DEPARTMENT 30

Gene J. Stonebarger, State Bar No. 209461
Richard D. Lambert, State Bar No. 251148
LINDSAY & STONEBARGER
A Professional Corporation
620 Coolidge Drive, Suite 225
Folsom, CA 95630
Telephone: (916) 294-0002
Facsimile: (916) 294-0012

Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SAMUEL NICKEL, an individual; and DAVID ROBERTS, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

ANABOLIC INDUSTRIES; and DOES 1 through 50, inclusive

Defendants.

CASE NO. 34-2009-00058968

CLASS ACTION

COMPLAINT FOR:

(1) NEGLIGENT MISREPRESENTATIONS;

(2) INTENTIONAL MISREPRESENTATIONS;

(3) VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT;

(4) VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW;

(5) VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW; AND

(6) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

Plaintiffs, Samuel Nickel and David Roberts (hereinafter collectively referred to as "Plaintiffs"), on behalf of themselves and all others similarly situated, and demanding a jury trial, complain and allege of Defendants Anabolic Industries; and DOES 1 through 50 (hereinafter collectively referred to as "Defendants") inclusive as follows:

I.

INTRODUCTION

1. This is a civil action alleging Negligent Misrepresentations, Intentional Misrepresentations, violations of California's Consumers Legal Remedies Act (hereinafter referred to as the "CLRA"), False Advertising Law (hereinafter referred to as "FAL"), Unfair Competition Law (hereinafter referred to as the "UCL"), and Unjust Enrichment, in connection with Defendants' course of conduct, in the design, research, manufacturing, advertising, promotion, marketing, distribution, and sale by Defendants of various products containing any of the following synthetic steroid compounds: 19-Norandrosta-4, 9-diene-3, 17 dione; 17a-methyletioallocholan-2-ene-17b-ol; 4-hydroxyandrostenedione (4-0HA); 5a-androstano[3, 2-c] pyrazole-3-one-17B-ol-THP-ether; 2a, 3a-epithio-17a-methyl-17B-hydroxy-5a-etioallocholane; Androsta-1, 4-dien-3, 17-dione; 17a-methyl-4-chloro-androsta-I, 4-diene3B, 17B-diol; and 1-androsterone (hereinafter referred to collectively as the "Products") throughout the United States, and the State of California.

II.

RELEVANT BACKGROUND FACTS

A. The "Dietary Supplement" Industry

2. Over the past decade, the increased popularity of alternative medicine and the growing number of health conscious consumers have contributed to increased sales of "dietary supplements." This trend is expected to continue as the aging baby-boomer generation, rising health care costs and increasing focus on fitness are driving the growth of the "dietary supplement industry."

3. Also promoting growth in the "dietary supplement" industry is the ever increasing public awareness of the positive effects of vitamins and "dietary supplements" on health. Such

awareness has been heightened by widely publicized reports of scientific findings supporting such claims. As a result, the "dietary supplement" industry has benefited from the fact that consumers are willing to pay premium prices for such products because they believe in the health benefits of consuming such products.

4. All of the above factors have lead to a significant increase in profits for the developers, manufacturers, and distributors of "dietary supplements." In 2008, the "dietary supplement" industry, despite dire economic times for most Americans, did over $22 billion in sales, with that number expected to increase an additional $1.3 to $1.9 billion in the next three years. Needless to say, with the extraordinary profits to be made in the "dietary supplement" industry, there is a substantial incentive to create, manufacture, distribute, and introduce a "dietary supplement" into the marketplace as quickly as possible.

B. FDA Approval of Drugs

5. The Food, Drug, and Cosmetic Act (hereinafter referred to "FDCA") defines a drug, in part, as those "articles (other than food) intended to affect the structure or any function of the body of man or other animals." 21 U.S.C. 321.

6. When a product is classified as a "drug" as opposed to a cosmetic, the manufacturer must go through a rigorous, extensive, and costly FDA approval process. Specifically, once a company develops a drug, it undergoes around three and a half years of laboratory testing, before an application is made to the FDA to begin testing the drug in humans. Only one in one thousand of the compounds that enter laboratory testing will ever make it to human testing.

7. If the FDA approves the drug for human testing, the "investigative" drug will then enter three phases of clinical trials: (i) Phase 1 uses 20-80 healthy volunteers to establish a drug's safety and profile and lasts approximately one year; (ii) Phase 2 employs 100-300 patient volunteers to assess the drug's effectiveness and lasts approximately two years; and (iii) Phase 3 involves 1000-3000 patients in clinics and hospitals who are monitored carefully to determine effectiveness and identify adverse reactions which lasts about three (3) years.

