she questioned whether
9 it contained the active ingredients as advertised, and whether those ingredients, in fact,
10 would help her lose weight. She, like other reasonable consumers, was deceived by the
11 Product’s false claims. She did not receive the benefit of her bargain when she purchased
12 the Product based upon false and unsupported claims made by Wellnx, selling the
13 Product under the Nature’s Science label. She was economically injured when she
14 purchased the Product based upon Defendants’ fraudulent misrepresentations regarding
15 the value and efficacy of the Product, as listed on the Product’s label and in Defendants’
16 advertising. She would not have purchased the Product or would have paid less for it had
17 its characteristics and efficacy been truthfully advertised.

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24 21. Plaintiff Dianne Lee is a resident and citizen of Charlotte, Mecklenburg
25 County, North Carolina. Ms. Lee purchased two bottles of the Nature’s Science 100%
26 Garcinia Cambogia Product between July 2016 and February 2017 from Wal-Mart
27 Supercenter, 3850 E Independence Blvd., Charlotte, NC 28205, and paid approximately
28

1 \$19.99 for the Products. Prior to purchasing the Product, she read and relied on the
2 advertising claims made by Defendants as described herein, and purchased the Product
3 under the belief that it would help her lose weight. After ingesting this supplement as
4 directed, without success, she did not believe that it contained the active ingredients as
5 advertised, or that it would help her lose weight. She did not receive the benefit of her
6 bargain when she purchased the Product based upon false and unsupported claims shown
7 on the Nature's Science 100% Garcinia Cambogia label. She, like other reasonable
8 consumers, was deceived by the Product's false claims. She was economically injured
9 when she purchased the Product based upon Defendants' fraudulent misrepresentations
10 regarding the value and efficacy of the Product, as listed on the Product's label and in
11 Defendants' advertising. She would not have purchased the Product or would have paid
12 less for it had its characteristics and efficacy been truthfully advertised.
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18 22. Defendants manufacture, distribute, market, and sell over-the-counter weight
19 loss products, including "Nature's Science 100% Pure Garcinia Cambogia" ("Product").
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21 23. Defendants unapologetically boast about the efficacy of Garcinia Cambogia
22 – the main active ingredient in the Product – despite the overwhelming scientific
23 literature refuting the fat burning, weight loss, and appetite suppression claims.
24

25 24. Under information and belief, Defendants had access to, but knowingly
26 and/or recklessly ignored all competent and reliable scientific evidence regarding the
27 main active ingredient in the Product, Garcinia Cambogia - HCA.
28

1 25. Defendants made false claims regarding the efficacy of the Product in
2 providing weight loss, weight management, and inhibiting fat production.

3
4 26. Defendants also knowingly and/or recklessly under-dosed the Product's
5 allegedly active ingredient, HCA.

6
7 27. Defendants state the following false/misleading claims on the Product's
8 label and on the Product's website advertising at
9 <http://www.naturessciencesupplements.com>, as shown below:

- 10
11 a. "100% Pure Garcinia Cambogia";
12
13 b. "Effective Weight Loss!";
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15 c. "[M]ade with premium garcinia cambogia that supplies 60% HCA, which is
16 the active weight-loss component of garcinia cambogia";
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18 d. "[S]cientifically formulated to deliver the exact clinically tested dose of
19 4667mg of garcinia cambogia per day that is needed to see results!";
20
21 e. "The Best of Nature and Science, New Nature's Science is a line of natural,
22 high quality, weight-loss supplements that are scientifically formulated for
23 better efficacy!"; and
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25 f. "Nature's Science products are made with pure natural ingredients. Unlike
26 other products, Nature's Science product are made with premium natural
27 ingredients for effective results."
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THE BEST OF NATURE & SCIENCE

New Nature's Science is a line of natural, high-quality, weight-loss supplements that are scientifically formulated for better efficacy!

ABOUT OUR PRODUCTS

NATURAL INGREDIENTS
Nature's Science products are made with pure natural ingredients. Unlike other products, Nature's Science products are made with premium natural ingredients for effective results.

SCIENTIFICALLY FORMULATED
Nature's Science products are formulated to deliver the exact clinically tested dose that are needed to see results!



