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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON on behalf of themselves, all others similarly situated, and the general public, Plaintiffs, v. LEE LABRADA; LABRADA BODYBUILDING NUTRITION, INC.; LABRADA NUTRITIONAL SYSTEMS, INC.; DR. MEHMET C. OZ, M.D.; ENTERTAINMENT MEDIA VENTURES, INC. d/b/a OZ MEDIA; ZOCO PRODUCTIONS, LLC; HARPO PRODUCTIONS, INC; SONY PICTURES TELEVISION, INC; NATUREX, INC.; and INTERHEALTH NUTRACEUTICALS, INC.; Defendants.	Case No.: 5:16-cv-00189-JGB-SP **CLASS ACTION** **FIRST AMENDED COMPLAINT** **Demand for Jury Trial**

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1. Plaintiffs Veda Woodard, Teresa Rizzo-Marino, and Diane Morrison ("Plaintiffs"), individually and on behalf of themselves, all others similarly situated and the general public, bring this action against Lee Labrada, Labrada Bodybuilding Nutrition, Inc., Labrada Nutritional Systems, Inc. (collectively "Labrada"), Dr. Mehmet C. Oz, M.D. ("Dr. Oz"), Entertainment Media Ventures, Inc. ("EMV"), Zoco Productions, LLC ("Zoco"), Harpo Productions, Inc. ("Harpo"), Sony Pictures Television, Inc. ("Sony"), Naturex, Inc. ("Naturex"), and Interhealth Nutraceuticals Incorporated ("Interhealth") (collectively the "Defendants") demanding a trial by jury, and allege on information, belief, or by investigation of their counselformed after an inquiry reasonable under the circumstances as set forth in the preceding paragraphs.

JURISDICTION AND VENUE

2. This Court has diversity jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there are more than 100 class members and the aggregate amount in controversy exceeds $5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs are asserting claims under the Federal Magnuson-Moss Warranty Act,

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants are doing business throughout this District, and a substantial part of the events giving rise to Plaintiff's claims took place within this judicial district.

NATURE OF THE ACTION

5. On June 17, 2014, the United States Senate Subcomitte on Consumer Protection, Product Safety, and Insurance held a hearing titled *Protecting Consumers*

from False and Deceptive Advertising of Weight-Loss Supplement Products.[1] In her opening statement, committee chairwoman— Senator Claire McCaskill— stated that "With so many Americans desperate for anything that might make it easier to lose weight, it's no wonder scam artists and fraudsters have turned to the $60-billion weight-loss market to make a quick buck."

6. False advertising of weight-loss products is truly an epidemic. Government regulators are overwhelmed because "One out of ten fraud claims submitted to the FTC are, in fact, for weight-loss products." Indeed, Senator McCaskill stated that "the problem is much larger than any enforcement agency could possibly tackle on its own. Private stakeholders, companies that sell weight-loss products, media outlets, and other advertising platforms, *as well as consumer watchdogs*, must all do their part to help address this problem."

7. The 2014 Senate hearing featured testimony from Defendant Doctor Mehmet C. Oz— host of the daytime television series *The Doctor Oz Show*. Dr. Oz was under scrutiny because of certain episodes of *The Doctor Oz Show* where he called Garcinia Cambogia and Green Coffee Bean Extract "***miracles in a bottle***" that will "***bust your body fat for good***." Senator McCaskill expressed her concern that Dr. Oz was "melding medical advice, news, and entertainment in a way that harms consumers."

SENATOR McCASKILL:

> I can't figure this out Dr. Oz...I get that you do a lot of good on your show. I understand that you give a lot of information that's great information about health, and you do it in a way that's

[1] Official transcript of *Protecting Consumers From False and Deceptive Advertising of Weight-Loss Products, Before the Subcommittee on Consumer Protection, Product Safety and Insurance of the United States Senate*, 113TH CONG. 2ND. SESS. (June 14, 2016) [*hereinafter* "Senate Hearing"], *available at* https://www.gpo.gov/fdsys/pkg/CHRG-113shrg92998/pdf/CHRG-113shrg92998.pdf.

> understandable. You're very talented, you're obviously very bright. You've been trained in science-based medicine.
>
> Now, here are three statements you've made on your show:
>
> - 'You may think magic is make-believe, but this little bean has scientists saying they've found the magic weight-loss cure for every body type. It's green coffee extract.'
> - 'I've got the number one miracle in a bottle to burn your fat! it's raspberry ketones.'
> - 'Garcinia cambogia: it may be the simple solution you've been looking for to bust your body fat for good.'
>
> I don't get why you need to say this stuff, because *you know it's not true!* So why, when you have this amazing megaphone, and this amazing ability to communicate, why would you cheapen your show by saying things like that?"
>
> **Dr. OZ.** Well, if I could disagree about whether they work or not, and I'll move on to the issue of the words that I used. And just with regard to whether they work or not, take the green coffee bean extract, as an example. I'm not going to argue that it would FDA-muster if it was a pharmaceutical drug seeking approval, but among the natural products that are out there, this is a product that has several clinical trials. There was one large one, a very good-quality one, that was done the year we talked about this, in 2012.
>
> **Senator MCCASKILL**. No, what I want to know—I want to know about that clinical trial, because the only one I know is 16 people in India that was paid for by the company. In fact, at the point in time you initially talked about this being a miracle, the only study that was out there was the one with 16 people in India that was written up by somebody who was being paid by the company that was producing it.

8. Despite this testimony, Dr. Oz never answered the simple question he was asked: *Why would he say that stuff*? This class action lawsuit seeks to pick up where the Senate hearing left off.

Senator HELLER.

Do you believe there's a magic weight-loss cure out there?

Dr. OZ.
[I]f you're selling something because it's magical, no. If you're arguing that it's going to be like magic, because if you stop eating carbohydrates, you're going to lose a lot of weight, that's a truthful statement. You may not agree with the flowery use of the word ''magic,'' but it is true that most people cutting out simple carbs will lose weight.

****
Senator HELLER.
OK. And it is true that you do not endorse any products or receive any money from any product sold?

Dr. OZ.
That is true.

9. But is that *really* true? After all, Dr. Oz made the following admission during a television news interview: "I wish I'd never used the laudatory terms I used

for weight loss supplements. That was the big mistake I think all of us acknowledge."[2] Dr. Oz— a renown surgeon at Columbia University Medical School— knew or should have known that the supplement products he promoted were ineffective at providing weight-loss benefits, much less the "magic" "fat busting" effects that he claimed were supported by clinical studies. *So why would he say those things*?

10. Although Dr. Oz seems to have acknowledged his "big mistake," what he has not done is provide redress to consumers who were duped into paying for the worthless supplement products he promoted.

Video available here.

11. Plaintiffs Veda Woodard, Teresa Rizzo-Marino, Diane Morrison, and the proposed Class members are all purchasers of Labrada brand weight-loss supplement products that contain Green Coffee Bean extract and Garcinia Cambogia. The specific

[2] http://www.huffingtonpost.com/2015/05/11/dr-oz-weight-loss-mistake_n_7256534.html

products subject to this action are the "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER" with Supercitrimax® and the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" with Svetol®. (collectively the "Labrada Products" or the "Products"). The Labrada Products are sold online and at popular supplement retailers like the VitaminShoppe.

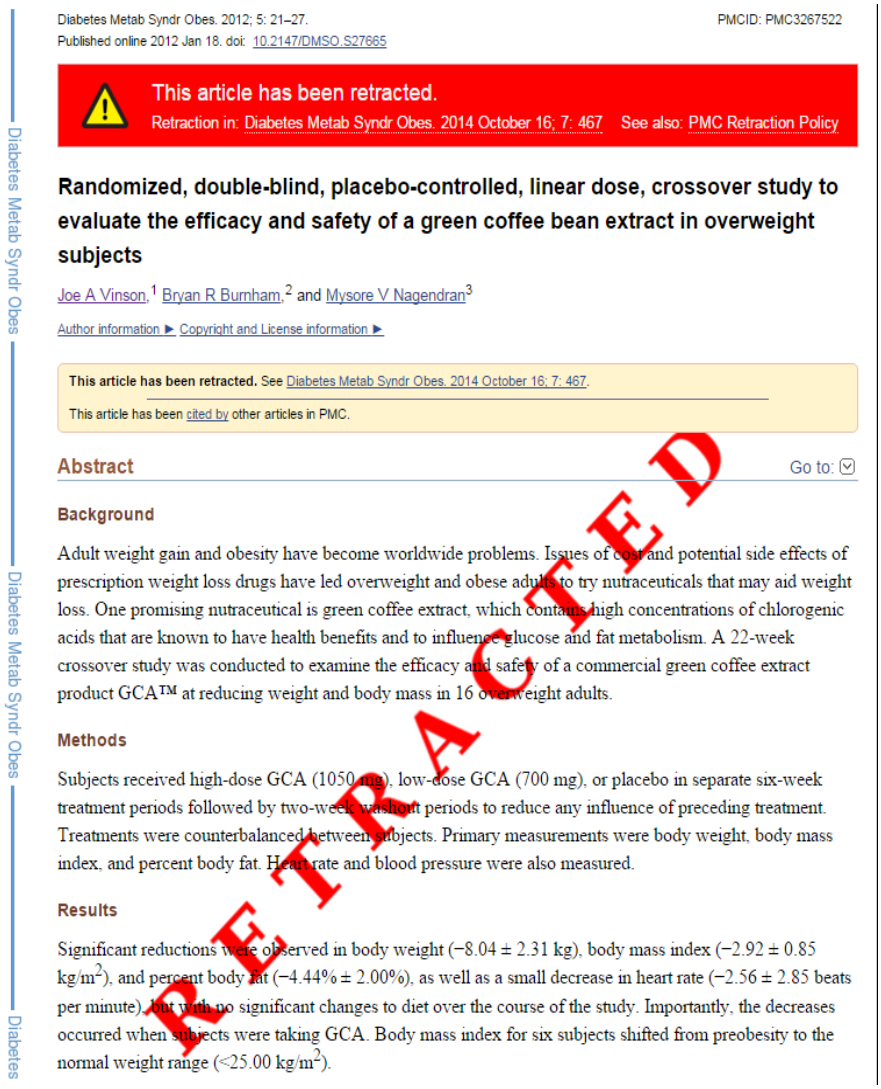
12. The "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" contains Svetol® Green Coffee Bean Extract that is manufactured by Defendant Naturex, Inc.— an affiliate of the "Naturex Group" led by its the French parent company Naturex Société Anonyme ("Naturex, S.A."). The Naturex Group "is the global leader in specialty plant-based natural ingredients" that "employs more than 1,700 people and benefits from 8 sourcing offices around the world and high-performance manufacturing operations across 15 sites in Europe, Morocco, the United States, Brazil, Australia, India and Chile." According to Defendant Naturex, "Svetol® is the most studied and proven green coffee bean extract for losing weight and increasing lean body mass." Moreover, "Svetol® is derived from 100% premium Robusta beans that have undergone a proprietary processing technology which extracts a high concentration of key chlorogenic acids."

13. The "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER" contains the proprietary active ingredient Supercitrimax®, which is supplied by Defendant Interhealth Nutraceuticals. Interhealth is headquartered in Benicia, California. Its "ingredients are sold worldwide to manufacturers of dietary supplements and functional foods & beverages" and "the company's success is earmarked by high-quality ingredients, thorough research program, outstanding customer service and powerful co-branding marketing strategy." Interhealth's Supercitrimax® is a weight-loss supplement ingredient containing an extract of the *Garcinia cambogia* fruit. According to the Interhealth, "Super CitriMax® is a patented, 60% hydroxycitric acid (HCA) water extract from *Garcinia cambogia*. It is uniquely bound to calcium and potassium for maximum stability, solubility, bioavailability, and efficacy."

14. The Labrada Products, by way of their proprietary active ingredients Svetol® and Supercitrimax®, claim to be effective "FAT BUSTERS" that contain "ZERO BINDERS, ZERO FILLERS, AND ZERO ARTIFICIAL INGREDIENTS." The Labrada Products purport to be clinically proven by citing to "references" on the product labels. These references are likely to mislead consumers about the efficacy of the Labrada products by stating or suggesting that the products are proven by "peer-reviewed, published studies." This deception is bolstered by the fact that the "references" appear in close proximity claims on the label that tout the weight-loss benefits of the products. For example, the Labrada green coffee bean extract states "**Helps Support Significant Fat Loss**" and then cites directly to a study by "Vinson J.A."

15. However, the studies cited on the Labrada labels do not support the marketing claims. The study by "Vinson J.A." was actually retracted by the author, Dr. Joe Vinson, after an FTC investigation revealed that "the principal investigator repeatedly: (1) altered the weights and other key measurements of the subjects; (2) changed the length of the trial; and (3) confused which subjects took either the placebo or [Green Coffee Bean Extract] at various points during the trial."

16. Below is how the *Vinson* study now appears online at the U.S. National Library of Medicine's website:[3]



Diabetes Metab Syndr Obes. 2012; 5: 21–27. PMCID: PMC3267522
Published online 2012 Jan 18. doi: 10.2147/DMSO.S27665

This article has been retracted.
Retraction in: Diabetes Metab Syndr Obes. 2014 October 16; 7: 467 See also: PMC Retraction Policy

Randomized, double-blind, placebo-controlled, linear dose, crossover study to evaluate the efficacy and safety of a green coffee bean extract in overweight subjects

Joe A Vinson,[1] Bryan R Burnham,[2] and Mysore V Nagendran[3]

Author information ▶ Copyright and License information ▶

This article has been retracted. See Diabetes Metab Syndr Obes. 2014 October 16; 7: 467.

This article has been cited by other articles in PMC.

Abstract Go to:

Background

Adult weight gain and obesity have become worldwide problems. Issues of cost and potential side effects of prescription weight loss drugs have led overweight and obese adults to try nutraceuticals that may aid weight loss. One promising nutraceutical is green coffee extract, which contains high concentrations of chlorogenic acids that are known to have health benefits and to influence glucose and fat metabolism. A 22-week crossover study was conducted to examine the efficacy and safety of a commercial green coffee extract product GCA™ at reducing weight and body mass in 16 overweight adults.

Methods

Subjects received high-dose GCA (1050 mg), low-dose GCA (700 mg), or placebo in separate six-week treatment periods followed by two-week washout periods to reduce any influence of preceding treatment. Treatments were counterbalanced between subjects. Primary measurements were body weight, body mass index, and percent body fat. Heart rate and blood pressure were also measured.

Results

Significant reductions were observed in body weight (−8.04 ± 2.31 kg), body mass index (−2.92 ± 0.85 kg/m^2), and percent body fat (−4.44% ± 2.00%), as well as a small decrease in heart rate (−2.56 ± 2.85 beats per minute), but with no significant changes to diet over the course of the study. Importantly, the decreases occurred when subjects were taking GCA. Body mass index for six subjects shifted from preobesity to the normal weight range (<25.00 kg/m^2).

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[3] U.S. NAT. LIB. OF MED., NAT. INST. HEALTH, PMC I.D. No. PMC3267522, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3267522/.

17. The retracted *Vinson* study is the same study that Dr. Oz called a "good quality" study during the Senate hearing. But that is not the only "big mistake" Dr. Oz has made. That same year, in 2012, Dr. Oz featured a guest named "Doctor" Lindsay Duncan who touted the weight-loss benefits of green coffee bean extract. It turns out, however, that "Doctor" Lindsay Duncan was no doctor at all. "According to [an] FTC lawsuit, shortly after Duncan agreed to appear on *Dr. Oz* but before the show aired, he began selling the extract and tailored a marketing campaign around his appearance on the show to capitalize on the 'Oz effect' – a phenomenon in which discussion of a product on the program causes an increase in consumer demand."

18. Defendant Lee Labrada and his companies similarly sought to capitalize off *'The Doctor Oz Effect*.' But the "*Dr. Oz Effect*" is no random coincidence. The Labrada Defendants and/or their proprietary ingredient suppliers— Naturex and Interhealth— provided some form of compensation to Dr. Oz in exchange for Defendants, including Dr. Oz, actively promoting the Labrada products or their proprietary ingredients on television.

19. These covert product placements on *The Doctor Oz Show* are part of a rapidly expanding advertising scheme called "branded integration." In the era of digital video recorders (DVRs) like TiVo, many viewers simply fast-forward through the commercials. To make up for lost revenue, media companies have turned to "branded integration" as an advertising alternative by simply making the advertisement a part of the television show.

20. *The Doctor Oz Show* is arguably the most successful television program that has ever implemented branded integration strategies. Consumers perceive Dr. Oz as a trusted and unbiased source of information. But Dr. Oz fails to disclose material facts about his connections to the supplement industry, including Labrada, and his on-air branded promotion deals. Moreover, Dr. Oz makes affirmative misrepresentations

that he does not promote any "specific brands." But this statement is deceptive or false because, by using key language, Dr. Oz is promoting certain brands, as he is paid to do.

21. Senator McCaskill's concern that Dr. Oz is "melding medical advice, news, and entertainment in a way that harms consumers" should be heeded. For example, a supplement industry publication called *Natural Products Insider* stated that "Oz tends to feature the base ingredient, not finished supplements or branded products, so ingredient suppliers offering a nutrient or specialty compound highlighted on the show will definitely feel the impact and need to brace for the increased demand and capitalize on the heightened awareness among potential new customers at retail." The article further notes that "Naturex has seen a noticeable uptick in awareness of green coffee extract and Naturex's Svetol® brand of this ingredient." Antoine Bily, PhD, director of research at Naturex, was quoted saying "'The show has also helped us to capture the interest of new consumers and we have seen an increase in the amount of Svetol® ordered with existing consumers,' he said, noting Naturex believes the Oz effect on this ingredient will be long term.'"

22. But Dr. Oz's covert product placements are harming consumers. In fact, the United States Federal Trade Commission recently issued a policy guidance on "**Deceptively Formatted Advertisements**."

> The Commission has long held the view that advertising and promotional messages that are not identifiable as advertising to consumers are deceptive if they mislead consumers into believing they are independent, impartial, or not from the sponsoring advertiser itself. Knowing the source of an advertisement or promotional message typically affects the weight or credibility consumers give it. Such knowledge also may influence whether and to what extent consumers choose to interact with content containing a promotional message. Over the years, the Commission has challenged as deceptive a wide variety of advertising and other commercial message formats, including ‘‘advertorials’’ that appeared as news stories or feature articles, direct-mail ads disguised as book reviews, infomercials presented as regular television or radio

> programming, in-person sales practices that misled consumers as to their true nature and purpose, mortgage relief ads designed to look like solicitations from a government agency, emails with deceptive headers that appeared to originate from a consumer's bank or mortgage company, and paid endorsements offered as the independent opinions of impartial consumers or experts.[4]

23. Dr. Oz— dubbed by Oprah Winfrey as "America's Doctor"— falls within the last category.

24. Significantly, the Federal Trade Commission has stated, "Regardless of the medium in which an advertising or promotional message is disseminated, deception occurs when consumers acting reasonably under the circumstances are misled about its nature or source, and such misleading impression is likely to affect their decisions or conduct regarding the advertised product or the advertising."

25. Plaintiffs bring this class action lawsuit alleging that the Media Defendants have violated state consumer protection laws that similarly prohibit deception of consumers who have been misled by weight-loss supplement endorsements on *The Doctor Oz Show*.

26. Moreover, undisclosed product placements on *The Doctor Oz Show* constitute illegal "***Payola***." "Section 317 of the Communications Act of 1934, as amended, 47 U.S.C. § 317, requires broadcasters to disclose to their listeners or viewers if matter has been aired in exchange for money, services or other valuable consideration. The announcement must be aired when the subject matter is broadcast." Plaintiffs allege that Dr. Oz failed to comply with the FCC's payola disclosure requirements.

27. There are three straightforward issues in this case: 1.) Are the Labrada Defendants liable for marketing and sales of the "Labrada Garcinia Cambogia DUAL

[4] *See* Enforcement Policy Statement on Deceptively Formatted Advertisements, Federal Trade Commission, *available at* https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf

ACTION FAT BUSTER" with Supercitrimax® and the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" with Svetol®?; 2.) Are the ingredient supplier Defendants— Interhealth and Naturex— liable for their role in distributing and marketing the proprietary ingredients in the products or their ingredients? and 3.) Should Dr. Oz and the other Media Defendants be held accountable for misrepresenting their promotions and financial interests in the weight-loss supplement products subject to this suit?

28. Plaintiff Veda Woodard, a resident of California, alleges that Defendants have violated California's consumer protection laws and asserts claims for fraud, negligent misrepresentation, Violations of the Unfair Competition Law, Violations of the False Advertising Law, Violations of the Consumers Legal Remedies Act, and Violations of the Magnuson-Moss Warranty Act for breaches of express and implied warranties under California law.

29. Plaintiffs Rizzo-Marino and Morrison, residents of New York, allege that the Labrada Defendants have violated New York's consumer laws and assert claims for fraud, negligent misrepresentation, violations of N.Y. General Business Laws §§ 349 and 350, and for Violations of the Magnuson-Moss Warranty Act for breaches of express and implied warranties under California law.

THE PARTIES

A. The Plaintiffs and Proposed Class Representatives

i. Plaintiff Veda Woodard

30. Plaintiff Veda Woodard, is a resident of Murrieta, California. Plaintiff Woodard purchased the "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER," the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" on multiple occasions beginning on or around June of 2013 and continuing until approximately December of 2013 from Vitamin Shoppe stores located in Murrieta, California and in Temecula, California. Plaintiff Woodard paid approximately $14.99

to $19.99 for each of the Products that she purchased.

31. Plaintiff Woodard saw the Misrepresentations prior to and at the time of purchase and understood them as representations and warranties that the Products were safe and effective for weight loss and fat loss as advertised. Ms. Woodard relied on the representations made on the Products' label in deciding to purchase the Products. Additionally, Plaintiff Woodard saw episodes of *The Doctor Oz Show* that promoted the products and relied on the representations made on *The Doctor Oz Show* in deciding to purchase the Products. These representations and warranties were part of her basis of the bargain, in that she would not have purchased the Products had she known the representations were false. She also understood that in making the sale, the retailer was acting with the knowledge and approval of and/or as the agents of Defendants. She also understood that the purchase involved a direct transaction between herself and the ingredient manufacturers because her purchase came with the ingredients manufacturers misrepresentations and warranties that the products were, in fact, safe and effective for weight loss and fat loss, among other things. Plaintiff Woodard would consider purchasing the Products again if the advertising statements made on the Product labels and in the Product advertisements were, in fact, truthful and represented in a manner as not to deceive consumers.

ii. Plaintiff Teresa Rizzo-Marino

32. Plaintiff Teresa Rizzo-Marino, is a resident of Brooklyn, New York. Plaintiff Rizzo-Marino purchased the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" on approximately six to eight occassions beginning on or around January of 2014 from retail stores near her home in Brooklyn, New York. Plaintiff Rizzo-Marino believes that she purchased the Labrada Green Coffee Bean Extract from CVS, Rite Aide, and Wal-Mart. Plaintiff Rizzo-Marino paid approximately $14.99 for each of the Products that she purchased.

33. Plaintiff Rizzo-Marino saw the Misrepresentations prior to and at the time

of purchase and understood them as representations and warranties that the Products were safe and effective for weight loss and fat loss as advertised. Ms. Rizzo-Marino relied on the representations made on the Products' label in deciding to purchase the Products. These representations and warranties were part of her basis of the bargain, in that she would not have purchased the Products had she known the representations were false. She also understood that the purchase involved a direct transaction between herself and the ingredient supplier, Naturex, because her purchase came with the Naturex's misrepresentations and warranties that the Green Coffee Bean Product was in fact, safe and effective for weight loss and fat loss, among other things. Plaintiff Rizzo-Marino would consider purchasing the Products again if the advertising statements made on the Product labels and in the Product advertisements were, in fact, truthful and represented in a manner as not to deceive consumers.

iii. Plaintiff Diane Morrison

34. Plaintiff Diane Morrison, is a resident of Bolivar, New York. Plaintiff Morrison purchased the "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER," and the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" on multiple occasions beginning in the summer of 2012 and continuing until approximately late 2013 from various retail stores in upstate New York, including Walgreens. Plaintiff Morrison paid approximately $14.99 to $19.99 for each of the Products that she purchased.

35. Plaintiff Morrison saw the Misrepresentations prior to and at the time of purchase and understood them as representations and warranties that the Products were safe and effective for weight loss and fat loss as advertised. Plaintiff Morrison relied on the representations made on the Products' label in deciding to purchase the Products. Additionally, Plaintiff Morrison saw episodes of *The Doctor Oz Show* that aired in or around 2012 that promoted the products. Plaintiff Morrison relied on the representations made on *The Doctor Oz Show* in deciding to purchase the Products,

including representations about scientific evidence supporting the ingredients in the products. Plaintiff Morrison specifically recalls seeing an episode of The Doctor Oz Show in 2012 where Dr. Oz conducted an experiment on his audience members regarding the efficacy of green coffee bean extract. These representations and warranties were part of her basis of the bargain, in that she would not have purchased the Products had she known the representations were false. She also understood that the purchase involved a direct transaction between herself and the ingredient manufacturers because her purchase came with the ingredients manufacturers misrepresentations and warranties that the products were, in fact, safe and effective for weight loss and fat loss, among other things. Plaintiff Morrison would consider purchasing the Products again if the advertising statements made on the Product labels and in the Product advertisements were, in fact, truthful and represented in a manner as not to deceive consumers.

B. The "Labrada Defendants"

iv. Defendant Lee Labrada

36. Defendant Lee Labrada is a resident of Tomball, Texas. Defendant Lee Labrada is the founder, president, and C.E.O. of both Defendant Labrada Body Building, Inc. and Defendant Labrada Nutritional Systems, Inc. Defendant Lee Labrada is a public figure who is recognized as a world-renowned bodybuilder.

37. Defendant Lee Labrada develops, manufactures, promotes, markets, distributes, and/or sells the Labrada Products across the United States, including to hundreds of thousands of consumers in California. Lee Labrada has authorized and ratified the use of his name, image, and likeness to promote the Labrada Products and has reaped substantial profits thereby.

38. Labrada Nutrition and Labrada Bodybuilding were founded by Defendant Lee Labrada, a former professional bodybuilder who has won 22 professional bodybuilding titles. Defendant Lee Labrada is also one of the few pro bodybuilders

who has placed in the top four at the "Mr. Olympia" competition seven consecutive years in a row; a feat he shares with the likes of Arnold Schwarzenegger.

39. In 1995, Defendant Lee Labrada founded Labrada Nutrition and launched the Labrada Product line that consists mostly of protein powders and other muscle building "stacks." Labrada is also well-known for its Lean Body® line of protein shakes that are sold at major retail stores like Walmart.

