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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

PAMELA MILLER, RANDY HOWARD and
DONNA PATTERSON, On behalf of
themselves and all others similarly situated,

Civil Case No. 2:07-CV-00871-TS

Plaintiffs,

PROPOSED CLASS ACTION

v.

DEMAND FOR JURY TRIAL

BASIC RESEARCH LLC, DYNAKOR
PHARMACAL, LLC, WESTERN HOLDINGS,
LLC, DENNIS GAY, DANIEL B. MOWREY,
Ph.D., MITCHELL K. FRIEDLANDER, and
DOES 1 through 50,

Defendants.

Plaintiffs, Pamela Miller, Randy Howard and Donna Patterson for their Class Action Complaint (hereinafter the "Complaint") against Defendants, Basic Research, L.L.C. ("Basic Research"), Dynakor Pharmacal, L.L.C. ("Dynakor"), Western Holdings, L.L.C. ("Western Holdings"), Dennis Gay ("Gay"), Daniel B. Mowrey ("Mowrey") d/b/a American Phytotherapy Research Laboratory, and Mitchell K. Friedlander ("Friedlander") (collectively, the "Defendants"), hereby allege, with personal knowledge as to their own actions, and upon information and belief as to those of others, as follows:

NATURE OF THE CLASS ACTION

1. This class action seeks to redress the pervasive pattern of fraudulent, deceptive and otherwise improper advertising and marketing practices that Defendants are engaged in with respect to a dietary supplement called “Akävar 20/50” (“Akävar”), purportedly designed to cause weight loss and improve bodily appearance. Defendants have knowingly engaged in a deliberate campaign of widespread fraud and deception intended to coax unsuspecting consumers, including Plaintiffs and the members of the Class, into purchasing millions of dollars worth of Akävar, which is manufactured, marketed, advertised and sold by Defendants. Plaintiffs, on behalf of themselves and the members of the Class (as defined in Paragraph 36 of this Complaint), assert claims against Defendants for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968, Utah’s Pattern of Unlawful Activity Act (“UPUAA”), Utah Code Ann. §§ 76-10-1601 to -1609; fraud; violations of the Utah Consumer Sales Practices Act (“UCSPA”), Utah Code § 13-11-1, *et seq.* and similar consumer protection statutes; and unjust enrichment.

2. With regard to Akävar and numerous other alleged dietary supplements, Defendants have perpetrated their schemes to defraud through a web of interrelated, closely-held limited liability companies that oversee the “research,” publication, manufacturing, marketing, sales and distribution of Akävar. Defendants have operated a common business enterprise while engaging in the deceptive acts and practices alleged in this Complaint and are, therefore, jointly and severally liable for such acts and practices.

3. Defendants have used television, internet and national publications to advertise Akävar as a product that offers a “foolproof” alternative to weight loss with “guaranteed success” and “WITHOUT GRUELING DIET AND EXERCISE REGIMENS!” These advertisements also falsely state that “Studies have proved a virtual 100% success rate among the participants,” and that by

taking the product the consumer will see excess fat “PULLED FROM BULGING PARTS OF YOUR BODY.” Defendants also falsely allege that the results are “scientific fact, documented by published medical findings” and that “a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities” of Akävar. However, in truth, Akävar is not a foolproof alternative to weight loss with guaranteed success and the product has not been subjected to clinical trials.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1331, relating to federal question jurisdiction; Section 1964(c) of RICO, 18 U.S.C. § 1964(c); and Rule 23 of the Federal Rules of Civil Procedure. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391 and Section 1965 of RICO, 18 U.S.C. § 1965.

PARTIES

5. Plaintiff Pamela Miller is a citizen of Gilbert, Arizona. Based on Defendants’ advertising, Ms. Miller purchased a supply of Akävar through Defendants’ website, www.akavar.net. After 25 days of taking Akävar as directed on the package labeling, Ms. Miller gained 10 pounds, and she ceased taking the product. Ms. Miller sent several email inquiries concerning Akävar to Defendant Dynakor and also made several telephone calls, leaving messages, but received no response to her emails or voice messages.

6. Plaintiff Randy Howard is a citizen of Morton, Illinois. Based on the representations made as part of Defendants’ in-store advertising materials, Plaintiff Howard purchased a 45-day supply of Akävar at a local Wal-Mart store. After 30 days of taking Akävar as directed on the package labeling, with no weight loss, Mr. Howard ceased taking Akävar.

7. Plaintiff Donna Patterson is a citizen of Washington, D.C. Based on Defendants’ advertising, Ms. Patterson purchased a supply of Akävar from a General Nutrition Center (“GNC”)

store in Arlington, Virginia. After thirty days of taking Akävar as directed on the package labeling, Ms. Patterson had lost no weight, and ceased taking the product.

8. Defendant Basic Research is a limited liability company established under the laws of the State of Utah with its principal place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Basic Research is one of the largest nutraceutical companies in the United States with annual sales revenues in excess of \$50 million. Basic Research develops and manufactures scores of cosmetics, nutritional supplements and dietary supplements that are marketed under the names of nearly a dozen companies. Defendant Basic Research is the subject of a permanent injunction by the United States Federal Trade Commission for the marketing and sale of alleged weight loss products that purport to work without diet or exercise.

9. Defendant Dynakor is a limited liability company established under the laws of the State of Utah with its principal place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Dynakor, an affiliate of Defendant Basic Research, markets and sells certain products developed by Defendant Basic Research, including Akävar.

