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CENTRAL DIST. OF CALIF.
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8 Attorneys for Plaintiff and the Class
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 MARTIN CONDE, individually, and on behalf of
14 all others similarly situated,
15 Plaintiff,
16 vs.
17 OBESITY RESEARCH INSTITUTE, LLC; and
18 DOES 1-25, Inclusive,
19 Defendants.

Case No.: **CV12 - 0413 RSWL (RZx)**
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

7/5-21

20
21 Plaintiff MARTIN CONDE ("Plaintiff"), individually and on behalf of all others similarly
22 situated, alleges the following on information and belief:
23

24 **I. INTRODUCTION**

25 1. Obesity Research Labs, LLC ("Defendant") manufactures, markets, and sells the
26 Lipozene line of products ("the Products") as "safe and effective" weight loss products "clinically
27 proven to reduce body fat." Defendant claims its Products are backed by "clinical studies" and
28 research which supports the efficacy claims about their Products.

BY FAX ORIGINAL

1 and/or are, in some manner or way, responsible for and liable to Plaintiff for the events, happenings,
2 and damages hereinafter set forth below.

3 **III. JURISDICTION AND VENUE**

4 8. This Court has jurisdiction over the subject matter presented by this Complaint because
5 it is a class action arising under the Class Action Fairness Act (“CAFA”), Pub. L. No. 109-2, 119 Stat.
6 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts over any class
7 action in which any member of the Plaintiff Class is a citizen of a state different from any Defendant,
8 and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive of
9 interest and costs.

10 9. Plaintiff alleges that the total damages of the individual members of the Plaintiff Class
11 in this action are in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required
12 by 28 U.S.C. § 1332(d)(2), (5).

13 10. As set forth herein, both Plaintiff and Defendant are citizens of California but the
14 proposed class is nationwide and exceeds 100 individuals. Therefore, diversity of citizenship exists
15 under CAFA, as required by 28 U.S.C. § 1332(d)(2), (5).

16 11. Venue is proper in this Court because Plaintiff purchased the Product in this Judicial
17 District and because Defendant has received substantial compensation from sales in this Judicial
18 District. Specifically, Defendant knowingly engages in activities directed at consumers in this Judicial
19 District, and Defendant obtains substantial benefits from its scheme perpetrated in this Judicial
20 District. The declaration of venue required by California Civil Code § 1780(d) is attached hereto as
21 Exhibit 1.

22 **IV. FACTS**

23 12. Defendant manufactures, markets, and sells the Lipozene product line (“the Products”)
24 as a “safe and effective” way to lose weight that is “clinically proven to reduce body fat.” Defendant
25 claims its Products are backed by “clinical studies” and research which supports the efficacy claims
26 about its Products. Based on Defendant’s wide-spread marketing campaign, **Defendant claims to**
27 **have sold “over 10 million bottles”** of its Products. (Emphasis added).
28

1 13. Defendant makes numerous efficacy assertions on its website and via print, radio and
2 television advertisements which Defendant states are supported by “clinical studies,” University
3 testing and other “research.” Some of the claims include:

- 4
- 5 (a) “CLINICALLY PROVEN TO REDUCE BODY FAT”;
- 6 (b) “Weight Loss Guaranteed Results”;
- 7 (c) “Lipozene diet pills are clinically proven to help reduce body fat & weight”;
- 8 (d) “78% of each Pound Lost is PURE BODY FAT”;
- 9 (e) “Lipozene diet pills are backed by multiple clinical studies”;
- 10 (f) “REDUCE POUNDS of Body Fat and Weight WITHOUT a change in
11 lifestyle”;
- 12 (g) “Lipozene weight loss supplements are safe and effective”;
- 13 (h) “Lipozene creates a dietary fiber sponge that makes you feel full, thus reducing
14 caloric intake and adding fiber to your diet”;
- 15 (i) “Lipozene guarantees you will lose weight and body fat”;
- 16 (j) “The Obesity Research Institute has found the solution. It’s called Lipozene”;
- 17 (k) “Lipozene is so powerful that it’s clinically proven to help you lose pure body
18 fat”; and
- 19 (l) Participants in the allegedly “major” University conducted, double-blind study
20 “were not asked to change their daily lives. It’s so easy, just take Lipozene.”

21 (See Exhibit 2 attached depicting the numerous efficacy claims made by
22 Defendant).