///

8. After clinical testing, the company then submits an application (usually about 100,000 pages) to the FDA for approval, a process that can take up to two and a half years. After final approval, the drug becomes available for physicians to prescribe At this stage, the drug company will continue to report cases of adverse reactions and other clinical data to the FDA.

9. Overall, it takes an average of twelve (12) years and over $350 million for a company to get a new drug from the laboratory into the marketplace. Clearly, the time and costs associated with FDA approval of a new "drug" and the post-marketing reporting serves as a market barrier for most companies. This is especially true considering that the research-based pharmaceutical industry currently invests some $12.6 billion a year in new drug development and this drug development figure doubles every five years.

10. Due to the substantial – and largely prohibitive – time and costs associated with FDA approval of a new drug, manufacturers have every incentive to avoid classification of their product as a "drug" if possible.

C. FDA Oversight of Drug Industry

11. At the heart of the FDA's post-market drug surveillance system is the Adverse Event Reporting System (AERS). Started in 1998, the AERS is a "computerized information database designed to support the FDA's post-marketing safety surveillance program for all approved drug(s)." This system is part of the FDA's "MedWatch" promotional program designed to provide safety information to the healthcare industry and improve the reporting of adverse drug experiences (hereinafter referred to as "ADEs").

12. When ADEs occur, the subsequent voluntary report is sent through MedWatch and becomes part of the AERS database. The AERS "is the world's largest database of voluntary, spontaneous reports of adverse drug reactions." Staff at the FDA's Center for Drug Evaluation and Research (CDER), which oversees MedWatch and AERS, then analyze the reports in conducting post-marketing drug surveillance to detect safety issues or other concerns. This is done by two organizations within the CDER – the Office of Surveillance and Epidemiology (OSE) and the Office of New Drugs (OND). This evaluation eventually leads to the FDA taking regulatory action to improve drug safety and protecting the public health.

13. In addition to the AERS, some drug sponsors are subject to mandatory reporting requirements under federal regulations. An adverse drug experience is defined by the FDA as "any adverse event associated with the use of a drug in humans, whether or not considered drug related." Those required to report the occurrence of ADEs are "any person whose name appears on the label of a marketing prescription drug product as its manufacturer, packer, or distributor." If one of those entities is informed of an ADE caused by one of its drugs, it is required to notify the FDA as soon as possible, but no later than fifteen days after receiving the information. After filing a report with the FDA, the reporting entity must then promptly investigate the ADE and then file a follow-up report within fifteen days.

14. A third way for the FDA to receive post-market drug safety information is through research agreements that it enters into with a drug sponsor prior to approval. These agreements are negotiated between sponsors and the FDA and require the sponsor to conduct certain post-marketing studies. The FDA will enter into these post-marketing study agreements when it has questions regarding a drug's safety, but still believes that its benefits outweigh the risks. When a sponsor enters into one of these agreements, it is required to submit a report to the FDA with the results of the study within one year of the drug's approval and annually thereafter.

D. The Dietary Supplement Health and Education Act (DSHEA) of 1994

15. In 1994, Congress passed the Dietary Supplement Health and Education Act, which defined the term "dietary supplement" as a product taken by mouth that contains a "dietary ingredient" intended to supplement the diet. The "dietary ingredients" in these products may include: vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissues, glandulars, and metabolites. "Dietary supplements" can also be extracts or concentrates, and may be found in many forms such as tablets, capsules, softgels, gelcaps, liquids, or powders. They can also be in other forms, such as a bar, but if they are, information on their label must not represent the product as a conventional food or a sole item of a meal or diet.

16. Whatever their form may be, DSHEA places "dietary supplements" in a special category under the general umbrella of "foods" not drugs, and requires that every supplement be

labeled as a "dietary supplement."

17. Prior to the DSHEA, "dietary supplements" were subject to the same regulatory requirements as were other foods However, the DSHEA, which amended the Federal Food, Drug, and Cosmetic Act, and created a new regulatory framework for the safety and labeling of "dietary supplements." Under DSHEA, a firm is responsible for determining that the "dietary supplements" it manufactures or distributes are safe and that any representations or claims made about them are substantiated by adequate evidence to show that they are not false or misleading. Unlike drugs, "dietary supplements" do not need approval from FDA before they are marketed.

18. Also, manufacturers do not need to register themselves nor their "dietary supplements" products with FDA before producing or selling them. Currently, there are no FDA regulations that are specific to "dietary supplements" that establish a minimum standard of practice for manufacturing "dietary supplements." At present, the manufacturer is responsible for establishing its own manufacturing practice guidelines to ensure that the "dietary supplements" it produces are safe and contain the ingredients listed on the label.