40. According to *Bloomberg*, "Mr. Labrada guided Labrada Nutrition to become one of the fastest growing privately-held companies in the U.S.-earning Inc. 500 status-in only six years."[5]

v. Defendant Labrada Bodybuilding Nutrition, Inc.

41. Defendant Labrada Bodybuilding Nutrition, Inc. is a corporation organized under the laws of the state of Texas that maintains its principal place of business at 333 North park Central Drive, Suite Z, Houston, Texas. Defendant Labrada Body Building, Inc. develops, manufactures, promotes, markets, distributes, and/or sells the Labrada Products across the United States, including to hundreds of thousands of consumers in California and New York. Defendant Lee Labrada is the Chief Executive Officer and Founder of Labrada Bodybuilding Nutrition, Inc. According to the United States Patent and Trademark Office, Defendant Labrada Bodybuilding Nutrition is the owner of the "Labrada Nutrition" trademark. The labels and packaging for the Labrada Products uniformly state that the Labrada Products are "Developed and Manufactured for Labrada Nutrition."

vi. Defendant Labrada Nutritional Systems, Inc.

42. Defendant Labrada Nutritional Systems, Inc. is a corporation organized under the laws of the state of Texas that maintains its principal place of business at 333 North park Central Drive, Suite Z, Houston, Texas. Plaintiffs are informed and believe that Defendant Labrada Nutritional Systems, Inc. develops, manufactures, promotes,

[5] *See Executive Profile of Lee Labrada*, BLOOMBERG ONLINE, http://goo.gl/LS8pAb.

markets, distributes, and/or sells the Labrada Products across the United States, including to hundreds of thousands of consumers in California and New York. Defendant Lee Labrada is the Chief Executive Officer and Founder of Labrada Nutritional Systems, Inc.

vii. The Labrada Joint Enterprise

43. Defendants Lee Labrada, Labrada Bodybuilding Nutrition, Inc., and Labrada Nutritional Systems, Inc. (collectively the "Labrada Defendants" or "The Labrada Joint Venture") have combined their property, skill, and knowledge to carry out a single business undertaking in that they develop, manufacture, promote, market, distribute, and/or sell the Labrada Products across the United States, including to hundreds of thousands of consumers in California and New York. The Labrada Defendants have joint control over the enterprise and Plaintiffs allege that the Labrada Defendants delegate that control. The Labrada Defendants have formed either an express agreement, or an implied agreement, to jointly share the control, profits, and losses of the Labrada Joint Venture. The Labrada Venture is a business undertaking in that it was formed to profit from sales of the Labrada Products.

C. Media Defendants

viii. Defendant Dr. Mehmet C. Oz, M.D.

44. Defendant Dr. Mehmet C. Oz, M.D. ("Dr. Oz") is a resident of New Jersey who maintains his principal place of business in the State of New York. Defendant Dr. Mehmet C. Oz has been called "America's Doctor"[6] by Oprah Winfrey and was a frequent guest on *The Oprah Winfrey* television show. In 2009, Harpo Productions—Oprah's production company— began producing *The Dr. Oz Show* featuring Defendant Dr. Mehment C. Oz. *The Dr. Oz Show* is a three-time Emmy Award-winning broadcast that aired its 1,000th episode in May of 2015. The show is broadcast in all U.S. markets in 118 countries around the word. Additionally, Dr. Oz has authored seven *New York*

[6] "AMERICA'S DOCTOR" is a registered trademark owned by Dr. Mehmet C. Oz.

Times bestselling books. According to a *Bloomberg* biography, Dr. Oz is affiliated with several venture capital firms, hospitals, pharmaceutical manufacturers, and distributors.[7] Defendant Dr. Mehmet C. Oz promotes and markets the Labrada Products (and/or their active ingredients) across the United States, including to hundreds of thousands of consumers in California and New York.

ix. Defendant Entertainment Media Ventures, Inc. d/b/a "Oz Media"

45. Defendant Entertainment Media Ventures, Inc. ("EMV" or "Oz Media") is a California corporation that maintains its principal place of business at 5225 Wilshire Blvd. #777, Los Angeles, California 90036. EMV is registered to do business in California as entity number C2133554. Defendant EMV is an entertainment venture capital firm that is operated by Dr. Oz's Hollywood agent, Sanford R. Climan. Mr. Climan rose to success as an agent at the Creative Artists Agency ("CAA") and has represented actors by the likes of Robert De Niro, Robert Redford, Kevin Costner, Danny DeVito, and Michael Man. In 2013, "Mr. Climan partnered with Dr. Mehmet Oz to form Oz Media, which is dedicated to building companies committed to improving health and wellness across cultures and geographies."[8]

46. Plaintiffs are informed and believe that Entertainment Media Ventures is doing business as "Oz Media" because the EMV website identifies the company as "Oz Media" on certain webpages. [9] Moreover, Plaintiffs allege that EMV and Oz Media are the alter egos of one another because they consist of the same two or three members working out of the same office and interchangeably refer to the operation as "Entertainment Media Ventures" or "Oz Media."

47. Plaintiffs are informed and believe that Entertainment Media Ventures is

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[7] Executive Profile of Dr. Oz, BLOOMBERG, http://goo.gl/YjH84n.

8 http://emventures.com/who-we-are/.

[9] http://web.archive.org/web/20160323023620/http://emventures.com/what-we-do/oz-media/

a business operation that brokers certain "strategic partnership" deals between Dr. Oz and weight-loss supplement ingredient suppliers. According to the LinkedIn page for Nelly Kim, Vice President, Strategy and Business Development at Entertainment Media Ventures, she provides "Business development and strategic partnerships for Dr. Oz. These partnerships include, but are not limited to, endorsements, collaborations, speaking engagements, equity deals, and potential investments."[10]

48. Under the partnerships tab of the EMV website, it admits " products referenced by Dr. Oz consistently see significant boosts in sales; . . . Our goal is for Dr. Oz to forge a direct and authentic connection between you and your demographic. This alliance will ensure brand integrity, large scale awareness, and continued financial growth." *See* http://goo.gl/HOYXDT.

49. Plaintiffs are informed and believe that further investigation and discovery will reveal that EMV manages, invests, and has possession of certain ill-gotten gains that Dr. Oz has received through his branded endorsement deals of weight-loss supplement products.

50. Plaintiffs also allege that EMV has acted in concert with one or more of the other Media Defendants to further the unlawful supplement endorsement deals subject to this complaint. Specifically, EMV knows that the conduct of Dr. Oz in his endorsements and profits from fraudulent weight-loss supplement sales constitute a breach of duty owed to consumers. EMV gives substantial assistance and encouragement to Dr. Oz in an effort to facilitate his fraudulent endorsements of weight-loss supplements, like the Labrada supplements. On information and belief, Plaintiffs allege that EMV brokers Dr. Oz's endorsement deals and assists Dr. Oz or the other media defendants in concealing their ill-gotten gains through the use of various shell entities and investment vehicles.

51. EMV's president Sanford Climan, has specialized knowledge and the

[10] See LinkedIN, Nelly Kim, available at https://www.linkedin.com/in/nelly-kim-8715171b (last visited June 2, 2016).

capacity to assist Dr. Oz with the concealment of his ill-gotten gains. Specifically, "Mr. Climan is president of Entertainment Media Ventures, Inc., a company active in media investment and strategic advisory work that he founded in 1999. Since 2013, Mr. Climan has also served as chief executive officer of Oz Media, LLC, which was formed in 2013 in partnership with Dr. Mehmet Oz and is dedicated to building companies committed to improving health and wellness across cultures and geographies. In addition, Mr. Climan has served as an operating advisor for Pegasus Capital since May 1, 2014. From 2007 to 2010, Mr. Climan served as the first chief executive officer of 3ality Digital, LLC, a leading company in the development and commercialization of technologies that enable high quality digital 3D image capture, digital 3D broadcast and software that enables consumer applications of 3D entertainment. Mr. Climan also serves on several charitable boards, including The American Cinematheque, The Fulfillment Fund, and the UCLA School of Theater, Film and Television."[11]

x. Defendant Zoco Productions, LLC

52. Defendant Zoco Productions, LLC ("Zoco") is a Delaware limited liability company that maintains its principal place of business in New York City, New York. Zoco produces *The Doctor Oz Show* and operates the website for the *The Doctor Show*. Plaintiffs are informed and believe that after a reasonable opportunity for further investigation or discovery, that Defendant Zoco Productions, LLC or its agents and employees provided substantial assistance to Dr. Oz in carrying out the branded integration marketing strategy for Labrada products on *The Doctor Oz Show*. Plaintiffs further believe that Dr. Oz is an agent or employee for Defendant Zoco working within the scope of that agency relationship. During 2012, it is believed that Dr. Oz maintained

[11] *See* Proxy Statement of LIGHTING SCIENCE GROUP CORPORATION 8 (Aug. 1, 2014), *available at* http://www.sec.gov/Archives/edgar/data/866970/000119312514291650/d670646ddef14a.htm

a business email address ending with the domain name "@Zoco."

53. Defendant Zoco promotes and markets the Labrada Products (and/or their proprietary active ingredients) across the United States, including to hundreds of thousands of consumers in California.

xi. Defendant Harpo Productions, Inc.

54. Defendant Harpo Productions, Inc. is an Illinois corporation that maintains its principal place of business in Chicago, Illinois. According to its LinkedIn web page, "Harpo Productions (also referred to as Harpo Studios) is a multimedia production company founded by Oprah Winfrey and is based in Chicago, Illinois. It is the most successful production company in daytime talk, producing The Oprah Winfrey Show, The Dr. Oz Show, and The Nate Berkus Show, as well as having developed Dr. Phil and Rachael Ray. Also, Harpo creates and produces original television programming for broadcast, syndication, and cable." Harpo is Oprah spelled backwards. Based on information and belief, Defendant Zoco is a wholly-owned subsidiary of Defendant Harpo. Defendant Harpo promotes and markets the Labrada Products (and/or their proprietary active ingredients) across the United States, including to hundreds of thousands of consumers in California.

xii. Defendant Sony Pictures Television, Inc.

55. Defendant Sony Pictures Television, Inc. ("Sony") is a Delaware corporation that maintains its principal place of business at 10202 W Washington Blvd., Spp #119 Culver City, California. Sony is registered to do business in California as entity number C1619277. Sony is one of the world's largest content providers. An article that appeared on the Oprah Winfrey website in 2009 stated the following:

> Dr. Mehmet C. Oz, MD, better known to millions as Dr. Oz, the renowned and popular surgeon, educator, and best-selling author who appears regularly on The Oprah Winfrey Show, will debut in first-run syndication next year with a series co-produced by Harpo Productions and Sony Pictures Television (SONY) and

> distributed by SONY, it was jointly announced today by Oprah Winfrey; Tim Bennett, president, Harpo Productions; and Steve Mosko, president, Sony Pictures Television. The series, Dr. Oz (working title), will be available to stations across the country to launch in Fall 2009. Under the multi-year agreement, SONY will handle all distribution efforts for the show in the United States and Canada, advertiser sales and marketing, and co-produce the series with Harpo Productions.[12]

56. Defendant Sony promotes and markets the Labrada Products (and/or their active ingredients) across the United States, including to hundreds of thousands of consumers in California and New York.

a. The Media Defendants Are General Partners

57. Sony, Harpo, Zoco, and Dr. Oz are general partners in a general partnership that Plaintiffs believe is an unregistered business entity. Defendants Dr. Mehmet C. Oz, Zoco Productions, Harpo Productions, and Sony Pictures Television have combined their property, skill, and knowledge to carry out a single business undertaking in that they produce, promote, and distribute *The Doctor Oz* television show and other Doctor Oz related business operations.

58. According to a Harpo Press Release, "Harpo Productions creates and develops original TV programming for primetime, syndication and cable television and operates Oprah.com, a premier lifestyle website. ZoCo Productions, LLC, an affiliate of Harpo Productions, Inc., and Sony Pictures Television co-produce *The Dr. Oz Show*.

59. The Media Defendants have formed an agreement to jointly share the control, profits, and losses of the general partnership. The responsibilities of the parties have also been delegated pursuant to a partnership agreement: "Harpo to produce and retain copyright;" "SPT to have distribution rights in the US and Canada with a right

[12] *See* Press Release, *Harpo Productions and Sony Pictures Television to Launch Dr. Oz* (Jun. 13, 2009), http://www.oprah.com/pressroom/Harpo-Productions-and-Sony-Pictures-Will-Launch-Dr-Oz.

of first negotiation / refusal on all other territories;" "SPT and Harpo to have mutual approval over production budget;" "SPT and Harpo to collaborate on a website and digital extensions;" "SPT to provide marketing, legal/business affairs, finance, and other back office services;" "Harpo will control any broader joint venture/web project with Dr. Oz but Harpo acknowledges Sony's strong interest in partnering on a Dr. Oz branded new media venture and will discuss with Sony in good faith meaningful opportunities to participate."[13] *See* Exhibit C.

D. The Supplier Defendants

xiii. Defendant Naturex

60. Defendant Naturex, Inc. ("Naturex") is a Delaware corporation that maintains its principal place of business at 375 Huyler Street, South Hackensack, New Jersey. Defendant Naturex develops, manufactures, promotes, markets, distributes, and/or sells the Svetol® brand Green Coffee Bean Extract ingredient and the Labrada Green Coffee Bean Product with Svetol® throughout the United States, including in California. Defendant Naturex, Inc. is registered to do business in the state of California as entity number C1575823.

61. According to the U.S. Patent and Trademark Office, the "Svetol" trademark is owned by Naturex, S.A, which is the French holding company for Naturex, Inc. The Naturex LinkedIn web page describes the company's business operations as follows:

> Naturex is the global leader in specialty plant-based natural ingredients. Through its dedicated business units, the Group addresses the specific needs of 3 strategic markets: Food & Beverage, Nutrition

[13] *See* "Partnership Proposal" dated April 29, 2008, *available at* https://wikileaks.org/sony/docs/07/junderwood/1 Biz Dev/Harpo/Overview_v18.ppt (last visited May 31, 2016) [*Archived at* http://web.archive.org/web/20160414063523/https://wikileaks.org/sony/docs/07/junderwood/1 Biz Dev/Harpo/Overview_v18.ppt].

> & Health, and Personal Care. The company offers its customers a full array of high quality ingredients, responsibly sourced from nature for food, pharmaceutical, nutraceutical and cosmetic applications. Naturex's head office is in Avignon, France. The company employs more than 1,700 people and benefits from 8 sourcing offices around the world and high-performance manufacturing operations across 15 sites in Europe, Morocco, the United States, Brazil, Australia, India and Chile. It also has a global commercial presence through a dedicated network of 25 sales offices.[14]

62. The "Naturex Group" maintains three offices and two "multifunction sites" in the United States. A Naturex sales office is located 3080 Bristol Street, Suite 540, Costa Mesa, California 92626.

63. Naturex licenses the trademark to the brand "Svetol" to the Labrada Defendants for display on the Labrada Green Coffee product. Upon information and belief, the licensing agreement gives Naturex substantial control over the content of the labels that appear on the Labrada Green Coffee product. A Svetol license agreement that was entered into by Naturex and an unrelated entity shows that Naturex must provide prior written approval of the labeling and packaging materials before any product with its "Svetol" logo can be marketed and sold in commerce. *See* Exhibit A.[15] Moreover, Naturex takes affirmative steps to guarantee the "quality control" of products containing Svetol by actively testing the products to ensure compliance with its quality standards. *See* Ex. A. Naturex also has legal control and audit rights over documents relating to sales of products containing Svetol. *See* Ex. A. On information and belief, the Labrada Defendants and Naturex have entered into an agreement that is substantially similar to the one that is available on the SEC's website at the URL address referenced in the below footnote.[16]

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[14] *See* LinkedIn: Naturex, https://www.linkedin.com/company/naturex.

[16] Exhibit A is a copy of a Svetol licensing agreement that is published online through

xiv. Defendant Interhealth Nutraceuticals, Inc.

64. Defendant Interhealth Nutraceuticals Incorporated ("Interhealth") is a California Corporation with its principal place of business at 5451 Industrial Way, Benicia, California 94510. Interhealth develops, manufactures, promotes, markets, distributes, and/or sells Supercitrimax® and the Labrada Garcinia Cambogia with Supercitrimax® product across the United States, including to hundreds of thousands of consumers in California.

65. According to its website, "InterHealth Nutraceuticals specializes in researching, developing, marketing and distributing proprietary branded nutraceutical ingredients. InterHealth ingredients are sold worldwide to manufacturers of dietary supplements and functional foods & beverages." Interhealth is the owner of the "Supercitrimax" trademark.

66. Interhealth's Supercitrimax® trademark and logo appear on the bottles of the Labrada Garcinia Cambogia. A copy of a standard Interhealth trademark licensing agreement is available online and attached hereto as Exhibit B. The licensing agreement shows that Interhealth maintains a high degree of control over the content that appears on the labels and packaging of products containing its Supercitrimax ingredient. Interhealth must provide written approval of the packaging before any supplement containing Supercitrimax can be sold in commerce. Moreover, Interhealth takes an active role in marketing the products by providing marketing materials to the supplement companies that sell products containing Supercitrimax. *See* Ex. B. Plaintiffs are informed and believe that the Labrada Defendants have entered into an agreement with Interhealth that is substantially similar to the one shown in Exhibit B.

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the SEC's EDGAR search database, *available at* http://www.sec.gov/Archives/edgar/data/1527613/000129460614000146/exhibit103.htm

THE PRODUCTS

67. Labrada began selling weight-loss supplements containing Garcinia Cambogia and Green Coffee Bean Extract sometime around 2012 under its "Wellness Line" brand of products. Each of the Labrada Products at issue in this complaint sell at a retail price of approximately $19.99.

68. For purposes of this section, each statement that appears in quotation marks ("") below create affirmative representations about the Products and also create express and implied warranties that were relied on by Plaintiff and the Class members in deciding to purchase the products.

69. These statements will from now on be referred to in this Complaint as the "Express Warranties" and they also form the basis of plaintiffs' consumer fraud and misrepresentation causes of action.

A. The Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER.

70. The front label of the Labrada Green Coffee Bean Extract deceptively states that the product is a "Fat Loss Optimizer" that is "From the Makers of LEAN BODY." The front label further states that the product contains "Svetol®, 45% Chlorogenic Acid," and is "Stimulant Free."

71. The side-label of the Product states "**Green Coffee Bean Extract** is a natural powder extract from unroasted coffee beans. Green Coffee Bean Extract is rich in natural compounds, such as chlorogenic acids, that are known to have health benefits and to influence glucose and fat metabolism."

72. The side-label further states that "Recent peer-reviewed published studies have found that Green Coffee Bean Extract" does the following:

- "Helps Support Significant Fat Loss." and
- "Contains Natural Anti-Oxidant Properties"

73. Below these statements is a "**References**" section that is surrounded by a bright red rectangle that cites the following studies that purportedly support the product's weight-loss benefits:

a) "Vinson JA, et al. Diab. Metab. Snyder & Obes. Jan 2012"

b) "Farah A, et al. Jour of Nutr. Dec. 2008"

74. The back label of the Labrada Green Coffee Bean Product states "Green Coffee Bean Extract: 400 mg," then below that statement reads "Svetol®** Standardized to 45-50% total Chlorogenic Acids."

75. The back label then has a "Other Ingredients" section that reads "Gelatin, Maltodextrin, Magnesium Stearate, Silica, Sodium Copper Chlorophyllin, and titanium dioxide." In bold-face typed capital letters on the back label appear the statements:

- **"ZERO FILLERS"**
- **"ZERO BINDERS"**
- **"ZERO ARTIFICIAL INGREDIENTS."**

76. Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and Defendants have breached said warranties for the reasons described herein.

B. The Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER

77. The front label of the Labrada Garcinia Cambogia states that the product is a "**Dual Action Fat Buster**" that:

i. "Increases Fat Burning,"
ii. "Curbs Appetite to Aid Weight Loss,"

78. The front label further says that the Product is "From the Makers of LEAN

BODY" and is made with "Supercitrimax® 60% HCA."

79. The Labrada Garcinia Cambogia side label states that "Labrada Garcinia Cambogia with Super CitriMax® is a Dual Action Fat Buster" and "Studies suggest that HCA may inhibit body fat formation and suppress appetite." The label further states, "Use of 2800-3000 mg/day of HCA for 8 weeks has been shown to:"

- "Reduce body weight"
- "Curb appetite and food intake"
- "Boost fat burning during exercise and enhances glycogen synthesis"

80. The side label also contains a "References" section that cites to the following three publications:

- "Preuss HG, Rao CV, Garis R., et al., *Journal of Medicine* 2004; 35 (1-6):33-48."
- "Downs BW, Bagchi M. Subbaraju GV, et al. Mutation Research 2005; 579 (1-2): 149-162."
- "Chen IS, Haung SW Lu HC, et al. British Journal of Nutrition. Apr. 2012; 107(7): 1048-1055."

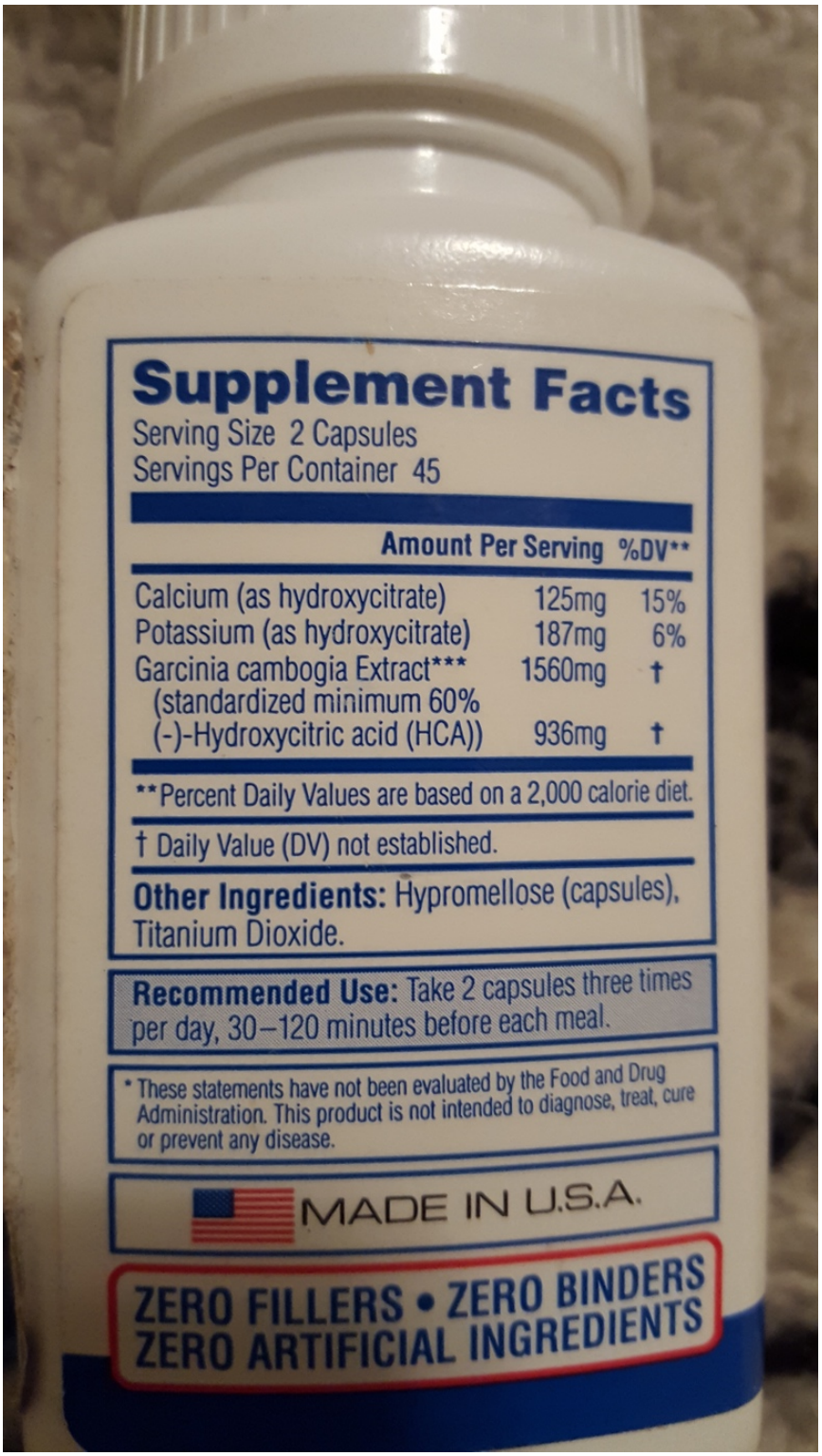
81. The side label further features the **"**SuperCitrimax" logo next to a statement saying that "Super CitriMax® is a registered trademark of Interhealth N.I."

82. The back label of the Labrada Garcinia cambogia Product states "Garcinia Cambogia Extract: 1560mg," then below that statement reads "standardized minimum 60% (-)- Hydroxycitric acid (HCA) 936 mg."

83. The back label then has a "Other Ingredients" section that reads "Hypromellose (capsules)," and "Titanium Dioxide."

84. In bold-face typed capital letters on the back label appear the statements:

- **"ZERO FILLERS"**
- **"ZERO BINDERS"**
- **"ZERO ARTIFICIAL INGREDIENTS."**



85. The back label further states that the Product is "Made in the USA" next

to a picture of an American Flag.

86. Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and Defendants have breached said warranties for the reasons alleged herein.

THE DECEPTIVE LABELING OF THE LABRADA PRODUCTS

A. Reasonable Consumers Would Be Deceived If They Knew the Truth About Labrada's "References"

87. All competent and reliable scientific studies conclude that the active ingredients in the Products do not provide the touted weight loss benefits. In an attempt to conceal the truth about their supplements, Defendants have misled consumers by stating or implying that Labrada Garcinia Cambogia is backed by clinical studies in the "references" section of the label. But the only clinical studies supporting the Products are either irrelevant, wholly unreliable, or conducted by Defendants themselves. If Plaintiffs and the class knew that the studies supporting the products were conducted by biased researchers or that the underlying data was manipulated or fraudulently presented, they would not have purchased the Products. . Moreover, the two studies Defendants rely on do not support the advertising claims Defendants made about the products.

B. SuperCitrimax Garcinia Cambogia Is Not an Effective "Fat Buster"

88. A significant *Garcinia*/HCA weight loss study was published in 1998 by a group of researchers at Columbia University's Obesity Research Center that was led by Dr. Heymsfield and published in the *Journal of the American Medical Association*.[17]

[17] S.B. Heymsfield, *et al.,* "Garcinia Cambogia (Hydroxycitric Acid) As a Potential Antiobesity Agent: A Randomized Controlled Trial," *J. Amer. Med. Assoc.* 280(18):1596-600 (1998). *Full text available at* http://jama.jamanetwork.com/article.aspx?articleid=188147. (Accessed October 14, 2015).