23 14. In reality, no reliable clinical research or University testing can support the above
24 claims made by Defendant. Those “tests” and “studies” purportedly relied upon by Defendant are not
25 named or identified by the Defendant, nor are the “Universities” or institutions that allegedly
26 conducted them. “The bottom line: There’s simply no good evidence that the small doses of
27 glucomannan offered by Lipozene could lead to significant weight loss, says Vladimir Vuksan, a
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1 professor of nutritional sciences at the University of Toronto.”¹ In fact, for Defendant’s allegedly
2 active ingredient, glucomannan, to have any real effect as an appetite suppressant, “Vuksan estimates
3 that it would take 20 to 30 grams of glucomannan each day to achieve substantial weight loss, enough
4 to cause severe diarrhea and other gastrointestinal distress. Or, as Vuksan puts it, ‘your gut would
5 explode’.”²

6 15. Further, several studies which have examined the link between glucomannan and
7 weight loss have produced results that do not support, or even contradict Defendant’s claims about
8 Lipozene’s efficacy. For example, one study concluded that **glucomannan had no effect on weight**
9 **loss when compared to a placebo.**³ In another study, glucomannan was only found to have a
10 statistical effect when it was coupled with resistance and endurance exercise and “healthy food
11 choices.”⁴ In a review of studies on the effects of glucomannan and weight, the researchers
12 determined “Further investigation of safety, efficacy, and mechanisms of action is needed to
13 determine whether [glucomannan] can help to decrease the high prevalence of overweight and obesity
14 in the United States.”⁵ In yet another study, glucomannan was only found to have an effect when it
15 was coupled with a *1200 calorie a day* diet for five weeks.⁶

16 16. Defendant’s exaggerated and/ or blatant misrepresentations regarding the efficacy of
17 their Products were designed to, and did, lead Plaintiff and others similarly situated (collectively the
18 “Class”) to believe that the Products were effective at providing weight loss and the reduction of fat.
19 Plaintiff and members of the Class relied on Defendant’s misrepresentations and would not have paid
20 as much, if at all, for the Products but for Defendant’s misrepresentations.

21 17. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of thousands of
22 California consumers by Defendant, and to recover the money taken by this unlawful practice.

23
24 ¹ Chric Woolston, “Bold claims for Lipozene, but not much evidence,” The Los Angeles Times (June 9, 2008), available at
25 <http://articles.latimes.com/2008/jun/09/health/he-skeptic9>.

26 ² *Id.*

27 ³ Salas-Salvado, J. et al., “Effect of two doses of a mixture of soluble fibres on body weight and metabolic variables in
28 overweight or obese patients: a randomised trial,” Br. J. Nutr. (June 2008).

⁴ Kraemer, W.J. et al., “Effect of adding exercise to a diet containing glucomannan,” Metabolism. (Aug. 2007).

⁵ Kiethley, J., et al., “Glucomannan and obesity: a critical review,” Altern. Ther. Health Med. (Nov.-Dec. 2005).

⁶ Birketvedt, G.S. et al., “Experiences with three different fiber supplements in weight reduction,” Med. Sci. Monit. (Jan. 2005).

1 18. Defendant sells the Products for approximately \$29.99 based on the preceding false
2 advertising claims. As a result, Defendant has wrongfully taken millions of dollars from United States
3 consumers.

4 19. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands
5 of United States consumers by Defendant, and to recover the funds taken by this unlawful practice.

6 V. CLASS ACTION ALLEGATIONS

7 20. Plaintiff brings this class action for damages and other monetary relief on behalf of the
8 following class:

9 All persons located within the United States who purchased Lipozene
10 (1) from a retail location in California, or (2) over the internet at any
11 time after April 1, 2011 through the date of trial in this action (the
12 "Class").

13 21. Excluded from the Class are governmental entities, Defendant, any entity in which
14 Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal
15 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, and individuals
16 bound by any prior settlement involving Lipozene. Also excluded from the Class is any judge, justice,
17 or judicial officer presiding over this matter and the members of their immediate families and judicial
18 staff.

19 22. The proposed Class is so numerous that individual joinder of all its members is
20 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
21 the total number of Class members is at least in the tens of thousands and members of the Class are
22 numerous and geographically dispersed across the United States. While the exact number and
23 identities of the Class members are unknown at this time, such information can be ascertained through
24 appropriate investigation and discovery. The disposition of the claims of the Class members in a
25 single class action will provide substantial benefits to all parties and to the Court.

