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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MARIO ACQUAVIVA, on Behalf of
12 Himself and All Others Similarly
13 Situated,

14 Plaintiff,

15 v.

16 GNC HOLDINGS, INC., GENERAL
17 NUTRITION CENTERS, INC.,
18 CELLUCOR SPORTS NUTRITION,
19 WOODBOLT DISTRIBUTION, LLC,
20 WOODBOLT DISTRIBUTION, LTD.,
21 WOODBOLT MANAGEMENT, LLC
22 and WOODBOLT INTERNATIONAL,

23 Defendants.

Case No. **CV 12-2542** *mm*
CLASS ACTION COMPLAINT *(FFM)*

- 24 **I. Magnuson-Moss Warranty Act**
- 25 **II. Unjust Enrichment**
- 26 **III. Breach of Express Warranty**
- 27 **IV. Breach of Implied Warranty of Merchantability**
- 28 **V. California Unfair Competition Laws**
- VI. California False Advertising Laws**
- VII. California Consumer Legal Remedies Act**
- VIII. NY General Business Law § 349**
- IX. NY General Business Law § 350**

JURY TRIAL DEMANDED

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1 Plaintiff Mario Acquaviva (“Plaintiff”) brings this action against GNC
2 Holdings, Inc. (“GNC Holdings”), General Nutrition Centers, Inc. (together with
3 GNC Holdings, “GNC”), Cellucor Sports Nutrition (“Cellucor”), Woodbolt
4 Distribution, LLC, Woodbolt Distribution, Ltd., Woodbolt Management, LLC
5 (“Woodbolt Management”) and Woodbolt International (together with Cellucor,
6 Woodbolt Distribution, LLC, Woodbolt Distribution, Ltd. and Woodbolt
7 Management, “Cellucor”) (collectively, “Defendants”) on behalf of himself and all
8 others similarly situated. Plaintiff, by his attorneys, makes the following allegations
9 pursuant to the investigation of his counsel and based upon information and belief,
10 except as to allegations specifically pertaining to himself and his counsel, which are
11 based on personal knowledge.

12 NATURE OF THE ACTION

13 1. This is a class action lawsuit on behalf of purchasers of C-4 Extreme,
14 marketed by Defendants as a pre-workout, mix powdered “dietary supplement”
15 having the “power to ignite your mind, muscles, and workout regiment, workout after
16 workout after workout.” In reality, C-4 Extreme is not a “dietary supplement.” C-4
17 Extreme has been formulated with a dangerous and synthetic stimulant known as 1,
18 3-Dimethylamylamine (“DMAA”).¹

19 2. Defendants marketed DMAA as “a component of geranium.” In fact,
20 the DMAA ingredient is not a component of geranium. DMAA is a manmade,
21 synthetic substance.

22 3. Defendants have utilized misleading marketing practices as a means of
23 promoting a product with a so-called natural ingredient, which has enabled
24

25 ¹ DMAA is also known and referred to as 1,3-Dimethylamylamine HCl, 1,3
26 Dimethylhexaneamine, Methylhexaneamine, Dimethylpentylamine and
27 Geranamine.

1 Defendants to illegally sell C-4 Extreme as a “supplement” and allowed Defendants
2 to circumvent premarketing scrutiny by the Food and Drug Administration (“FDA”).

3 4. There is a growing international consensus: DMAA is not a natural
4 extract of geranium, as claimed by supplement manufacturers and sellers like
5 Defendants. It is actually a synthetic drug with serious, documented health risks.

6 5. Plaintiff asserts claims on his own behalf and on behalf of a nationwide
7 class for violations of the Magnuson-Moss Act, 15 U.S.C. § 2301, *et. seq.*, unjust
8 enrichment, breach of express and implied warranties, violations of the California
9 *Consumers Legal Remedies Act* (“CLRA”), Civil Code §§ 1750, *et seq.*, *Unfair*
10 *Competition Law* (“UCL”), *Business & Professions Code* §§ 17200 *et seq.*, and *False*
11 *Advertising Law* (“FAL”), *Business & Professions Code* §§ 17500 *et seq.* Moreover,
12 Plaintiff seeks relief individually and on behalf of a subclass of residents of New
13 York under the false advertising and deceptive acts and practices law of that state.