E. FDA Oversight of "Dietary Supplements" Under the DSHEA

19. Under the DSHEA, the manufacturer is responsible for ensuring that its "dietary supplements" products are safe before they are marketed. Unlike "drugs" that must be proven safe and effective for their intended use before marketing, there are no provisions in the law for the FDA to "approve" "dietary supplements" for safety or effectiveness before they reach the consumer. Also unlike drug products, manufacturers and distributors of "dietary supplements" are not currently required by law to record, investigate, or forward to the FDA any reports they receive of injuries or illnesses that may be related to the use of their products.

F. Defendants Fraudulently Marketed and Advertised the Products as a "Dietary Supplement" When They Do Not Meet the Definition of Such Under the DSHEA

20. Defendants' Products are marketed towards bodybuilders, athletes, and those individuals looking to increase muscle mass. In other words, Defendants' Products are marketed as an alternative to anabolic steroids for increasing muscle mass and strength and are sold both online and in retail stores. The Products, as are others like them, are also promoted to athletes to

improve sports performance and to aid in recovery from training and sporting events.

21. Defendants labeled, marketed, advertised, and sold the Products to members of public as "dietary supplements." However, the Products do not, and never did, meet the definition of a "dietary supplement" as none of the Products "bear[] or contain[] one or more...dietary ingredients." In other words, none of the Products are "dietary supplements" because none contain a vitamin, mineral, amino acid, herb or other botanical, or dietary substance for use by man to supplement the diet by increasing the total dietary intake, or are a concentrate, metabolite, constituent, extract or combination of any dietary ingredient from the preceding categories.

22. Rather, the Products are manufactured using, consist of, and have as their main ingredient at least one of the following ***synthetic steroids***: 19-Norandrosta-4, 9-diene-3, 17 dione; 17a-methyletioallocholan-2-ene-17b-ol; 4-hydroxyandrostenedione (4-0HA); 5a-androstano[3, 2-c] pyrazole-3-one-17B-ol-THP-ether; 2a, 3a-epithio-17a-methyl-17B-hydroxy-5a-etioallocholane; Androsta-1, 4-dien-3, 17-dione; 17a-methyl-4-chloro-androsta-I, 4-diene3B, 17B-diol; and 1-androsterone.

23. None of these synthetic steroids is a vitamin, mineral, amino acid, herb or other botanical, or dietary substance for use by man to supplement the diet by increasing the total dietary intake; further, none of them is a concentrate, metabolite, constituent, extract or combination of any such dietary ingredient. Thus, because none of the Products bear or contain a "dietary ingredient" as defined in the DSHEA, none of the Products meet the definition of a "dietary supplement" under the DSHEA, and thus, could not be labeled, advertised, marketed, and sold as a "dietary supplement" pursuant to the DSHEA's rules and regulations.

III.

JURISDICTION & VENUE

24. Defendants, and each of them, are business entities authorized and empowered by the laws of the State of California to conduct business in California, and whose principal place of business is, Plaintiffs are informed and believe and on that basis allege, in California. Defendants have labeled, marketed, advertised, and sold the Products throughout California,

including the County of Sacramento, which has caused both the respective obligations and liabilities of Defendants to arise in the County of Sacramento.

25. The amount in controversy exceeds the jurisdictional minimum of this Court.

IV.

THE PARTIES

A. Plaintiff Nickel

26. Plaintiff Nickel is a resident of Sacramento County, in the state of California, who, during the relevant Class Period, purchased at least one of the Products for his own use and not for resale.

27. Specifically, Plaintiff Nickel purchased TREN-X from a retail store located in California. Defendants' TREN-X Product contains the synthetic steroid 19-Norandrosta-4, 9-diene-3, 17 dione.[1]

28. In making his purchase of TREN-X, Plaintiff Nickel relied upon, *inter alia*, the material misrepresentations and/or omissions which were prepared and approved by Defendants and their agents and disseminated on the Products' labeling, marketing, and advertising campaigns which provided the following regarding the Products:

a. That the Products were "dietary supplements";

b. That the Products were not synthetic steroids;

c. That the Products contained compounds, ingredients, or components that were natural;

d. That the Products did not contain artificial, synthetic, or manmade compounds or ingredients; and

e. That the Defendants' labeling, marketing, advertising, of the Products as being "dietary supplements" was true, accurate, and correct.