10. Defendant Western Holdings is a limited liability company established under the laws of the State of Utah with its principal place of business located at 1821 Logan Avenue, Cheyenne, Wyoming 82001. Western Holdings, an affiliate of Defendant Basic Research, licenses its trademarks to Defendant Basic Research for the development and manufacturing of cosmetics, nutritional supplements and dietary supplements. "Dynakor Pharmacal" and "Basic Research" are registered trademarks of Western Holdings.

11. Defendant Gay is a citizen and resident of the State of Utah with a residence located at 748 East 200 South, Payson, Utah 84651, and a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Defendant Gay is an officer and a principal shareholder of, among other companies, Defendants Basic Research and Dynakor. Individually or acting in concert

with others, Defendant Gay formulates, directs, controls, or participates in the acts and/or practices of Defendants, including Basic Research and Dynakor. Defendant Gay is the subject of a permanent injunction by the United States Federal Trade Commission for the marketing and sale of alleged weight loss products that purport to work without diet or exercise.

12. Defendant Mowrey is a citizen and resident of the State of Utah with a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Defendant Mowrey is a principal shareholder of, and the Director of Scientific Affairs at, Defendant Basic Research. Mowrey also serves as a consultant for Defendant Dynakor. Defendant Mowrey owns American Phytotherapy Research Laboratory, a business organization used by Defendants as an instrumentality of the Defendants to develop, market, endorse and promote products for Defendants Basic Research and Dynakor. In various advertisements for dietary supplements marketed and sold by Defendant Basic Research, Defendants have represented, expressly or by implication, that Defendant Mowrey is a medical doctor, when in truth and in fact, he is not. Defendant Mowrey is the subject of a permanent injunction by the United States Federal Trade Commission for the marketing and sale of alleged weight loss products that purport to work without diet or exercise.

13. Defendant Friedlander, the self-proclaimed marketing guru of Basic Research, is a citizen and resident of the State of Utah with a place of business located at 5742 West Harold Gatty Drive, Salt Lake City, Utah 84116. Defendant Friedlander is a marketing consultant to, among others, Defendants Gay, Basic Research and Dynakor. Defendant Friedlander develops and endorses products marketed by Defendants Basic Research and Dynakor. Although not an employee of either Basic Research or Dynakor, Defendant Friedlander maintains his offices at the headquarters of Defendant Basic Research. Defendant Friedlander is the subject of a permanent injunction by the United States Federal Trade Commission for the marketing and sale of alleged weight loss products that purport to work without diet or exercise.

STATEMENT OF FACTS

14. Fraudulent weight loss products are an enormous problem in the United States. In a recently released (October 2007) Federal Trade Commission study, "*Consumer Fraud in the United States: The Second FTC Survey*," the FTC notes that an estimated 2.1% of all consumers nationwide - representing a total of 4.8 million U.S. adults - purchased and used fraudulent weight-loss products during the year prior to the survey. The Study found that "[m]ore consumers were victims of fraudulent weight-loss products than of any of the other specific frauds covered in the survey." The report describes the prototypical fraudulent weight-loss claim as products that were promoted "as making it easy to lose weight or allowing one to lose weight without diet or exercise."

15. Basic Research was created to capitalize on this fraudulent weight loss epidemic. It is one of the largest nutraceutical companies in the U.S., with over \$50 million in annual sales revenues. Basic Research puts out scores of products, which are marketed under the names of nearly a dozen companies – a practice that Defendant Gay has stated is intended to confuse competitors and "protect our brands in the Wild West atmosphere that exists today in the supplement industry."

16. Defendant Dynakor was created by Defendants with the intent to mislead consumers into believing there was a real, independent "lab" behind Akävar 20/50. This fiction was openly acknowledged in internal meetings by Basic Research and its management, including Gay, Mowrey, and Friedlander.

17. The web of interlocking entities created to confuse competitors is, not coincidentally, equally confusing to consumers.

Defendants' False and Misleading Advertising

18. On December 12, 2006, the United States Patent and Trademark Office ("USPTO") listed an application for the trademark "Akävar 20/50" by Dynakor Pharmacal IP Holdings, an affiliate of Defendants, acting on behalf of Defendants. Subsequently, on May 3, 2007, the USPTO

listed a trademark application for Akävar to Defendant Dynakor. Starting on or about this date, Defendants began marketing Akävar throughout the United States.

19. In advertising, Defendants claim that Akävar is the “*European weight-loss breakthrough.*” In fact, Akävar was not available in Europe prior to its U.S. introduction, and was created by Defendants in Utah, at their headquarters.

20. Defendants’ marketing blitz, engineered by Friedlander, was designed to saturate the television, internet, and print media with Defendants’ claims – including “infomercials,” created by Friedlander and used to promote Akävar to the public.

21. The core of Defendants’ fraudulent representations regarding Akävar is summarized in Defendants’ slogan: “Eat all you want and still lose weight.” The phrase “Eat all you want and still lose weight” is a registered trademark of Defendant Western Holdings.