100% MONEY BACK GUARANTEE

Nature's Science is guaranteed to work or your money back

Simply return it to the place of purchase within 30 days for a refund with original receipt

1 28. All of the labeling and marketing claims of Defendants regarding the
2 Product are predicated on HCA, the active ingredient in the herbal compound Garcinia
3 Cambogia, to inhibit the extramitochondrial enzyme, adenosine triphosphate (ATP)-
4 citrate-lyase.
5

6 **Defendants' Labeling and Marketing Claims are False and/or Misleading**
7 **Regarding Garcinia Cambogia**
8

9 29. After HCA was reported to promote weight loss, in part, through
10 suppression of hunger, a study was conducted to determine the effects of HCA on
11 appetitive variables. In the study, the active treatment group did not exhibit better dietary
12 compliance or significant correlations between appetitive variables and energy intake or
13 weight change. The study did not support a satiety effect of HCA.¹
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15 30. The study revealed that a two-week supplementation with HCA alone, or in
16 combination with medium chain triglycerides, did not result in increased satiety
17 compared to a placebo, in subjects losing bodyweight.²
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23 ¹ Mattes R, Bormann L. Effects of (-)-hydroxycitric acid on appetitive variables. *Physiol Behav* 2000,
24 71:87-94.

25 ² Kovacs E, Westerterp-Plantenga M, Saris W. The effects of 2-week ingestion of (--)hydroxycitrate
26 and (--)hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy
27 expenditure and body weight. *Int J Obes Relat Metab Disord* 2001a, 25:1087-94.
28

1 31. A similar study was performed in order to assess the effects of two weeks of
2 supplementation with HCA alone, or combined with medium-chain triglycerides, on
3 satiety and energy intake. Two weeks of supplementation with HCA alone or combined
4 with medium chain triglycerides did not result in increased satiety or decreased energy
5 intake compared to placebo in subjects losing bodyweight.³
6
7

8 **No Efficacy for Increased Metabolism, Fat Burning or Weight Loss**

9 32. As *Garcinia Cambogia* (HCA) is considered to be a potential anti-obesity
10 agent, a randomized controlled trial was conducted to evaluate the efficacy of *Garcinia*
11 *Cambogia* for body weight and fat mass loss in overweight human subjects. *Garcinia*
12 *Cambogia* failed to produce weight loss and fat mass loss beyond that observed with a
13 placebo.⁴
14
15

16 33. A study was performed with the objective of determining the effect of HCA
17 on marker substrates of altered metabolism, as well as on respiratory quotient (“RQ”) and
18 energy expenditure (“EE”) in humans, following an overnight fast and during a bout of
19 exercise. The hypothesis was that supplementation with HCA would result in an increase
20 in fat oxidation and metabolic rate, reflected by an increase in beta-hydroxybutyrate and
21 EE and/or a decrease in RQ. In a fasted state and following three days of HCA treatment,
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25 _____
26 ³ Kovacs E, Westerterp-Plantenga M, de Vries M, Brouns F, Saris W. Effects of 2-week ingestion of (-)
27)hydroxycitrate and (-)-hydroxycitrate combined with medium-chain triglycerides on satiety and food
28 intake. *Physiol Behav* 2001b, 74:543-9.

⁴ Heymsfield S, Allison D, Basselli J, Pietrobelli A, Greenfield D, Nunez C. *Garcinia cambogia*
(Hydroxycitric Acid) as a potential antiobestiy agent. *J Am Med Assoc* 1998, 280: 1596-1600.

1 RQ was not significantly lowered during rest or during exercise when compared with the
2 placebo treatment. Treatment with HCA did not affect EE, either during rest or during
3 moderately intense exercise. Furthermore, the blood substrates measured were not
4 significantly different between treatment groups under the fasting conditions of this
5 study. The results did not support the hypothesis that HCA alters the short-term rate of
6 fat oxidation in the fasting state during rest or moderate exercise.⁵
7

8
9 34. A study determined the effects of 2-week ingestion of HCA alone or
10 combined with medium-chain triglycerides on fat oxidation, energy expenditure and body
11 weight. Two-week supplementation with HCA alone or in combination with medium
12 chain triglycerides did not result in increased fat oxidation, 24 h EE or bodyweight loss
13 compared to a placebo, in subjects losing bodyweight.⁶
14
15

16 35. An additional study was conducted to assess the effects of acute HCA
17 supplementation on substrate metabolism at rest and during exercise in humans. The
18 study found that HCA, even when provided in large quantities, does not increase total fat
19 oxidation in vivo in endurance-trained humans.⁷
20
21

22
23 ⁵ Kriketos A, Thompson H, Greene H, Hill J. (-)-Hydroxycitric acid does not affect energy expenditure
24 and substrate oxidation in adult males in a post-absorptive state. *Int J Obes Relat Metab Disord* 1999,
23:867-73.