14 **PARTIES**

15 6. Plaintiff Mario Acquaviva (“Plaintiff”) is a citizen of New York.
16 Plaintiff purchased and consumed C-4 Extreme from a GNC store in the State of New
17 York for personal, family or household purposes. The C-4 Extreme product
18 purchased by Plaintiff contained DMAA. Prior to purchasing C-4 Extreme, Plaintiff
19 read that the ingredient list included DMAA, “a component of geranium.” At the
20 time Plaintiff purchased and used C-4 Extreme he was unaware that DMAA was not
21 a component of geranium, but was a synthetic stimulant with serious, documented
22 health risks. Mr. Acquaviva would not have purchased C-4 Extreme had he known
23 that it was not a dietary supplement and it contained a synthetic stimulant with
24 serious health risks.

25 7. Defendant GNC Holdings is a corporation organized under the laws of
26 the State of Delaware with its principal executive offices at 300 Sixth Avenue,
27 Pittsburgh, Pennsylvania 15222. GNC Holdings is a holding company that operates

1 through its subsidiaries. The company is a large specialty retailer of health and
2 wellness products, including vitamins, minerals, and herbal supplement products,
3 sports nutrition products and diet products, including C-4 Extreme. GNC Holdings'
4 latest annual report, filed with the Securities and Exchange Commission on February
5 27, 2012, states that its "network of domestic retail locations is approximately eleven
6 times larger than the next largest U.S. specialty retailer of nutritional supplements and
7 provides a leading platform for [its] vendors to distribute their products to their target
8 consumers." In addition to its retail locations in all 50 states, GNC Holdings markets
9 and sells products to consumers through its website. GNC Holdings sells products
10 under GNC proprietary brands as well as third-party brands. At all relevant times,
11 GNC Holdings has done substantial business in the State of California.

12 8. General Nutrition Centers, Inc. is an indirect wholly owned operating
13 subsidiary of GNC Holdings. It is a corporation organized under the laws of the State
14 of Delaware with its principal executive offices at 300 Sixth Avenue, Pittsburgh,
15 Pennsylvania 15222. General Nutrition Centers, Inc. is a retailer of health and
16 wellness products, including vitamins, minerals, and herbal supplement products,
17 sports nutrition products and diet products, including C-4 Extreme. At all relevant
18 times, General Nutrition Centers, Inc. has done substantial business in the State of
19 California.

20 9. Defendant Cellucor is located at 715 North Main Street, Bryan, Texas
21 77803-3327. Cellucor develops, manufactures, sells, promotes, markets and
22 distributes dietary supplements, including C-4 Extreme. At all relevant times,
23 Cellucor has done substantial business in the State of California.

24 10. Defendant Woodbolt Distribution, LLC is a limited liability company
25 organized and existing under the laws of the State of Texas, with its principle
26 executive offices at 715 North Main Street, Bryan, Texas 77803-3327. It develops,
27 manufactures, promotes, markets, sells and distributes dietary supplements, including

1 C-4 Extreme. At all relevant times, Woodbolt Distribution, LLC has done substantial
2 business in the State of California.

3 11. Defendant Woodbolt Distribution, Ltd. is a domestic limited partnership
4 organized and existing under the laws of the State of Texas, with its principle
5 executive offices at 715 North Main Street, Bryan, Texas 77803-3327. It develops,
6 manufactures, promotes, markets, sells and distributes dietary supplements, including
7 C-4 Extreme. At all relevant times, Woodbolt Distribution, Ltd. has done substantial
8 business in the State of California.

9 12. Defendant Woodbolt Management is a limited liability company
10 organized and existing under the laws of the State of Texas, with its principle
11 executive offices at 715 North Main Street, Bryan, Texas 77803-3327. It is the
12 general partner of Woodbolt Distribution, Ltd. It develops, manufactures, promotes,
13 markets, sells and distributes dietary supplements, including C-4 Extreme. At all
14 relevant times, Woodbolt Management has done substantial business in the State of
15 California.

16 13. Defendant Woodbolt International is located at 715 North Main Street,
17 Bryan, Texas 77803-3327 and is identified on the product package as the distributor
18 of C-4 Extreme. Woodbolt International distributes Cellucor products such as C-4
19 Extreme to thousands of retail locations. At all relevant times, Woodbolt
20 International has done substantial business in the State of California.