22. In support of their claims that Akävar allows you to “Eat all you want and still lose weight,” Defendants’ advertising asserts a number of facts, including the following:

Akävar-20/50 *literally causes excess fat to be pulled from bulging parts of your body!*

As Akävar-20/50 restricts caloric intake to below your daily caloric requirement, you literally pull excess fat from all over your body, including your waist, hips, thighs and buttocks. . . leaving your body thinner, trimmer and sexier than you ever thought possible. Akävar-20/50 ***helps draw out bulging pockets of fat and prevents the further conversion and storage of excess fat all over your body.*** This remarkably effective formula works so fast and is so easy to use that before you have time to be discouraged you will have lost pounds and inches of ugly, hard-to-get-at, figure-destroying fat. (emphasis added).

Akävar-20/50 will produce an extraordinary, unparalleled loss of body weight! Akävar–20/50 is the perfect weight-loss compound for tough weight-loss problems. This amazing ***formulation is the result of years of intensive research and scientific evaluation. Not one, but a team of doctors working in a recognized medical university discovered the potent caloric-restricting qualities*** of the Akävar-20/50 formulation, and the research team at Dynakor Pharmacal is proud to have played a major role in bringing this new generation of fast-acting caloric restrictors to the general public. . . at an affordable price. (emphasis added)

Tests prove virtually 100% success.

That's right. While no diet pill can possibly work for everybody (that's why there's a money-back guarantee), scientific documentation has confirmed that virtually everyone in the study who used Akävar-20/50's active compound (23 out of 24 participants, to be exact) lost weight. The research results are staggering. In a ***controlled, randomized clinical trial*** (the only type of proof accepted by both scientific and medical communities), doctors tested a group of overweight patients. And among those who took the active, patented Akävar-20/50 compound, 23 out of 24 people lost a substantial amount of weight. But there's more! Not one of the subjects who continued taking the active Akävar-20/50 weight-loss compound for a period of one full year experienced rebound weight gain. Not one! In other words, ***Akävar-20/50 caused easy, automatic weight loss without calorie counting and without diet rebound.*** (emphasis added).

An entirely new generation of "diet pills"

An entirely ***new generation of powerful, foolproof, bio-active weight-loss compounds that automatically reduce caloric intake.*** . . . eliminating traditional dieting, calorie counting, strenuous exercise, fad diets, supermarket "miracle" pills, Japanese wonder diets, rubber suits, belts, creams or anything else you have ever tried before. (emphasis added).

The only thing you have to do is remember to take your easy-to-swallow Akävar-20/50 tablets each and every day. That's it!

Akävar-20/50 is the only weight-loss compound that works automatically. There is absolutely no need to count calories, no need to consciously lower your caloric intake, no need for expensive, pre-measured meals. . . and no need to give up your favorite foods! Why? Because Akävar-20/50 reduces caloric intake. . . automatically. (emphasis added).

23. In fact, Defendants' advertising claims are false, misleading, deceptive and inaccurate.

Contrary to Defendants' advertising claims, Akävar's formulation is not the result of years of intensive research. Nor is Akävar a new generation of powerful, foolproof, bio-active weight-loss compound.

24. Although the ingredients of Akävar are not listed in the advertising, and are not available on the website, the product packaging claims that Akävar-20/50 is "A Proprietary Blend Containing:"

- * Yerba Mate (Leaf) SE
- * Trimethylxanthine (*i.e.* Caffeine)
- * Guarana (Seed) SE

- * Damiana (Leaf, Seed) SE
- * Green Tea (Leaf) SE
- * Ginger (Root)
- * Kola Nut SE
- * Schinsandra (Fruit)
- * Scutellaria (Root) SE
- * Tibetan Ginseng (Root) SE
- * Cocoa Nut SE
- * Jujube (Fruit)
- * Thea Sinensis Complex (Leaf) SE

25. The ingredient list also includes Vitamin B6, Magnesium, Rice Flour, Magnesium Stearate, Cellulose, Silicon Dioxide, FD&C Red #3, FD&C Yellow #6, Titanium Dioxide, and Gelatin. The principal ingredients, Yerba Mate, Trimethylxanthine, and Guarana, are chemical equivalents of caffeine.

26. The ingredients of Akävar are identical to those listed in “Estrin-D,” another weight-loss product created by Basic Research and marketed and distributed by Defendants and their affiliated entities. Estrin-D is the subject of an unrelated class action filed in the United States District Court for the Southern District of New York, against Defendants Gay, Mowrey, Friedlander, Basic Research, Western Holdings, and others.

27. Akävar has not undergone scientific evaluation by a team of doctors, nor has Akävar been tested in controlled random clinical trials.

28. Akävar has not been tested for safety or efficacy, is not a part of a “new generation of fast-acting caloric restrictors,” and no “tests prove virtually 100% success.”

29. Defendants intentionally mislead consumers as to the evaluation and testing of the product. For example, in an article for the February 7, 2007 *Business Wire*, Defendants claimed that Defendant Mowrey had “reviewed the substantiation for [Akävar’s claims]” on behalf of Defendant Dynakor. In the same interview press release for *Business Wire*, Defendants presented Mowrey as an independent reviewer who was not involved with the development of the product:

Frankly I don't like the way the ad looks, either, and I certainly wouldn't be as flamboyant with the headlines. . . . But forget about the way the ad looks. The real question is whether or not a diet pill can really let you eat all you want and still lose weight? In regards to Akävar-20/50, the facts are the facts and scientific documentation has confirmed that virtually everyone in the study who used Akävar's active compound -- 23 out of 24 participants, to be exact -- lost weight. That's the bottom line."