29. Had Plaintiff Nickel been aware that Defendants' Products: (i) were not "dietary supplements"; (ii) were in fact synthetic steroids; (iii) did not contain compounds, ingredients, or

[1] The synthetic steroid 19-Norandrosta-4, 9-diene-3, 17 dione is also commonly referred to by its scientific synonym Estra-4,9-diene-3,17-dione

components that were natural; (iv) contained artificial, synthetic, or manmade compounds or ingredients; and (v) were falsely, misleadingly, and incorrectly labeled, marketed, and advertised, Plaintiff Nickel would not have purchased any of Defendants' Products.

B. Plaintiff Roberts

30. Plaintiff Roberts is a resident of Sacramento County, in the state of California, who, during the relevant Class Period, purchased at least one of the Products for his own use and not for resale.

31. Specifically, Plaintiff Roberts purchased Epi from a retail store located in California. Defendants' Epi Product contains the synthetic steroid 2a, 3a-epithio-17a-methyl-17B-hydroxy-5a-etioallocholane.

32. In making his purchase of FX, Plaintiff Roberts relied upon, *inter alia*, the material misrepresentations and/or omissions which were prepared and approved by Defendants and their agents and disseminated on the Products' labeling, marketing, and advertising campaigns which provided the following regarding the Products:

a. That the Products were "dietary supplements";

b. That the Products were not synthetic steroids;

c. That the Products contained compounds, ingredients, or components that were natural;

d. That the Products did not contain artificial, synthetic, or manmade compounds or ingredients; and

e. That the Defendants' labeling, marketing, advertising, of the Products as being "dietary supplements" was true, accurate, and correct.

33. Had Plaintiff Roberts been aware that Defendants' Products: (i) were not "dietary supplements"; (ii) were in fact synthetic steroids; (iii) did not contain compounds, ingredients, or components that were natural; (iv) contained artificial, synthetic, or manmade compounds or ingredients; and (v) were falsely, misleadingly, and incorrectly labeled, marketed, and advertised, Plaintiff Roberts would not have purchased any of Defendants' Products.

/ / /

C. Defendants

34. Defendant Anabolic Industries develops, manufactures, markets and sells, vitamins, minerals, herbal, nutritional supplements, and consumer health products, including the Products. Defendant Anabolic Industries is a business entity of unknown form, which, Plaintiffs are informed and believe, and on that basis allege, is authorized and empowered by the laws of the State of California to conduct business in California, and whose principal place of business is in California. The acts complained of, which are the subject of this Class Action Complaint, occurred, in substantial part, in the State of California. During the period of time covered by this Class Action Complaint, Defendant Anabolic Industries engaged in the business of, among other things, formulating, developing, manufacturing, marketing, selling, advertising, distributing, promoting or otherwise placing into the stream of commerce in California, directly or indirectly, the Products.

35. Plaintiffs are unaware of the true names, capacities, or basis for liability of Defendants Does 1 through 50, inclusive, and therefore sues said Defendants by their fictitious names. Plaintiffs will amend this complaint to allege their true names, capacities, or basis for liability when the same have been ascertained. Plaintiffs are informed and believe and on that basis allege that Defendants Does 1 through 50, inclusive, and each of them, are in some manner liable to Plaintiffs, and/or are proper and necessary parties to this action in light of the relief requested.

36. Plaintiffs are informed and believe, and based thereon allege that all Defendants, including the fictitious Doe Defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents, partner and/or joint venturers and employees of all other Defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or implied permissions, knowledge, consent, authorization and ratification of their Co-Defendants; however, each of these allegations are deemed "alternative" theories whenever doing so would result in a contradiction with the other allegations.

/ / /

V.
DEFENDANTS FRAUDULENTLY AND INTENTIONALLY CONCEALED THEIR KNOWLEDGE OF THE PRODUCTS' FALSE DESIGNATION AS A "DIETARY SUPPLEMENT"

37. As stated above, Defendants fraudulently and intentionally labeled, marketed, advertised, distributed, and sold their Products as being "dietary supplements" when in fact the Products did not – and could not – meet the requisite definition of a "dietary supplement."

38. Plaintiffs are informed and believe, and on that basis allege, that Defendants, and each of them, labeled, marketed, advertised, distributed, and sold their Products as being "dietary supplements" despite direct knowledge that their Products were in fact synthetic steroids and, as such, did not – and could not – meet the requisite definition of a "dietary supplement."

39. Plaintiffs are informed and believe, and on that basis allege, that Defendants intentionally engaged in these fraudulent practices so as to purposefully avoid the rigorous, lengthy, and expensive approval process mandated by the FDA for the distribution of drugs.

40. Throughout the Class Period, Defendants affirmatively and fraudulently concealed their knowledge of the fact that the Products' were in fact synthetic steroids and therefore were not a "dietary supplement" from Plaintiffs and the Class.