21 1. At all relevant times, each of the Defendants were engaged in the
22 development, design, manufacture, production, testing, study, inspection mixture,
23 labeling, marketing, advertising, sale, promotion and/or distribution of C-4 Extreme,
24 which they falsely promoted as a “dietary supplement.”

1 transparency.” Cellucor asserts that it “has set another industry first by drastically
2 improving label transparency. . . . Cellucor has clearly labeled all key ingredient
3 dosages – no more confusing proprietary blends, no more wondering what you’re
4 actually taking.”

5 19. In reality, the labels on C-4 Extreme have not been truthful. Defendants
6 have promoted, marketed, distributed and sold C-4 Extreme as a “dietary
7 supplement” and the labels on C-4 Extreme have claimed the ingredient DMAA is “a
8 component of geranium.” These statements are calculated to mislead consumers into
9 believing that DMAA is a natural substance derived from the geranium plant when, in
10 fact, DMAA is a synthetic stimulant with serious, documented health risks, including
11 headache, nausea, vomiting, increased blood pressure, kidney and liver failure,
12 seizures, loss of consciousness, stroke and even death.

13 20. Cellucor’s website states that “[e]ach and every unit [sold under the
14 Cellucor brand] undergoes strenuous quality testing to ensure potency, consistency,
15 and most important, safety. . . . [S]cience serves as the foundation for our success.”
16 In fact, Cellucor has misrepresented the safety and legality of C-4 Extreme and its
17 ingredient DMAA and Cellucor’s statements concerning C-4 Extreme and DMAA
18 are unsupported by reliable scientific research studies.

19 21. On February 23, 2012, Cellucor announced that C-4 Extreme was a “Top
20 10” product at Bodybuilding.com. See
21 <http://www.prweb.com/releases/2012/2/prweb9223655.htm>.

22 22. Defendants’ marketing and advertising of C-4 Extreme has falsely
23 represented that C-4 Extreme is a “dietary supplement” and that DMAA is “a
24 component of geranium.” These statements are false and deceptive. DMAA is not a
25 dietary ingredient and is not a component of geranium. It is a synthetic stimulant
26 with serious, documented health risks.

1 23. On February 17, 2011, bodybuildingsupplementinformation.com posted
 2 that Cellucor had removed DMAA from C-4 Extreme. See
 3 <http://bodybuildingsupplementinformation.com/2011/02/cellucor-c4/>. Nonetheless,
 4 C-4 Extreme containing DMAA continues to be sold by both Cellucor and GNC.

5 24. A comparison of the before and after labels reveals the new ingredient
 6 Synephrine HCL and shows that caffeine anhydrous has been increased from 100mg
 7 per scoop to 135mg per scoop:

What's in Cellucor C4 Extreme?

30 Servings - Fruit Punch

Amount Per Serving		% DV
Calories	5	
Total Carbohydrates	1 g	<1%**
Sugars	1 g	
Vitamin C	250 mg	417%
Calcium	1 mg	<1%
Folate	250 mcg	62%
Vitamin B12	34 mcg	575%
Beta Alanine	1500 mg	
Creatine Nitrate	1000 mg	
Arginine AKG	1000 mg	
Explosive Energy Blend	594 mg	

Vitamin C (As Ascorbic Acid), Caffeine Anhydrous (100 Mg), N-Acetyl-L-Tyrosine, Mucuna Pruriens (95% L-Dopa), Xanthinol Nicotinate, 1,3-Dimethylamylamine HCl, Rauwolfscine, Folate (As Folic Acid), Pyridoxine Phosphate, Vitamin B12 (As Methylcobalamin)

** Percent Daily Values (% DV) are based on a 2,000 calorie diet.
 Daily Value not established.

Other Ingredients:
 Natural And Artificial Flavors, Citric Acid, Silicon Dioxide, Beet Juice (Color), Sucralose, Beta Carotene, Acesulfame Potassium (Ace-K)

What's in Cellucor C4 Extreme?