30. The February 7, 2007 press release goes on to quote "Dr. Mowrey" as saying that after the supposed first test of Akävar, "I suggested a second clinical trial, which has yet to be published, to examine whether Akävar could have altered the hunger hormone. It did."

In fact, there has been neither a first nor a second clinical trial of Akävar.

31. In fact, Defendant Mowrey is not a medical doctor. Nor is Defendant Mowrey even remotely "independent." As previously outlined, Mowrey is a principal shareholder of Defendant Basic Research and a consultant for Defendant Dynakor.

32. Finally, there is no clinical or scientific support for Defendants' representations that Akävar has the ability to cause pockets of fat to be pulled from bulging parts of consumers' bodies, working automatically if the consumer simply remembers to take an easy-to-swallow tablet. To the contrary, there is no guarantee that the product can and does work at all.

33. Consumers can purchase Akävar directly from Defendants through Defendants' websites, including www.dynakorpharmal.com, www.AKAVAR2050.com, and other sites, or by calling 1-800-235-8715.

34. Through their websites and toll-free number, Defendants sell a "full 60-capsule supply" of Akävar for \$39.99. Alternatively, consumers can purchase two bottles for \$79.98 and receive a third bottle free. Akävar is also available in stores and on-line through retailers such as GNC and Wal-Mart.

35. As part of their advertising campaign for Akävar, Defendants use the phrases: "and we couldn't say it in print" and "and we couldn't say it in print if it wasn't true," both registered

trademark phrases of Defendant Western Holdings. These phrases are false, and are intended to be, and are, misleading to consumers.

CLASS ACTION ALLEGATIONS

36. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other similarly situated members of the Class defined below pursuant to the Federal Rule of Civil Procedure 23(a) and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions. The Class is defined as follows:

All persons or entities that purchased, not for resale or assignment, an Akävar 20/50 Fast Acting Caloric Restricting Compound.

37. Excluded from the Class are: (1) Defendants, any entity or division in which any Defendant has a controlling interest, and its/their legal representatives, officers, directors, assigns and successors; and (2) the judge to whom this case is assigned and any member of the judge's immediate family.

38. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is presently unknown, and can only be ascertained from records maintained by, and in the possession and control of, Defendants, Plaintiffs believe the Class is comprised of many thousands of purchasers of the Akävar throughout the United States.

39. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all Class members, purchased Akävar and have suffered injury as a result.

40. Moreover, the factual bases of Defendants' misconduct are common to all Class members, and Defendants' misrepresentations, omissions and acts of concealment resulted in injury to all members of the Class.

41. There are numerous questions of law and fact common to all Class members and those questions predominate over any questions that may affect only individual Class members, including, but not limited to the following:

- a. Whether Defendants engaged in a pattern of fraudulent, deceptive and misleading conduct toward the public through their marketing, advertising, promotion and sale of Akävar;
- b. Whether Defendants misrepresented the efficacy of Akävar to consumers' financial detriment;
- c. Whether the acts and omissions of Defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et seq.*;
- d. Whether the acts and omissions of Defendants violated Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10(3) and (4);
- e. Whether Defendants should be enjoined from the continued unlawful marketing, advertising, promotion, distribution and sale of Akävar;
- f. Whether Defendants were unjustly enriched by their acts and omissions, at the expense of Plaintiffs and the Class;
- g. Whether Defendants made material misrepresentations of fact, or omitted to state material facts to Plaintiffs and the Class regarding the marketing, promotion and advertising of Akävar, which material misrepresentations or omissions operated as fraud and deceit upon Plaintiffs and the Class;
- h. Whether Plaintiffs and the Class have sustained damages and loss as a result of Defendants' actions; and
- i. Whether the actions of Defendants were willful and malicious, or manifested knowing and reckless indifference and disregard toward the rights of Plaintiffs and the Class.

42. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel highly experienced in prosecuting class actions, including actions involving defective consumer goods and dietary supplements.

43. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of Class members and have the resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class.

44. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the relatively small size of the individual Class members' claims, absent a class action most Class members would likely find the cost of litigating their claims against Defendants to be prohibitive. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(For Violations of Section 1962(c) and (d) of RICO)

45. Paragraphs 1-44 of this Complaint are realleged and incorporated by reference. This claim, which asserts violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), is asserted against Defendants Gay, Mowrey and Friedlander.

46. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 1961(3) of RICO, 18 U.S.C. § 1961(3).

47. At all times relevant to this class action, Defendant Basic Research, was an "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4). In the alternative, Defendant Dynakor was an "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4).

48. At all times relevant to this class action, and as alleged in Paragraphs 3, 5-7, and 18-35 of this Complaint, Defendants Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. §

1343; and interstate transportation of money taken by fraud, in violation of in violation of 18 U.S.C. § 2314. Each of the numerous mailings, communications and transportations using interstate facilities that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "racketeering activity," as that term is defined in Section 1961(1) of RICO, 18 U.S.C. § 1961(1).

49. The fraudulent and deceptive activities engaged in by Defendants Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce. As alleged in this Complaint, Defendants Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

50. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a "pattern of racketeering activity," as that term is defined in Section 1961(5) of RICO, 18 U.S.C. § 1961(5).

51. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an "enterprise," namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

52. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an "enterprise," namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 1962(d) of RICO, 18 U.S.C. § 1962(d).

53. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Gay, Mowrey and Friedlander under Section 1964(c) of RICO, 18 U.S.C. § 1964(c).