This study was, and remains, one of the longest duration (12 weeks) and largest (135 subjects divided equally into placebo and control groups) randomized double-blind clinical trials of *Garcinia cambogia.*

89. The study found that a *Garcinia* extract failed to produce a significant loss of weight and fat mass beyond that observed with placebo.[18]

90. *The Heymsfield* study has stood the test of time. In 2011, it was one of only 12 clinical trials deemed worthy of inclusion in a landmark meta-analyses of supplements like *Garcinia cambogia* and is assigned the highest Jadad score[19] of all included studies.[20,21]

91. In 2004, Max Pittler and Edzard Ernst, complementary medicine researchers at the universities of Exeter and Plymouth, published a systematic review of prior meta-analyses[22] and clinical trials of a variety of over-the-counter weight loss aids in *The American Journal of Clinical Nutrition.* The results indicated that none of the weight loss aids worked, including the *Garcinia cambogia* products reviewed.

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[18] In fact, the data suggests that the placebo group, on average, consistently lost more weight than the *Garcinia* treatment group across the entire time course of the study.

[19] "Jadad score" is a benchmark measuring the likelihood of bias in clinical trials, with higher numbers indicating lower likelihoods of bias. For a meta-analysis, Jadad scoring is carried out by a panel of scientists who are themselves blinded as to the authorship of articles. A.R. Jadad, R.A. Moore, *et al.,* "Assessing the Quality of Reports of Randomized Clinical Trials: is Blinding Necessary?" *Controlled Clinical Trials* 17(1):1-12 (1996). http://goo.gl/rdsRW3 .

[20] *See* Table 1 *in* I. Onakpoya, *et al.,* "*The Use of Garcinia Extract (Hydroxycitric Acid) as a Weight Loss Supplement: A Systematic Review and Meta-Analysis of Randomised Clinical Trials,"* J. OBESITY (2011), http://www.hindawi.com/journals/jobe/2011/509038/.

[21] Heymsfield recently defended his results and stated that marketers of *Garcinia cambogia* are "weaving a story with obscure facts. Maybe each fragment has some validity, but if you wind it together it makes no sense at all." *See* "*The Claims Make this Supplement Tempting, But They're Untrue*," CONSUMER REPORTS (Aug. 10, 2015)

[22] A meta-analysis contrasts and combines results from different studies in an attempt to identify patterns among study results, sources of disagreement, and other relationships between the studies.

Moreover, adverse events were reported in the *Garcinia* trials reviewed. The report concluded that "none of the reviewed dietary supplements," which included Garcinia cambogia, "can be recommended for over-the-counter use."[23]

92. Since hydroxycitric acid reportedly promotes weight loss, in part, through suppression of hunger, a study was conducted to determine the effects of hydroxycitric acid on appetitive variables. The active treatment group did not exhibit better dietary compliance or significant correlations between appetitive variables and energy intake or weight change. This study does not support a satiety effect of hydroxycitric acid.[24]

93. A study was conducted to assess the effects of acute hydroxycitric acid supplementation on substrate metabolism at rest and during exercise in humans. Hydroxycitric acid, even when provided in large quantities, does not increase total fat oxidation in vivo in endurance-trained humans.[25]

94. Meta-analyses of research on *Garcinia cambogia* and/or HCA have evaluated all known published credible human scientific studies. The meta-analyses uniformly conclude that HCA-containing supplements, such as Labrada's Garcinia Cambogia Product, have little or no positive effect on weight loss in healthy individuals.

C. Green Coffee Bean Extract Is Not an Effective Fat Loss Optimizer

95. A study in the *Journal of Agricultural and Food Chemistry* found that the main ingredient in Svetol®- chlorogenic acid- was not effective when given to mice over a 12-week period. In fact, taking the compound gave the mice early symptoms of

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[23] M.H. Pittler & E. Ernst, "*Dietary Supplements for Body-Weight Reduction: A Systematic Review*," AMER. J. OF CLIN. NUTR. (May 2004).

[24] Mattes R, Bormann L. Effects of (-)-hydroxycitric acid on appetitive variables. *Physiol Behav* 2000, 71:87-94.

[25] 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.

diabetes.[26] Moreover, "A meta-analysis a few years ago combined the results from three small, short-term trials. The authors found that green coffee extract was associated with losing about 5 pounds. But this slimming effect vanished when the authors analyzed the two studies that used the type of supplement recommended by Dr. Oz — green coffee extract enriched with chlorogenic acid."[27]

D. Labrada Misrepresents the Quality of the Products

96. In 2013, a consumer advocacy website that performs independent testing of consumer goods published a review of different Garcinia Cambogia supplements. Fourteen products were tested; of those products did not pass, according to the group Consumerlab.com. Labrada Nutrition's SuperCitrimax® brand of Garcinia Cambogia, lot # 80310513, was reportedly among those that did not pass.

97. According to the consumerlabs.com report:

> Retesting of a dietary supplement reported in October to contain significantly less of a key ingredient than listed on its label corroborates the original findings from ConsumerLab.com. The product, Labrada Nutrition Garcinia Cambogia, was one of six Garcinia supplements found by ConsumerLab.com to contain significantly lower amounts of HCA, a key natural component of Garcinia, than expected from labels. Labrada Nutrition challenged ConsumerLab.com's results based on its own tests suggesting the product contained more HCA than reported by ConsumerLab. However, the retesting last week found just 49% of the listed amount of HCA, even less than the 60% found earlier by ConsumerLab.[28]

98. Plaintiffs have also sought independent testing of the Labrada Garcinia

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[26] *Supplementation of a High-Fat Diet with Chlorogenic Acid Is Associated with Insulin Resistance and Hepatic Lipid Accumulation in Mice*, 61 J. AGRIC. FOOD CHEM. 4371–4378 (2013).

[28] *Retesting Confirms Lack of Ingredient in Garcinia Cambogia Supplement* Consumerlab.com (June 2, 2016), *available at* https://www.consumerlab.com/news/Labrada_Garcinia_Retest/12_6_2013/

Cambogia product from GAAS Analytical in Tucson, Arizona. A test was performed on Labrada Nutrition's Garcinia Cambogia Lot Number A105390815, Exp: 08/18 to measure the presence of HCA. The test results show that the product only contains 49.59% HCA. The standard deviation of the test was 8.46%. *See* Exhibit C.

99. Plaintiffs believe that after an opportunity for further investigation and discovery, the factual record will likely show that the SuperCitrimax ingredient and the Labrada Garcinia Product has contained varying levels of HCA throughout the class period and Defendants' claim that the products are made from "standardized HCA" is actually false and likely to mislead reasonable consumers.

100. Plaintiffs also allege that after further investigation and discovery, Plaintiff will have evidence to show that the Labrada Green Coffee bean Product also contains less than the advertised amount of the active ingredients.

E. False Claims that Labrada Products contain "Zero Binders, Zero Fillers and Zero Artificial Ingredients"

101. The Labrada Garcinia Cambogia Product contains one or more artificial ingredients. Specifically, the Supercitrimax® ingredient is processed and manufactured by artificial means that use chemical additives and solvents like ammonium chloride. Moreover, the Supercitrimax® ingredient does not contain naturally occurring hydroxycitric acid (HCA), but rather an artificial form of HCA that synthetically binds hydroxycitric acid with potassium and calcium minerals. In addition, the "other ingredients" in the Product are artificial, fillers, and/or binders.

102. "Hypromellose" is often used a binder in supplement products. Hypromellose is a synthetic polymer that does not occur naturally. Furthermore, the Labrada Garcinia Cambogia Product contains "titanium dioxide," which is often used a colorant in supplement products. Titanium dioxide in supplement products is often an artificial form called "nano-particle titanium dioxide" that is known to cause adverse health effects.

103. Each of the other products also contain artificial ingredients like "Svetol®

Green Coffee Bean"Gelatin," "Silica," "Magnesium Stearate," and "Sodium Copper Chlorophyllin." Each of the ingredients are recognized as artificial ingredients. With respect to Sodium Copper Chlorophyllin, the Code of Federal Regulations state "the color additive sodium copper chlorophyllin is a green to black powder prepared from chlorophyll by saponification and replacement of magnesium by copper. Chlorophyll is extracted from alfalfa (Medicago sativa) using any one or a combination of the solvents acetone, ethanol, and hexane." 21 C.F.R. 73.125.

F. Labrada Garcinia Cambogia Is Not "Made in the USA."

104. The label of the Labrada Garcinia Cambogia Product deceptively claims that the Product is "Made in the USA" and makes this statement next to a picture of an american flag. However, most, if not all, of the ingredients in the Product are made in a foreign country and imported into the United States, including the Product's purported active ingredient SuperCitrimax®. Notably, Defendant Interhealth imports Supercitrimax® from Laila Nutraceuticals in India.

105. Defendants' deceptive "Made in the USA" statement also violates California Business and Professions Code § 17533.7, which requires products with labeling statements like "Made in the USA" to contain "not more than 5 percent of the final wholesale value of the manufactured product." The foreign ingredients in the Labrada Garcinia Cambogia Product far exceed 5 percent of the final wholesale value of the Product.

THE DOCTOR OZ EFFECT

106. "Oprah Winfrey was the first person to dub Oz — then a frequent guest on her program — 'America's doctor.' Today, the Emmy Award-winning 'Dr. Oz Show' is one of the top-rated daily TV programs in the country, and Oz has authored a series of books, all of it turning him into a medical-media franchise."[29]

[29] *How 'The Dr. Oz Effect' Has Hooked American Consumers*, NBC News (Jun. 18, 2014), *available at*

107. Indeed, Dr. Oz's "medical-media franchise" is highly profitable and highly diversified.

108. In 2009, Defendants Dr. Oz, Sony, Harpo, and Zoco formed a partnership to produce *The Doctor Oz Show*. One reason for developing the show was to capitalize off the growing nutritional and health industry. The media Defendants sought to use Doctor Oz's credibility as a renowned surgeon at Columbia University to create a perception of trust amongst the show's viewers. But the primary purpose of the Doctor Oz Show— if not the only purpose— is to profit from advertising. However, *The Doctor Oz Show* has taken advertising to a whole new level.

109. Instead of relying on traditional television commercial to generate revenue, The Doctor Oz Show has instead successfully implemented a marketing strategy called "branded integration" whereby specific brands or products are promoted on the show in a manner that is non-obvious to consumers. Aside from omitting the fact that products are actually being endorsed on the *Doctor Oz Show*, Dr. Oz affirmatively misrepresents the true commercial nature of the show by making statements like: "Please listen carefully. I don't sell this stuff. I'm not making any money on this. I'm not going to mention any brands to you either. I don't want you conned."

110. But Doctor Oz is the one conning consumers— not to mention congress.

111. Dr. Oz has promoted the Labrada Products and/or their proprietary ingredients, Supercitrimax® and Svetol® by using key language. An episode of The Doctor Oz show believed to have aired on October 29, 2012 stated the following:

> DR. MEHMET OZ:
> From African mango to green coffee, it's the most talked about topic. Everybody wants to know, *what's the newest, fastest fat buster*? People have been stopping me on the street, e-mailing me. Even my family is asking the

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See How the Doctor Oz Effect has Hooked American Consumers, NBC News (June 18, 2014), *available at* http://www.nbcnews.com/health/health-news/how-dr-oz-effect-has-hooked-american-consumers-n134801?cid=eml_onsite

same question: How can I burn fat without spending every waking moment exercising and dieting? I just don't have any time to put in more effort. Well, I can tell you You're hearing thanks to brand-new scientific research, *about a revolutionary fat buster*.

(Begin video clip:)

DR. MEHMET OZ: It's called garcinia cambogia, a pumpkin-shaped fruit that grows in Southeast Asia and India, and it just might be the most exciting breakthrough in natural weight loss to date.

Revolutionary new research says it could be the magic ingredient that lets you lose weight without diet or exercise.

Dr. Harry Preuss is at the forefront of the research.

DR. HARRY PREUSS: The ideal weight loss program is one in which you lose fat and you retain your muscle or even build it. With garcinia, we can make that happen. I tell women, "Look at your dress size. If your figure is getting much smaller, that's exactly what you want."

DR. RICH SCHECKENBACH: Garcinia is an *exceptionally effective fat buster*. It inhibits the production of fat in the body, and when the body is not making fat, it's burning fat.

*****

DR. MEHMET OZ: All right. So listen, anytime I see a scientist excited about this, and I looked through some of this research, called these scientists myself, I get excited. That's why garcinia cambogia makes sense to me, fascinates me. But I'm going to say something for everyone to hear. Please listen carefully. I don't sell this stuff. I'm not making any money on this. I'm not going to mention any brands to you either. I don't want you conned. I'm going to walk you through, over the course of today's show, with exactly how you'd find this. But I've got to say, I am intrigued by how this stuff works. Explain to me how it's different from all of the other weight loss supplements that I've heard of in the past, the ones that most of our audience knows about.

DR. JULIE CHEN: Well, I think it's great because *it's like the **dual-action fat buster*** because it suppresses appetite.

DR. MEHMET OZ: Uh-huh.

112. Reference to the "Dual-Action Fat Buster" and other claims about Garcinia Cambogia products being fat busters are endorsements of the "Labrada garcinia cambogia DUAL ACTION FAT BUSTER with SuperCitrimax®." The connection does not end there though.

113. Dr. Harry Pruess, who was featured on the garcinia show is a paid researcher for Defendant Interhealth. In fact, the Labrada Garcinia cambogia bottle cites to an article that was authored by Dr. Harry Preuss. That study was paid for by Interhealth. The co-author of the study, Dr. Bagchi, is a paid researcher for Interhealth. Finally, the test subjects in one of Pruess' studies cited in the article were "male and female Sprague-Dawley rats"

114. Finally, the Garcinia episode states the following:

> DR. JULIE CHEN: You're looking for a percentage of this HCA, which is that ingredient in the rind, of at least 50 percent.
>
> DR. MEHMET OZ: Uh-huh. DR. JULIE CHEN: And because it actually is *absorbed better with mineral salts like potassium or potassium and calcium*, you want to make sure that that's included.
>
> DR. MEHMET OZ: All right. So you want to have it say "K" or say "potassium" next to it.
>
> ****
>
> DR. MEHMET OZ:
>
> All right, so I've warned everybody that I'm not going to mention specific brands, but I do want to go through exactly what I would look for. You're going to look on that list of ingredients. There should be **ZERO FILLERS**. There should be **ZERO BINDER**, **ZERO ARTIFICIAL INGREDIENTS**, all right? Remember, you should never see my picture next to it, because I never sell it. You see my picture next to it, that means they're stealing from you. I guarantee, as

> soon as the show airs, there are going to be thousands of fake ads out there. Don't go for those.

115. Defendants' show's discussion of calcium and potassium is a clear reference to the Supercitrimax® ingredient, which is a patented form of Garcinia Cambogia bound to calcium and potassium.[30] Moreover, the ZERO FILLERS, ZERO BINDER, ZERO ARTIFICIAL INGREDIENTS is a marketing slogan that appears on the labels of the Labrada products. Thus, these are key phrases that Dr. Oz was either paid to, or which he knew he had to, say.

116. Put simply, Dr. Oz has concealed his association with Defendant Interhealth. As of the date of filing this complaint, the Dr. Oz website still has an episode posted that promotes Meratrim® weight-loss supplements.[31] The caption to the video reads: "Dr. Oz has a brand-new fat loss program that works faster than ever! Learn how to block fat stores, burn fat after eating and activate calorie-burning mechanisms easier than ever before. Plus, everything you need to know about Meratrim® supplements." Meratrim®, however, is trademarked proprietary ingredient that marketed and sold by Defendant Interhealth.[32]

117. Dr. Oz's promotion of Svetol® Green Coffee Bean Extract, which is the key component of the Labrada product, is even more convincing. During a 2012 episode of The Doctor Oz Show, Dr. Oz stated:

> **DR. OZ:** Magic is make-believe, but this little bean has scientists saying they found a magic weight-loss cure for every body type. It's green coffee beans. When turned into a supplement this miracle pill can ***burn fat fast***. For anyone who wants to lose weight this is very exciting, and it's breaking news.

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[30] [30] *See, e.g.,* U.S. Patent Nos. 6,875,891; 7,943,186; 7,858,128.

See Website for The Dr. Oz Show, [31] http://www.doctoroz.com/episode/triple-your-fat-loss.

[32] *See* Interhealth website, Meritrim, http://www.interhealthusa.com/our-brands/meratrim/

Millions of you love coffee. Now, you're going to love it for a whole other reason. A staggering newly released study reveals that the coffee bean in its purest, raw form may hold the secret to weight loss that you've been waiting for. The study, presented at a meeting of the world's largest scientific society, triggered unprecedented excitement for a weight loss study. It showed women and men who took green coffee extract lost an astounding amount of fat and weight. 17 pounds in 22 weeks by doing absolutely nothing extra in their day. Could this be the magic weight loss bean to help you melt away unwanted pounds that you've been waiting for?

Next, private doctor and certified nutritionist Lindsey Duncan is here with the findings.

DR. LINDSEY DUNCAN: You know, I usually don't recommend weight loss supplements. This one has got me really really excited. In the medical community, the weight loss community is all buzzing about this. Here's why. The recent study that you were talking about earlier, the participants took the capsules and they did nothing else. They didn't exercise, they didn't change their diet, they actually consumed 2,400 calories a day. They burned only 400 calories. Now, that's weight gain, not weight loss. They lost over 10% of their total body weight.

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DR. OZ: How does it work?

DR. LINDSEY: Well, it's amazing. It's what we call a triple threat. It's the chlorogenic acid that causes the effect, and it works 3 ways. The first way is it goes in and it causes the body to burn glucose, or sugar, and burn fat, mainly in the liver. The second way, and the most important way, is it slows the release of sugar into the bloodstream. When you don't have sugar building up in the bloodstream, you don't have fat building up. Sugar turns to fat. Everybody must remember that. When the 2 are combined together, you get this synergistic effect that basically burns and blocks and stops fat, but it also is natural and safe.

118. The "study" that Dr. Oz touted on this episode was the *Vinson* study that was retracted by the authors after data was found to be falsified. Thus, Dr. Oz' statement was false and a reasonable doctor would know it to be false. Dr. Oz also knew consumers were likely to rely on his statements, as a scientist and medical doctor, to their detriment.

119. Moreover, "Doctor" Lindsay Duncan was not even a real doctor. A complaint that was filed by the Federal Trade Commission against Lindsay Duncan and his affiliated companies alleged the following:

> Through Duncan's appearances on "The Dr. Oz Show" and their experience selling dietary supplements and food products, Defendants were aware of the "Oz effect," a phenomenon where discussion of a product or product ingredient on "The Dr. Oz Show" causes a large increase in demand for the product or products containing the ingredient.
>
> ***
>
> A producer with "The Dr. Oz Show" first contacted Duncan about appearing as a guest to discuss GCBE in the morning of April 5, 2012. A Dr. Oz Show producer wrote: "We are working on a segment about the weight loss benefits

> of green coffee bean and I was hoping that Lindsey Duncan might be available to be our expert. Has he studied green coffee bean at all? Would he be able to talk about how it works?"
>
> At that time, Duncan had no familiarity with the purported weight-loss benefits of GCBE, nor did Defendants sell GCBE. Nevertheless, within a few hours, a senior member of the Defendants' public relations team replied: "Awesome! Thanks for reaching out, Dr. Lindsey does have knowledge of the Green Coffee Bean. He loves it!" Later that day, Defendants contacted a manufacturer of GCBE and, on or about the same day, submitted a wholesale order for GCBE raw material.
>
> In the evening of April 5, 2012, a producer for "The Dr. Oz Show" emailed [Duncan] a "very rough outline of the script" for the segment on GCBE shortly after a call between the producer and Duncan. The email stated that the script contained "some sample questions and [the producer's] sample answer s" based on the producer and Duncan's phone conversation. The draft also contained an introductory segment for Dr. Oz stating that "You may think magic is make believe – but this bean (hold coffee bean) has scientists saying . . . they found the magic weight loss cure for every body type. As a supplement, this miracle pill can burn fat fast! It's green coffee beans. For those with fat all over and anyone who wants to lose weight – this is very exciting – breaking news!"
>
> [Duncan] edited the script by, among other things, adding language in which Duncan would advise viewers that they could find green coffee bean capsules online by typing the words "Pure Green Coffee Bean Capsules" into their web browsers. The Defendants also added language in which Duncan would advise viewers to "take two 400 mg vegetarian capsules." Duncan rehearsed his delivery of the script during the days prior to taping the GCBE segment.[33]

120. The FTC complaint also noted ***evidence of Payola*** on *the Doctor Oz Show*. "In multiple instances following Duncan's appearances on television programs, Defendants sent gift cards of more than $100 in value, or complimentary shipments of

[33] *See* Complaint, *Federal Trade Commission v. Genesis Today et al*., Case 1:15-cv-00062 (W.D. Tex. Jan. 26, 2015), *available at* https://www.ftc.gov/system/files/documents/cases/150126lindduncmpt.pdf

their products, to the producers and staffs of various television shows, including 'The Dr. Oz Show' and 'The View.' Defendants also sent gift cards, worth several hundred dollars each, to four individuals associated with 'The Dr. Oz Show' and 'The View' as holiday presents in December 2011. At least one person returned the gift."

121. What the FTC action may have missed, however, is the fact that Lindsay Duncan and the Media Defendants were promoting not only "pure green coffee," but also the Svetol® branded ingredient in Labrada products. An archived webpage of Doctoroz.com that was captured following Duncan's appearance on the show in April specifically states the following:

> When purchasing supplements, make sure you look at the list of ingredients. When looking for a green coffee bean supplement, it should contain the chlorogenic acid extract, which can be listed as any of the following:
>
> GCA® (green coffee antioxidant)
> Svetol®
>
> Also, look for a capsule that contains at least 45% chlorogenic acid. More than 45% is okay, but pills with less than this amount have not been tested in studies that demonstrate weight loss. If you are going to take green coffee bean, the recommended dosage is 400mg, three times a day – 30 minutes before each meal. [34]

122. Following the April episode that featured Green Coffee Bean Extract, Doctor Oz did a second show about green coffee bean extract to defend against the criticism he received from the first show. During this second episode, he conducted his own study on 100 of his audience members. This "study" was modeled after the now-retracted *Vinson* study.

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[34] *See* Fact Sheet: Green Coffee Bean that was posted to Doctoroz.com on April 26, 2012, https://web.archive.org/web/20120913043020/http://www.doctoroz.com/videos/fact-sheet-green-coffee-bean?

123. Even more notable is that it appears that Doctor Oz specifically promoted Svetol® on-air during this second broadcast. Another archived webpage from Doctoroz.com has a screen clip from the actual episode showing that the word "Svetol" appeared on screen.[35]

124. So why would Dr. Oz promote brands like Labrada, Supercitrimax, and Svetol®? Maybe it is because a member of *The Doctor Oz Show* medical advisory board is also a paid spokesperson for Defendant Naturex.[36] That same spokesperson for Naturex is also Doctor Oz's business partner in a website venture called sharecare.com. Defendants Sony, Harpo, and Zoco also join Doctor Oz as co-owners of the Sharecare website. And, on information and belief, Dr. Oz and the Media Defendants were compensated through sponsorship agreement(s) to promote these products through the use of key language that would drive consumers to purchase the sponsors' products.

125. In the wake of Doctor Oz's Green Coffee fiasco, a statement submitted by a majority of the Commissioners opined that Dr. Lindsay's speech on the *Doctor Oz Show* constituted misleading commercial speech that has no first amendment protections.[37]

TOLLING THE STATUTE OF LIMITATIONS

126. **Delayed discovery.** Plaintiff and the Class are laypersons, lacked the knowledge and experience to understand how the Products' labels were deceptive or false, and information regarding the false or deceptive advertising was solely within Defendants' possession and control. Thus, the delayed discovery exception postpones accrual of the limitations period for all members of the putative classes.

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[35] *See* http://web.archive.org/web/20121105205629/http://www.doctoroz.com/episode/green-coffee-fat-burner-works?video=14493

[36] http://www.doctoroz.com/medadvisoryboard/chris-kilham

[37] See https://www.ftc.gov/system/files/documents/public_statements/620651/150126linddunstmter-jb-tm.pdf.

127. **Fraudulent concealment.** Additionally, or in the alternative, Defendants were constructively and actually aware that the Products were ineffective for their advertised use. Nevertheless, Defendants continued to sell the Labrada Products. Therefore, at all relevant times Defendants had a duty to inform consumers that the Products were not effective at providing the advertised weight-loss benefits, but Defendants knowingly concealed that fact from members of the putative classes herein. Accordingly, the fraudulent concealment exception tolls the statute of limitations on all claims herein.

128. **Continuing violation.** Additionally, or in the alternative, because Defendants' misrepresentations and deception continues up to the present, the continuing violation exception tolls all applicable statues of limitations for all members of the putative classes until Defendants' unlawful advertising and labeling is corrected.

CLASS ACTION ALLEGATIONS

129. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek certification of the following Classes (or alternative Classes or Subclasses), for the time period from when the Labrada Products first entered into the stream of commerce until the present ("Class Period"), as initially defined as follows:

The Nationwide Garcinia Class

All persons in the United States who purchased Labrada Garcinia Cambogia for personal and household use and not for resale during the Class Period.

The Nationwide Green Coffee Class

All persons in the United States who purchased Labrada Green Coffee Bean Extract for personal and household use and not for resale during the Class Period.

The California Garcinia Class

All persons in the United States who purchased Labrada Garcinia Cambogia for personal and household use and not for resale during the Class Period.

The California Green Coffee Class

All persons in the United States who purchased Labrada Green Coffee Bean Extract for personal and household use and not for resale during the Class Period.

The New York Garcinia Class

All persons in New York and states with substantially similar laws who purchased Labrada Garcinia Cambogia for personal and household use and not for resale during the Class Period.

The New York Green Coffee Class

All persons in New York and states with substantially similar laws who purchased Labrada Green Coffee Bean Extract for personal and household use and not for resale during the Class Period.

130. The Classes and Subclasses described in this complaint will jointly be referred to as the "Class" or the "Classes" unless otherwise stated, and the the proposed members of the Classes and Subclasses will jointly be referred to as "Class Members."

131. Plaintiffs and the Class reserve their right to amend or modify the Class definitions with greater specificity or further division into subclassses or limitation to particular issues as discovery and the orders of this Court warrant.

132. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants' employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, including all parent companies, and their employees; and the judicial officers, their immediate family members and court staff assigned to this case.

133. The proposed Classes are so numerous that individual joinder of all the members is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiffs believe the total number of Class members is at least in the hundreds of thousands and members of the Classes are numerous. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of

the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

134. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making final injunctive relief or corresponding declaratory relief and damages as to the Products appropriate with respect to the Classes as a whole. In particular, Defendants have failed to disclose the true nature of the Products being marketed as described herein.

135. There is a well-defined community of interest in the questions of law and fact involved, affecting the Plaintiff and the Classes and these common questions of fact and law include, but are not limited to, the following:

a. Whether Defendants breached any express warranties made to Plaintiff and the Class;

b. Whether Defendants breached an implied warranty of merchantability made to Plaintiff and the Class;

c. Whether Defendants were unjustly enriched by their conduct;

d. Whether Defendants engaged, and continue to engage, in unfair or deceptive acts and practices in connection with the marketing, advertising, and sales of Labrada Products;

e. Whether Defendants violated other consumer protection statutes, false advertising statutes, or state deceptive business practices statutes; and

f. Whether, as a result of Defendants' misconduct as alleged herein, Plaintiff and Class Members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

136. Plaintiff's claims are typical of the claims of the members of the Classes. Plaintiff and all members of the Classes have been similarly affected by Defendants' common course of conduct since they all relied on Defendants' representations concerning the Products and purchased the Products based on those representations.

137. Plaintiff will fairly and adequately represent and protect the interests of the Classes. Plaintiff has retained counsel with substantial experience in handling complex class action litigation in general and scientific claims specifically, including for dietary supplements. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Classes and have the financial resources to do so.

138. Plaintiffs and the members of the Classes suffered, and will continue to suffer harm as a result of the Defendants' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Classes is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

139. Adjudication of individual Class members' claims with respect to Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

CLAIMS FOR RELIEF

COUNT I

CLAIM FOR FRAUD, DECEIT, AND SUPPRESSION OF FACTS
CAL. CIV. CODE §§ 1709-1711
AND THE COMMON LAW OF ALL STATES

By All Named Plaintiffs
-on behalf of-
All Defined Classes
-against-
All Defendants

Allegations Against The Labrada Defendants And Supplier Defendants

140. Plaintiffs and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

141. All Plaintiffs bring this Claim individually and on behalf of the members of all Classes against Defendants Lee Labrada, Labrada Bodybuilding Nutrition, Inc., and Labrada Nutritional Systems, Inc., Naturex, Inc., and Interhealth.

142. All Defendants named in this Count have committed the requisite tortious actions giving rise to Plaintiffs' claims. Alternatively, Plaintiffs allege that the Labrada Defendants are primarily liable and that Naturex and Interhealth are liable by aiding and abetting the commissions of the Labrada Defendants' tortious conduct by providing them with substantial assistance and encouragement with knowledge of the Labrada Defendants' wrongful conduct.

143. There are no material differences in the laws of the fifty states with respect to claims for fraud and deceit as such claims arise from common law principles and duties. In the event the Court does find that a material difference in state law exists, then Plaintiff and the Class assert this Claim based on the laws of California and all states with substantially similar laws. Plaintiff and the Class reserve their right to amend the class definitions in this complaint to further define multistate classes consisting of persons in states that have substantially similar laws

144. Plaintiff brings this claim under alternate legal theories sounding in both

tort and contract, as to the extent allowable by Federal Rule of Civil Procedure 8(d)(2).

False Statements of Material Facts

145. The Labrada Defendants made material representations to Plaintiff and the Class members that the Labrada Products are effective at providing weight loss benefits capable of "busting their body fat" and other representations described in this complaint. However, the Products are not effective at providing the advertised weight loss results because the ingredients in the Products are ineffective, as established by numerous reliable and credible studies, and the ingredients cannot provide the advertised weight-loss benefits.

146. Defendants made material representations to Plaintiffs and the Class members that the products contain "Zero Fillers, Zero Binders, and Zero Artificial Ingredients" when in fact the products do contain fillers, binders, and artificial ingredients.

147. Defendants made material representations to Plaintiffs and the Class members that the products contained "Standardized" amounts of ingredients when in fact they do not.

148. Defendants' actions constitute "actual fraud" within the meaning of Cal. Civ. Code § 1572 because Defendants did the following with the intent to deceive Plaintiff and Class member and to induce them to enter into their contracts:

a. Suggested that the Products are effective as a weight-loss aid, even though Defendants knew that the Products are not;

b. Positively asserted that the Products are made with no artificial ingredients, binders, and fillers, when in fact they are not;

c. Suppressed the true nature of the Products from Plaintiff and Class members; and

d. Promised they would supply the Products with "standardized" ingredients even though the products do not contain standardized ingredients.

149. Defendants' actions, listed above, also constituted "deceit" as defined by Cal. Civ. Code § 1710 because Defendants willfully deceived Plaintiff and Class members with intent to induce them to alter their positions to their detriment by purchasing defective Products.

Fraud by Concealment and Omission of Material Facts

150. Defendants actively concealed material facts, in whole or in part, with the intent to induce Plaintiffs and members of the Classes to purchase the Products. Specifically, Defendants actively concealed the truth about the products by not disclosing all facts about the studies supposedly supporting the Products or by making such studies difficult or impossible to discover because many of the studies are only accessible by means of a paid subscription to the "journal" or other publication that prints the full version of the studies.

151. Plaintiffs and the Classes were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed facts.

152. Plaintiffs and the Class suffered injuries that were proximately caused by Defendants' active concealments and omissions of material facts.

153. Defendants' fraudulent concealments and omissions were a substantial factor in causing the harm suffered by Plaintiff and the class members as they would not have purchased the products at all if all material facts were properly disclosed.

Knowledge of Falsities

154. Defendants, at all times mentioned herein, had knowledge that that their representations concerning the Products are false and misleading because the Products are ineffective at providing the advertised weight-loss benefits. Defendants, at all times mentioned herein, had knowledge that the ingredients are ineffective because Defendants Interhealth, Naturex, and/or other ingredient suppliers essentially made up the science supporting the active ingredients in the Labrada Products through manipulation of "clinical studies" and the Labrada Defendants acted with reckless disregard with respect to discovering the truth about the studies.

Intent to Defraud and Intent to Induce Reliance

155. Defendants made the misrepresentations alleged herein with the intention of inducing and persuading Plaintiff and the Class to purchase the Labrada Products because the Defendants sought to reap enormous profits from the sales of the falsely labeled Products and the fraudulent advertising and promotion of the Products was essential to Defendants' ability to profit from the sales of the Products.

156. Defendants further withheld and omitted material information about the Products with the intention of inducing and persuading Plaintiff and the class to purchase the Labrada Products as a part of their unlawful scheme.

****Intent to Defraud a Class of Persons and the Public****

157. "One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit." Cal. Civ. Code § 1711.

158. Defendants are responsible for their material misrepresentations and omissions described above even if they did not intend any particular Plaintiffs or any particular class member to rely on the misrepresentations because Defendants made the representations to groups of persons and the public at large, intending or reasonably expecting that it would be repeated to Plaintiffs and the Class members who are consumers that were actually misled into purchasing the products.

*** Justifiable Reliance***

159. Plaintiffs and the Class, by purchasing the products, justifiably relied on Defendants' false and misleading statements and misrepresentations, and on the absence of the material information that Defendants omitted. If Plaintiffs and the class would have known the truth concerning the false representations and omissions, they would not have purchased the Labrada products at all because the Labrada products are essentially "worthless" in that they have a fair market value of $0.00.

Injury and Actual Damages

160. As a direct and proximate result of Defendants' intentional

misrepresentations and deceptive omissions, Plaintiff and the members of the Class were induced to pay for worthless products.

161. As a direct and proximate result of Defendants' intentional misrepresentations and deceptive omissions, Plaintiff and the members of the Class detrimentally relied on Defendants' misrepresentations and deceptive omissions in that they consumed worthless products that have no positive health benefits and in the fact that the products are potentially dangerous to their health.

162. Plaintiffs and the Class bring this claim for intentional misrepresentation based on alternate legal theories sounding in both tort and contract.

163. Plaintiffs and the Class were damaged through their purchase and use of the Products. Plaintiff and the Class suffered harm in that they suffered actual damages in the amount of what they paid for the Products subtracted by the fair market value of the products are actually worth.

164. The Labrada Products are worthless in that they have a fair market value of zero. Therefore, Plaintiffs and the Class have suffered actual damages in the amount of the purchase price paid for the products.

165. Alternatively, Plaintiff and the class allege that the Labrada Products are priced at a premium in comparison to other weight-loss products and that the premium price is commanded in the marketplace as a direct result of the false and misleading advertising tactics described in this complaint. This alternative premium-price measure of damages can be calculated on a uniform class-wide basis and Plaintiff and the classes out-of-pocket loss is the amount of the premium price that the Products command.

Fraudulent Inducement

166. For Plaintiffs' alternate intentional misrepresentation claim sounding in contract, Plaintiff suffered harm in that she has actual economic damages for Defendants' breach of contract by way of fraud and Plaintiffs allege that the proper measure of damages would be a full refund of the class members' purchase price of the products because the sales contracts are voidable as a result of fraudulent inducement.

Plaintiffs were induced by fraud when entering into the contract and would not have purchased the products had they known the truth. Therefore, Plaintiffs and the Class repudiate their purchase contracts and pray for legal or equitable restitution to the extent that defendants have been unjustly enriched by wrongfully obtaining Plaintiffs and the class members' purchase money.

167. For Plaintiffs' alternative intentional misrepresentation claim based in tort, Plaintiffsand the class suffered harm and seek the actual damages suffered because they detrimentally relied on Defendants' false statements of material facts by expending their time purchasing the products and they suffered a personal injury in that they consumed Products that are worthless and potentially dangerous. This chain of events is collateral to Plaintiffs' purchase of the Products and gives rise to a separate tort claim as it affects a separate primary right.

168. Plaintiffs and the class have all suffered the threshold amount of harm to state a claim for fraud, but in the event that the actual damages based on this tort theory cannot be determined on a class-wide basis, Plaintiffs and the Class will then seek nominal damages for their alternative intentional misrepresentation claim based on tort in a nominal amount, such $1.00, for each purchase of the Labrada Products.

Punitive Damages

169. Defendants' conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Plaintiffs' and Class members' rights and interests. Defendants' conduct thus warrants an assessment of punitive damages under Cal. Civ. Code § 3294 and other applicable states' laws, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

ALLEGATIONS OF FRAUD, DECEIT, AND SUPPRESSION OF FACTS AGAINST THE MEDIA DEFENDANTS

170. Plaintiffs and the Class members incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

171. All Plaintiffs bring this Claim individually and on behalf of the members of all Classes against Defendants Dr. Oz, Sony, Harpo, Zoco, and EMV.

172. There are no material differences in the laws of the fifty states with respect to claims for fraud and deceit as such claims arise from common law principles and duties. In the event the Court does find that a material difference in state law exists, then Plaintiff and the Class assert this Claim based on the laws of California and all states with substantially similar laws. Plaintiff and the Class reserve their right to amend the class definitions in this complaint to further define multistate classes consisting of persons in states that have substantially similar laws

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174. Defendants made material representations to Plaintiff and the Class members that the Labrada Products are effective at providing weight loss benefits capable of "busting their body fat for good" and other representations described in this complaint. However, the Products are not effective at providing the advertised weight loss results because the ingredients in the Products are ineffective, as established by numerous reliable and credible studies, and the ingredients cannot provide the advertised weight-loss benefits.

175. Defendants made material misrepresentations to Plaintiff and the Class members that Dr. Oz does not endorse specific brands of products when in fact he did endorse the Labrada brand, the Supercitrimax® brand, and/or the Svetol® brand of weight loss products.

Material Statements of Fact and not Opinions

176. Dr. Oz and the Dr. Oz Defendants claimed to have special knowledge about the weight loss supplements because Dr. Oz is renown doctor at the Columbia University School of Medicine. Defendants also claimed to have superior knowledge about the subject matter by hiring other doctors to disseminate false statements about the products.

177. Plaintiff and the class members did not have the same superior knowledge about the products.

178. Defendants made the representations described in this complaint as true representations, not casual expressions of belief, and did so in a way that declared the matter to be true.

179. Defendants, through Dr. Oz's reputation as a renowned doctor at Columbia University School of Medicine, had reasons to expect that by disseminating undisclosed endorsements of weight loss products, including the Labrada Products, that Plaintiff and the Class would rely on their representations as material statements of facts and not opinions.

180. Defendants' actions constitute "actual fraud" within the meaning of Cal. Civ. Code § 1572 because Defendants did the following with the intent to deceive Plaintiff and Class member and to induce them to enter into their contracts:

a. Suggested that the Products are effective as a weight-loss aid, even though Defendants knew that the Products are not;

b. Positively asserted that the Products are made with no artificial ingredients, binders, and fillers, when in fact they are not;

c. Suppressed the true nature of the Products from Plaintiff and Class members; and

d. Promised they would supply the Products with "standardized" ingredients even though the products do not contain standardized ingredients.

181. Defendants' actions, listed above, also constituted "deceit" as defined by Cal. Civ. Code § 1710 because Defendants willfully deceived Plaintiff and Class members with intent to induce them to alter their positions to their detriment by purchasing defective Products.

Fraud by Concealment and Omission of Material Facts

182. As set forth above, Defendants concealed material facts concerning the true nature of their Products, the endorsements of the products on *The Dr. Oz Show*, and the true nature of the clinical studies used in support of the weight-loss claims made on the product packaging and advertising. Defendants had a duty to make these disclosures based on their superior knowledge of the Products and the ingredients in the Products, as well as their affirmative disclosure of some facts and concealment of other material facts, thus making the partial disclosures deceptive.

183. Defendants actively concealed material facts, in whole or in part, with the intent to induce Plaintiff and members of the Classes to purchase the Products. Specifically, Defendants actively concealed the truth about the products by not disclosing all facts about the studies supposedly supporting the Products or by making such studies difficult or impossible to discover because many of the studies are only accessible by means of a paid subscription to the "journal" or other publication that prints the full version of the studies.

184. Plaintiffs and the Classes were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed facts.

185. Plaintiffs and the Class suffered injuries that were proximately caused by Defendants' active concealments and omissions of material facts.

186. Defendants' fraudulent concealments and omissions were a substantial factor in causing the harm suffered by Plaintiff and the class members as they would not have purchased the products at all if all material facts were properly disclosed.

Knowledge of Falsities

187. Defendants, at all times mentioned herein, had knowledge that that their

representations concerning the Products are false and misleading because the Products are ineffective at providing the advertised weight-loss benefits. Defendants, at all times mentioned herein, had knowledge that the ingredients are ineffective because Defendants Interhealth, Naturex, and/or other ingredient suppliers essentially made up the science supporting the active ingredients in the Labrada Products through manipulation of "clinical studies" and the Media Defendants acted with reckless disregard with respect to discovering the truth about the studies.

188. Dr. Oz, as a renown surgeon at Columbia University and a sophisticated party with superior knowledge about the fields of science and medicine, knew that the representations were false or recklessly disregarded to truth about the weight loss products he endorsed, including the Labrada Products.

Intent to Defraud and Intent to Induce Reliance*

189. Defendants made the misrepresentations alleged herein with the intention of inducing and persuading Plaintiff and the Class to purchase the Labrada Products because the Defendants sought to reap enormous profits from the sales of the falsely labeled Products and the fraudulent advertising and promotion of the Products was essential to Defendants' ability to profit from the sales of the Products.

190. Defendants further withheld and omitted material information about the Products with the intention of inducing and persuading Plaintiff and the class to purchase the Labrada Products as a part of their unlawful scheme to make money from the sales of the Products.

****Intent to Defraud a Class of Persons and the Public****

191. "One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit." Cal. Civ. Code § 1711.

192. Defendants are responsible for their material misrepresentations and omissions described above even if they did not intend any particular Plaintiff or any particular class member to rely on the misrepresentations because Defendants made the

representations to groups of persons and the public at large, intending or reasonably expecting that it would be repeated to Plaintiff and the Class members who are consumers that were actually mislead into purchasing the products.

193. Dr. Oz made the representations to the television audience with the intent that TV viewers and the news media would disseminate such information to the Class members who did not hear or perceive the misrepresentations directly from *The Dr. Oz Show*. Plaintiff and the Class members justifiably relied on all misrepresentations made on *The Dr. Oz Show*, however, because the representations were repeated to Plaintiff and the Class through the comprehensive marketing scheme described herein.

** *Justifiable Reliance***

194. Plaintiffs and the Class, by purchasing the products, justifiably relied on Defendants' false and misleading statements and misrepresentations, and on the absence of the material information that Defendants omitted. If Plaintiff and the class would have known the truth concerning the false representations and omissions, they would not have purchased the Labrada products at all because the Labrada products are essentially "worthless" in that they have a fair market value of $0.00.

195. Plaintiffs justifiably relied on the statements made by Dr. Oz because he assured consumers that he does not endorse a specific brand and because he has specialized knowledge as a doctor at Columbia University School of Medicine.

196. Plaintiffs and the Class also justifiably relied on the the material misrepresentations made by all Defendants as described in this complaint because Defendants used paid doctors like Harry Preuss to further the notion that the products worked as advertised and touted the fact that the Products are supported by clinical studies and scientific references that appear on the packaging of the Products and in the advertising materials for the Products.

Injury and Actual Damages

197. As a direct and proximate result of Defendants' intentional misrepresentations and deceptive omissions, Plaintiff and the members of the Class

were induced to pay for worthless products.

198. As a direct and proximate result of Defendants' intentional misrepresentations and deceptive omissions, Plaintiffs and the members of the Class detrimentally relied on Defendants' misrepresentations and deceptive omissions in that they consumed worthless products that have no positive health benefits and in the fact that the products are potentially dangerous to their health.

199. Plaintiff and the Class bring this claim for intentional misrepresentation based on alternate legal theories sounding in both tort and contract.

200. Plaintiff and the Class were damaged through their purchase and use of the Products. Plaintiff and the Class suffered harm in that they suffered actual damages in the amount of what they paid for the Products subtracted by the fair market value of the products are actually worth.

201. The Labrada Products are worthless in that they have a fair market value of zero. Therefore, Plaintiff and the Class have suffered actual damages in the amount of the purchase price paid for the products.

202. Alternatively, Plaintiff and the class allege that the Labrada Products are priced at a premium in comparison to other weight-loss products and that the premium price is commanded in the marketplace as a direct result of the false and misleading advertising tactics described in this complaint. This alternative premium-price measure of damages can be calculated on a uniform class-wide basis and Plaintiff and the classes out-of-pocket loss is the amount of the premium price that the Products command.

Fraudulent Inducement

203. For Plaintiff's alternative intentional misrepresentation claim based in tort, Plaintiff and the class suffered harm and seek the actual damages suffered because they detrimentally relied on Defendants' false statements of material facts by expending their time purchasing the products and they suffered a personal injury in that they consumed Products that are worthless and potentially dangerous. This chain of events is collateral to Plaintiff purchase of the Products and gives rise to a separate tort

claim as it affects a separate primary right. Plaintiff and the class have all suffered the threshold amount of harm to state a claim for fraud, but in the event that the actual damages based on this tort theory cannot be determined on a class-wide basis, Plaintiff and the Class will then seek nominal damages for their alternative intentional misrepresentation claim based on tort in the amount of $1.00 for each purchase of the Labrada Products.

Punitive Damages

204. Defendants' conduct was systematic, repetitious, knowing, intentional, and malicious, and demonstrated a lack of care and reckless disregard for Plaintiff's and Class members' rights and interests. Defendants' conduct thus warrants an assessment of punitive damages under Cal. Civ. Code § 3294 and other applicable states' laws, consistent with the actual harm it has caused, the reprehensibility of its conduct, and the need to punish and deter such conduct.

COUNT III

CLAIM FOR NEGLIGENT MISREPRESENTATION

THE COMMON LAW OF ALL STATES AND CAL. CIV. CODE § 1710(2)

By All Plaintiffs
-on behalf of-
All Classes
-against-
All Defendants

205. Plaintiffs and the Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

206. Defendants had a duty to disclose to Plaintiff and Class Members correct information as to the quality and characteristics of the Products because Defendants were in a superior position than Plaintiff and Class Members such that reliance by Plaintiff and Class Members were justified., Defendants possessed the skills and expertise to know the type of information that would influence a consumer's purchasing decision.

207. During the applicable Class period, Defendants negligently or carelessly misrepresented, omitted, and concealed from consumers material facts regarding the quality and characteristics of the Products, including the alleged weight-loss benefits.

208. Defendants made such false and misleading statements and omissions through a wide range of advertisement medium described herein, with the intent to induce Plaintiff and Class Members to purchase the Products.

209. Defendants were careless in ascertaining the truth of its representations in that they knew or should have known that Plaintiff and Class Members would not realize the alleged benefits represented by Defendants.

210. Plaintiffs and the Class Members were unaware of the falsity in Defendants' misrepresentations and omissions and, as a result, justifiably relied on them when making the decision to purchase the Products.

211. Plaintiffs and the Class Members would not have purchased the Products or paid as much for the Products if the true facts had been known.

COUNT IV
CLAIM FOR VIOLATIONS OF THE UNFAIR COMPETITION LAW
CAL. BUS. & PROF. CODE §§ 17200, *et seq*.

By Plaintiff Veda Woodard

-on behalf of-

The Nationwide Classes and the California Classes

-against-

All Defendants

212. Plaintiff Veda Woodard and the Nationwide and California Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

213. Plaintiff Woodard brings this claim on behalf of the Nationwide classes and California Classes against Defendants.

214. California's Unfair Competition Law, Business and Professions Code §17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendants have engaged in unfair,

deceptive, untrue and misleading advertising, and continue to engage in such business conduct, in violation of the UCL.

215. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq., proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

****Unlawful****

216. Defendants have violated the UCL unlawful prong in at least the following ways:

a. By knowingly and intentionally concealing from Plaintiff and the other Class members that the Products cannot provide the advertised weight-loss benefits while obtaining money from Plaintiff and the Classes;

b. By misrepresenting the nature of the Products and the Products' effectiveness at providing the weight-loss benefits;

c. By misrepresenting the quality of the Products and that the Products have "Standardized" amounts of ingredients;

d. By engaging in the conduct giving rise to the claims asserted in this complaint;

e. By representing the Products as being "Made in the USA" in violation of California Business and Professions Code § 17533.7, which requires products with labeling statements like "Made in the USA" to contain "not more than 5 percent of the final wholesale value of the manufactured product."

f. By violating California Civil Code §§ 1709-1711 by making affirmative misrepresentations about the Labrada Products;

g. By violating California Civil Code §§ 1709-1711 by suppressing material information about the Labrada Products;

h. By violating the CLRA, FAL, and the California Commercial Code for breaches of express and implied warranties.

i. By violating the FCC's Payola rules.

217. Such conduct is ongoing and continues to this date.

218. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices.

****Unfair****

219. The UCL also prohibits any "unfair"… business act or practice."

220. Defendants' acts, omissions, misrepresentations, practices and nondisclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. In the alternative, Defendants' business conduct as described herein violates relevant laws designed to protect consumers and business from unfair competition in the marketplace. Such conduct is ongoing and continues to date.

221. Plaintiff Woodard also alleges violations of consumer protection, unfair competition and truth in advertising laws in California and other states resulting in harm to consumers. Plaintiff assert violation of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of the UCL. Such conduct is ongoing and continues to this date.

222. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

****Fraudulent****

223. The UCL also prohibits any "fraudulent business act or practice."

224. Defendants' claims, nondisclosures (i.e., omissions) and misleading statements, as more fully set forth above, were false, misleading and/or likely to

deceive a reasonable consumer within the meaning of the UCL. Such conduct is ongoing and continues to this date.

225. Defendants' conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact as a result of Defendants' unfair conduct.

226. Defendants have thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff and the Class to injunctive relief against Defendants, as set forth in the Prayer for Relief.

227. Pursuant to Business and Professions Code §17203, Plaintiff and the Class seek an order requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendants to engage in a corrective advertising campaign.

228. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Products they purchased, which was unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition and attorneys' fees and costs.

COUNT V
CLAIM FOR VIOLATIONS OF THE CLRA
CAL. CIV. CODE §§ 1700, *et seq.*

By Plaintiff Veda Woodard
-on behalf of-
The Nationwide Classes and the California Classes
-against-
The Labrada Defendants and the Supplier Defendants

229. Plaintiff Veda Woodard and the Nationwide and California Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

230. Plaintiff Woodard brings this claim on behalf of the Nationwide classes and California Classes against the supplier defendants and the Labrada Defendants for their violations of California's Consumers Legal Remedies Act, Cal. Civ. Code §§

1750, *et seq.*

231. Defendants are "persons" under Cal. Civ. Code § 1761(c).

232. Plaintiff is a "consumer," as defined by Cal. Civ. Code § 1761(d).

233. By making affirmative misrepresentations about the weight-loss benefits of the products and by concealing material facts about the products and the studies supporting the efficacy claims about the products, Defendants engaged in deceptive business practices prohibited by the CLRA, Cal. Civ. Code § 1750, *et seq.*, including:

§ 1770(a)(2): Misrepresenting the source, sponsorship, approval, or certification of goods or services by claiming that that the Products are "Made in the USA" when in fact they are not.

§ 1770(a)(4): Using deceptive representations or designations of geographic origin in connection with goods by claiming the Products are Made in the USA when in fact they are not.

1770(a)(5): Representing that goods have characteristics, uses, or benefits which they do not have by claiming that the products are effective as weight-loss aids and "fat busters" when in fact they provide no such benefits;

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another by claiming that the products contain "standardized" ingredients and have "zero fillers, zero binders, and zero artificial ingredients" when in fact such representations are not true.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised because Defendants knew that the Products could not provide the advertised benefits, but they chose to advertise and sell the Products to consumers.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not by using unstandardized ingredients that fluctuate in their quantity and quality.

234. A reasonable consumer would not have purchased nor paid as much for the Products had Defendants disclosed the truth about the weight loss benefits of the

products and the clinical studies supporting the products, as that information is material to a reasonable consumer.

235. As a result of its violations of the CLRA detailed above, Defendants have caused and continues to cause harm to Plaintiff and members of the Class and, if not stopped, will continue to harm them. Had Plaintiff known the truth about the Products she would not have purchased the Products.

236. In accordance with Civil Code § 1780(a), Plaintiff and members of the Class seek injunctive and equitable relief for Defendants' violations of the CLRA.