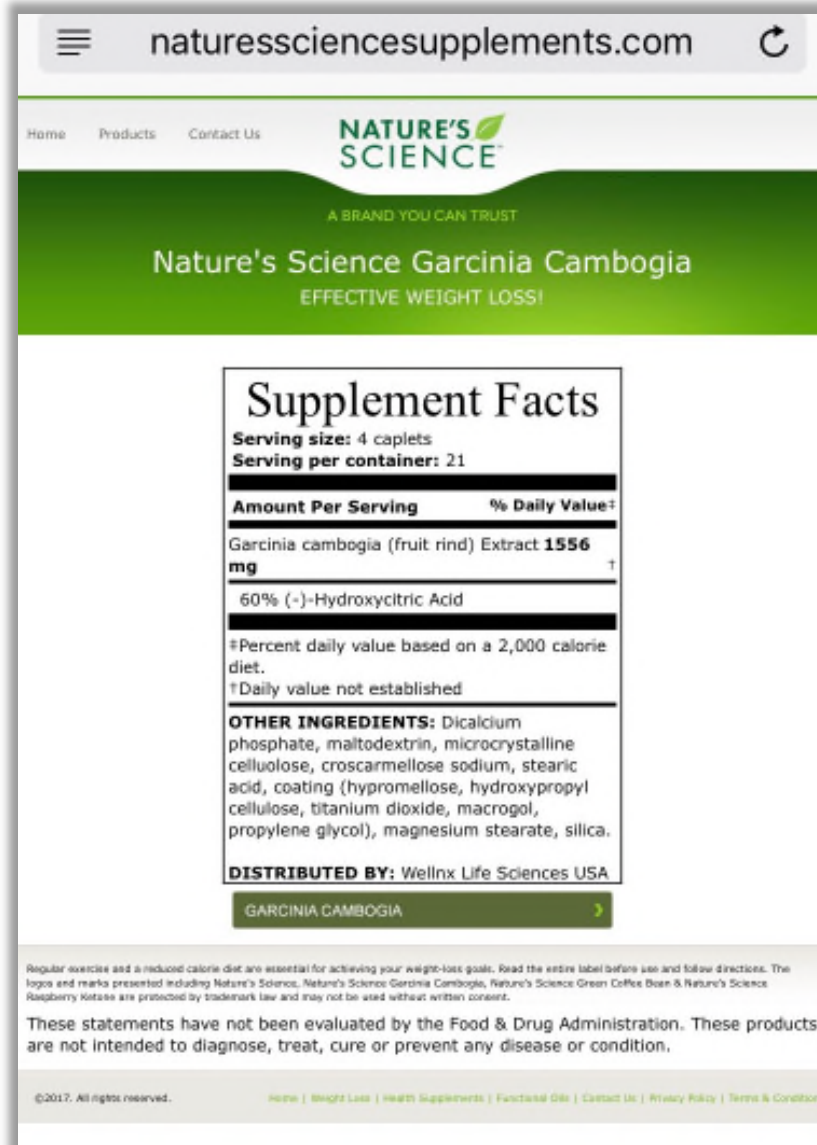
25 ⁶ Kovacs E, Westerterp-Plantenga M, Saris W. The effects of 2-week ingestion of (-)-hydroxycitrate
26 and (-)-hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy
27 expenditure and body weight. *Int J Obes Relat Metab Disord* 2001a, 25:1087-94.

28 ⁷ van Loon L, van Rooijen J, Niesen B, Verhagen H, Saris W, Wagenmakers A. Effects of acute (-)
)hydroxycitrate supplementation on substrate metabolism at rest and during exercise in humans. *Am J
Clin Nutr* 2000, 72:1445-50.

1 36. All of Defendants' claims regarding the Product and its ability to help with
2 appetite control, fat burning, and weight loss are false and/or misleading based upon the
3 scientific literature and the dose of HCA contained in the Product.
4

5 **Defendants' Mislabeling of the Product by**
6 **Under-Dosing the Main "Active Ingredient," HCA**

7 37. Defendants claim that each 4 caplet serving of the Product contains 1556 mg
8 of Garcinia Cambogia Extract, with 60% concentration of HCA (or 933.6 mg of HCA):
9



1 44. Defendants' conduct is also deceptive and unfair in that it violates the
2 prohibition against false or misleading labeling under California's Sherman Laws, which
3 adopt the federal labeling regulations as the food labeling requirements of the state. Cal.
4 Health & Safety Code § 110100.
5

6 45. The introduction of misbranded food into interstate commerce is prohibited
7
8 under the FDCA and the parallel state statute cited in this Class Action Complaint.