54. By virtue of their violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), Defendants Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for three times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

SECOND CAUSE OF ACTION

(For Violations of Section 1962(c) and (d) of RICO)

55. Paragraphs 1-54 of this Complaint are realleged and incorporated by reference. This claim, which asserts violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d), is asserted against Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander.

56. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 1961(3) of RICO, 18 U.S.C. § 1961(3).

57. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander constituted an association-in-fact "enterprise," as that term is defined in Section 1961(4) of RICO, 18 U.S.C. § 1961(4).

58. At all times relevant to this class action, and as alleged in Paragraphs 3, 5-7. and 18-35 of this Complaint, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and interstate transportation of money taken by fraud, in violation of in violation of 18 U.S.C. § 2314. Each of the numerous mailings, communications and transportations using interstate facilities that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "racketeering activity," as that term is defined in Section 1961(1) of RICO, 18 U.S.C. § 1961(1).

59. The fraudulent and deceptive activities engaged in by Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce. As alleged in this Complaint, Defendants Basic Research, Dynakor, Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

60. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a “pattern of racketeering activity,” as that term is defined in Section 1961(5) of RICO, 18 U.S.C. § 1961(5).

61. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an “enterprise,” namely, an association-in-fact consisting of the Defendants, through a pattern of racketeering activity, in violation of Section 1962(c) of RICO, 18 U.S.C. § 1962(c).

62. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an “enterprise,” namely, an association-in-fact consisting of the Defendants, through a pattern of racketeering activity, in violation of Section 1962(d) of RICO, 18 U.S.C. § 1962(d).

63. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander under Section 1964(c) of RICO, 18 U.S.C. § 1964(c).

64. By virtue of their violations of Section 1962(c) and (d) of RICO, 18 U.S.C. § 1962(c) and (d) Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and

each of them, are jointly and severally liable to Plaintiffs and Class members for three times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

THIRD CAUSE OF ACTION

(For Violations of Section 76-10-1603(3) and (4) of UPUAA)

65. Paragraphs 1-64 of this Complaint are realleged and incorporated by reference. This claim, which asserts violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10(3) and (4), is asserted against Defendants Gay, Mowrey and Friedlander.

66. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, was a "person," as that term is defined in Section 76-10-1602(3) of UPUAA, Utah Code Ann. § 76-10-1602(3).

67. At all times relevant to this class action, Defendant Basic Research, was an "enterprise," as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1). In the alternative, Defendant Dynakor was an "enterprise," as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1).

68. At all times relevant to this class action, and as alleged in Paragraphs 3, 5-7, and 18-35 of this Complaint, Defendants Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and interstate transportation of money taken by fraud, in violation of in violation of 18 U.S.C. § 2314. Each of the numerous mailings, communications and transportations using interstate facilities that were made in furtherance of Defendants' scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of "unlawful activity," as that term is defined in Section 76-10-1602(4)(g) of UPUAA, Utah Code Ann. § 76-10-1602(4)(g).

69. The fraudulent and deceptive activities engaged in by Defendants Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and

affect interstate commerce. As alleged in this Complaint, Defendants Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

70. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a “pattern of unlawful activity,” as that term is defined in Section 76-10-1602(2) of UPUAA, Utah Code Ann. § 76-10-1602(2).

71. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an “enterprise,” namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 76-10-1603(3) of UPUAA, Utah Code Ann. § 76-10-1603(3).

72. At all times relevant to this class action, Defendants Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an “enterprise,” namely, Basic Research, or, in the alternative, Dynakor, through a pattern of racketeering activity, in violation of Section 76-10-1603(4) of UPUAA, Utah Code Ann. § 76-10-1603(4).

73. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Gay, Mowrey and Friedlander under Section 76-10-1605(1) of UPUAA, Utah Code Ann. § 76-10-1605(1).

74. By virtue of their violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4) Defendants Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class members for two times the damages that Plaintiffs and Class members suffered as a result of Defendants’ scheme to defraud.

FOURTH CAUSE OF ACTION

(For Violations of Section 76-10-1603(3) and (4) of UPUAA)

75. Paragraphs 1-74 of this Complaint are realleged and incorporated by reference. This claim, which asserts violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4), is asserted against Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander.

76. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, was a “person,” as that term is defined in Section 76-10-1602(3) of UPUAA, Utah Code Ann. § 76-10-1602(3).

77. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander constituted an association-in-fact “enterprise,” as that term is defined in Section 76-10-1602(1) of UPUAA, Utah Code Ann. § 76-10-1602(1).

78. At all times relevant to this class action, and as alleged in Paragraphs 3, 5-7, and 18-35 of this Complaint, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, engaged in acts constituting mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and interstate transportation of money taken by fraud, in violation of 18 U.S.C. § 2314. Each of the numerous mailings, communications and transportations using interstate facilities that were made in furtherance of Defendants’ scheme to defraud Plaintiffs and Class members constitute separate and distinct acts of “unlawful activity,” as that term is defined in Section 76-10-1602(4)(g) of UPUAA, Utah Code Ann. § 76-10-1602(4)(g).

79. The fraudulent and deceptive activities engaged in by Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, in marketing Akävar to Plaintiffs and Class members involve and affect interstate commerce. As alleged in this

Complaint, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander market, sell and deliver Akävar throughout the United States.