237. In addition, Plaintiff Woodard has mailed a notice and demand letter to Defendants more than 30 days prior to bringing this CLRA claim in this First Amended Complaint. Defendants have failed to take the corrective action requested in Plaintiff's demand letter and continue to falsely market and sell the Labrada Products. Thus, Plaintiff Woodard seeks restitution, disgorgement of profits, actual damages, and punitive damages in accordance with the CLRA.

238. A copy of Plaintiff Woodard's CLRA notice letter is attached to this complaint as Exhibit D.

239. Plaintiff and members of the Class request that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

240. Plaintiff Woodard has attached a "venue affidavit" to this complaint, to the extent it is required in federal court, in accordance with California Civil Code Section 1781(e) attesting that Defendants are "doing business" in this County and that this County is the proper place for trial.

COUNT VI

CLAIM FOR VIOLATIONS OF THE FALSE ADVERTISING LAW

CAL. BUS. & PROF. CODE §§ 17500, *et seq*.

By Plaintiff Veda Woodard

-on behalf of-

The Nationwide Classes and the California Classes

-against-

All Defendants

241. Plaintiff Veda Woodard and the Nationwide and California Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

242. Plaintiff Woodard brings this claim on behalf of the Nationwide classes and California Classes against Defendants for their violations of California's False Advertising Law, Cal. Bus & Prof. Code §§ 17500, *et seq*.

243. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance upon Defendants' marketing claims. Plaintiff used the Products as directed, but the Products have not worked as advertised, nor provided any of the promised benefits.

244. Defendants' business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to California Business and Professions Code section 17500, *et seq*. because Defendants advertised the Products Plaintiff purchased in a manner that is untrue and misleading, and that is known or reasonably should have been known to Defendants to be untrue or misleading.

245. Defendants' wrongful business practices have caused injury to Plaintiff and the Class.

246. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff and the Class seek an order of this court enjoining Defendants from continuing to engage in deceptive business practices, false advertising, and any other

act prohibited by law, including those set forth in the complaint.

247. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Products which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition and attorneys' fees and costs.

COUNT IV

CLAIM FOR BREACH OF EXPRESS WARRANTY

CAL. COMM. CODE § 2313

By Plaintiff Veda Woodard
-on behalf of-
The Nationwide Classes and the California Classes
-against-
The Labrada Defendants

248. Plaintiff Veda Woodard and the California Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

249. Plaintiff Woodard brings this claim on behalf of the California Classes against Defendants Lee Labrada, Labrada Bodybuilding Nutrition, Inc. and Labrada Nutritional Systems, Inc. for their breaches of express warranties pursuant to California Commercial Code § 2313.

250. Defendants, in their capacity as manufacturers of the Products, expressly warranted that the Products were fit for their intended purpose by making the Express Warranties, as defined in this complaint.

251. The foregoing representations were material and were a substantial factor in causing the harm suffered by Plaintiff and the Class because they concerned alleged efficacy of the Products regarding the ability aid with weight loss and bust body fat.

252. These representations had an influence on consumers' decisions in purchasing the Products.

253. Defendants made the above representations to induce Plaintiff and the members of Class to purchase the Products. Plaintiff and the Class members relied on

the representations when purchasing Defendants' products.

254. In fact, the Products do not conform to the Express Warranties because each of the Express Warranties is false and misleading and the Products do not perform as warranted.

255. Plaintiff and the Class members were injured and continued to be injured as a direct and proximate result of Defendants' breach because they would not have purchased the Products or paid as much for the Products if the true facts had been known.[38]

256. Plaintiff and the Class bring this claim against Defendants in their capacities as manufacturers of the Products with whom Plaintiff has not dealt with directly. Therefore, Plaintiff and the Class were not required to notify Defendants of their breaches of express warranties within a reasonable time. Plaintiff has notified Defendants of their breaches via letters sent by certified mail, return receipt requested, and allowed Defendants reasonable time to take corrective actions. Defendants failed to take corrective action.

COUNT V

CLAIM FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

CAL. COMM. CODE § 2314

By Plaintiff Veda Woodard
-on behalf of-
The Nationwide Classes and the California Classes
-against-
The Labrada Defendants

257. Plaintiff Woodard and the California Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

258. Plaintiff Woodard brings this claim on behalf of the California classes

[38] Though, Plaintiff and the Class would still be interested in purchasing the Labrada Products again if they were represented properly or truthfully.

against the Labrada Defendants.

259. Defendants did so with the intent to induce Plaintiff and Class Members to purchase the Products.

260. At the time of Plaintiff and the class members' purchase, Defendants, by their occupations as manufacturers of the goods, held themselves out as having special knowledge or skill regarding the Products.

261. Defendants breached the warranties implied in the contract for the sale of the Products in that the Products:

a. Were not of the quality as of other products generally acceptable in the trade of weight-loss aids and/or supplement products;

b. Were not fit for the ordinary purposes for which the Products were intended because they provide no weight-loss benefits.

c. Were not adequately labeled because the statements on the label are false and misleading;

d. Were not conformed to the promises or affirmations of fact made on the container or label because the Products provide no weight-loss benefits and are worthless products;

262. Moreover, the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, and the goods were unfit for their intended and ordinary purpose. As a result, Plaintiff and the Class members did not receive the Products as impliedly warranted by Defendants to be merchantable.

263. Plaintiff and the Class bring this claim against Defendants in their capacities as manufacturers of the Products with whom Plaintiff has not dealt with directly. Therefore, Plaintiff and the Class were not required to notify Defendants of their breaches of implied warranties within a reasonable time. Plaintiff has notified Defendants of their breaches via letters sent by certified mail, return receipt requested, and are allowing Defendants reasonable time to take corrective actions.

COUNT VI

CLAIM FOR BREACH OF EXPRESS WARRANTY

N.Y. U.C.C. § 2-313

By Plaintiffs Morrison and Rizzo-Marino

-on behalf of-

The New York Classes

-against-

The Labrada Defendants

264. Plaintiffs and the Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

265. Plaintiffs bring this Count individually and on behalf of the members of the New York Classes against the Labrada Defendants.

266. Defendants, as a manufacturer, marketer, distributor and/or seller, expressly warranted that Labrada Products were fit for their intended purpose of making the Express Warranties.

267. In fact, Labrada Products are not fit for such purposes because each of the Express Warranties is false and misleading.

268. Defendants breached the warranty implied in the contract for the sale of Labrada Products in that the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, the goods were unfit for their intended and ordinary purpose for which the Products are used, and the

COUNT VIII

CLAIM FOR BREACH OF IMPLIED WARRANTY

N.Y. U.C.C. § 2-314

By Plaintiffs Morrison and Rizzo-Marino

-on behalf of-

The New York Classes

-against-

The Labrada Defendants

269. Plaintiffs and the Class Members re-allege and incorporate by reference

each and every allegation set forth above, and further allege as follows:

270. Plaintiffs bring this Count individually and on behalf of the members of the Nationwide Class and New York Subclass against the Labrada Defendants.

271. Defendants are and were at all relevant times, merchants under N.Y. U.C.C. § 2- 314. Defendants, as the designer, manufacturer, marketer, distributor and/or seller, impliedly warranted that Labrada Products were fit for their intended purpose in that that the Products would (i) be effective weight-loss aids; (ii) contained zero binders, zero fillers, zero artificial ingredients; (iii) work as effective "fat busters"; and (iv) be supported by credible references. Defendants did so with the intent to induce Plaintiff and the New York Class Members to purchase Labrada Products.

272. Defendants breached the warranty implied in the contract for the sale of Labrada Products in that the Products could not pass without objection in the trade under the contract description, the goods were not of fair or average quality within the description, the goods were unfit for their intended and ordinary purpose for which the Products are used.

COUNT IX

CLAIM FOR BREACH OF EXPRESS WARRANTIES TO INTENDED THIRD PARTY BENEFICIARIES

By all Plaintiffs
-on behalf of-
All Defined Classes
-against-
The Supplier Defendants

273. Plaintiffs and the Classes incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

274. Plaintiff Woodard bring this claim on behalf of the Nationwide and California classes against Defendants Interhealth and Naturex.

275. Plaintiffs Morrison and Rizzo-Marino bring this claim on behalf of the Nationwide and New York Classes against Defendants Interhealth and Naturex.

276. Defendants, in their capacity as manufacturers of the Products, expressly warranted that the Products were fit for their intended purpose by making the Express Warranties.

277. The foregoing representations were material and were a substantial factor in causing the harm suffered by Plaintiff and the Class because they concerned alleged efficacy of the Products regarding the ability aid with weight loss and bust body fat.

278. These representations had an influence on consumers' decisions in purchasing the Products.

279. Defendants made the above representations to induce Plaintiff and the members of Class to purchase the Products. Plaintiff and the Class members relied on the representations when purchasing Defendants' products.

280. In fact, the Products do not conform to the Express Warranties because each of the Express Warranties is false and misleading and the Products do not perform as warranted.

281. Plaintiff and the Class members were injured and continued to be injured as a direct and proximate result of Defendants' breach because they would not have purchased the Products or paid as much for the Products if the true facts had been known.39

282. Plaintiff and the Class bring this claim against Defendants in their capacities as manufacturers of the Products with whom Plaintiff has not dealt with directly.

283. Plaintiff and the Class also bring this claim against Defendant Interhealth as intended third-party beneficiaries to the contract between Interhealth and Labrada concerning the Labrada garcinia cambogia product.

284. Plaintiff and the Class also bring this claim against Defendant Naturex as intended third-party beneficiaries to the contract between Naturex and Labrada

[39] Though, Plaintiff and the Class would still be interested in purchasing the Labrada Products again if they were represented properly or truthfully.

concerning the Labrada green coffee product.

COUNT X

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
15 U.S.C. §§ 2301, *et seq.*

By All Plaintiffs
-on behalf of-
All Defined Classes
-against-
The Labrada Defendants and the Supplier Defendants

285. Plaintiffs and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

286. Plaintiffs bring this Count individually and on behalf of the members of the Nationwide Class against the Labrada Defendants. Alternatively, Plaintiff Woodard brings this Count individually and on behalf of the California Classes and Plaintiffs Morrison and Rizzo-Marino bring this Count individually and on behalf of the New York Classes.

287. The Labrada Products are consumer products as defined in 15 U.S.C. § 2301(1).

288. The Labrada Products sell at retail for more than five dollars.

289. Each Plaintiff purchased the Products on multiple occasions and each paid twenty-five dollars or more for their total purchases.

290. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301 (4) and (5).

291. In connection with the sale of the Labrada Products, the Labrada Defendants issued written warranties as defined in 15 U.S.C. § 2301 (6), which warranted that the Products are effective at providing weight-loss benefits.

292. In connection with the sale of the Labrada Products, Defendants impliedly warranted as defined in 15 U.S.C. §2301(7), that the products were of merchantable quality, such that the products were of the same average grade, quality,

and value as similar goods sold under similar circumstances.

293. Defendants breached these warranties because the Products are not effective for their intended use because the Products contain hyper-diluted ingredients that are scientifically incapable of effectively causing sustained weight-loss.

294. By reason of the Labrada Defendants' breach of the express written warranties, Defendants violated the statutory rights owed to Plaintiffs and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiffs and Class members.

295. Plaintiffs and the Class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased the Products if the true facts had been known.

296. Prior to filing this action, Plaintiffs, by and through their counsel, provided Defendants with written notice of their claims pursuant to 15 U.S.C. § 2310(e) and also notified Defendants that they are acting on behalf of a Class defined as all persons in the United States who purchased the Labrada Products. *See Ex.* C.

COUNT XI

CLAIM FOR UNFAIR TRADE PRACTICES
N.Y. BUS. LAW § 349

By Plaintiffs Morrison and Rizzo-Marino
-on behalf of-
The Nationwide and New York Classes
-against-
All Defendants

297. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

298. Plaintiffs Morrison and Rizzo-Marino bring this Count individually and on behalf of members of the New York Classes.

299. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by making the Misrepresentations.

300. The foregoing deceptive acts and practices were directed at consumers, including Plaintiffs and members of the New York Sub-Class.

301. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and qualities of Labrada Products to induce consumers to purchase the Products.

302. Plaintiffs and the New York Class Members were injured, and continue to be threatened by irreparable injuries.

COUNT XII

CLAIM FOR FALSE ADVERTISING

N.Y. BUS. LAW § 350

By Plaintiffs Morrison and Rizzo-Marino

-on behalf of-

The Nationwide and New York Classes

-against-

All Defendants

303. Plaintiffs and the Class Members re-allege and incorporate by reference each and every allegation set forth above, and further allege as follows:

304. Plaintiffs Morrison and Rizzo-Marino bring the Count individually and on behalf of members of the Nationwide Classes and New York Sub-Classes against Defendants.

305. Based on the foregoing, Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

306. Defendants' false, misleading, and deceptive statements and representations of fact, including, but not limited to, the Misrepresentations, were and are directed to consumers, including Plaintiffs and members of the Classes.

307. Defendants' false, misleading, and deceptive statements and representations of fact, including, but not limited to, the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

308. Defendants' false, misleading, and deceptive statements and representations of fact, including, but not limited to, the Misrepresentations, have resulted in consumer injury or harm to the public interest.

309. As a result of Defendants' false, misleading, and deceptive statements and representations of fact, including, but not limited to, the Misrepresentations, Plaintiffs and Class Members have suffered and continue to suffer economic injury.

310. Plaintiffs and the New York Sub-Class suffered an ascertainable loss caused by Defendants' Misrepresentations because they paid for Labrada Products, which they would not have purchased, or would not have paid as much for the Products, had they known the truth about the Products.

311. Plaintiffs, on behalf of himself and other members of the New York Sub-Class, seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or $500.00, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members request that the Court enter an order or judgment against Defendants including the following:

i. An order certifying that this action is properly brought and may be maintained as a class action;

ii. An order appointing Plaintiff as class representatives of the Nationwide Class, as class representative of their respective Subclasses, and The Law Office of Ronald A. Marron as counsel for the Class;

iii. An order requiring Defendants to bear the costs of Class notice;

iv. Restitution in such amount that Plaintiff and Class Members paid to purchase Defendants' Products;

v. Actual damages, compensatory damages, punitive, treble damages, nominal damages, and such other relief as provided by the statutes cited herein;

vi. Other appropriate injunctive relief;

vii. An order declaring Defendants' conduct as unlawful, and an order enjoining Defendants from unlawfully and misleadingly representing the Products in violation of state law;

viii. An order awarding Plaintiff their costs of suit, including reasonable attorneys' fees and pre- and post-judgment interest on such monetary relief;

ix. An order requiring an accounting for, and imposition of, a constructive trust upon all monies Defendants received as a result of the misleading, fraudulent, and unlawful conduct alleged herein.

x. Such other relief to which Plaintiff and Class Members may be entitled to at law or in equity.

JURY DEMAND

Plaintiffs hereby demands a trial by jury on all causes of action or issues so triable.

DATED: June 2, 2016

/s/ *Ronald A. Marron*
Ronald A. Marron

THE LAW OFFICES OF RONALD A. MARRON
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Facsimile: (619) 564-6665
Counsel for Plaintiffs and the Proposed Class

EXHIBIT A

EX-10 3 exhibit103.htm TRADEMARK LICENSE AGREEMENT WITH NATUREX RE: SVETOL
Exhibit 10.3

NATUREX
Ultimate Botanical Benefits

TRADEMARK LICENSE AGREEMENT – SVETOL®

THIS AGREEMENT is made as of **October 11th, 2013** (hereinafter the "Effective Date") by and between Naturex Inc., a corporation organized and existing under the laws of Delaware, having a place of business at 375 Huyler Street, South Hackensack, New Jersey 07606 (hereinafter "**Licensor**") and **NuZee Inc.,** a company existing under the laws of the United States, having a place of business at **16955 Via Del Campo, Suite 260 San Diego, CA 92127, USA** (hereinafter "**Licensee**").

WHEREAS, Licensor owns rights on the "**SVETOL®**" trademark (the "**Trademark**") registered in the United States under Registration Nos. 3,120,866 and 3,781,379;

WHEREAS, Licensee desires to purchase "**SVETOL®**" brand green coffee bean extract (the "**Extract**") from Licensor and Licensor agrees to sell the Extract to Licensee subject to Licensee's agreement to use the Trademark in connection with the marketing and sale of its products containing the Extract (the "Products") on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the promises and of the obligations hereinafter set forth, the parties, intending to be legally bound, hereby agree as follows:

1. License.

For so long as Licensee directly acquires its supplies of Extract, which shall not be less than 500 kg per twelve (12) month period (the "Annual Minimum"), from Licensor, Licensee agrees that the Products shall bear the Trademark, subject to the terms and conditions hereof. In connection therewith, Licensor hereby grants to Licensee, and Licensee hereby accepts, a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the Trademark in the United States solely in connection with the marketing and sale of the Products manufactured, processed, packaged, distributed or sold by Licensee. This license shall remain in effect for all periods during which Licensee manufactures, processes, packages, distributes or sells the Products in accordance with this Agreement. Notwithstanding the fact that the foregoing license is non-sublicensable, but subject to Licensor's express prior written approval and Licensee's compliance with the covenant of Licensee set forth in Section 6(iv) below, Licensee may have Products manufactured and packaged by third parties identified to, and approved in advance by, Licensor.

2. Termination.

(a) The license granted to Licensee hereunder may be terminated by either Party ~~Licensor~~ at any time, for any reason or no reason, upon thirty (30) days' prior written notice to Licensee.

(b) In the event Licensee has not purchased the Annual Minimum from Licensor for any twelve (12) month period, Licensor will be entitled to terminate the license granted to Licensee hereunder upon fifteen (15) days' prior written notice to Licensee.

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(c) Each party may terminate this Agreement immediately upon written notice to the other party if the other party commits a breach of any term of this Agreement which is incapable of remedy, or, in the case of a breach capable of being remedied, has failed within fifteen (15) days after receipt of notice from the other party, to remedy such breach to the reasonable satisfaction of the other party; provided, however, that Licensor shall have the right to terminate this Agreement immediately upon written notice to Licensee if Licensee, as determined by Licensor in its sole, absolute and unfettered discretion, willfully commits a breach of this Agreement, including, in particular but without limitation, Section 3(c) of this Agreement.

(d) Licensor shall have no obligation to compensate or indemnify Licensee, except as otherwise expressly provided herein, in the event Licensor terminates this Agreement.

(e) Upon termination of this Agreement for any reason, the license granted to Licensee hereunder shall immediately terminate and Licensee shall have no further right to use the Trademark for any purpose, including, without limitation, using the Trademark in connection with the marketing, packaging or sale of Products.

(f) Within fifteen (15) days after such termination, Licensee will return or, at Licensor's election, destroy all copies of all packaging and other printed materials bearing the Trademarks,

(g) Sections 2(f), 5, 7, 8, 9, 10, 11, 12 and 13 of this Agreement shall survive the termination of this Agreement.

3. Quality Control.

(a) Licensee shall only use Licensor's Trademark on Product packaging and labels solely in such manner as has been approved in writing by Licensor pursuant to this Agreement and shall not use the Trademark in any manner which has not been approved in writing in advance by Licensor or with respect to any services or products other than the Products. Licensee shall not use any mark confusingly similar to the Trademark, and shall only use the Trademark in connection with products containing the Extract obtained from Licensor by Licensee and marketed, distributed or sold by Licensee.

(b) Licensee shall submit to Licensor samples of the proposed labeling of any new product containing the Extract for Licensor's review and approval of the use of the Trademark at least thirty (30) days before use begins. After review of such labeling, Licensor shall notify Licensee of its comments, change and/or approval of the proposed label, and Licensee shall promptly comply with Licensor's request prior to marketing, distributing or selling the Products with the Trademark. The failure of Licensor to respond to such submission of samples by Licensee shall be deemed disapproval of the samples. Licensee agrees to submit to Licensor samples of any uses of the Trademark from time to time as Licensor may reasonably request for such additional review as Licensor may deem desirable.

(c) Licensee shall provide, upon request by Licensor, finished packaged products containing the Extract for testing by Licensor to assess Product integrity. The Products shall not contain any extracts of green coffee bean except if such others extracts of green coffee bean are supplied by the Licensor. Licensor shall provide Licensee with the results of any such

tests. If, in Licensor's sole discretion, the Product or the packaging does not conform with Licensor's quality standards provided to Licensee from time to time, Licensor may require changes to the Product or the packaging. If Licensee fails to do so, Licensor may by written notice to Licensee immediately terminate this Agreement.

(d) Licensor may request documents and Product samples from Licensee in order to check that the Products contain the required daily quantity of Extract as provided in Exhibit B (the "Daily Quantity"). In the event Licensee does not provide such documents or samples, or such documents or samples are inaccurate or incomplete, at Licensor's sole, absolute and unfettered discretion, Licensor may order, and Licensee shall in good faith cooperate with, an audit of Licensee's production operations, Products and documentation to commence not earlier that three (3) business days after Licensor's written notice to Licensee. In case the audit concludes that the Products do not contain the Daily Quantity or are otherwise inconsistent with Licensor's quality control guidelines herein, Licensee shall have the opportunity to demonstrate to Licensor that such breach was inadvertent. Nevertheless Licensee shall pay to Licensor an amount equal to the purchase price of the quantity of Extract missing from the Products. If two or more batches of the applicable Products do not contain the Daily Quantity or are otherwise inconsistent with Licensor's quality control guidelines herein, the audit fees will be charged to Licensee and Licensee shall promptly reimburse such charges to Licensor. Licensee shall also pay to Licensor an amount equal to the purchase price of the quantity of Extract missing from the Products, and Licensor will be allowed to terminate the present Agreement effective immediately upon written notice to Licensee. If Licensee fails to fully and timely cooperate with the foregoing audit provisions, Licensor may terminate this Agreement effective immediately upon written notice to Licensee.

4. License to Licensor.

For so long as this Agreement is in effect, Licensee hereby grants to Licensor, and Licensor hereby accepts, a limited, irrevocable, non-exclusive, royalty-free license to use and display the trademarks and images of the Products of Licensee on Licensor's websites, social media channels and in Licensor's marketing and promotional materials, solely for the purpose of Licensor promoting its own trademarks, products and services.

5. Indemnification.

Licensor shall indemnify and defend Licensee against any and all claims, costs, damages and expenses, including reasonable attorneys' fees and expenses, arising out of any claim by a third party against Licensee for infringement based on Licensee's use of the Trademark, so long as (a) such use is in compliance with Licensor's trademark guidelines (Exhibit B) and the terms of this Agreement, and (b) Licensee is not otherwise in breach of this Agreement. The forgoing indemnity shall be subject to Licensee's giving Licensor (i) prompt notice of any claim giving rise to such indemnity; (ii) sole control over the defense of such claim; and (iii) Licensee cooperating with Licensor in the defense of such claim if requested by Licensor (at Licensor's cost). If a claim of infringement by a third party occurs, Licensor may demand by notice (the "Termination Notice") at any time that Licensee terminate the use of the Trademark, and Licensee shall terminate the use of the Trademark immediately upon receipt of the Termination Notice. Licensee shall defend, indemnify and hold Licensor and/or any of its affiliates, subsidiaries, agents and assignees

harmless from and against any and all claims, demands, causes of action, liability, loss, damage, judgments or expenses (including without limitation reasonable attorneys' fees, expenses and court costs) (collectively, "Claims") arising out of or related to (x) Licensee's design, manufacture, distribution, shipment, labeling, sale, advertisement, or promotion of the Products or the labeling, packaging, advertising and promotional materials for the Products (other than Claims solely related to the Trademark), including, without limitation, any Claim for personal injury, wrongful death or any similar matter; (y) Licensee's breach of any of its representations, warranties, covenants or other obligations hereunder; and (z) Licensee's gross negligence or willful misconduct. Licensor shall have the right to defend any such claim or suit through counsel of its own choice at Licensee's expense.

6. Covenants of Licensee.

Licensee covenants and agrees that: (i) it shall at all times conduct its business related to its manufacture, labeling, packaging, marketing, use, offer for sale and sale of the Extract and the Trademark in strict compliance with all applicable health, safety and other laws, ordinances, orders, rules and regulations (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction), and all applicable industry standards, and will observe the highest standards of quality and fair dealing with its customers; (ii) all Products manufactured, processed, distributed and sold hereunder will be merchantable and fit for the purpose for which they are intended; (iii) all Products will conform in all respects to the samples approved by Licensor and that Licensee will not distribute or sell any Products which are of a quality or standard inferior to or different from the approved quality or are injurious to the reputation and goodwill associated with the Trademark; and (iv) Licensee shall not use third parties to manufacture or package Products unless such third parties have signed the acknowledgement attached hereto as Exhibit C or have otherwise agreed, in a writing disclosed in advance to, and otherwise acceptable in all respects to, Licensor, to be bound by the quality control, audit of this Agreement.

7. Trademark.

(a) Licensee agrees not to contest or otherwise challenge or attack Licensor's rights in and to the Trademark or the validity of the Trademark or the license granted herein during the term hereof and thereafter. Licensee further agrees not to do anything either by act of omission or commission which might impair, jeopardize, violate, or infringe the Trademark, or to misuse or bring into dispute the Trademark or otherwise diminish Licensor's goodwill with respect to the Trademark, as determined by Licensor in its sole, absolute and unfettered discretion. Licensee shall not use the Trademark as part of its company name, corporate name or trade name except with the prior written consent of Licensor, which consent will not be unreasonably withheld. Licensee shall not register or attempt to register the Trademark or similar marks during the term of this Agreement or thereafter, or aid or abet anyone else in doing so.

(b) Licensee shall prominently display the appropriate notice(s) in conjunction with any and all use of the Trademark, as indicated on Exhibit A. Licensee shall not use any other trademark or design in combination with any Trademark without Licensor's prior written approval. Licensee agrees that it will not use the Trademark in a misleading or confusing manner, nor in a manner that misrepresents any relationship between the parties hereto. Licensee hereby acknowledges Licensor's right, title and interest in and to the Trademark and agrees not to claim

any title to the Trademark or any right to use the Trademark except as permitted by this Agreement. Any goodwill associated with the use of the Trademark by Licensee will inure solely to the benefit of Licensor. Licensor reserves the right to object to unfair use or misuse of its Trademark or other violations of applicable law. Nothing contained herein shall prevent Licensor or any of its licensees or distributors from manufacturing, distributing, or selling any products or services of any kind with the Trademark in any territory in the world.

8. Limitation of Liability.

IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE, REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, OR FOR LOST PROFITS OR BUSINESS INTERRUPTION LOSSES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR ANY ALLEGED OR ACTUAL BREACH THEREOF, EVEN IF LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Independent Contractors.