41. Plaintiffs and the Class did not discover, and could not discover through the exercise of reasonable diligence, that Defendants' Products were not "dietary supplements" but were in fact synthetic steroids until July 27, 2009, when the FDA issued a public warning letter advising consumers that it had issued a Warning Letter to a manufacturer of body building supplements (American Cellular Labs, Inc.) whose products claimed to contain ***steroid-like ingredients***, in fact contained synthetic steroids. The products named in the Warning Letter to American Cellular Laboratories, Inc., included those products containing the following ***synthetic steroids***: 19-Norandrosta-4, 9-diene-3, 17 dione; 17a-methyletioallocholan-2-ene-17b-ol; 4-hydroxyandrostenedione (4-0HA); 5a-androstano[3, 2-c] pyrazole-3-one-17B-ol-THP-ether; 2a, 3a-epithio-17a-methyl-17B-hydroxy-5a-etioallocholane; Androsta-1, 4-dien-3, 17-dione; 17a-methyl-4-chloro-androsta-l, 4-diene3B, 17B-diol; and 1-androsterone, at least one of which is found in the Products developed, manufactured, distributed, and sold by Defendants.

42. Defendants intentionally concealed their knowledge of their intentional misclassification of their Products so as to not interrupt the substantial profits they derived from their sales of the Products Defendants attempted to withhold such information from Plaintiffs and the Class, the medical community, regulators, and the public. Defendants fraudulently concealed their activities through various means and methods designed to avoid detection.

43. Plaintiffs and the Class could not have discovered Defendants' unlawful concealment at an earlier date through the exercise of reasonable diligence because Defendants actively and purposefully concealed the truth regarding the Products.

44. Defendants engaged in a successful, illegal fraud on consumers by which they deliberately and affirmatively concealed their knowledge regarding their intentional misclassification of their Products as "dietary supplements" in at least the following respects:

a. By affirmatively marketing, advertising, promoting, and labeling the Products as being "dietary supplements" when in fact they were not; and

b. By intentionally concealing the fact the that the Products were synthetic steroids;

c. By affirmatively marketing, advertising, promoting the Products as containing compounds, ingredients, or components that were natural; and

d. By intentionally concealing the fact the that the Products contained artificial, synthetic, or manmade compounds or ingredients.

45. As a result of Defendants' fraudulent conduct, Plaintiffs and the Class purchased and/or paid for the Products and could not reasonably have discovered Defendants' misconduct regarding the Products prior to July 27, 2009. Plaintiffs and the Class therefore assert the tolling of any applicable statute of limitations affecting the rights of action of Plaintiffs and the Class.

///

///

///

///

///

VI.

CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this class action against Defendants, pursuant to California Code of Civil Procedure section 382, on behalf of the following ascertainable nationwide Class:

> Class: All individuals who purchased for their own use and not for resale, any of the Products during the time period beginning four years prior to the filing of this Class Action Complaint through the date of Class Notice.

Excluded from the Class are Defendants, their corporate parents, subsidiaries and affiliates, officers and directors, any entity in which Defendants have a controlling interest, and the legal representatives, successors or assigns of any such excluded persons or entities, and the attorneys for Plaintiffs in this action.

A. Numerosity

47. The Class is so numerous that individual joinder of all members is impractical under the circumstances of this case. While the exact number of Class members is unknown to Plaintiffs at this time, based upon the substantial trade and commerce in the "dietary supplements" industry, Plaintiffs are informed and believe that Defendants sell tens of millions of dollars worth of the Products in the United States annually. Based thereon, Plaintiffs are informed and believe that the Class includes hundreds of thousands of members, including several tens of thousands of members throughout California alone.

B. Common Questions of Law and Fact

48. Common questions of law and fact exist as to all members of the Class and predominate over any questions which affect only individual members of the Class. These common questions of law and fact include, but are not limited to, the following:

a. Whether Defendants engaged in a fraudulent and/or deceptive scheme to promote the Products as "dietary supplements" despite their direct knowledge that the Products were not "dietary supplements";

b. Whether Defendants made material, uniform misrepresentations and/or omissions in its labeling, packaging, marketing, and advertising of the Products to Plaintiffs and the Class with respect to the Products' designation as a "dietary supplement" despite their direct

knowledge that the Products were not "dietary supplements";

c. Whether Defendants engaged in a scheme to create demand for the Products based on the false statement in the Products' respective labeling, packaging, marketing, and advertising that the Products' were a "dietary supplement" despite their direct knowledge that the Products were not "dietary supplements";

d. Whether Defendants fraudulently concealed the fact that the Products were not "dietary supplements";

e. Whether Defendants engaged in deceptive or unfair acts and practices in violation of state consumer protection statutes, including the CLRA, the UCL, and the FAL;

f. Whether Defendants engaged in engaged in negligent misrepresentations;

g. Whether Defendants engaged in engaged in intentional misrepresentations;

h. Whether Plaintiffs and the Class are entitled to restitution as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such restitution;

i. Whether the members of the Class have sustained damages as a result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be applied in determining such damages; and

j. Whether members of the Class are entitled to punitive and exemplary damages as a result of Defendants' acts of fraud, malice and oppression or in conscious disregard of the rights of Plaintiffs and the Class, and, if so, what is the proper amount of such punitive and exemplary damages.