80. By committing such offenses, which victimized Plaintiffs and thousands of Class members, and which offenses continue today and are likely to continue in the future, Defendants, and each of them, have engaged in a “pattern of unlawful activity,” as that term is defined in Section 76-10-1602(2) of UPUAA, Utah Code Ann. § 76-10-1602(2).

81. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings Gay, Mowrey and Friedlander, and each of them, have conducted or participated, directly or indirectly, in the management and operation of an “enterprise,” namely, an association-in-fact consisting of the Defendants, through a pattern of racketeering activity, in violation of Section 76-10-1603(3) of UPUAA, Utah Code Ann. § 76-10-1603(3).

82. At all times relevant to this class action, Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, have conspired to conduct or participate, directly or indirectly, in the management and operation of an “enterprise,” namely, an association-in-fact consisting of the Defendants, through a pattern of racketeering activity, in violation of Section 76-10-1603(4) of UPUAA, Utah Code Ann. § 76-10-1603(4).

83. Plaintiffs and Class members who purchased Akävar have been injured in their business or property and, therefore, have standing to sue Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander under Section 76-10-1605(1) of UPUAA, Utah Code Ann. § 76-10-1605(1).

84. By virtue of their violations of Section 76-10-1603(3) and (4) of UPUAA, Utah Code Ann. § 76-10-1603(3) and (4), Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander, and each of them, are jointly and severally liable to Plaintiffs and Class

members for two times the damages that Plaintiffs and Class members suffered as a result of Defendants' scheme to defraud.

FIFTH CAUSE OF ACTION

(Fraud)

85. Paragraphs 1-84 of this Complaint are realleged and incorporated by reference. This claim, which asserts fraud, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander.

86. Defendants' business practices in marketing, advertising and promoting Akävar are intentionally and willfully false and fraudulent.

87. In marketing, advertising and promoting Akävar, Defendants willfully and intentionally made representations regarding the product that were known by Defendants to be false and untrue.

88. Defendants' unlawful conduct as set forth in this Complaint has the capacity to mislead or deceive consumers, including Plaintiffs and members of the Class.

89. Defendants' willful and intentional false promises and misrepresentations as set forth in this Complaint are material in that they relate to matters which reasonable persons, including Plaintiffs and members of the Class, would attach importance to in their purchasing decisions or conduct regarding the purchase of Akävar.

90. Plaintiffs and members of the Class uniformly relied on Defendant's misrepresentations and promises, and under the circumstances described above such reliance was justifiable.

91. As a result of Defendants' fraudulent practices as described herein, Plaintiffs and members of the Class have suffered loss of money and property.

92. The actions of Defendants were willful and malicious, and manifested knowing and reckless indifference and disregard toward the rights of Plaintiffs and the Class.

SIXTH CAUSE OF ACTION

(Violation of UCSPA and Other Consumer Protection Statutes)

93. Paragraphs 1-92 of this Complaint are realleged and incorporated by reference. This claim, which asserts violation of the UCSPA, or in the alternative, the consumer protection laws of Utah and the other states, and the District of Columbia, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander.

94. In connection with the purchase and sale of Akävar, Plaintiffs and the Class are consumers and Defendants are suppliers within the meaning of the UCSPA and the similar consumer protection statutes of the other states.

95. The purchase of Akävar by Plaintiffs and all other members of the Class as described herein constitute consumer transactions within the meaning of the UCSPA and the similar consumer protection statutes of the other states.

96. Defendants' business practices in marketing, advertising and promoting Akävar, as described above, are intentionally and willfully false, misleading and fraudulent.

97. In marketing, advertising and promoting Akävar, Defendants willfully and intentionally made representations regarding the product that were known by Defendants to be false and untrue.

98. Defendants' unlawful conduct as set forth in this Complaint had, and has, the capacity to mislead or deceive consumers, including Plaintiffs and members of the Class. Such unlawful conduct did mislead and deceive Plaintiffs and other consumers, the members of the Class, and continues to do so.

99. Defendants' willful and intentional false promises and misrepresentations as set forth in this Complaint are material in that they relate to matters to which reasonable persons, including Plaintiffs and members of the Class, would attach importance in their purchasing decisions or conduct regarding the purchase of Akävar.

100. Defendants' misrepresentations in their marketing concerning the efficacy of Akävar as described herein constitute false, deceptive, misleading and unconscionable practices in violation of UCSPA.

101. Defendants acted in the face of prior notice that their conduct was deceptive, unfair and unconscionable. It is well established under the UCSPA, as well as the FTC Act, that material omissions and misrepresentations regarding a defective product's characteristics and efficacy constitute a violation of the statute. Further, the FTC has on multiple occasions admonished Defendants, and brought enforcement proceedings against Defendants, concerning the same or similar misconduct as that alleged in this Complaint, and Defendants have entered into consent judgments prohibiting such conduct.

102. Application of UCSPA to all Class members throughout the country, regardless of their state or residence, is appropriate because, *inter alia*:

- a) Defendants' nationwide sales operations are controlled, directed and originate from Salt Lake City, Utah;
- b) Defendants' marketing operations, including the decisions regarding how to advertise, promote and sell Akävar, are made in Salt Lake City, Utah, and internal marketing personnel and external marketing consultants all are based there;
- c) Defendants' telephone sales force, customer service, and internet website and advertising operations are controlled, directed and originate in Salt Lake City, Utah;
- d) Defendants' principal place of business is in Salt Lake City, Utah;
- e) All significant employees of Defendants are based in Salt Lake City, Utah;
- f) Internet sales of Akävar are placed, fulfilled and carried out in Salt Lake City, Utah; and
- g) The facts and circumstances of this case include such numerous contacts with the State of Utah as to create a state interest in applying Utah's consumer laws to Defendants, making application of Utah law to the entire Class appropriate.