The relationship of Licensor and Licensee established by this Agreement is that of independent contractors, and neither party shall be considered or deemed to be an agent, employee, joint venturer or partner of the other party as a result of this Agreement. Neither party shall have the right, power or authority to assume, create or incur any expense, liability or other obligation, express or implied, on behalf of the other and shall not represent itself as an agent of the other party or as otherwise authorized to act for or on behalf of the other party. Neither party shall be responsible for payment of worker's compensation, disability benefits, unemployment insurance, and for withholding of income taxes, social security or business license taxes for the other party's employees.

10. No Assignment.

Licensee may not sublicense, assign or otherwise transfer any rights granted to it hereunder except with the prior written consent of Licensor which may be granted, conditioned or denied at Licensor's sole discretion.

11. Miscellaneous.

In the event that any provision of this license would be held illegal, invalid or unenforceable by a courts or any jurisdiction, Licensor will be allowed to immediately terminate this license without any legal formality and Licensee shall terminate the use of the Trademark immediately upon receipt of the notice of the decision of Licensor. This Agreement shall be interpreted under the laws of the State of New Jersey applicable to contracts made and wholly performed within such state without giving effect to the conflicts of law thereof. The parties agree to submit any dispute arising out of this Agreement to, and consent to the jurisdiction of, the courts of the State of New Jersey or any Federal District Court having jurisdiction within such state. This Agreement supersedes all prior understandings, oral or written, with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. No amendment or change in this Agreement may be

made except in a writing signed by the parties hereof. Any waiver under this Agreement shall be in writing, and no waiver or absence of granting a waiver shall be deemed a waiver or a continuing waiver.

12. Notices.

All notices, approvals and requests hereunder shall be in writing and deemed given if sent by certified mail, return receipt requested, or by Federal Express, DHL or other recognized courier service, or by e-mail or fax, with acknowledged receipt thereof, within three days of being sent or sooner when it is actually delivered beforehand to the addresses set forth at the foot of this Agreement..

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the later of the Effective Date.

Licensee: NuZee Inc.

Dated: 10/17/2013

By: Craig Hagopian

Title: President and CEO

Address: 16955 Via Del Campo, Suite 260
San Diego, CA 92127, USA

Signature: _____

Licensor: NATUREX INC.

Dated: 10/11/2013

By: David YVERGNIAUX

Title: Sales Director - Nutrition & Health

Address: 375 Huyler Street, South Hackensack, New Jersey 07606, USA

Signature: _____

* On behalf of David Yvergniaux

NATUREX
Ultimate Botanical Benefits

EXHIBIT A - TRADEMARK LICENSE AGREEMENT

LICENSED TRADEMARK NOTICE

"**SVETOL**®" is a trademark of Naturex.

Such other trademark, copyright or other notices as Licensor may request from time to time.

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EXHIBIT B

Super CITRIMAX™ FULL STRENGTH

LICENSING OVERVIEW

New Logo and Licensing Agreement

To help consumers identify products that contain optimal levels of bioavailable HCA, and to assist manufacturers differentiate their *full strength* Super CitriMax™ products in the marketplace, InterHealth is introducing a new tradename and logo called **Super CitriMax™ *Full Strength***, which is available to manufacturers of dietary supplements and functional food and beverage products by licensing agreement through InterHealth Nutraceuticals. The "Super CitriMax™ *Full Strength*" Licensing Agreement includes rights to:

1. Super CitriMax™, InterHealth's clinically tested, patent-pending calcium/potassium-bound HCA ingredient,
2. Super CitriMax™ *formula*, InterHealth's clinically tested, patent-pending formula consisting of HCA, chromium and Gymnema,
3. Use of the Georgetown research data in the promotion of full strength Super CitriMax and/or Super CitriMax *formula* products (unauthorized users may be held liable for unfair competition),
4. The **Super CitriMax™ *Full Strength*** trademark, available only to manufacturers who adhere to the Super CitriMax™ or Super CitriMax™ formula *full strength* dosage requirements and have signed, and are in compliance with, the "Super CitriMax™ *Full Strength*" Licensing Agreement,
5. 5% logo discount on purchase price of product.

Research and Marketing Support

In addition to the licensing rights described above, InterHealth will be actively promoting its **Super CitriMax™ *Full Strength*** trademark and research findings to trade, consumer and scientific audiences through various trade shows, scientific meetings, advertising and public relations media. Recently, Super CitriMax and the Georgetown Study have been, or are scheduled to be, presented at:

- Natural Foods Expo, Anaheim, California, March 7-10, 2002.
- 41st Annual Meeting the Society of Toxicology, Nashville, Tennessee, March 17-21, 2002.
- International Scientific Conference on Complimentary, Alternative & Integrative Medicine Research (Harvard University), April 12-14, 2002.
- Experimental Biology 2002 Meeting (FASEB), New Orleans, Louisiana, April 20-24, 2002.
- Annual American Society of Bariatric Physicians Meeting, Denver, Colorado, May 16-18, 2002.
- 9th World Congress on Clinical Nutrition, London, England, June 24-26, 2002.
- Others to be announced.

and published in:

- *Society of Toxicology*, 66:188-189, Abs. 921, 2002.
- *The FASEB Journal*, 16:A1020, Abs. 742.16, 2002.
- *International Scientific Conference on Complimentary, Alternative & Integrative Medicine Research*, p. 9, Abs. 141, April 12-14, 2002.
- Others to be announced.

Learn More/Sign-Up

Manufacturers who are interested in learning more about the Super CitriMax™ *Full Strength* marketing program and/or entering into a "Super CitriMax™ *Full Strength*" Licensing Agreement may do so by contacting their InterHealth sales representative or calling 1-800-783-4636 or 1-707-751-2800 (outside the U.S.).

CX1-020419-020502

InterHealth Nutraceuticals Incorporated

"SUPER CITRIMAX® *FULL STRENGTH*" LICENSING AGREEMENT

This Licensing Agreement ("Agreement") is entered into as of _____, 20____ ("Effective Date"), between InterHealth Nutraceuticals Incorporated, a California corporation ("Company"), and the licensee identified on the signature page of this Agreement ("Licensee").

WHEREAS, Company markets, distributes and sells a standardized calcium/potassium (–)hydroxycitric acid product ("Product") and product formula ("Product Formula") described in Exhibits A and B, respectively, attached hereto, which:

(a) are sold as nutritional supplements,

(b) are the subject of various U.S. and PCT patents and patents pending described in Exhibits A and B attached hereto, as well as other patents and patents pending, which may be obtained or applied for in the future ("Patents" and "Patents Pending," respectively),

(c) are the subject of various research studies described in Exhibit C attached hereto, as well as other research studies, which may be conducted and published in the future ("Research"), and

(d) are sold under the tradename "Super CitriMax Full Strength" ("Trademark")

(each a "Licensed Product" and collectively referred to as "Licensed Products").

WHEREAS, A) Company is the owner of all right, title and interest in the Patents, Patents Pending and Trademark, including variations thereof and any registrations which may exist therefore, for its Licensed Products, B) Licensee desires to sell, market and distribute finished product(s) that contain Licensed Products to be packaged by Licensee in end-user, finished packaged form as a nutritional supplement (each a "Finished Product"), and to use the Trademark and Research in connection with sales of its Finished Products; and C) Company is willing to grant Licensee the right to use the Trademark and Research in connection with Licensed Products purchased from Company.

NOW, THEREFORE, the parties agree as follows:

1. **TRADEMARK OWNERSHIP** - Licensee agrees that:

   (a) Company is the sole and exclusive owner of all right, title and interest in, and to, the Trademark;

   (b) Licensee shall not challenge or question the validity of, or Company's title to, the Trademark; and

   (c) with the exception of the rights being licensed under this Agreement, all other rights relating to the Trademark are of the Company and Licensee shall not acquire any other rights to the Trademark.

2. **GRANT OF LICENSE** - Company grants to Licensee, and Licensee accepts, a non-exclusive, non-transferable, royalty-free license to use the Trademark solely in connection with the marketing and distribution of Licensed Product and/or Finished Products in the manner, and on the terms and conditions, specified in this Agreement.

3. **USE OF TRADEMARK –** Licensee shall:

   (a) use the Trademark solely in connection with:

      (i) the Licensed Product purchased from Company, and

      (ii) Finished Product that is in compliance with this Agreement;

   (b) display the Trademark on, or in, all labeling, advertising and promotional materials of its Finished Products in a manner that clearly associates the Trademark with the Licensed Product;

   (c) display or reproduce the Trademark only in:

      (i) the appropriate logo style specified in Exhibit D attached to this Agreement (electronic file of the Trademark logo to be provided to Licensee by Company upon execution of this Agreement); or

      (ii) type-written form only if used in secondary labeling, advertising and promotional copy (i.e. in a sentence or paragraph describing the Licensed Product), and so long as the Super CitriMax trademark is accompanied by the "®" symbol and identified as a trademark of InterHealth N.I.; and

   (d) not use, display or relate in any manner, either directly or indirectly, the Trademark in connection with any products that do

not contain Licensed Product and are not subject to this Agreement.

4. **PRODUCT INFORMATION AND MATERIALS** - Company provides, and will provide, Licensee information and materials relating to Licensed Product, whether proprietary or non-proprietary, whether written, recorded or verbal, whether on, prior or subsequent to the date of this Agreement, whether prepared by Company or by a third party, including, but not limited to, all Licensed Product sales and marketing materials, research data and other technical information ("Information" and "Materials"), "As Is, With All Faults," and makes, and will make, no representations or warranties, express or implied, as to the usefulness, accuracy, completeness, feasibility, reliability or legality of the Information and Materials. Licensee may use all Information and Materials prepared by or for Company solely in connection with the marketing and distribution of Licensed Product purchased from the Company or Finished Products that contain Licensed Product purchased from the Company and not in connection with any products that do not contain Licensed Product and are not subject to this Agreement; provided that Licensee does not in any way alter any of the Materials. Company may amend, add to, subtract from or otherwise change from time to time, the Information and/or Materials, in its sole and absolute discretion.

5. **UNDERTAKINGS BY LICENSEE:**

(a) **Product Changes** - Licensee may amend, add to, subtract from or otherwise change from time to time its Finished Products, provided that all such changes and Finished Products comply with the terms and conditions of this Agreement;

(b) **Product Dosage** – Licensee shall formulate, manufacture and label all Finished Product in accordance with the required dosage described in Exhibits A (for Finished Products that contain Product) or B (for Finished Products that contain Product Formula), whichever the case may be ("Required Dosage");

(c) **Labeling Statements** - Licensee shall display the required labeling statements described in Exhibits A (for Finished Products that contain Product) or B (for Finished Products that contain Product Formula), whichever the case may be ("Required Labeling Statements"), on, or in, all labeling, advertising and promotional materials of its Finished Products in a manner that clearly associates the Required Labeling Statements with the Licensed Product;

(d) **Patents** - Licensee shall list all Patent numbers and/or Patents Pending, if any, appropriate to the territory(ies) in which the Finished Product is sold, as described in Exhibits A (for Finished Products that contain Product) or B (for Finished Products that contain Product Formula), whichever the case may be, on, or in, all labeling, advertising and promotional materials of its Finished Products in a manner that clearly associates the Patents and/or Patents Pending with the Licensed Product ("Required Patents and Patents Pending Information"). In the event the Required Patents and Patents Pending Information changes, Company shall notify Licensee in writing and Licensee shall be provided a reasonable amount of time to change the labeling, advertising and promotional materials of its Finished Products to reflect the new Required Patents and Patents Pending Information;

(e) **Label Review** – Prior to distribution of its Finished Products, Licensee shall provide Company copies of its Finished Product labeling, advertising and promotional materials for pre-market approval by Company, which Company shall promptly review solely with respect to their compliance with this Agreement. Company shall promptly notify Licensee in writing of its acceptance or rejection of Licensee's Finished Product labeling, advertising and promotional materials with respect to their compliance with this Agreement. If rejected, Company shall inform Licensee of the changes necessary to be in compliance with this Agreement;

(f) **Product Quality** - Licensee shall (i) not blend nor formulate the Licensed Product with any other (–)hydroxycitric acid, chromium or Gymnema material, and (ii) not sell any Finished Products that are not manufactured in accordance with the requirements of the United States Federal Food, Drug and Cosmetic Act, including all applicable good manufacturing practice regulations, or, in the event Finished Products are manufactured or distributed in countries outside the United States, in accordance with all applicable laws and regulations of such countries;

(g) **Product Supply** - Licensee agrees that it will not resell or supply any Licensed Product in bulk raw material form, either directly or indirectly, to any other third party, except for use in the manufacture of Licensee's Finished Products;

(h) **Third Party Compliance** - Licensee shall assure compliance with this Agreement by any third-party manufacturer or distributor of Finished Products, and guarantees performance of and payment under Company's General Purchase Agreement by any manufacturer which has purchased Licensed Product from Company for the manufacture of Finished Products under contract with Licensee;

(i) **New Marks** - Licensee may use its own trademarks, tradenames, logos, advertising slogans and other related marks to identify Licensee and its Finished Products (collectively, "Other Marks") in Licensee's Materials, but agrees not to combine the Trademark with any Other Marks, words, letters or symbols, or otherwise alter the Trademark, to form one or more new marks ("New Marks"), without the express written consent of Company, which consent Company may withhold at its sole and absolute discretion. Licensee agrees that Company is the sole and exclusive owner of all right, title and interest in, and to, any New Marks, except those rights expressly granted to Licensee;

(j) **Trademark Infringement** - Licensee shall bring to the attention of Company any infringement or misuse of the Trademark which comes to Licensee's attention. Company shall indemnify, defend and hold Licensee harmless from any infringement or unfair competition proceedings involving the Trademark so long as Licensee is using the Trademark in compliance with this Agreement. Licensee shall not assert any claim based upon misuse or infringement of the Trademark without the prior written consent of Company;

(k) **Compliance With Laws** - Licensee will comply with all laws and regulations relating or pertaining to the use of the Trademark and marketing of Finished Products;

(l) **Expenses** - Licensee will not create any expenses chargeable to Company; and

(m) **Indemnification** - Except as provided in Section 5(j), Licensee indemnifies and holds Company harmless from any claims arising out of any act under or in violation of this Agreement by Licensee and its manufacturers and/or distributors, including, but not limited to, the distribution, advertising and promotion of Licensee's Finished Products, or use of the Information or Materials.

6. **TERM AND TERMINATION -** This Agreement shall commence on the Effective Date and shall continue in full force and effect, unless and until terminated as follows:

(a) Company shall have the right to terminate this Agreement upon written notice to Licensee upon the breach of any provision of this Agreement,

(b) Licensee shall have the right to terminate this Agreement at any time upon written notice to Company, and

(c) Licensee's failure to sell one or more of the Finished Products which are a part of, and in compliance with, this Agreement during any six month period of time shall constitute an abandonment and automatic termination of this Agreement. Upon termination of this Agreement for any reason, Licensee shall immediately discontinue all use of the Trademark, Materials and Information, except for Information that is publicly available. Sections 5(j,l,m), 6 and 7 shall survive the termination of this Agreement.

7. **GENERAL PROVISIONS:**

(a) **Assignment** - This Agreement is personal to Licensee. Licensee shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Company; provided, however, that Licensee may assign to any manufacturer with which Licensee contracts to produce any Finished Products any rights or obligations reasonably necessary to enable the manufacturer to produce the Finished Products. Any purported assignment without consent except as provided in this Section 7(a) will be null and void. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns;

(b) **Relationship** - The relationship of the parties of this Agreement is determined solely by the provisions of this Agreement.

The parties do not intend to create any agency, partnership, joint venture, trust or other relationship with duties or incidents different from those of parties to an arm's-length contract

(c) **Choice of Law** - This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California, without regard to conflicts of law;

(d) **Integration** - This Agreement sets forth the entire understanding of the parties relating to the transactions it contemplates, and supersedes all prior understandings relating to them, whether written or oral. There are no obligations, commitments, representations or warranties relating to them except those expressly set forth in these Agreements;

(e) **Attorney's Fees** - If any action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which it may be entitled;

(f) **Severability** - Should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, the remaining portions or provisions shall be unaffected; and

(g) **Waiver/Modification/ Amendment** - No amendment of, supplement to or waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

LICENSEE

Company:_____

A _____ Corporation

Address:_____

City, State, Zip:_____

Signature:_____

Name (Print):_____

Title:_____

COMPANY (INTERHEALTH)

Signature:_____

Name (Print):_____

Title:_____

NATUREX
Ultimate Botanical Benefits

EXHIBIT B - SVETOL® co-branding usage guidelines

General rules:

1. Do not pluralize a trademark or make it possessive (which would be using it as a noun). Do not join a trademark to other words, symbols, or numbers, either as one word or with a hyphen. And do not abbreviate a trademark.

2. Always use the proper spelling and the proper trademark symbol. For the trademark symbol, the superscript or subscript mode is preferred, but if it is not available, use parentheses: (R).

3. Always use trademarks and brand names in the ways they were intended to be used. Do not use them for goods or services for which they were not originally intended. Do not alter them in any way. Do not make puns out of them or portray them in a negative light.

Specific rules for SVETOL®:

SVETOL® is registered in classes 1, 3, 5 and 32.

Each class as well as the list of goods or services appearing in each class can be modified. The Licensee shall use the Trademark in compliance with the textual description of the figurative elements contained in the classes for which the Trademark is registered.

Licensee shall prominently display the appropriate notice "SVETOL® is a trademark of Naturex" in conjunction with any and all use of the Trademark.

The formulation of customer's finished Product must provide at least an amount of SVETOL® of 400 mg daily.

NATUREX
Ultimate Botanical Benefits

EXHIBIT C – MANUFACTURER'S ACKNOWLEDGEMENT

In order to induce Naturex Inc. to consent to the manufacture of authorized products using the SVETOL® trademark by the undersigned, the undersigned manufacturer ("Manufacturer") acknowledges that it has read the agreement between Naturex Inc. and NuZee Inc. and agrees to be bound by the terms thereof that relate to the services to be rendered by Manufacturer, and the restrictions imposed upon Manufacturer in accordance with the provisions of the agreement, including but not limited to the quality control and audit provisions thereof.

Dated: _____, 2013.

By:_____

NAME OF MANUFACTURER:

ADDRESS OF MANUFACTURER:

EXHIBIT C

HARPO PRODUCTIONS SONY PICTURES TELEVISION

I. Deal Overview

Harpo / Sony Relationship

By distributing Dr. Oz, SPT will be entering into a partnership with Harpo Productions. Harpo's King World partnership has been one of the most successful producer / distributor relationships in TV history. Dr. Oz can serve as the foundation for a similar partnership between SPT and Harpo.

Oprah Support for Dr. Oz

The new program will benefit from the power of the Oprah platform. Similar to the launch of Dr. Phil, the show's host, Dr. Mehmet Oz, has been a frequent guest on the *The Oprah Winfrey Show* and will make regular appearances over the next year in advance of the launch. He is also a frequent contributor to Oprah's XM Satellite Radio program. The program will be produced in Chicago with Harpo having creative control.

Show Synopsis

The show will focus on healthy living / lifestyles and will likely include a team of medical correspondents. Dr. Mehmet Oz is board certified cardiovascular surgeon and holds chair positions at Columbia University and New York Presbyterian Hospital.

The show is expected to premier in September 2009 and will be EBIT positive in its first season. Due to timing of period expenses and revenue, SPT FY09 loss expected to be less than $1MM. SPT FY10 profit is estimated to be $2.5-5MM.

Key Terms

- 2+2+2 term with renewal triggers:
  - 1st and 2nd renewals require Mosko to be personally involved in clearing the top 25 markets
  - 2nd renewal also requires SPT generating $120MM in cumulative gross receipts by the end of year 3
- Harpo to produce and retain copyright
- SPT to have distribution rights in the US and Canada with a right of first negotiation / refusal on all other territories
- SPT to provide an annual $12MM recoupable production advance (payable after show is sold)
- SPT and Harpo to have mutual approval over production budget
- Distribution fees range from 10%-15%
- SPT fees deferred; then paid out of 50% of profits
- SPT to charge a production services fee of 6% of the annual budget; capped at $2.5MM
- SPT and Harpo to collaborate on a website and digital extensions
- SPT to provide marketing, legal/business affairs, finance, and other back office services

HARPO PRODUCTIONS SONY PICTURES TELEVISION

II. Summary Financial Model

	1-Season	6-Season
LOW - 2.5 HH / $18.00 CPM / $400 Cash License		
Total Revenue	56,059	340,838
Production Costs	(32,934)	(205,530)
Distribution & Marketing Costs	(15,125)	(81,692)
Profit Before Fees	*8,000*	*53,616*
SPT Fees	7,410	46,162
Portion Deferred	(3,410)	(19,354)
Net to SPT	**4,000**	**26,808**
MID - 2.5 HH / $20.00 CPM / $450 Cash License		
Total Revenue	61,724	375,323
Production Costs	(32,934)	(205,530)
Distribution & Marketing Costs	(15,125)	(81,692)
Profit Before Fees	*13,665*	*88,101*
SPT Fees	8,042	50,052
Portion Deferred	(1,209)	(7,262)
Net to SPT	**6,833**	**42,790**
HIGH - 3.5 HH / $20.00 CPM / $500 Cash License		
Total Revenue	76,587	467,612
Production Costs	(32,934)	(205,530)
Distribution & Marketing Costs	(15,125)	(81,692)
Profit Before Fees	*28,528*	*180,390*
SPT Fees	9,593	59,621
Portion Deferred	0	0
Net to SPT	**9,593**	**59,621**

HARPO PRODUCTIONS SONY PICTURES TELEVISION

III. Program Comps

Dr Oz Talk Show
Ratings and CPM Comparables

	HH RATING	W18-49 VPVH	W18-49 CPM
OPRAH	5.5	0.306	$37.00
DR. PHIL	4.6	0.295	$22.00
DR. OZ - HIGH	*3.5*	*0.300*	*$20.00*
LIVE WITH REGIS	3.0	0.266	$22.00
THE VIEW	2.8	0.264	$17.00
DR. OZ - MID	*2.5*	*0.300*	*$20.00*
DR. OZ - LOW	*2.5*	*0.300*	*$18.00*
MAURY	2.2	0.394	$9.00
ELLEN	2.1	0.334	$17.00
RACHAEL RAY	2.0	0.300	$18.00
MONTEL	1.6	0.364	$9.00
JERRY SPRINGER	1.5	0.299	$9.00
MARTHA	1.1	0.290	$18.00
TYRA BANKS	1.1	0.426	$11.00
MORNING SHOW	1.0	0.343	$11.00

HARPO PRODUCTIONS SONY PICTURES TELEVISION

Dr Oz Talk Show
License Fee Comparables
($ in 000's)

	LICENSE FEES		
Oprah	**$4,500**	**-**	**$5,000**
Dr. Phil	**$2,500**	**-**	**$3,000**
Rachel Ray	**$850**		
Dr. Oz - High	***$500***		
Dr. Oz - Mid	***$450***		
Dr. Oz - Low	***$400***		
The Doctors	**$350**		
Bonnie Hunt	**$300**		

Note: The Doctors and Bonnie Hunt launching Fall '08

Dr Oz Talk Show
1-Season Revenue Comparables
($ in MM's)

	1st SEASON REVENUE
Dr. Oz - High	***$76.6***
Dr. Oz - Mid	***$61.7***
Rachel Ray	**$58.0**
Dr. Oz - Low	***$56.1***
The Doctors	**$55.0**

Note: The Doctors launching Fall '08

HARPO PRODUCTIONS SONY PICTURES TELEVISION

IV. Distribution Proposal

Program:	175 one-hour original episodes per year; launched fall 2009.
Media	Distribution rights are in all media, provided Harpo shall have the right to approve distribution platforms other than television.
Territory:	North America. First negotiation/first refusal on international territories.
Term:	2 year term, with 2 options for Sony to renew for 2 years each so long as Mosko is personally involved in clearing the top 25 markets (as defined by Nielsen). Sony's second option shall further require that Gross Receipts total $120 million cumulatively by the end of year 3. Harpo does not have to produce the show during any year (exercisable (a) no later than the upfront market and (b) so that Sony is not put in breach of any station agreements), but cannot distribute/take the show to another distributor during the Term.
Launch Condition:	Clearance of 80% of markets with minimum fees of $400,000/week, or Harpo does not have to proceed (and Harpo will make such decision by the 2009 upfront market). Mosko to be personally involved in clearing the top 25 markets.
Distribution Fee:	15% fee in Territory except: 10% for barter sales, OWN license, Canada license (*i.e.*, assuming Canada is delivered by Harpo) and XM Radio, payable out of 50% of Net (defined below) revenues.
Production Services Fee:	Harpo and Sony to have equal production services fees: at 6% of production costs capped at $2.5M per season, for as long as Sony is rendering production services. Recoupable after other production costs are recouped. Harpo shall charge no other fee, but shall charge the reasonable arms length cost for any services or facilities used. Harpo shall have creative control over the show. Harpo to have annual option to engage Sony to render production services to be exercised no later than March 1 prior to the season. Notwithstanding the foregoing, if Harpo chooses not to have Sony render production services in any given year, Sony shall be entitled to its full Distribution Fee without deferral for any such year.
Advance:	$12M per year, payable 50% on July 15 and 50% on October 1, starting 2009.
Non-compete:	Dr. Oz show can't directly compete with TOWS in any timeslot without Harpo's consent.
Cable:	Harpo to have first negotiation/last refusal right to repurpose show on OWN.
Website:	Promotional website for show to be mutually controlled by Harpo and Sony. Harpo will control any broader joint venture/web project with Dr. Oz but Harpo acknowledges Sony's strong interest in partnering on a Dr. Oz branded new media venture and will discuss with Sony in good faith meaningful opportunities to participate. Harpo shall have the annual option to terminate the promotional website and incorporate it into the broader web venture, which shall be under Harpo's exclusive control (in meaningful consultation with Sony insofar as it promotes the show), and in such event the website will no longer be put against the show as an expense.

Exhibit C PAGE 21

Format/Spinoffs: No rights granted to Sony. Harpo to discuss format/spin-off opportunities in good faith with Sony as they may arise from time to time.

Staff: Moira Coffey to be engaged as researcher/consultant on the show.

Waterfall: I. From Gross Receipts, deduct in this order (with all seasons crossed):

1. Sony first recoups Approved Distribution Expenses (including, *e.g.,* Marketing, Ads, Phys Delivery, Internet hosting, Materials, Encoding) set forth in III below with any overage recoupable out of Sony's 50% of Net under II.1 below.

2. Production Costs

A. Sony first recoups the Advance
B. Harpo then recoups Production Costs up to the "Approved Production Costs" limit (set forth in III below) with any overage recoupable out of Harpo's share under II.2 below.