C. Typicality

49. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiffs, like other members of the Class, purchased the Products in reliance on the same misrepresentations and/or omissions made by Defendants in the labeling, advertising and marketing campaign, and distribution of the Products as being a "dietary supplement." Accordingly, Defendants' material misrepresentations and/or omissions in their labeling, advertising and marketing campaign, and

distribution have affected members of the Class in similar ways as all members of the Class purchased the Products based on their respective reliance on Defendant's designation of the Products as "dietary supplements." Plaintiffs and each Class member have sustained injuries and damages as a direct result of Defendants' wrongful conduct in violation of law as alleged herein.

D. Adequacy

50. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs purchased the Products during the Class period, and are adequate representatives of the Class as they have no interests which are adverse to the interests of absent Class members. Plaintiffs have retained adequate counsel who have substantial experience and success in the prosecution of consumer protection class actions.

51. The policies, procedures and practices described herein relating to Defendants' conduct with respect to the labeling, marketing, advertising, and distribution of the Products are part of a common course of conduct of unlawful deceptive acts and practices undertaken by Defendants. As a result, the issues affecting Plaintiffs and all members of the Class in common, predominate over those which affected only the interest of any individual Class member.

E. Superiority

52. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all member of the Class is impractical. Furthermore, as the damages or injuries suffered by each individual member of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class members to redress the wrongs done to them. The cost to the court system of adjudications of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

53. Certification of a nationwide class under the laws of California is appropriate because, *inter alia*:

a. Defendant Anabolic Industries has its principal place of business in California;

b. Defendants are conducting substantial business in California;

c. Defendants have substantial offices located in California, and California is where all significant decision-making with respect to the Products' labeling, marketing, and advertising occurred;

d. Defendants' marketing, promotional activities, and literature are coordinated at, emanate from, and/or are developed in California;

e. The Unfair Competition and False Advertising Laws expressly apply to claims asserted by out-of-state Class members regarding false representations and/or omissions emanating from California; and

f. A significant number of Class members reside in California.

VII.

FIRST CAUSE OF ACTION
Negligent Misrepresentations
(Plaintiffs and the Class Against All Defendants)

54. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 54 hereof.

55. Defendants, having undertaken to prepare, design, research, develop, manufacture, inspect, label, market, promote, and sell the Products, owed a duty to Plaintiffs and the Class to provide them accurate and complete information regarding this product.

56. The Defendants' labeling, marketing and advertising, and distribution of the Products, by containing affirmative misrepresentations and omissions, falsely and deceptively sought to create the image and impression that the Products were "dietary supplements" as opposed to synthetic steroids.

57. Plaintiffs are informed and believe, and on that basis allege, that Defendants failed to disclose, misstated, and concealed the true fact that the Products were not "dietary supplements" but were in fact synthetic steroids that should have been properly classified as a drug and been subjected to the rigorous pre-marketing FDA approval process.

58. Defendants knew or were aware, or should have known or been aware, that the Products were not "dietary supplements" and therefore were improperly and unlawfully labeled,

marketed, advertised, and sold as such. Nonetheless, Defendants continued to market the Products by providing false and misleading information with regard to their improper designation of the Products as "dietary supplements."

59. Plaintiffs justifiably relied to their detriment upon Defendants' positive misrepresentations concerning the Products' designation as a "dietary supplement." Had Plaintiffs been aware of the true fact that the Products were not "dietary supplements" but were in fact a synthetic steroid, Plaintiffs would not have purchased the Products.

60. As a result of Defendants' conduct, Plaintiffs have sustained injuries described above.

61. Defendants' actions, as described above, were performed willfully, intentionally, and with reckless disregard for the rights of Plaintiff and the public. Accordingly, Plaintiffs seek and are entitled to compensatory and punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

VIII.

SECOND CAUSE OF ACTION
Intentional Misrepresentations
(Plaintiffs and the Class Against All Defendants)

62. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 61 hereof.

63. Defendants, having undertaken to prepare, design, research, develop, manufacture, inspect, label, market, promote and sell the Products, owed and continue to owe a duty to provide accurate and complete information regarding the Products.