9 46. Plaintiffs and Class Members would not have purchased the Product or
10 would have paid less for the Product if they were aware of the misleading labeling of the
11 Product by Defendants.
12

13
14 **CLASS ACTION ALLEGATIONS**

15 47. Plaintiffs bring this class action on behalf of themselves and all others
16 similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil
17 Procedure.
18

19 48. Plaintiffs seek to represent a Nationwide Class defined as follows:
20

21 **National Class: All persons in the United States who purchased**
22 **Defendants' Product.**

23 49. In the alternative, Plaintiffs bring this action on behalf of the following State
24 Classes:
25

26 a. Plaintiff Choo brings this action on behalf of the following:
27

28 **California State Class: All persons in the State of California who**
purchased Defendants' Product.

1 b. Plaintiff Lee brings this action on behalf of the following:
2

3 **North Carolina Class: All persons residing in the State of North Carolina**
4 **who purchased Defendants' Product.**

5 50. Excluded from the Classes are: Defendants and their subsidiaries and
6 affiliates; all persons who make a timely election to be excluded from the Classes; all
7 governmental entities; and the Judge to whom this case is assigned.
8

9 51. Certification of the Plaintiffs' claims for classwide treatment is appropriate
10 because Plaintiffs can prove the elements of their claims on a classwide basis using the
11 same evidence as would be used to prove those elements in individual actions alleging
12 the same claims.
13

14 52. Numerosity – Federal Rule of Civil Procedure 23(a)(1). The Members of
15 the Classes are so numerous that individual joinder of all Class Members in
16 impracticable. On information and belief, there are thousands of consumers who have
17 been affected by the Defendants' wrongful conduct. The precise number of the Class
18 Members and their addresses is presently unknown to Plaintiffs, but may be ascertained
19 from the Defendants' books and records.
20
21

22 53. Class Members may be notified of the pendency of this action by
23 recognized, Court-approved notice dissemination methods, which may include U.S. mail,
24 electronic mail, Internet postings, and/or published notice.
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1 54. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)
2 and 23(b)(3). This action involves common questions of law and fact, which
3 predominate over any questions affecting individual Class Members, including, without
4 limitation:
5

- 6 a. Whether the Product, when used by consumers in a normal and customary
7 manner and/or in accordance with Defendants’ suggested use, works as
8 advertised, marketed, and conveyed to consumers;
9
10 b. Whether, in the course of business, Defendants represented that the Product
11 has characteristics, uses, benefits, or qualities that it does not have when
12 used by consumers in a normal and customary manner and/or in accordance
13 with Defendants’ suggested use;
14
15 c. Whether the claims Defendants made and are making regarding the Product
16 are unfair or deceptive; specifically, whether the Product provides fat
17 burning, weight loss and/or appetite suppression properties to the consumer.
18
19 d. Whether Defendants knew at the time the consumer transactions took place
20 that consumers would not receive the promised benefits of the Product that
21 Defendants were claiming they would receive;
22
23 e. Whether Defendants knowingly made misleading statements in connection
24 with consumer transactions that reasonable consumers were likely to rely
25 upon to their detriment;
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- 1 f. Whether Defendants knew or should have known that the representations
2 and advertisements regarding the Product were unsubstantiated, false, and
3 misleading;
4
5 g. Whether Defendants have breached express and implied warranties in the
6 sale and marketing of the Product;
7
8 h. Whether Defendants' conduct violates public policy;
9
10 i. Whether Defendants' acts and omissions violated the consumer fraud acts;
11
12 j. Whether Defendants have been unjustly enriched by the sale of the Product
13 to the Plaintiffs and the Class Members;
14
15 k. Whether Plaintiffs and the Class Members did not receive the benefit of their
16 bargain when purchasing the Product;
17
18 l. Whether the Plaintiffs and the Class Members suffered monetary damages,
19 and, if so, what is the measure of those damages;
20
21 m. Whether Plaintiffs and the Class Members are entitled to an injunction,
22 damages, restitution, equitable relief, and other relief deemed appropriate,
23 and, if so, the amount and nature of such relief.

24 55. Typicality – Federal Rule of Civil Procedure 23(a)(3). Plaintiffs' claims are
25 typical of the other Class Members' claims because, among other things, all Class
26 Members were similarly injured through the uniform and common misconduct described
27 above.
28

1 56. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).