26 23. There is a well-defined community of interest in the questions of law and fact involved
27 affecting the plaintiff class and these common questions predominate over any questions that may
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1 affect individual Class members. Common questions of fact and law include, but are not limited to,
2 the following:

- 3 a. Whether Defendant's efficacy claims are accurate;
- 4 b. Whether Defendant's efficacy claims are properly substantiated;
- 5 c. Whether Defendant has falsely represented that Lipozene products have uses
6 and benefits which they do not have;
- 7 d. Whether Defendant knew that its efficacy claims were false;
- 8 e. Whether Defendant's conduct constitutes a violation of the Consumers Legal
9 Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 10 f. Whether Defendant's conduct constitutes a violation of California's false
11 advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- 12 g. Whether Defendant's conduct constitutes an unfair, unlawful, and/or fraudulent
13 business practice in violation of California's unfair competition law (Cal. Bus.
14 & Prof. Code §§ 17200, *et seq.*);
- 15 h. Whether Plaintiff and Class members are entitled to compensatory damages,
16 and if so, the nature of such damages;
- 17 i. Whether Plaintiff and Class members are entitled to restitutionary relief; and
- 18 j. Whether Plaintiff and Class members are entitled to injunctive relief.

19 24. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
20 members of the Class have been similarly affected by Defendant's common course of conduct since
21 they all relied on Defendant's representations concerning the Products and purchased them based on
22 those representations.

23 25. Plaintiff will fairly and adequately represent and protect the interests of the Class.
24 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.
25 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and
26 have the financial resources to do so. Plaintiff has retained a law firm who is widely recognized as one
27 of the most successful and effective class action litigators in California, and whose victories have been
28

1 publicized on CNN, Fox News, MSNBC, and nearly every major California newspaper. The firm has
2 also been certified as lead class counsel in similar class actions.

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

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

18
19 **VI. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

22 **(CAL. CIV. CODE §§ 1750, ET SEQ.)**

23 **(By Plaintiff and on Behalf of the Class Against Defendant)**

24 28. Plaintiff incorporates by this reference the allegations contained in the paragraphs
25 above as if fully set forth herein.

26 29. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
27 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
28 purchased the Products in reliance on Defendant's marketing claims with respect to efficacy. Plaintiff

1 used the Products as directed, but it did not work as advertised and was not of the quality and standard
2 advertised by Defendant.

3 30. Defendant has engaged in and continues to engage in business practices in violation of
4 California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false and
5 unsubstantiated representations concerning the efficacy of the Products. These business practices are
6 misleading and/or likely to mislead consumers and should be enjoined.

7 31. Defendant has engaged in deceptive acts or practices intended to result in the sale of
8 Lipozene in violation of Civil Code § 1770. Defendant knew and/or should have known that its
9 representations of fact concerning the efficacy of the Products were material and likely to mislead the
10 public. Defendant affirmatively misrepresented that the Products were of a certain standard and
11 quality with certain benefits which they did not have.

12 32. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
13 including but not limited to, the following provisions: (1) using deceptive representations in
14 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods
15 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
16 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with
17 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate
18 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or
19 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

20 33. There is no other adequate remedy at law, and Plaintiff and Class members will suffer
21 irreparable harm unless Defendant's conduct is enjoined.

22 34. In conjunction with filing this action, Plaintiff's counsel mailed to Defendant, by
23 certified mail, return receipt requested, the written notice required by Civil Code Section 1782(a). A
24 copy of this letter is attached hereto as Exhibit 3. Should Defendant fail to respond within thirty days,
25 Plaintiffs will amend to seek damages under the California Consumer Legal Remedies Act.

26 35. The declaration of venue required by Civil Code § 1780(d) is attached hereto as Exhibit

27 1.

28 36. Defendant's wrongful business practices constituted, and constitute, a continuing

1 course of conduct in violation of the Consumer Legal Remedies Act since Defendant is still
2 representing that their Products have characteristics, uses, benefits, and abilities which are false and
3 misleading, and have injured Plaintiff and the Class.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

6 **(CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)**

7 **(By Plaintiff and on Behalf of the Class Against Defendant)**

8 37. Plaintiff incorporates by this reference the allegations contained in the paragraphs
9 above as if fully set forth herein.