103. As a result of Defendants' violations of UCSPA, Plaintiffs and the Class have suffered damages, and are entitled to recover such damages, equitable and restitutionary measures as are available under UCSPA, together with appropriate penalties, including attorneys' fees and costs of suit.

104. In the alternative to the application of the UCSPA on a nationwide basis, the conduct of Defendants alleged above constitutes unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the other state consumer protection and unfair competition statutes listed below in addition to the UCSPA:

<u>Alabama:</u>	Alabama Code §8-19-1, <i>et seq.</i>
<u>Alaska:</u>	Alaska Stat. §45.50.471, <i>et seq.</i>
<u>Arizona:</u>	Ariz. Rev. Stat. Ann §44-1521, <i>et seq.</i>
<u>Arkansas:</u>	Arkansas Code §4-88-101, <i>et seq.</i>
<u>California:</u>	California Bus. & Prof. Code §17200, <i>et seq.</i>
<u>Colorado:</u>	Colo. Rev. Stat. §6-1-101, <i>et seq.</i>
<u>Connecticut:</u>	Conn. Gen. Stat. §42-110a, <i>et seq.</i>
<u>Delaware:</u>	Del. Code Ann. §2511, <i>et seq.</i> ; §2531, <i>et seq.</i>
<u>District of Columbia:</u>	District of Columbia Code §28-3901, <i>et seq.</i>
<u>Florida:</u>	Florida Stat. §501.201, <i>et seq.</i>
<u>Idaho:</u>	Idaho Code §48-601, <i>et seq.</i>
<u>Hawaii:</u>	Haw. Rev. Stat. §480-1, <i>et seq.</i> ; §481A-1, <i>et seq.</i>
<u>Idaho:</u>	Idaho Code §48-601, <i>et seq.</i>
<u>Illinois:</u>	Ill. Comp. Stat. Ann. 505/1, <i>et seq.</i> ; 510/1 <i>et seq.</i>
<u>Indiana:</u>	Ind. Code Ann. §24-5-0.5-1, <i>et seq.</i>
<u>Iowa:</u>	Iowa Code Ann. §714.16, <i>et seq.</i>

<u>Kansas:</u>	Kan. Stat. Ann. §50-623, <i>et seq.</i>
<u>Kentucky:</u>	Ky. Rev. Stat. Ann. §367.110, <i>et seq.</i>
<u>Louisiana:</u>	La. Rev. Stat. Ann. §51-1401, <i>et seq.</i>
<u>Maryland:</u>	Md. Code Ann. Com. Law. §13-101, <i>et seq.</i>
<u>Michigan:</u>	Mich. Comp. Laws Ann. §445.901, <i>et seq.</i>
<u>Minnesota:</u>	Minn. Stat. §8.31; §325D.43, <i>et seq.</i> ; §325F.67; §325F.68 <i>et seq.</i>
<u>Mississippi:</u>	Miss. Code Ann. §75-24-1 <i>et seq.</i>
<u>Missouri:</u>	Mo. Rev. Stat. §407.010 <i>et seq.</i>
<u>Montana:</u>	Montana Code §30-14-101, <i>et seq.</i>
<u>Nebraska:</u>	Nebraska Rev. Stat. §59-1601, <i>et seq.</i> ; §87-301, <i>et seq.</i>
<u>Nevada:</u>	Nev. Rev. Stat. Chapter 598A.0903, <i>et seq.</i>
<u>New Hampshire:</u>	N.H. Rev. Stat. § 358-A:1, <i>et seq.</i>
<u>New Jersey:</u>	N.J. Stat. Ann. §56:8-1, <i>et seq.</i>
<u>New Mexico:</u>	New Mexico Stat. §57-12-1, <i>et seq.</i>
<u>New York:</u>	New York Gen. Bus. Law §349, <i>et seq.</i>
<u>North Carolina:</u>	North Carolina Gen. Stat. §75-1.1, <i>et seq.</i>
<u>North Dakota:</u>	N.D. Cent. Code §§51-15-01, <i>et seq.</i>
<u>Ohio:</u>	Ohio Rev. Code Ann. §1345.01, <i>et seq.</i> ; §4165.01, <i>et seq.</i>
<u>Oklahoma:</u>	Okla. Stat. tit. 78, §5, <i>et seq.</i>
<u>Oregon:</u>	Or. Rev. Stat. §646.605, <i>et seq.</i>
<u>Pennsylvania:</u>	Pa. Stat. Ann. tit. 73, §201-1, <i>et seq.</i>
<u>Rhode Island:</u>	R.I. Gen. Laws §6-13.1-1, <i>et seq.</i>
<u>South Carolina:</u>	S.C. Code Ann. §39-5-10, <i>et seq.</i>
<u>South Dakota:</u>	S.D. §37-24-1, <i>et seq.</i>

<u>Tennessee:</u>	Tenn. Code Ann. §§ 47-18-101, <i>et seq.</i>
<u>Texas:</u>	Tex. Bus. & Com. Code Ann. §17.41, <i>et seq.</i>
<u>Vermont:</u>	Vt. Stat. Ann tit 9, §2451, <i>et seq.</i>
<u>Virginia:</u>	Va. Code Ann. §59.1-196, <i>et seq.</i>
<u>Washington:</u>	Wash. Rev. Code Ann. §19.86.010, <i>et seq.</i>
<u>Wisconsin:</u>	Wisc. Stat. Ann. § 100.18; §100.20, <i>et seq.</i>
<u>Wyoming:</u>	Wyo. Stat. Ann. §40-12-101, <i>et seq.</i>

105. As a direct and proximate result of Defendants' unlawful conduct in violation of the UCSPA, or in the alternative, of the UCSPA and these other state consumer statutes, Plaintiffs and members of the Class have been injured and suffered loss of money and property.