2 Plaintiffs are adequate representatives of the Class because their interests do not conflict
3 with the interests of the other Class Members they seek to represent; they have retained
4 counsel competent and experienced in complex class action litigation; and Plaintiffs
5 intend to prosecute this action vigorously. The Class Members’ interests will be fairly
6 and adequately protected by Plaintiffs and their counsel.
7
8

9 57. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure

10 23(b)(2). Defendants have acted or refused to act on grounds generally applicable to
11 Plaintiffs and the other Class Members, thereby making appropriate final injunctive relief
12 and declaratory relief, as described below, with respect to Class Members as a whole.
13
14

15 58. Superiority – Federal Rule of Civil Procedure 23(b)(3). A class action is

16 superior to any other available means for the fair and efficient adjudication of this
17 controversy, and no unusual difficulties are likely to be encountered in the management
18 of this class action. The damages or other financial detriment suffered by Plaintiffs and
19 the other Class Members are relatively small compared to the burden and expense that
20 would be required to individually litigate their claims against Defendants, so it would be
21 impracticable for Class Members to individually seek redress from Defendants’ wrongful
22 conduct. Even if Class Members could afford individual litigation, the court system
23 could not. Individualized litigation creates a potential for inconsistent or contradictory
24 judgments, and increases the delay and expense to all parties and the court system. By
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1 contrast, the class action device presents far fewer management difficulties, and provides
2 the benefits of single adjudication, economy of scale, and comprehensive supervision by
3 a single court.
4

5 **CAUSES OF ACTION**
6 **COUNT I**

7 **California’s Unfair Competition Law**
8 **Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”)**
9 **(On Behalf of the California Class)**

10 59. Plaintiff incorporates the allegations set forth above as if fully set forth
11 herein.

12 60. The UCL prohibits any “unlawful, unfair or fraudulent business act or
13 practice.” Cal. Bus. & Prof. Code § 17200.
14

15 61. The acts, omissions, misrepresentations, practices, and non-disclosures of
16 Defendants as alleged herein constitute business acts and practices.
17

18 62. Unlawful: The acts alleged herein are “unlawful” under the UCL in that
19 they violate at least the following laws:
20

- 21 a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
22 b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
23 c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
24 d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
25 Code §§ 110100 *et seq.*
26
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1 63. Unfair: Defendants’ conduct with respect to the labeling, advertising, and
2 sale of the Products was “unfair” because Defendants’ conduct was immoral, unethical,
3 unscrupulous, or substantially injurious to consumers and the utility of their conduct, if
4 any, does not outweigh the gravity of the harm to their victims.
5

6 64. Defendants’ conduct with respect to the labeling, advertising, and sale of the
7 Products was and is also unfair because it violates public policy as declared by specific
8 constitutional, statutory or regulatory provisions, including but not limited to the
9 applicable sections of: the Consumers Legal Remedies Act, the False Advertising Law,
10 the Federal Food, Drug, and Cosmetic Act, and the California Sherman Food, Drug, and
11 Cosmetic Law.
12
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15 65. Defendants’ conduct with respect to the labeling, advertising, and sale of the
16 Products was and is unfair because the consumer injury was substantial, not outweighed
17 by benefits to consumers or competition, and not one consumers themselves could
18 reasonably have avoided.
19

20 66. Fraudulent: A statement or practice is “fraudulent” under the UCL if it is
21 likely to mislead or deceive the public, applying an objective reasonable consumer test.
22

23 67. As set forth herein, Defendants’ claims relating to 100% Pure Garcinia
24 Cambogia are likely to mislead reasonable consumers to believe the product can provide
25 weight-loss benefits, when they cannot.
26
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1 68. Defendants profited from their sale of the falsely, deceptively, and
2 unlawfully advertised and packaged Products to unwary consumers.

3
4 69. Plaintiff and Class Members are likely to continue to be damaged by
5 Defendants' deceptive trade practices, because Defendants continue to disseminate
6 misleading information on the Products' packaging. Thus, injunctive relief enjoining
7 Defendants' deceptive practices is proper.
8

9 70. Defendants' conduct caused and continues to cause substantial injury to
10 Plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a result of
11 Defendants' unlawful conduct.
12

13 71. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
14 enjoining Defendants from continuing to conduct business through unlawful, unfair,
15 and/or fraudulent acts and practices, and to commence a corrective advertising campaign.
16
17

18 72. Plaintiff and the Class also seek an order for and restitution of all monies
19 from the sale of the Products, which were unjustly acquired through acts of unlawful
20 competition.
21

22 **COUNT II**

23
24 **California's False Advertising Law**
25 **Cal. Bus. & Prof. Code § 17500 ("FAL")**
26 **(On Behalf of the California Class)**

27 73. Plaintiff incorporates the allegations set forth above as if fully set forth
28 herein.