3. Each party next recoups its Production Fee (subject to the $2.5m cap). Each party recoups 50 cents on the dollar at this stage because fees are equal:

* Sony – 50 cents on dollar up to its 6%/$2.5m
* Harpo – 50 cents on dollar up to its 6%/$2.5m

4. Next, Third Party Payments are recouped (*i.e.*, Dr. Oz).

II. "Net" is what is left. From this the following are recouped:

1. Sony recoups its Distribution Fee, and any Distribution Expenses in excess of Approved Distribution Expenses, from 50% of Net, with the rest deferred (unless Harpo terminates Sony's production services in which case it's recoupable at step I.2.A above).

2. Rest is Harpo's

III. Approval of Budgets for Production and Distribution

1. Promptly after execution and in conjunction with preparation of the long form agreement, the parties will discuss in good faith and mutually agree on budgets for Distribution Expenses and Production Costs. The parties presently contemplate that the all-in cost of Distribution Expenses plus Production Costs to be $40 million.

2. The "Approved Distribution Expenses" for year 1 shall then be the mutually agreed Distribution Expenses budget plus 10% and the "Approved Production Costs" shall be the mutually agreed Production Costs budget plus 10%.

3. For each subsequent year, Approved Distribution Expenses and Approved Production Costs shall be determined mutually by the parties in good faith. In the unlikely event the parties fail to agree on either number, then the Approved Distribution Expenses or Approved Production Costs (as the case may be) shall be that from the prior year plus 5%.

Long Form: The parties shall promptly negotiate in good faith and execute a binding long form agreement containing customary terms and conditions, including without limitation representations, warranties and indemnities.

PRINT

Harpo Productions and Sony Pictures Television To Launch *Dr. Oz*

FOR IMMEDIATE RELEASE: FRIDAY, JUNE 13

Chicago, IL and Culver City, CA— Dr. Mehmet C. Oz, MD, better known to millions as Dr. Oz, the renowned and popular surgeon, educator, and best-selling author who appears regularly on *The Oprah Winfrey Show*, will debut in first-run syndication next year with a series co-produced by Harpo Productions and Sony Pictures Television (SPT) and distributed by SPT, it was jointly announced today by Oprah Winfrey; Tim Bennett, president, Harpo Productions; and Steve Mosko, president, Sony Pictures Television. The series, *Dr. Oz* (working title), will be available to stations across the country to launch in Fall 2009. Under the multi-year agreement, SPT will handle all distribution efforts for the show in the United States and Canada, advertiser sales and marketing, and co-produce the series with Harpo Productions.

Dr. Oz has earned a reputation as "America's Doctor" through regular appearances over the past three years as the health expert for *The Oprah Winfrey Show* and is the nation's preeminent and trusted expert on health and wellness. He is professor and vice-chairman of surgery at Columbia University as well as medical director of the Integrated Medicine Center and director of the Heart Institute at New York Presbyterian/Columbia Medical Center. As the co-author of the best-selling YOU series, Dr. Oz is also a publishing phenomenon. In addition to numerous appearances on network morning and evening news programs, Dr. Oz is the host of the "The Dr. Oz Show" on XM Satellite Radio's Oprah Radio channel, giving viewers crucial information on health issues and sparking in-depth conversations about the essentials to living longer, more vibrant lives. He was recently named one of the 100 Most Influential People in the World by *TIME* magazine.

Said Oprah Winfrey, "This is a show I believe in. Judging by the response from our viewers, Dr. Oz has already demonstrated he is a valued and trusted medical expert who has created a deep connection with our audience."

"We are looking forward to partnering with Sony Pictures Television on this project," said Tim Bennett, President, Harpo Productions. "Of all the first-rate potential partners we spoke with, we felt that Sony was the best-positioned to co-produce and distribute the *Dr. Oz* show."

"We are thrilled to be working with Oprah, Dr. Oz and everyone at Harpo on this amazing project," said Steve Mosko, president, Sony Pictures Television. "It's a perfect marriage of independent, entrepreneurial companies and a wonderful opportunity for us to work with such tremendously talented people."

"Medicine has always been my calling. This show allows me to share the same passion I bring to my patients with millions of viewers every day. We will empower the audience to live more fully as they take control of their health...and their bodies. I am deeply appreciative to Oprah and to our great partner Sony for this opportunity," said Dr. Oz. Harpo Productions, Inc. produces the number-one-rated, award-winning *The Oprah Winfrey Show*; creates and develops original TV programming for primetime, syndication and cable television; and operates Oprah.com (www.oprah.com), a premier lifestyle website. Harpo Print, LLC and Hearst Magazines publish the monthly *O, The Oprah Magazine* and quarterly *O at Home* publications. Harpo Films, Inc. produces feature films as well as top-rated telefilms under the "Oprah Winfrey Presents" banner. Harpo Radio, Inc. produces Oprah Radio (Channel 156) on XM Satellite Radio. Harpo, Inc. has also recently partnered with Discovery Communications to launch a new cable network, The Oprah Winfrey Network (OWN) in 2009.

Sony Pictures Television is one of the television industry's leading content providers. It produces and distributes programming in every genre, including series, telefilms, theatrical releases and family entertainment for network and cable television, as well as first-run and off-network series for syndication. With more than 25 programs on the air, SPT boasts a program slate that includes the top-rated daytime dramas and game shows, landmark off-network series, original animated series and critically acclaimed primetime dramas, comedies and telefilms. SPT also owns one-half of cable channel GSN and is a partner in FEARnet, the premier horror/thriller website and VOD service. Sony Pictures Television oversees all of Sony Pictures Entertainment's (SPE) domestic digital distribution efforts across all electronically delivered platforms, including the internet and mobile. Sony Pictures Television, advertiser sales, is one of the premiere national advertising sales companies, handling the commercial inventory in SPT syndicated series as well as in all of SPE's digital businesses in the United States, for Sony BMG and for iN DEMAND's high-definition channel Mojo and the Tennis Channel, and is part owner of national media sales company ITN Networks, Inc. SPT (www.sonypicturestelevision.com) is a Sony Pictures Entertainment company.

PUBLISHED 06/24/2008

EXHIBIT D

LAW OFFICES OF

RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

January 19, 2016

Via: Certified Mail, (receipt acknowledgment with signature requested)

Labrada Body Building Nutrition, Inc.
333 North park Central Drive, Suite Z
Houston, TX 77073-6337

Lee Labrada
21303 Genwillow Street
Tomball, TX 77375Int

Labrada Nutritional Systems, Inc.
333 North park Central Drive, Suite Z
Houston, TX 77073-6337

RE: NOTICE: Violations of Consumer Protection Laws, Breach of Warranties, and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this law firm represents Veda Woodard and Teresa Rizzo-Marino, purchasers of Labrada weight loss supplements. All further communications intended for our clients must be directed through this office. This notice and demand letter provides **Labrada Body Building Nutrition, Inc., Labrada Nutritional Systems, Inc., and Lee Labrada** (collectively "YOU") with notice and demand for corrective action arising from YOUR breaches of warranties, and is meant to comply with the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, and the laws requiring pre-suit demand and notice, including the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA").

I. THE LABRADA FAT BUSTERS

Obesity in America is a growing epidemic. "Unfortunately, there is no miracle pill that can help Americans lose excess weight, so we have to rely on responsible behavior – including eating right and being physically active."[1] Despite this consensus from experts and government regulators, you have marketed and sold several "miracle pills" under the Labrada brand name. Starting sometime around 2012 or earlier, *The Dr. Oz Show* featured several weight-loss supplements that Dr. Oz called "***fat busters***" that allow users to lose weight "without diet and exercise." In an effort to capitalize off of this publicity, YOU have marketed, distributed, and sold the following products that are collectively referred to in this letter as the "Labrada Fat Busters:"

1. "The Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER;"
2. "The Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER;"
3. "The Labrada Raspberry Ketones METABOLIC ENHANCER;"
4. "The Labrada Ursolic Acid LEAN MUSCLE OPTIMIZER;"
5. "The Labrada LEAN BODY LEAN LIPIDS FAT LOSS AID"
6. "The Labrada FAT BUSTER FAT LOSS AID."

Our clients purchased Labrada Fat Buster supplements based on the representations on the package, label, and in other marketing and advertising materials which state, among other thing, that the products are effective for weight loss. Specifically, Ms. Woodard purchased the "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER," the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER," and the "Labrada Raspberry Ketones METOBOLIC ENHANCER" on multiple occasions beginning on or around June of 2013 and continuing until approximately December of 2013 from Vitamin Shoppe stores located in Murrieta, California and in Temecula, California. Ms. Woodard paid approximately $14.99 to $19.99 for each of the Products that she purchased.

Ms. Rizzo-Marino purchased the "Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER" approximately six to eight times beginning on or around January of 2014 from retail stores near her home in Brooklyn, New York, including CVS, Rite Aid, and Walmart. Ms. Rizzo-Marino paid approximately $14.99 each time she purchased the product.

[1] Staff Report, *Deception in Weight-Loss Advertising Workshop: Sizing Opportunities and Building Partnerships to Stop Weight- Loss Fraud*, FEDERAL TRADE COMMISSION (Dec. 2003).

Our clients would not have purchased the Labrada Fat Buster supplements had they known that the products are not effective for weight loss as further explained in this letter.

A. Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER

YOU deceptively market the Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER by claiming that it is a "DUAL ACTION FAT BUSTER" that "Increases Fat Burning" and "Curbs Appetite to Aid Weight Loss." However, YOU do not disclose to consumers that the purported "active" ingredient in Labrada Garcinia Cambogia with Supercitrimax® does not provide the advertised weight loss benefits. Moreover, YOU falsely claim that the product contains "Zero Filler, Zero Binders, and Zero Artificial Ingredients" even though the Product contains artificial and synthetic fillers and binders as more fully explained herein.

The front label of the Product states "Increases Fat Burning," "Curbs Appetite to Aid Weight Loss," and is "From the Makers of LEAN BODY." The Labrada Garcinia Cambogia side label states that "Labrada Garcinia Cambogia with Super CitriMax® is a DUAL ACTION FAT BUSTER" and "Studies suggest that HCA may inhibit body fat formation and suppress appetite." The label further states, "Use of 2800-3000 mg/day of HCA for 8 weeks has been shown to:"

- **"Reduce body weight"**
- **"Curb appetite and food intake"**
- **"Boost fat burning during exercise and enhances glycogen synthesis"**

The side label also contains a "Reference**s**" section that cites to the following three publications:

- "Preuss HG, Rao CV, Garis R., et al., *Journal of Medicine* 2004; 35 (1-6):33-48."
- "Downs BW, Bagchi M. Subbaraju GV, et al. Mutation Research 2005; 579 (1-2): 149-162."
- "Chen IS, Haung SW Lu HC, et al. British Journal of Nutrition. Apr. 2012; 107(7): 1048-1055."

The side label further features the **"**Super Citrimax" logo next to a statement saying that "Super CitriMax® is a registered trademark of Interhealth N.I."

The back label of the Labrada Garcinia cambogia Product states "Garcinia Cambogia Extract: 1560mg," then below that statement reads "standardized minimum 60% (-)-Hydroxycitric acid (HCA) 936 mg."

The back label then has a "Other Ingredients" section that reads "Hypromellose (capsules)," and "Titanium Dioxide."

In bold-face typed capital letters on the back label appear the statements:

a) **"ZERO FILLERS"**

b) **"ZERO BINDERS"**

c) **"ZERO ARTIFICIAL INGREDIENTS."**

The back label further states that the Product is "Made in the USA" next to a picture of an American Flag.

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

B. <u>The Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER</u>

The front label of the Labrada Green Coffee Bean Extract deceptively states that the product is a "***Fat Loss Optimizer***" that is "From the Makers of **LEAN BODY**." The front label further states that the product contains "Svetol®, 45% Chlorgenic Acid," and is "Stimulant Free."

The side-label of the Product states "**Green Coffee Bean Extract** is a natural powder extract from unroasted coffee beans. Green Coffee Bean Extract is rich in natural compounds, such as chlorogenic acids, that are known to have health benefits and to influence glucose and fat metabolism."

The side-label further states that "Recent peer-reviewed published studies have found that Green Coffee Bean Extract" does the following:

- "**Helps Support Significant Fat Loss**." and
- "**Contains Natural Anti-Oxidant Properties**"

Below these statements is a "**References**" section that is surrounded by a bright-red rectangle that cites the following studies that purportedly support the product's weight-loss benefits:

1. "Vinson JA, et al. Diab. Metab. Synder & Obes. Jan 2012"

2. "Farah A, et al. Jour of Nutr. Dec. 2008"

The back label of the Labrada Green Coffee Bean Product states "Green Coffee Bean Extract: 400 mg," then below that statement reads "Svetol®** Standardized to 45-50% total Chlorogenic Acids"

The back label then has a "Other Ingredients" section that reads "Gelatin." In bold-face typed capital letters on the back label appear the statements:

a) "ZERO FILLERS"

b) "ZERO BINDERS"

c) "ZERO ARTIFICIAL INGREDIENTS."

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

C. <u>The Labrada Raspberry Ketones METABOLIC ENHANCER</u>

The front label of the Labrada Raspberry Ketones deceptively states that the product is a "***Metabolic Enhancer***" that provides "***Natural Fat Loss Support***" and is "From the Makers of **LEAN BODY**." The front label further states the following:

- **"Supports Body Fat Reduction"**
- **"Increases Lipolysis"**
- **"Healthy Anti-Oxidant"**

The back label of the Labrada Raspberry Ketones Product states "Raspberry Ketones: 100mg." The back label then has a "Other Ingredients" section that reads "Gelatin (capsule)," "Maltradextrin," "Magnesium Stearate," "Silica," "Titanium Dioxide Capsule" "(FD&C Red #40, FD&C Blue #1)."

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

D. <u>The Labrada Ursolic Acid LEAN MUSCLE OPTIMIZER</u>

The front label of the "Labrada Ursolic Acid LEAN MUSCLE OPRIMIZER" deceptively states that the product "***Supports Fat Loss,***" "***Supports Lean Muscle***," "***Support Cardiovascular Health***" and that it is "From the Makers of **LEAN BODY**."

The side-label of the Product states "**Ursolic acid is a naturally occurring ingredient found in foods such as apple peels. Ursolic acid provides healthful benefits for dieters and athletes."** The side-label further states that "**Recent peer-reviewed, published studies have found that ursolic acid**" [provides the following benefits]:

- "**Supports fat loss**."
- **"Supports lean muscle tissue" and**
- "**Supports cardiovascular health**"

Below these statements is a "**References**" section that is surrounded by a bright-red rectangle that cites the following studies that purportedly support the product's weight-loss benefits:

"Li , et al. Molec Nutr. & Food Res. Nov. 2010"

"Rao, et al. Jour of Medic Food. Nov 2011"

"Kunkel, et al. Cell metab. Jun 2011"

"Ullevig, et al. Atheroscler. Dec. 2011"

"Steinkam-Fenske K, et al. Atherosciler Nov. 2007"

The back label of the Labrada Ursolic Acid states "Ursolic Acid (from Rosemary Leaf Extract: 150mg.)" The back label then has a "Other Ingredients" section that reads "Maltrodextrin," "Gelatin," "Silica," "Magnesium Stearate," "Titanium Dioxide," and "Sodium Copper Chlorophyllin."

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

E. The Labrada LEAN BODY LEAN LIPIDS FAT LOSS AID

The front label of the "LABRADA LEAN BODY LEAN LIPIDS FAT LOSS AID" deceptively states that the product "***Supports Fat Burning,***" and "***Increases Metabolism***."

The side-label of the product makes the following representations:

- "**Lean Body® Lean Lipids Fat Loss Aid** is a combination of essential fatty acids that have a profound effect on fat burning metabolism**."**
- "**Lean Body® Lean Lipids Fat Loss Aid** contains EPA and DHA Omega-3 fatty acids that are beneficial for inducing lipolysis (fat burning)."
- "**Lean Body® Lean Lipids Fat Loss Aid** also contains GLA Omega-6 fatty acids for its body fat reducing properties and oleuropein Omega-9 fatty acids to enhance thermogenesis (heat generation from burning calories) by increasing brown fat metabolism."
- **"Lean Body® Lean Lipids Fat Loss Aid** provides essential fatty acids for those desiring a leaner body."

Below these statements is a "**References**" section that is surrounded by a bright-red rectangle that cites the following studies that purportedly support the product's weight-loss benefits:

- "Ref: Tai, et al. J Nut Biochem. 2010 Ma;21(5): 357-63. Baillie, et al. Prostaglandins Leukort Essent Fatty Acids. 1999. May-Jun; 60 (5-6): 351-6"
- "Ref: Takashani, et al. Comp Biochem Physiol B. Biochem Biol. 2000 Oct: 127(2): 213-22"
- "Ref: Oi-Kano, et al. J Nutr Sci Vitaminol (Tokoyo). 2008. Oct; 54(5): 363-70"

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

F. The Labrada FAT BUSTER FAT LOSS AID

The front label of the Labrada Fat Buster Fat Loss Aid deceptively states that the product is a "***Fat Buster***" and a "***Fat Loss Aid***" that is "From the Makers of LEAN BODY." The front label further states that the product contains Svetol Green Coffee Bean, Ursolic Acid, and Raspberry Ketones. The side-label of the Product states the following:

a) "**Labrada Fat Buster** capsules combine three of the **most powerful natural fat loss aids in existence** to help you shed unwanted pounds quickly and healthfully."

b) "Svetol® Green Coffee Bean Extract contains high amounts of a powerful fat-fighter called chllorgenic acid. Studies suggest that chlorogenic acid inhibits the enzymes responsible for the production of fat. It also slows down absorption of sugar."

c) "Raspberry Ketones stimulate fat loss and regulate metabolism by increasing the release of stored fat and augmenting the fat burning hormone adiponectin."

d) "Ursolic Acid is naturally occurring in apple peels and rosemary. It's been shown to support both fat loss and prevent muscle loss while dieting."

e) "See Website for Scientific References www.labrada.com" This statement is placed next to a QR barcode that users can scan directing them to a website.

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

II. FALSE AND DECEPTIVE STATEMENTS ABOUT THE LABRADA FAT BUSTERS

Deceptive Weight Loss Benefits

YOUR claims that the Labrada Fat Buster Products provides weight loss benefits is false and misleading. For example, the active ingredient in the Labrada Garcinia Cambogia Product, Supercitrimax® (HCA extract from Garcinia cambogia), has been proven ineffective at providing any weight loss benefits. A significant *Garcinia*/HCA weight loss study was published in 1998 by a group of researchers at Columbia University's Obesity Research Center that was lead by Dr. Heymsfiled and published in the *Journal of the American Medical Association*.[2] This study was,

[2] S.B. Heymsfield, *et al.,* "Garcinia Cambogia (Hydroxycitric Acid) As a Potential Antiobesity Agent: A Randomized Controlled Trial," *J. Amer. Med. Assoc.* 280(18):1596-600 (1998). *Full text available at* http://jama.jamanetwork.com/article.aspx?articleid=188147.

and remains, one of the longest duration (12 weeks) and largest (135 subjects divided equally into placebo and control groups) randomized double-blind clinical trials of *Garcinia cambogia.* The study found that Garcinia extract failed to produce significant loss of weight and fat beyond that observed with placebo. Other studies have similarly concluded that HCA extract from *Garcinia cambogia* fails to provide weight loss benefits. In short, YOUR exaggerated and patently false claims that the Product is a "***Dual Action Fat Buster***" has deceived our clients and all other consumers who have purchased the Labrada Garcinia Cambogia Product.

Similarly, none of the other Labrada Fat Buster Products provide the advertised weight loss benefits. There are no reliable clinical studies showing that Green Coffee Bean extract can provide any weight loss benefits and the FDA has even determined that caffeine in green coffee bean extract is not safe or effective for "weight control." *See* 21C.F.R. § 310.545(20). Further, chlorogenic acids have never been shown to be an effective treatment for weight control. There are also no reliable scientific studies showing that other ingredients in the Labrada Fat Busters, like Raspberry Ketones and Ursolic Acid, can provide the touted weight-loss benefits.

Deceptive Clinical Studies on the Product Labels

YOU misrepresent to consumers the true nature of the studies that are cited on the labels of the Labrada Fat Buster Products. The Product label would lead reasonable consumers to believe that the Products are backed by credible and reliable clinical studies and that the Products are proven effective as "fat busters" that can "Increase Fat Burning." However, YOU conceal material facts about these studies, including but not limited to the following facts:

- The "Vinson" study that appears on the label of the Labrada Green Coffee Bean Extract has been retracted by the authors after it was found that data was falsified under pressure from a supplement manufacturer.[3]
- Multiple studies cited on the labels used rodents like "Sprague-Dawley rats" as the test subjects instead of actual human beings who are likely to use the products.
- Each and every one of the studies suffers from flawed methodologies and are not the result of accepted scientific methodologies for conducting clinical studies.
- YOU fail to disclose that at least one study was completely funded by Interhealth Nutraceuticals —the maker of Supercitrimax®— and and was conducted in India at a

[3] Authors retract green coffee bean diet paper touted by Dr. Oz., Retraction Watch, available at, http://retractionwatch.com/2014/10/20/authors-retract-green-coffee-beandiet-paper-touted-by-dr-oz/.

LAW OFFICES OF

RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

February 8, 2016

Via: Certified Mail, (receipt acknowledgment with signature requested)

Naturex, Inc.
c/o Corporation Service Co.
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

RE: NOTICE: Violations of Consumer Protection Laws, Breach of Warranties, and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this law firm represents Veda Woodard, a purchaser of a supplement product that contains Svetol®. All further communications intended for our client must be directed through this office. This notice and demand letter provides **Naturex, INC.** ("YOU") with notice and demand for corrective action arising from YOUR breaches of warranties, and is meant to comply with the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq., and the laws requiring pre-suit demand and notice, including the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. ("CLRA").

Obesity in America is a growing epidemic. "Unfortunately, no miracle pill can help Americans lose excess weight, so we have to rely on responsible behavior – including eating right

and being physically active."[1] Despite that consensus from experts, YOU have marketed and sold "miracle pills" that contain Svetol® Green Coffee Bean Extract.

Ms. Woodard purchased the Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER on multiple occasions beginning on or around June of 2013 and continuing until approximately December of 2013 from Vitamin Shoppe stores located in Murrieta, California and in Temecula, California. Ms. Woodard paid approximately $19.99 each time she purchased the Product. Ms. Woodard would not have purchased the Product had she known that the product is not effective for weight loss as further explained in this letter.

I. SVETOL® GREEN COFFEE BEAN EXTRACT

YOU disiminate false and misleading statements about the Svetol® product. For example, the Svetol® website features an introductory video depicting a woman with a glove on her hand removing and erasing body weight and fat from her abdomen.

The website goes on to tout the supposed science behind Svetol®:

1) "The 9 published scientific studies on Svetol® support its beneficial effects on healthy weight management:"

2) "10% Body Mass Index Reduction: Clinical study demonstrates 5.7% body weight loss over 2 months supplementation & reduction of BMI by 10%"

3) "Glucose regulation: Pilot study shows Svetol®'s effect on blood sugar levels"

4) "Fat burning effect: +4% lean mass/fat mass ratio Study demonstrates Svetol®'s benefits on fat mass reduction.
The clinical study demonstrates that Svetol® is an effective weight loss solution: you don't lose water or muscle, it makes you lose fat!"

5) "Svetol® will bring you healthy weight loss results, without crash dieting or side effects. Moreover, it is fully natural and does not contain harmful chemicals. Millions of consumers have already used Svetol® as a safe and effective natural solution."

    - 1) "Svetol® is a 100% all-natural plant concentrate, with well-identified and controlled bioactives."

[1] Staff Report, *Deception in Weight-Loss Advertising Workshop: Sizing Opportunities and Building Partnerships to Stop Weight- Loss Fraud*, FEDERAL TRADE COMMISSION (Dec. 2003).

LAW OFFICES OF

RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

January 19, 2016

Via: Certified Mail, (receipt acknowledgment with signature requested)

Interhealth Nutraceuticals Incorporated
ATTN: Paul Dijkstra
5451 Industrial Way
Benicia, California 94510

RE: NOTICE: Violations of Consumer Protection Laws, Breach of Warranties, and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this law firm represents Veda Woodard and Teresa Rizzo-Marino, purchasers of weight loss supplements that contain the ingredient "Supercitrimax®." All further communications intended for our clients must be directed through this office. This notice and demand letter provides **Interhealth Nutraceuticals Incorporated** ("YOU") with notice and demand for corrective action arising from YOUR breaches of warranties, and is meant to comply with the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, and the laws requiring pre-suit demand and notice, including the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA").

I. SUPERCITRIMAX® GARCINIA CAMBOGIA

Obesity in America is a growing epidemic. "Unfortunately, there is no miracle pill that can help Americans lose excess weight, so we have to rely on responsible behavior – including eating

right and being physically active."[1] Despite this consensus from experts and government regulators, YOU have marketed, sold, and distributed a Garcinia cambogia extract called "SuperCitrimax®." Starting sometime around 2012 or earlier, *The Dr. Oz Show* featured several weight-loss supplements that Dr. Oz called "***fat busters***" that allow users to lose weight "without diet and exercise." In an effort to capitalize off of this publicity, YOU began acting in concert with companies that sell supplement products containing Supercitrimax®. The Supercitrimax® Products ("Products") include, but are not limited to, the following products:

1. "The Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER;"
2. "DietWorks Garcinia Cambogia Weight Management Formula;"
3. "Vitamin Shoppe Garcinia Cambogia" brand supplements.
4. "Life Extension Garcinia Cambogia;"
5. "Puritan's Pride Garcinia Cambogia with Supercitrimax®"
6. "Natrol Pure SuperCitriMax®."
7. "Bluebonnet Nutrition SuperCitriMax®"

YOU exercise a high-degree of control over the sellers of SuperCitirimax® supplements and have acted in concert with sellers of SuperCitrimax® supplements. Moreover, YOU are a joint venture with the sellers of SuperCitrimax® supplements as it is believed that YOU have a common purpose with SuperCitrimax® sellers to profit from the deceptive and misleading sales of Supercitrimax® supplements.

Our clients purchased SuperCitrimax® supplements based on the representations on the package, label, and in other marketing and advertising materials which state, among other thing, that the products are effective for weight loss. Specifically, Ms. Woodard purchased the "Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER" and a Vitamin Shoppe Brand Garcinia Cambogia Supplement on multiple occasions beginning on or around June of 2013 and continuing until approximately December of 2013 from Vitamin Shoppe stores located in Murrieta, California and in Temecula, California. Ms. Woodard paid approximately $14.99 to $19.99 for each Garcinia Cambogia Product that she purchased.

[1] Staff Report, *Deception in Weight-Loss Advertising Workshop: Sizing Opportunities and Building Partnerships to Stop Weight- Loss Fraud*, FEDERAL TRADE COMMISSION (Dec. 2003).