10 38. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
11 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
12 purchased Lipozene in reliance on Defendant's marketing claims. Plaintiff used the Products as
13 directed, but it did not work as advertised and did not provide any of the promised benefits.

14 39. Defendant has engaged in false advertising as they have disseminated false and/or
15 misleading representations about the Products.

16 40. Defendant knew or should have known by exercising reasonable care that its
17 representations were false and/or misleading. During the Class Period, Defendant engaged in false
18 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its
19 advertising and marketing of the Products to Plaintiff, Class members, and the consuming public that
20 its Products are effective.

21 41. Each of the aforementioned representations alleged in this Complaint was false and
22 misleading because the Products are not of the standard, quality or grade advertised, and are in reality,
23 ineffective.

24 42. By disseminating and publishing these statements in connection with the sale of the
25 Products, Defendant has engaged in and continues to engage in false advertising in violation of Bus. &
26 Prof. Code §§ 17500, *et seq.*

27 43. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant
28 has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant

1 has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution
2 and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500,
3 *et seq.*

4 44. Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of
5 Defendant's ill-gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

6 45. Plaintiff and Class members seek to enjoin Defendant from engaging in these wrongful
7 practices, as alleged herein, in the future. There is no other adequate remedy at law and if an
8 injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

9 **THIRD CAUSE OF ACTION**

10 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

11 **(CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

12 **(By Plaintiff and on Behalf of the Class Against Defendant)**

13 46. Plaintiff incorporates by this reference the allegations contained in the paragraphs
14 above as if fully set forth herein.

15 47. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
16 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
17 purchased Lipozene in reliance on Defendant's marketing claims. Plaintiff used the Products as
18 directed, but it did not work as advertised and were not of the standard, quality and grade advertised.

19 48. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive
20 business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*,
21 in that Defendant's actions are unfair, unlawful, and fraudulent, and because Defendant has made
22 unfair, deceptive, untrue, or misleading statements in advertising media, including the Internet, within
23 the meaning of California Business and Professions Code §§ 17200, *et seq.*

24 49. Defendant knew or should have known by exercising reasonable care that its
25 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,
26 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
27 by misrepresenting in its advertising and marketing of the Products to Plaintiff, Class members, and
28 the consuming public that, the Products were effective.

1 50. Each of the aforementioned representations alleged in this Complaint was false and
2 misleading because the Products are not of the standard, quality or grade advertised.

3 51. Defendant's business practices, as alleged herein, are unfair because they offend
4 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially
5 injurious to consumers in that consumers are misled by the claims made with respect to the Products
6 as set forth herein.

7 52. Defendant's business practices, as alleged herein, are unlawful because they violate the
8 Consumer Legal Remedies Act and False Advertising Law.

9 53. Defendant's business practices, as alleged herein, are fraudulent because they are likely
10 to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the
11 Products have characteristics and benefits they do not have.

12 54. Defendant's wrongful business practices constituted, and constitute, a continuing
13 course of conduct of unfair competition since Defendant is marketing and selling its Products in a
14 manner likely to deceive the public.

15 55. As a direct and proximate result of Defendant's wrongful business practices in
16 violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and members of the Class have
17 suffered economic injury by losing money as a result of purchasing the Products. Plaintiff and
18 members of the Class would not have purchased or would have paid less for the Products had they
19 known that they were not as represented.

20 56. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an
21 order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive
22 business practices and any other act prohibited by law, including those set forth in the Complaint.
23 Plaintiff and the Class also seek an order requiring Defendant to make full restitution of all moneys
24 they wrongfully obtained from Plaintiff and the Class.

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or
28 judgment against Defendant, and each of them as named in the future, as follows:

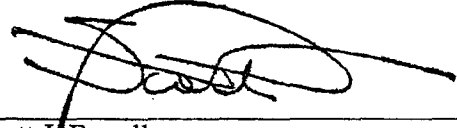
1. For an order certifying the Class, appointing Plaintiff and his counsel to represent the Class, and notice to the Class to be paid by Defendant;
2. For damages suffered by Plaintiff and Class members;
3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by Defendant;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For both pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded;
6. For Plaintiff's costs of the proceedings herein;
7. For reasonable attorneys' fees as allowed by statute; and
8. For any and all such other and further relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: January 17, 2012

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell

By: 

Scott J. Ferrell
Attorney for Plaintiff and the Class