1 74. The FAL provides that “[i]t is unlawful for any person, firm, corporation or
2 association, or any employee thereof with intent directly or indirectly to dispose of real or
3 personal property or to perform services” to disseminate any statement “which is untrue
4 or misleading, and which is known, or which by the exercise of reasonable care should be
5 known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.
6
7

8 75. It is also unlawful under the FAL to disseminate statements concerning
9 property or services that are “untrue or misleading, and which is known, or which by the
10 exercise of reasonable care should be known, to be untrue or misleading.” *Id.*
11

12 76. As alleged herein, the advertisements, labeling, policies, acts, and practices
13 of Defendants relating to the Products misled consumers acting reasonably as to the
14 effectiveness and weight-loss properties of the Product.
15

16 77. Plaintiff suffered injury in fact as a result of Defendants’ actions as set forth
17 herein because she purchased the Product in reliance on Defendants’ false and misleading
18 labeling claims that the Product, among other things, provides weight-loss benefits and
19 the amount of HCA in the Product.
20
21

22 78. Defendants’ business practices as alleged herein constitute deceptive, untrue,
23 and misleading advertising pursuant to the FAL because Defendants have advertised the
24 Product in a manner that is untrue and misleading, which Defendants knew or reasonably
25 should have known, and omitted material information from its advertising.
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1 79. Defendants profited from their sale of the falsely and deceptively advertised
2 Products to unwary consumers.

3
4 80. As a result, Plaintiff, the California Class, and the general public are entitled
5 to injunctive and equitable relief, restitution, and an order for the disgorgement of the
6 funds by which Defendants were unjustly enriched.

7
8 81. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of herself
9 and the California Class, seeks an order enjoining Defendants from continuing to engage
10 in deceptive business practices, false advertising, and any other act prohibited by law,
11 including those set forth in this Complaint.
12

13
14 **COUNT III**

15 **California's Consumer Legal Remedies Act**
16 **Cal. Civ. Code § 1750 et seq. ("CLRA")**
17 **(On Behalf of the California Class)**

18 82. Plaintiff incorporates the allegations set forth above as if fully set forth
19 herein.

20
21 83. The CLRA prohibits deceptive practices in connection with the conduct of a
22 business that provides goods, property, or services primarily for personal, family, or
23 household purposes.

24
25 84. Defendants' false and misleading labeling and other policies, acts, and
26 practices were designed to, and did, induce the purchase and use of the Products for
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1 personal, family, or household purposes by Plaintiff and Class Members, and violated
2 and continue to violate the following sections of the CLRA:

3 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they
4 do not have;

5 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if
6 they are of another;

7 § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

8 § 1770(a)(16): representing the subject of a transaction has been supplied in
9 accordance with a previous representation when it has not.

10
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12
13 85. Defendants profited from the sale of the falsely, deceptively, and unlawfully
14 advertised Products to unwary consumers.

15
16 86. Defendants' wrongful business practices constituted, and constitute, a
17 continuing course of conduct in violation of the CLRA.

18
19 87. As a result, Plaintiff and the Class have suffered harm, and therefore seek (a)
20 actual damages in the amount of the total retail sales price of the Products sold to all
21 Class Members, (b) punitive damages in an amount sufficient to deter and punish, (c)
22 injunctive relief in the form of modified advertising and a corrective advertising plan, and
23 (d) restitution.

24
25
26 88. Pursuant to California Civil Code § 1782, Plaintiff notified Defendants in
27 writing by certified mail, return receipt requested, of her claims, and of the particular
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1 violations of § 1770 of the CLRA, but Defendants failed to remedy the violations within
2 30 days.

3
4 **COUNT IV**

5 **Breach of Express Warranties**
6 **Cal. Com. Code § 2313(1)**
7 **(On Behalf of the California Class)**

8 89. Plaintiff incorporates the allegations set forth above as if fully set forth
9 herein.

10 90. Through the Product’s labels and advertising, Defendants made affirmations
11 of fact or promises, or description of goods, described above, which were “part of the
12 basis of the bargain,” in that Plaintiff and the Class purchased the Product in reasonable
13 reliance on those statements. Cal. Com. Code § 2313(1).
14

15 91. Defendants breached the express warranties by selling Products that do not
16 and cannot provide the promised benefits.
17

18 92. Plaintiff and the Class Members would not have purchased the Product had
19 they known the true nature of the Product’s ingredients and what the Product contained.
20

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

24 94. Defendants received timely notice regarding the problems at issue in this
25 litigation and, notwithstanding such notice, have failed and refused to offer an effective
26 remedy.
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1 95. As a result of Defendants' breach of warranty, Plaintiff and Class Members
2 have been damaged in the amount of the purchase price of the Product and any
3 consequential damages resulting from the purchases.
4

5 **COUNT V**

6
7 **Breach of Implied Warranty of Merchantability**
8 **Cal. Com. Code § 2314**
9 **(On Behalf of the California Class)**

10 96. Plaintiff incorporates the allegations set forth above as if fully set forth
11 herein.