Ms. Teresa Rizzo Marino purchased the Diet Works Garcinia Cambogia on multiple occasions beginning on or around March of 2014. Ms. Rizzo Marino purchased the Diet Works Product from Rite Aid and Walmart stores near her home in Brooklyn, New York and paid approximately $19.99.

Our clients would not have purchased the SuperCitrimax® supplements had they known that the products are not effective for weight loss as further explained in this letter. Each Supercitrimax® supplement is substantially similar to the Labrada Garcinia Cambogia supplement and the DietWorks Garcinia Cambogia supplements that are described below.

A. Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER

YOU deceptively market the Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER by claiming that it is a "DUAL ACTION FAT BUSTER" that "Increases Fat Burning" and "Curbs Appetite to Aid Weight Loss." However, YOU do not disclose to consumers that the purported "active" ingredient in Labrada Garcinia Cambogia with Supercitrimax® does not provide the advertised weight loss benefits. Moreover, YOU falsely claim that the product contains "Zero Filler, Zero Binders, and Zero Artificial Ingredients" even though the Product contains artificial and synthetic fillers and binders as more fully explained herein.

The front label of the Product states "Increases Fat Burning," "Curbs Appetite to Aid Weight Loss," and is "From the Makers of LEAN BODY." The Labrada Garcinia Cambogia side label states that "Labrada Garcinia Cambogia with Super CitriMax® is a DUAL ACTION FAT BUSTER" and "Studies suggest that HCA may inhibit body fat formation and suppress appetite." The label further states, "Use of 2800-3000 mg/day of HCA for 8 weeks has been shown to:"

- **"Reduce body weight"**
- **"Curb appetite and food intake"**
- **"Boost fat burning during exercise and enhances glycogen synthesis"**

The side label also contains a "Reference**s**" section that cites to the following three publications:

- "Preuss HG, Rao CV, Garis R., et al., *Journal of Medicine* 2004; 35 (1-6):33-48."
- "Downs BW, Bagchi M. Subbaraju GV, et al. Mutation Research 2005; 579 (1-2): 149-162."
- "Chen IS, Haung SW Lu HC, et al. British Journal of Nutrition. Apr. 2012; 107(7): 1048-1055."

The side label further features the **"**Super Citrimax" logo next to a statement saying that "Super CitriMax® is a registered trademark of Interhealth N.I."

The back label of the Labrada Garcinia cambogia Product states "Garcinia Cambogia Extract: 1560mg," then below that statement reads "standardized minimum 60% (-)-Hydroxycitric acid (HCA) 936 mg."

The back label then has a "Other Ingredients" section that reads "Hypromellose (capsules)," and "Titanium Dioxide."

In bold-face typed capital letters on the back label appear the statements:

a) **"ZERO FILLERS"**

b) **"ZERO BINDERS"**

c) **"ZERO ARTIFICIAL INGREDIENTS."**

The back label further states that the Product is "Made in the USA" next to a picture of an American Flag.

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

B. <u>DietWorks Garcinia Cambogia</u>

YOU deceptively market the DietWorks Garcinia Cambogia by claiming that it is a "Weight Management Formula" that is "Stimulant Free" and "Shown to help reduce cravings." YOU also claim that the DietWorks Garcinia Cambogia is made "with clinically-tested Supercitrimax" and the product is "lab tested," "Gold Standard," and "Quality Assured." Furthermore, YOU claim that the product contains "Garcinia Cambogia Standardized to 60% HCA." However, YOU do not disclose to consumers that the purported "active" ingredient in DietWorks Garcinia Cambogia with Supercitrimax® does not provide the advertised weight loss benefits.

The side label of the DietWorks Garcinia Cambogia continues to make false and misleading statements such as the following:

- "Recently, people have discovered the health benefits of DietWorks Garcinia Cambogia, the all-natural way to help reduce your appetite, burn more calories and help curb craving making losing weight faster and easier than ever."

- The naturally occurring compound found in garcinia cambogia is (-) hydroxy citric acid (HCA). HCA has been found to be responsible for garcinia cambogia's powerful weight management properties."

- "HCA is believed to help inhibit an enzyme in our responsible for converting carbohydrates into fat. HCA also has the ability to suppress hunger, curb sugar cravings and increase serotonin levels in the brain which is believed to improve mood and decrease emotional eating."

The other side label of the DietWorks Garcinia Cambogia also makes the following representations about the Product:

- "DietWorks Garcinia Cambogia is made using a patented, clinically validated form of Garcinia Cambogia called Super Citrimax®."

- "Only Super CitiriMax® is supported by 11 published studies demonstrating both efficacy and safety."

- "Used in conjunction with a healthy diet and regular exercise program, DietWorks Garcinia Cambogia may help you achieve and sustain your weight management goals."

    - **"Reduce Cravings"**

    - **"Curb Appetite"**

    - **"Stimulant Free"**

- "Super CitriMax® is a unique, patented form of (-) hydroxycitric acid (HCA) bound to calcium and potassium, which significantly increases the bioavailability and effectiveness of HCA."

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

II. FALSE AND DECEPTIVE STATEMENTS ABOUT THE SUPERCITRIMAX PRODUCTS

Deceptive Weight Loss Benefits

YOUR claims that the Supercitrimax® supplements provide weight loss benefits is false and misleading. For example, Supercitrimax® (HCA extract from Garcinia cambogia), has been

proven ineffective at providing any weight loss benefits. A significant *Garcinia/*HCA weight loss study was published in 1998 by a group of researchers at Columbia University's Obesity Research Center that was lead by Dr. Heymsfiled and published in the *Journal of the American Medical Association*.[2] This study was, and remains, one of the longest duration (12 weeks) and largest (135 subjects divided equally into placebo and control groups) randomized double-blind clinical trials of *Garcinia cambogia.* The study found that Garcinia extract failed to produce significant loss of weight and fat beyond that observed with placebo. Other studies have similarly concluded that HCA extract from *Garcinia cambogia* fails to provide weight loss benefits. In short, YOUR exaggerated and patently false claims that Supercitrimax® is effective at providing weight loss benefits has deceived our clients and all other consumers who have purchased the Supercitrimax® supplements.

Deceptive Clinical Studies

YOU misrepresent to consumers the true nature of the studies that supposedly support the weight-loss benefits of Supercitrimax®. The Product labels would lead reasonable consumers to believe that the Products are backed by credible and reliable clinical studies and that the Products are proven effective as weight loss supplements. However, YOU conceal material facts about these studies, including but not limited to the following facts:

- Multiple studies cited on the labels used rodents like "Sprague-Dawley rats" as the test subjects instead of actual human beings who are likely to use the products.
- Each and every one of the studies suffers from flawed methodologies and are not the result of accepted scientific methodologies for conducting clinical studies.
- YOU fail to disclose that at least one study was completely funded by YOU —the maker of Supercitrimax®— and and was conducted in India at a "research facility" that is funded and maintained by an affiliated supplement manufacturer. Each of the "researchers" conducting the study are either employees or paid spokespersons for Interhealth and/or its affiliate in India. Moreover, this same Indian supplement manufacturer supplies some, if not all, of the ingredients in the Labrada Garcinia Product. Even worse, the Indian supplement company and/or its agents assigned the patents for Supercitrimax® directly to Interhealth Nutriceuticals. These studies are

[2] S.B. Heymsfield, *et al.,* "Garcinia Cambogia (Hydroxycitric Acid) As a Potential Antiobesity Agent: A Randomized Controlled Trial," *J. Amer. Med. Assoc.* 280(18):1596-600 (1998). *Full text available at* http://jama.jamanetwork.com/article.aspx?articleid=188147.

unreliable and not the product of accepted scientific procedures for conducting clinical studies.

- Several studies are conducted *in Vitro* by using cell cultures instead of using actual human beings.

- In several studies, the test subjects were given other supplements *in addition to* Garcinia Cambogia.

Deceptive Claim that the Labrada Garcinia Cambogia Product Is "Made in the USA"

The label of the Labrada Garcinia Cambogia Product deceptively claims that the Product is "Made in the USA" and makes this statement next to a picture of an American flag. However, most, if not all, of the ingredients in the Product are made in a foreign country and imported into the United States, including the Product's purported active ingredient SuperCitrimax®. YOUR deceptive "Made in the USA" statement also violates California Business and Professions Code Section 17533.7, which requires products with labeling statements like "Made in the USA" to contain "not more than 5 percent of the final wholesale value of the manufactured product." The foreign ingredients in the Labrada Garcinia Cambogia Product far exceed 5 percent of the final wholesale value of the Product.

Deceptive Claims that Some Products Contain "Zero Fillers, Zero Binders, and Zero Artificial Ingredients"

The Labrada and Dietworks Garcinia Cambogia Products contain one or more artificial ingredients. Specifically, the Supercitrimax® ingredient is processed and manufactured by artificial means that uses chemical additives and solvents like ammonium chloride. Moreover, the Supercitrimax® ingredient does not contain naturally occurring hydroxycitric acid (HCA), but rather an artificial form of HCA that synthetically binds hydroxycitric acid with potassium and calcium minerals. In addition, the "other ingredients" in the Product are artificial, filler, and/or binders. For example, "Hypromellose" is often used a binder in supplement products. Hypromellose is a synthetic polymer that does not occur naturally. Furthermore, the Labrada Garcinia Cambogia Product contains "titanium dioxide," which is often used a colorant in supplement products. Titanium dioxide in supplement products is often an artificial form called "nano-particle titanium dioxide" that is known to cause adverse health effects.

Deceptive Claim that some Products Contain "Standardized" Ingredients

The label of the Labrada Garcinia Cambogia and the Dietworks Garcinia Cambogia similarly state that the products contain "standardized minimum 60% (-)- Hydroxycitric acid

(HCA) 936 mg" or other similar representations. However, independent laboratory tests conducted by consumerlabs.com have shown that the Labrada Product, and possibly other Supercitrimax® supplements, do not contain a "standardized minimum 60%" HCA, but rather varying amounts of HCA that are "all over the board." Additional test results performed by Labrada itself also confirmed that the Product does not contain "standardized minimum 60% (-)-Hydroxycitric acid (HCA) 936 mg."

"The Dr. Oz Effect"

YOU have concealed from consumers the fact that YOU have entered into agreement(s) with Dr. Mehmet Oz, or his affiliated companies, whereby YOU provided compensation to Dr. Oz in exchange for promoting and endorsing Supercitrimax® Garcinia Cambogia on *The Dr. Oz Show*. Put simply, at least one episode of *The Dr. Oz Show* was nothing more than an infomercial for Supercitrimax®. That same episode featured a testimonial by Dr. Harry Pruess, an Interhealth spokesperson that was compensated by YOU for performing some of the "clinical studies" that supposedly demonstrate the efficacy of "SuperCitrimax." Reasonable consumers relied on the representations made by Dr. Oz about the benefits of Garcinia Cambogia and YOU are liable for said representations. Specifically, the following representations were made on at least one episode of the *The Dr. Oz Show*:

DR. OZ:

From African mangoes to green coffee, it's the most talked about topic. Everybody wants to know what's the ***newest, fastest fat buster***. You've been stopping me on the street, emailing me. Even my family is asking the same question. How can I burn fat without spending every waking moment exercising and dieting? I just don't have any time to put in more effort. Well thanks to brand new scientific research, I can tell you about a ***revolutionary fat buster***. You're hearing it here first.

ANNOUNCER:

It's called garcinia cambogia, a pumpkin shaped fruit that grows in Southeast Asia and India, and it just might be the most exciting breakthrough in natural weight loss to date. ***Revolutionary new research says it could be the magic ingredient that lets you lose weight without diet or exercise.*** Dr. Harry Preuss is at the forefront of the research.

DR. HARRY PREUSS:

The ideal weight loss program is one in which you lose fat and you retain your muscle or even build it. With garcinia, you can make that happen. I tell women, "Look at your breast size. If your figure is getting much smaller, that's exactly what you want."

OTHER DOCTOR:

Garcinia is an ***exceptionally effective fat buster***. It inhibits the production of fat in the body, and when the body is not making fat, it's burning fat.

ANNOUNCER:

Could garcinia cambogia be the ***fat busting breakthrough*** you've been waiting for?

DR. OZ

The ***newest, fastest fat buster*** and one of the least expensive too is garcinia cambogia extract. I know it's a mouthful. I'll let you write it down. Garcinia cambogia. Because it may be the simple solution you've been looking for to ***bust your body fat for good.***

Each of the above-referenced statements that were made on *The Dr. Oz Show* are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-referenced statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

III. VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

Supercitrimax® does not work as advertised to provide the touted weight loss benefits. A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence, consumers would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR SuperCitrimax® Products.

YOUR material misrepresentations are deceiving customers into purchasing the Supercitrimax® supplements when in fact the Products provide no weight loss benefits.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices are in violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, but are not necessarily limited to:

§ 1770(a)(2): Misrepresenting the source, sponsorship, approval, or certification of goods or services;

§ 1770(a)(3): Misrepresenting the affiliation, connection, or association with, or certification by, another.

§ 1770(a)(4): Using deceptive representations or designations of geographic origin in connection with goods or services.

1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

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

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

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

Moreover, YOU have violated the consumer protection statutes of other states, including but not limited to New York General Business Laws § 349 and § 350. This letter is intended to provide YOU notice of these additional violations.

IV. BREACH OF EXPRESS AND IMPLIED WARRANTIES AND VIOLATIONS OF THE FEDERAL MAGNUSON-MOSS WARRANTY ACT

This letter further serves to notify you that the Supercitrimax® Products' packaging claims as contained in quotes herein created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and state warranty laws. Those warranties formed part of the benefit of the bargain and when the Products were not as warranted by YOU, my clients and all putative class members suffered economic loss.

V. DEMAND FOR CORRECTIVE ACTION

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU (1) cease and desist from further sales and distribution of the Supercitrimax® Product; (2) issue an immediate recall of the Supercitrimax® Product; (3) Destroy all false and misleading advertising materials and packaging for the Supercitrimax® Product; (4) Cease and desist from making false and misleading claims about the Supercitrimax® Product; and (5) Make full restitution to all purchasers of the Supercitrimax® supplements of all purchase money expended on the Supercitrimax® supplements.

Please be advised that your failure to comply with this request within a reasonable time—or thirty (30) days for violations of the CLRA— may subject you to the following remedies, available for violations of the CLRA as well as other consumer warranty and consumer protection statutes, which will be requested in a class action complaint on behalf of our clients and all other similarly situated consumers:

(1) The actual damages suffered;

(2) An order enjoining you for such methods, acts or practices;

(3) Restitution of property (when applicable);

(4) Disgorgement of profits;

(4) Punitive damages;

(5) Court costs and attorneys' fees;

(6) Costs of class action notice and administration; and

(7) Any other relief which the court deems proper.

VI. DUTY TO PRESERVE EVIDENCE

Lastly, I remind you of your legal duty to preserve all records relevant to such litigation. *See, e.g., Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216-18 (S.D.N.Y 2003) ("Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents."). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that are related to the formulation, marketing, advertising, and promotion of Supercitrimax® since the time the products entered into the stream of commerce will be sought

in the forthcoming discovery process. In addition, YOU must place a litigation hold on documents that relate to underlying data that was generated in the clinical studies that YOU contend support the efficacy claims of Supercitrimax® YOU therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account and Laila Nutraceuticals and the Laila Impex) to preserve all such relevant information.

YOU are directed to immediately initiate a litigation hold for potentially relevant Electronically Stored Information ("ESI"), documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. YOU are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs.

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potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

Please confirm by **Feburary 19, 2016** that you have taken the steps outlined in this letter to preserve ESI and tangible documents potentially relevant to this action. If YOU have not undertaken the steps outlined above, or have taken other actions, please describe what YOU have done to preserve potentially relevant evidence.

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron
Ronald A. Marron
Attorney for Veda Woodard, Teresa Rizzo-Marino, all others similarly situated, and the general public

- 2) "Svetol® has no reported side effects."
- 3) "Contains less caffeine than a quarter cup of coffee."

6) "In a published 60 day double-blind, placebo-controlled clinical trial, human subjects taking SVETOL® combined with proper nutrition lost up to 14 pounds and over 100% more weight loss than placebo group."

7) "SVETOL® cuts weight via 3 key benefits:

- 1) "Improves body shape and firmness by improving lean to fat mass ratio"
- 2) "Shuts down glucose pathways so you can burn fat more easily"
- 3) "Decreases intestinal glucose absorption"

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons alleged herein.

II. THE LABRADA GREEN COFFEE BEAN EXTRACT WITH SVETOL®

The front label of the Labrada Green Coffee Bean Extract deceptively states that the product is a "Fat Loss Optimizer" that is "From the Makers of LEAN BODY." The front label further states that the product contains "Svetol®, 45% Chlorogenic Acid," and is "Stimulant Free."

The side-label of the Product states "**Green Coffee Bean Extract** is a natural powder extract from unroasted coffee beans. Green Coffee Bean Extract is rich in natural compounds, such as chlorogenic acids, that are known to have health benefits and to influence glucose and fat metabolism."

The side-label further states that "Recent peer-reviewed published studies have found that Green Coffee Bean Extract" does the following:

- **"Helps Support Significant Fat Loss."** and
- **"Contains Natural Anti-Oxidant Properties"**

Below these statements is a "References" section that is surrounded by a bright red rectangle that cites the following studies that purportedly support the product's weight-loss benefits:

1. "Vinson JA, et al. Diab. Metab. Snyder & Obes. Jan 2012"

2. "Farah A, et al. Jour of Nutr. Dec. 2008"

The back label of the Labrada Green Coffee Bean Product states "Green Coffee Bean Extract: 400 mg," then below that statement reads "Svetol®** Standardized to 45-50% total Chlorogenic Acids.

The back label then has a "Other Ingredients" section that reads "Gelatin, Maltodextrin, Magnesium Stearate, Silica, Sodium Copper Chlorophyllin, and titanium dioxide." In bold-face typed capital letters on the back label appear the statements:

a) **"ZERO FILLERS"**

b) **"ZERO BINDERS"**

c) **"ZERO ARTIFICIAL INGREDIENTS."**

Each of the above-quoted statements are false, misleading, deceptive, and unlawful for the reasons explained herein. Moreover, each of the above-quoted statements create express or implied warranties and YOU have breached said warranties for the reasons described herein.

Deceptive Weight Loss Benefits

YOUR claims that the Svetol® Green Coffee Bean Extract provides weight loss benefits is false and misleading. For example, A study in the *Journal of Agricultural and Food Chemistry* found that the main ingredient in Svetol®- chlorogenic acid- was not effective when given to mice over a 12-week period. In fact, taking the compound gave the mice early symptoms of diabetes. Moreover, "A meta-analysis a few years ago combined the results from three small, short-term trials. The authors found that green coffee extract was associated with losing about 5 pounds. But this slimming effect vanished when the authors analyzed the two studies that used the type of supplement recommended by Dr. Oz — green coffee extract enriched with chlorogenic acid."

Deceptive Clinical Studies

YOU misrepresent to consumers the true nature of the studies cited by YOU in support of Svetol® and the Labrada Product. YOU have also concealed material facts about the clinical studies supporting Green Coffee Bean extract. For example, the Vinson study that appears on the label of the Labrada product was ***retracted by the journal that published it*** after an FTC investigation revealed that "the principal investigator repeatedly: (1) altered the weights and other

key measurements of the subjects; (2) changed the length of the trial; and (3) confused which subjects took either the placebo or [Green Coffee Bean Extract] at various points during the trial."[2]

III. VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

None of the ingredients in the Labrada Product, including Svetol®, work as advertised to provide the touted weight loss benefits. A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence, consumers would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR Svetol® Product and the Labrada Product.

YOUR material misrepresentations are deceiving customers into purchasing products that contain Svetol® when in fact the Products provide no weight loss benefits.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices are in violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq*., but are not necessarily limited to:

§ 1770(a)(2): Misrepresenting the source, sponsorship, approval, or certification of goods or services;

§ 1770(a)(3): Misrepresenting the affiliation, connection, or association with, or certification by, another.

§ 1770(a)(4): Using deceptive representations or designations of geographic origin in connection with goods or services.

1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

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

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

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

[2] *See FTC v. Applied Food Sciences, Inc.*, Civ. No., 1-14-cv-00851 (W.D. Tex. Sept. 8, 2014), https://www.ftc.gov/system/files/documents/cases/140908afscmpt.pdf.

IV. BREACH OF EXPRESS AND IMPLIED WARRANTIES AND VIOLATIONS OF THE FEDERAL MAGNUSON-MOSS WARRANTY ACT

This letter further serves to notify you that the claims as contained in quotes herein created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq. and state warranty laws. Those warranties formed part of the benefit of the bargain and when the Product was not as warranted by YOU, my client and all putative class members suffered economic loss.

V. DEMAND FOR CORRECTIVE ACTION

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU (1) cease and desist from further sales of Svetol®; (2) issue an immediate recall of the Svetol® Products; (3) Destroy all false and misleading advertising materials and packaging for the Svetol® Products; (4) Cease and desist from making false and misleading claims about the Svetol® Product and all substantially similar weight loss products; and (5) Make full restitution to all purchasers of of the Svetol® products of all purchase money expended on the Svetol® products.

Please be advised that your failure to comply with this request within a reasonable time—or thirty (30) days for the alleged CLRA violations— may subject you to the following remedies, available for violations of the CLRA, which will be requested in a class action complaint on behalf of our client and all other similarly situated consumers:

(1) The actual damages suffered;

(2) An order enjoining you for such methods, acts or practices;

(3) Restitution of property (when applicable);

(4) Disgorgement of profits;

(4) Punitive damages;

(5) Court costs and attorneys' fees;

(6) Costs of class action notice and administration; and

(7) Any other relief which the court deems proper.

VI. DUTY TO PRESERVE EVIDENCE

Lastly, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., Convolve, Inc. v. Compaq Computer Corp., 223 F.R.D 162, 175 (S.D.N.Y 2004); Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 216-18 (S.D.N.Y 2003) ("Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents."). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation, marketing, advertising, and promotion of YOUR Svetol® Product since the time the product entered into the stream of commerce will be sought in the forthcoming discovery process. YOU therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

YOU are directed to immediately initiate a litigation hold for potentially relevant Electronically Stored Information ("ESI"), documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. YOU are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
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office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R disks and the user's smart phone, voice mailbox or other forms of ESI storage.). Similarly, if employees, officers or board members used online or browser-based email accounts or services (e.g., Gmail, Yahoo Mail, AOL) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

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"research facility" that is funded and maintained by an affiliated supplement manufacturer. Each of the "researchers" conducting the study are either employees or paid spokespersons for Interhealth and/or its affiliate in India. Moreover, this same Indian supplement manufacturer supplies some, if not all, of the ingredients in the Labrada Garcinia Product. Even worse, the Indian supplement company and/or its agents assigned the patents for Supercitrimax® directly to Interhealth Nutriceuticals.

- Several studies are conducted *in Vitro* by using cell cultures instead of using actual human beings.

- The test subjects in several studies were given other supplements *in addition to* Garcinia Cambogia and/or Green Coffee Bean Extract.

Deceptive Claim that some Labrada Products Are "Made in the USA"

The label of the Labrada Garcinia Cambogia Product deceptively claims that the Product is "Made in the USA" and makes this statement next to a picture of an American flag. However, most, if not all, of the ingredients in the Product are made in a foreign country and imported into the United States, including the Product's purported active ingredient SuperCitrimax®. YOUR deceptive "Made in the USA" statement also violates California Business and Professions Code Section 17533.7, which requires products with labeling statements like "Made in the USA" to contain "not more than 5 percent of the final wholesale value of the manufactured product." The foreign ingredients in the Labrada Garcinia Cambogia Product far exceed 5 percent of the final wholesale value of the Product.

Deceptive Claims that Some Products Contain "Zero Fillers, Zero Binders, and Zero Artificial Ingredients"

YOUR Labrada Garcinia Cambogia Product contains one or more artificial ingredients. Specifically, the Supercitrimax® ingredient is processed and manufactured by artificial means that uses chemical additives and solvents like ammonium chloride. Moreover, the Supercitrimax® ingredient does not contain naturally occurring hydroxycitric acid (HCA), but rather an artificial form of HCA that synthetically binds hydroxycitric acid with potassium and calcium minerals. In addition, the "other ingredients" in the Product are artificial, filler, and/or binders. For example, "Hypromellose" is often used a binder in supplement products. Hypromellose is a synthetic polymer that does not occur naturally. Furthermore, the Labrada Garcinia Cambogia Product contains "titanium dioxide," which is often used a colorant in supplement products. Titanium dioxide in supplement products is often an artificial form called "nano-particle titanium dioxide" that is known to cause adverse health effects.

Each of the other products also contain artificial ingredients like "Svetol® Green Coffee Bean," "Raspberry Ketones," "Ursolic Acid," "Maltrodextrin," "Gelatin," "Silica," "Magnesium Stearate," and "Sodium Copper Chlorophyllin."

Deceptive Claim that some Products Contain "Standardized" Ingredients

The label of the Labrada Garcinia Cambogia states that it contains "standardized minimum 60% (-)- Hydroxycitric acid (HCA) 936 mg." However, independent laboratory tests conducted by consumerlabs.com have shown that the Labrada Product does not contain a "standardized minimum 60%" HCA, but rather varying amounts of HCA that are "all over the board." Additional test results performed by Labrada itself also confirmed that the Product does not contain "standardized minimum 60% (-)- Hydroxycitric acid (HCA) 936 mg."

Independent tests have also been performed on supplements containing green coffee bean extract and most were found to have an unstandardardized form of Green Coffee Bean Extract.

III. VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT

None of the ingredients in the Labrada Fat Buster Products work as advertised to provide the touted weight loss benefits. A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence, consumers would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR Labrada Fat Buster Products.

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

Moreover, YOU have violated the consumer protection statutes of other states, including but not limited to New York General Business Laws § 349 and § 350. This letter is intended to provide YOU notice of these additional violations.

IV. BREACH OF EXPRESS AND IMPLIED WARRANTIES AND VIOLATIONS OF THE FEDERAL MAGNUSON-MOSS WARRANTY ACT

This letter further serves to notify you that the Labrada Fat Busters Products' packaging claims as contained in quotes herein created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and state warranty laws. Those warranties formed part of the benefit of the bargain and when the Products were not as warranted by YOU, my clients and all putative class members suffered economic loss.

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Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA as well as other consumer warranty and consumer protection statutes, which will be requested in a class action complaint on behalf of our clients and all other similarly situated consumers:

(1) The actual damages suffered;

(2) An order enjoining you for such methods, acts or practices;

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