64. Defendant fraudulently, intentionally, and deceptively sought to perpetrate a fraud on Plaintiffs and the Class by labeling, advertising, marketing, and promoting the Products as being "dietary supplements" when in fact they were not.

65. Plaintiffs are informed and believe, and on that basis allege, that Defendants intentionally concealed, suppressed, and obscured the fact that the Products did not meet the definition of a "dietary supplement" by continuing to affirmatively labeling, promoting, and marketing the Products as being "dietary supplements" when in fact they were not. Defendants

intentionally deceived potential users of the Products by disseminating false information regarding the Products designation as a "dietary supplement" despite their direct knowledge to the contrary.

66. Defendants' misrepresentations were made with the purpose of deceiving and defrauding the public into believing that the Products were "dietary supplements" and not synthetic steroids, and thus, would be safe for consumption, provide them the results which they sought, and not put them at risk to suffer any of the serious side effects associated with anabolic steroids.

67. In representations made to Plaintiffs, physicians and the public in general, Defendants' fraudulently concealed and intentionally omitted information included, but not limited to the following:

a. By affirmatively marketing, advertising, promoting, and labeling the Products as being "dietary supplements" when in fact they were not;

b. By intentionally concealing the fact the that the Products were synthetic steroids;

c. By affirmatively marketing, advertising, promoting the Products as containing compounds, ingredients, or components that were natural; and

d. By intentionally concealing the fact the that the Products contained artificial, synthetic, or manmade compounds or ingredients.

68. Defendants were, or should have been, in possession of evidence demonstrating that the Products were not "dietary supplements." Nevertheless, Defendants falsely and fraudulently labeled, advertised, marketed, and sold, and continued to label, advertise, market, and sell, the Products as "dietary supplements."

69. Defendants knew or should have known that the public, including the Plaintiffs, would rely on the information that was being distributed.

70. Plaintiffs did in fact believe Defendants' representations to be true, relied upon the representations, were induced to purchase, and did in fact purchase, the Products based upon the representations set forth on the Products' label, in their marketing and promotion

materials, and in their advertising campaign, that the Products were a "dietary supplement" when in fact they were not. Plaintiffs did not discover the true facts with respect to the Defendants' fraudulent designation of the Products or the false representations that were made by Defendants, nor could the Plaintiffs have discovered the true facts with reasonable diligence.

71. Had Plaintiffs known of the true facts with respect to the fact that the Prodcuts were not in fact "dietary supplements" but were in fact synthetic steroids, Plaintiffs would not have purchased or used the Products nor would they have relied on Defendants' false representations.

72. Defendants concealment and omissions of material facts concerning the designation of the Products as being "dietary supplements" was made purposefully, wilfully, wantonly and/or recklessly, to mislead Plaintiffs, into continued purchase and use of the Products.

73. Defendants' actions, as described above, were performed willfully, intentionally, and with reckless disregard for the rights of Plaintiff and the public. Accordingly, Plaintiffs seek and are entitled to compensatory and punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

IX.

THIRD CAUSE OF ACTION
Violations of the Consumers Legal Remedies Act
California Civil Code section 1750 *et seq.*
(Plaintiffs and the Class Against All Defendants)

74. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 73 hereof.

75. The acts and practices as alleged herein constituted and constitute unlawful methods of competition, unfair, or deceptive acts undertaken in a transaction which resulted in the sale of goods to consumers including, but in no way limited to, representing that the Products have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which it does not have or that Defendants have a sponsorship, approval, status, affiliation, or connection which it does not have.

76. Plaintiffs seek an order enjoining the above-described wrongful acts and practices of Defendants and awarding restitution, recession or disgorgement of Defendants' revenues and profits from the sale of the Products.

77. As a direct and proximate result of Defendants' violations of the CLRA as alleged herein, Plaintiffs and the Class have been injured including, but not limited to, the following:

a. The infringement of their legal rights as a result of being subjected to the common course of conduct alleged herein;

b. Plaintiffs and the Class were induced to purchase the Products from Defendants, which they would not have done had they been fully informed of Defendants' acts, omissions, misrepresentations, practices, and nondisclosures as alleged in this Class Action Complaint, in violation of, *inter alia*, the CLRA;

c. Plaintiffs and the Class were induced to rely on Defendants' deceptive representations to their detriment as a result of Defendants' conduct as alleged in this Class Action Complaint, in violation of, *inter alia*, the CLRA; and

d. Plaintiffs and the Class have unknowingly been subjected to fraud and deceit as a result of Defendants' conduct.