12 97. Defendants, through their acts and omissions set forth herein, in the sale,
13 marketing, and promotion of the Product, made representations to Plaintiff and the Class
14 that, among other things, the Products will aid weight loss.
15

16 98. Plaintiff and the Class bought the Products manufactured, advertised, and
17 sold by Defendants, as described herein.
18

19 99. Defendants are merchants with respect to the goods of this kind which were
20 sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers,
21 an implied warranty that those goods were merchantable.
22

23 100. However, Defendants breached that implied warranty in that the Product
24 provides no weight-loss benefits, as set forth in detail herein.
25

26 101. As an actual and proximate result of Defendants' conduct, Plaintiff and the
27 Class did not receive goods as impliedly warranted by Defendants to be merchantable in
28

1 that they did not conform to promises and affirmations made on the container or label of
2 the goods nor are they fit for their ordinary purpose, causing weight loss.

3
4 102. Plaintiff and Class have sustained damages as a proximate result of the
5 foregoing breach of implied warranty in the amount of the Products' purchase prices.

6
7 **COUNT VI**

8 **Breach of Express Warranty**
9 **(N.C. Gen. Stat. § 25-2-313)**
10 **(On Behalf of the North Carolina Class)**

11 103. Plaintiff incorporates the allegations set forth above as if fully set forth
12 herein.

13
14 104. As express warrantors, manufacturers and merchants, Defendants had
15 certain obligations under N.C. Gen. Stat. § 25-2-313 to conform the Product to the
16 express warranties.

17
18 105. Plaintiff, and each Member of the North Carolina Class formed a contract
19 with Defendants at the time Plaintiff and the other Class Members purchased the Product.
20 The terms of the contract include the promises and affirmations of fact made by
21 Defendants on the Product's packaging and through marketing and advertising, as
22 described above. This labeling, marketing and advertising constitute express warranties
23 and became part of the basis of bargain, and are part of the standardized contract between
24 Plaintiff and the Members of the North Carolina Class and Defendants.
25
26
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1 106. Defendants purport through their advertising, labeling, marketing and
2 packaging to create an express warranty that the Product was effective at providing
3 weight loss and appetite suppression.
4

5 107. Plaintiff and the North Carolina Class performed all conditions precedent to
6 Defendants' liability under this contract when they purchased the Product.
7

8 108. Defendants breached express warranties about the Product and its qualities
9 because Defendants' statements about the Product were false and the Product does not
10 conform to Defendants' affirmations and promises described above. Plaintiff and the
11 North Carolina Class Members would not have purchased the Product had they known
12 the true nature of the Product's ingredients and what the Product contained.
13
14

15 109. Defendants received timely notice regarding the problems at issue in this
16 litigation and, notwithstanding such notice, have failed and refused to offer an effective
17 remedy.
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19 110. As a result of Defendants' breach of warranty, Plaintiff and North Carolina
20 Class Members have been damaged in the amount of the purchase price of the Product
21 and any consequential damages resulting from the purchases.
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COUNT VII

**Breach of the Implied Warranty of Merchantability
(N.C. Gen. Stat. § 25-2-314)
(On Behalf of the North Carolina Class)**

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5 111. Plaintiff incorporates the allegations set forth above as if fully set forth
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7 herein.

8 112. Defendants are and were at all relevant times merchants with respect to the
9
10 Product.

11 113. A warranty that the Product was in merchantable quality and condition is
12
13 implied by law pursuant to N.C. Gen. Stat. § 25-2-314.

14 114. Defendants impliedly warranted that the Product was of good and
15
16 merchantable condition and quality – fit for the ordinary purposes for which such goods
17
18 are sold and that the Product conforms to the promises and affirmations of fact made on
19
20 the label and in its product literature.

21 115. Defendants knew and intended that the North Carolina Class Members
22
23 would be the ultimate consumers of the Product.

24 116. Defendants sold the Product into the stream of commerce, and Defendants
25
26 are merchants with respect to goods such as the Product at issue.

27 117. The Product was not merchantable at the time of sale, because it did not—
28
nor could not—have any impact related to the representations as alleged herein.

1 118. The Plaintiff and North Carolina Class Members did not receive the benefit
2 of their bargain in purchasing the Product.

3 119. Because of Defendants' breach of the implied warranty, the Plaintiff and
4 North Carolina Class Members were injured.