106. In addition, in connection with the filing of this Complaint, Plaintiffs are sending required pre-filing notification letters pursuant to the state consumer protection laws in Georgia, Maine, Massachusetts and West Virginia. Depending upon Defendants' responses thereto, Plaintiffs will amend their Complaint to add claims under these states' consumer protection laws.

Notice To Attorneys General Of Action

107. A copy of this Complaint shall be mailed to the Attorneys General, Administrators, Commissioners, or other officers, as required by laws for the States of Connecticut, Georgia, Hawaii, Illinois, Kansas, Louisiana, Nevada, New Jersey, Oregon and Texas within three days of the filing of this Complaint with this Court pursuant to Conn. Gen. Stat. § 42-100g(c), Ga. Code § 10-1-399, Haw. Rev. Stat. § 48013.3, 815 ILCS § 505/6, Kan. Stat. § 50-634(g), La. Rev. Stat. § 51:1409(B), Nev. Rev. Stat. § 598A.210(3), N.J.S.A. § 56:8-20, Or. Rev. Stat. § 646.638(2) and Tex. Bus. & Com. Code § 17501(a)(1).

SEVENTH CAUSE OF ACTION

(Unjust Enrichment)

108. Paragraphs 1-107 of this Complaint are realleged and incorporated by reference. This claim, which asserts unlawful and fraudulent conduct and resulting unjust enrichment, is asserted against Defendants Basic Research, Dynakor, Western Holdings, Gay, Mowrey and Friedlander.

109. As a result of Defendants' wrongful and fraudulent conduct, Plaintiffs and members of the Class have conferred benefits upon Defendants.

110. Defendants were at all times aware that the benefits conferred upon by them by Plaintiffs and the Class were the result of Defendant's fraud and misrepresentation.

111. Allowing Defendants to retain these unjust profits and other benefits would offend traditional notions of justice and fair play. Under these circumstances, it would be inequitable for Defendants to retain the benefits and allowing them to do so would induce companies to misrepresent key characteristics of their products in order to increase sales.

112. Defendants are in possession of funds that were wrongfully obtained from Plaintiffs and the Class and which should be disgorged as ill-gotten gains.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendants as follows:

A. An order certifying a Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiffs as the representatives of the Class, and designating their counsel as counsel for the Class;

B. On the First Cause of Action, against Defendants jointly and severally in an amount equal to treble the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

C. On the Second Cause of Action, against Defendants jointly and severally in an amount equal to treble the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

D. On the Third Cause of Action, against Defendants jointly and severally in an amount equal to two times the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

E. On the Fourth Cause of Action, against Defendants jointly and severally in an amount equal to two times the amount of damages suffered by Plaintiffs and members of the Class as proven at trial plus interest and attorneys' fees and expenses;

F. On the Fifth Cause of Action, against Defendants jointly and severally, in an amount equal to the actual damages suffered by Plaintiffs and members of the Class as proven at trial plus interest, as well as punitive damages in an amount sufficient to punish Defendants and deter similar future conduct;

G. On the Sixth Cause of Action, against Defendants jointly and severally, in an amount equal to the actual damages suffered by Plaintiffs and members of the Class as proven at trial plus interest, together with all allowable penalties and damage multipliers available under the UCSPA and other state consumer protection laws, and attorneys' fees and expenses;

H. On the Seventh Cause of Action, against Defendants jointly and severally, for disgorgement of Defendants' unjust enrichment and/or imposition of a constructive trust upon Defendants' ill-gotten monies, freezing Defendants' assets, and requiring Defendants to pay restitution to Plaintiffs and the Class and to restore all funds acquired by means of any act or practice declared by this Court to be unlawful, deceptive, fraudulent or unfair, and/or a violation of laws, statutes or regulations;

I. On all Causes of Action, such other civil penalties and punitive damages to the fullest extent permitted by applicable law;

J. An order requiring Defendants to immediately cease their wrongful conduct as set forth above, as well as enjoining Defendants from continuing to falsely market and advertise, conceal material information and conduct business via the unlawful and unfair business acts and practices complained of herein; an order requiring Defendants to engage in a corrective notice campaign; and an order requiring Defendants to refund to Plaintiffs and all members of the Class the funds paid to Defendants for their fraudulent, defective product;

K. For the reasonable attorneys' fees and the costs of prosecuting this action;

L. For statutory pre-judgment interest; and

M. For such other relief as this Court may deem just and proper.

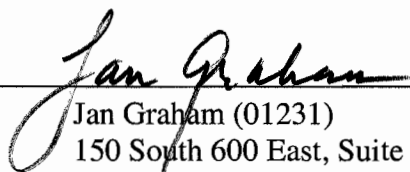
JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

Graham Law Offices

November 9, 2007

By:



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