78. Defendants' acts, statements, representations, policies and procedures as described herein were knowingly deceptive and were made with conscious disregard of the rights of consumers. Defendants are required by law to fairly and accurately label, promote, advertise, and distribute the Products according to established information associated with the Products. Defendants failed to do so in order to conceal their acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Class Action Complaint, and to induce consumers to purchase the Products. Accordingly, Defendants engaged in acts of fraud, malice, or oppression and in conscious disregard of the rights of Plaintiffs and the Class.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

///

///

///

X.

FOURTH CAUSE OF ACTION
Violations of False Advertising Law
California Business and Professions Code section 17500 *et seq.*
(Plaintiffs and the Class Against All Defendants)

79. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 78 hereof.

80. The advertising, marketing and other promotional efforts undertaken by Defendants constitute advertising devices disseminated by Defendants from and into the United States, including California, which contained and continue to contain statements and omissions of material facts concerning the designation of the Products that are untrue and/or misleading in violation of California Business and Professions Code section 17500 *et seq.*

81. Plaintiffs and the Class are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement of Defendants' revenues and profits resulting from the sale of the Products.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

XI.

FIFTH CAUSE OF ACTION
Violations of the Unfair Competition Law
California Business and Professions Code section 17200 *et seq.*
(Plaintiffs and the Class Against All Defendants)

82. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 81 hereof.

83. Plaintiffs have standing to bring this action under the UCL because they have suffered injury in fact and have lost money or property because of the Defendants' conduct.

84. All manufacturing, marketing, advertising, publicity, and promotional efforts as described herein by Defendants concerning the Products, constitute unfair competition in violation of the UCL. Defendants have engaged in conduct that is unlawful, unfair, or fraudulent through a pattern of misrepresentation and concealment of material facts that misleads and deceives the public with respect to the true nature of the Products by marketing, offering and

selling the Products under the deceitful guise that the Products are "dietary supplements" when in fact they are not.

85. The acts, omissions, misrepresentations, practices, and nondisclosures of Defendants, as alleged herein, constituted and continue to constitute unfair, unlawful, and/or fraudulent business practices within the meaning of California Business and Professions Code section 17200 *et seq*.

86. Defendants' practices are unlawful since, *inter alia*, they violate statutory law by violating, among others: (i) California Civil Code section 1750; (ii) California Civil Code section 17500; and (iii) California Health and Safety Code section, 110390, 110395, 110398, 110400, 111330, 111730, and 111735 relating to false advertising and misbranding of drugs and cosmetics.

87. Defendants' practices are also fraudulent since, *inter alia*, Defendants represent to consumers that the Products are "dietary supplements," when, in truth, the Prodcuts are synthetic steroids that do not meet the definition of a "dietary supplement." Defendants' practices have deceived and remain likely to deceive members of the public into believing that the Products are in fact "dietary supplements" when they are not.

88. Defendants' practices are also unfair since, *inter alia*, the practices have no utility and, even if it did, any utility would be outweighed by the gravity of harm to Plaintiffs and the Class members, and/or since, among others, the practices are immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers

89. Plaintiffs and the Class are entitled to equitable relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement of Defendants' revenues and profits resulting from the sale of the Products.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

///

///

///

///

XII.

SIXTH CAUSE OF ACTION
Unjust Enrichment
(Plaintiff and the Class Against All Defendants)

90. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 90 hereof.

91. To the detriment of Plaintiffs and members of the Class, Defendants have been, and continue to be, unjustly enriched as a result of the unlawful and/or wrongful collection of, *inter alia*, payments for the Products and continue to so benefit to the detriment and at the expense of the Plaintiffs and the members of the Class.

92. Accordingly, Plaintiffs and the Class seek full restitution of Defendants' enrichment, benefits, ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

PRAYER FOR RELIEF

WHERFORE, Plaintiffs and the Class pray for judgment against Defendants as follows:

1. That an order certifying the Class defined herein be entered designating Plaintiffs as representatives of said Class and appointing Plaintiffs' attorneys as Class Counsel;
2. That Defendants be ordered to make restitution to Plaintiffs and each member of the Class under each cause of action in an amount according to proof at trial;
3. For injunctive relief against Defendant under each cause of action;
4. For actual damages in an amount according to proof;
5. For compensatory damages in an amount according to proof;
6. For punitive damages;
7. For other equitable relief;
8. For attorneys' fees as provided by law;
9. For prejudgment interest as provided by law;
10. For costs of suit; and
11. For such other and further relief as this Court deems just and equitable.

DATED: August 13, 2009

LINDSAY & STONEBARGER

By: _____
Gene J. Stonebarger
Richard D. Lambert
Attorneys for Plaintiff and the Class