5 120. Defendants received timely notice regarding the problems at issue in this
6 litigation and, notwithstanding such notice, have failed and refused to offer an effective
7 remedy.
8

9 121. As a result of Defendants' breach, Plaintiff and North Carolina Class
10 Members have sustained damages.
11

12 **COUNT VIII**

13 **Unjust Enrichment**
14 **(On Behalf of the Nationwide Class or,**
15 **Alternatively, the North Carolina Class)**
16

17 122. Plaintiff Lee incorporates the allegations set forth above as if fully set forth
18 herein.
19

20 123. Through their numerous misleading, unfair and deceptive claims and
21 misrepresentations, Defendants made millions of dollars from the sale of the Product.
22 The considerable profits were made at the expense of Plaintiff and each Member of the
23 Class, who relied upon Defendants' material representations and omissions.
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1 124. Plaintiff and Class Members conferred benefits on Defendants by
2 purchasing the Product for more than it was worth as a result of Defendants' unlawful
3 conduct.
4

5 125. Defendants knowingly appreciated and accepted Plaintiff and Class
6 Members payment for the Product that they knowingly and unlawfully advertised to have
7 characteristics and ingredients that the Product did not have.
8

9 126. Defendants should not be permitted unjustly to enrich itself at the expense of
10 Plaintiff and Class Members.
11

12 127. Defendants have been unjustly enriched in retaining the revenues derived
13 from Plaintiff's and Class Members' purchase of the Product. Retention of those monies
14 under these circumstances is unjust and inequitable because Defendants' labeling of the
15 Product was misleading to consumers, which caused injuries to Plaintiff and Class
16 Members because they would have not purchased the Product if the true facts had been
17 known.
18
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20 128. Because Defendants' retention of the non-gratuitous benefits conferred on
21 them by Plaintiff and Class Members is unjust and inequitable, Defendants must pay
22 restitution to Plaintiff and the Class Members for Defendants' unjust enrichment, as
23 ordered by the Court.
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COUNT IX

**Declaratory Relief Under the Declaratory Judgment Act (On Behalf of the
Nationwide Class or,
Alternatively, the California and North Carolina Classes)**

129. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

130. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

131. Pursuant to 28 U.S.C. § 2201, et seq., there is an actual controversy between Defendants and Plaintiff concerning whether:

- a. Defendants have misrepresented the effectiveness of the Product; and
- b. Defendants knew or should have known of the misrepresentations regarding the efficacy of the Product.

132. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

133. Despite the studies which have proven Defendants’ representations false, Defendants continue to represent the effectiveness of the Product, and have otherwise failed to correct those misrepresentations.

1 134. Accordingly, based on Defendants' repeated and continued
2 misrepresentations, Plaintiffs seek a declaration that Defendants have misrepresented the
3 efficacy of the Product and that its actions are unlawful.
4

5 135. The declaratory relief requested herein will generate common answers that
6 will settle the controversy related to the misrepresented labeling of the Product. There is
7 an economy to resolving these issues as they have the potential to eliminate the need for
8 continued and repeated litigation.
9

10
11 **PRAYER FOR RELIEF**

12
13 Wherefore, Plaintiffs on behalf of themselves and all others similarly situated,
14 respectfully request that the Court enter an Order awarding the following relief:

- 15 A. Declaring that this action may be maintained as a class action, certifying the
16 Classes as requested herein, appointing Plaintiffs as the Class Representatives, and
17 appointing the undersigned as Class Counsel;
18
19 B. Enjoining Defendants from the unlawful practices and statutory violations asserted
20 herein;
21
22 C. Declaring Defendants' practices to be unlawful;
23
24 D. Entering a judgment awarding Plaintiffs and each of the other Members of the
25 Classes their actual damages in an amount according to proof as to Defendants'
26 unlawful conduct, as alleged herein;
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- 1 E. Entering a judgment awarding Plaintiffs and each of the other Members of the
2 Classes compensatory, consequential, and special damages in amounts to be
3 proven at trial, as well as statutory damages;
4
5 F. Granting an award of punitive damages, to the maximum extent permitted by law;
6
7 G. Entering a judgment awarding Plaintiffs and the other members of the Classes
8 restitution, including, without limitation, disgorgement of all profits and unjust
9 enrichment obtained by Defendants as a result of their wrongful conduct, as
10 alleged herein;
11
12 H. Awarding attorneys' fees, expenses, and the costs of this action to the maximum
13 extent permitted by law;
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15 I. An award of pre- and post-judgment interest; and
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17 J. All other and further relief that the Court deems necessary, just, and proper.

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JURY DEMAND

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiffs hereby demand a trial by jury of all claims in this Class Action Complaint so triable.

Dated: November 30, 2017

Respectfully submitted,

By: /s/ Jonathan Shub

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