30 Servings - Fruit Punch

Amount Per Serving		% DV
Vitamin C	250 mg	417%
Niacin	30 mg	150%
Folate	250 mcg	62%
Vitamin B12	35 mcg	588%
Beta Alanine	1500 mg	†
Creatine Nitrate	1000 mg	†
Arginine AKG	1000 mg	†
Explosive Energy Blend	718 mg	†

Vitamin C (As Ascorbic Acid), N-Acetyl-L-Tyrosine, Caffeine Anhydrous (135mg), Mucuna Pruriens, Niacinamide, Synephrine HCL, Folate (As Folic Acid), Pyridoxine Phosphate, Vitamin B12 (As Methylcobalamin)

** Percent Daily Values (% DV) are based on a 2,000 calorie diet.
 † Daily Value not established.

Other Ingredients:
 Citric Acid, Natural And Artificial Flavors, Silicon Dioxide, Sucralose, FD&C Red Lake No. 40, Acesulfame Potassium (Ace-K)

24 25. Importantly, the new ingredient Synephrine HCL is believed to be a
 25 synthetic stimulant with properties and health risks similar to DMAA. Accordingly,
 26 this change in formula has not corrected the misrepresentations to consumers
 27 identified in this Complaint.

1 1996 which reportedly identified DMAA as a constituent of geranium oil.² Health
2 Canada noted errors in the Chinese study and that at least seven other research papers
3 had failed to identify DMAA in geranium oil. As a consequence, “[i]n a
4 classification of DMAA dated July 7, 2011, by the Natural Health Product
5 Directorate (“NHPD”) and Therapeutic Products Directorate (“TPD”), Health Canada
6 has announced that products containing the DMAA must now be authorized as
7 drugs.” [http://www.nutraingredients-usa.com/Industry/Health-Canada-DMAA-is-not-](http://www.nutraingredients-usa.com/Industry/Health-Canada-DMAA-is-not-from-geranium)
8 [from-geranium.](http://www.nutraingredients-usa.com/Industry/Health-Canada-DMAA-is-not-from-geranium)

9 31. The Chinese study dismissed by Health Canada was similarly discredited
10 in a recent scientific study, which concluded that geranium oils do not contain
11 DMAA and that products labeled as containing DMAA contain a synthetic material.
12 See Lisi, A., Hasick, N., Kazlauskas, R. & Goebel, C., *Studies of Methylhexaneamine*
13 *in Supplements and Geranium Oil*, Drug Test Analysis, 3: 873–76 (2011). This
14 DMAA study posits that the 1996 Chinese study was either incorrect or incorrectly
15 translated, *id.* at 875, and states that the use of the name Geranamine for the
16 compound when it was first marketed as a dietary supplement in 2006 appears to
17 have been a “marketing ploy.”

18 32. Laboratories at NSF International, an independent, not-for-profit
19 organization that provides standards development, product certification, auditing and
20 other public health services, have conducted their own testing of geranium oil down
21 to a parts per billion screen and found that geranium does not contain DMAA. See
22 [http://www.nutraingredients-usa.com/Industry/NSF-MHA-not-a-constituent-of-](http://www.nutraingredients-usa.com/Industry/NSF-MHA-not-a-constituent-of-geranium-oil)
23 [geranium-oil.](http://www.nutraingredients-usa.com/Industry/NSF-MHA-not-a-constituent-of-geranium-oil) Edward Wyszumiala, the general manager of dietary supplement
24 programs at NSF International, has described DMAA as a stimulant similar to

25
26 ² Ping, Z., Jun. Q. & Quing, L., *A Study on the Chemical Constituents of Geranium*
27 *Oil*, Journal of Guizhou Institute of Technology (1996, Vol. 25, pp. 82-85).

1 amphetamine. See [http://www.nytimes.com/2012/02/03/business/army-studies-](http://www.nytimes.com/2012/02/03/business/army-studies-workout-supplements-after-2-deaths.html)
2 [workout-supplements-after-2-deaths.html](http://www.nytimes.com/2012/02/03/business/army-studies-workout-supplements-after-2-deaths.html).

3 33. The American Herbal Products Association (“AHPA”) is a national trade
4 association focused on the herbal products market. See
5 <http://www.ahpa.org/Default.aspx?tabid=150>. Last year, at the suggestion of the
6 AHPA Sports Nutrition Committee, the AHPA Board of Trustees approved a motion
7 to create a new trade requirement for labeling of DMAA, which effectively prohibits
8 members from labeling DMAA as any part of the geranium plant. “The committee
9 initiated the request due to [DMAA] being listed on product labels as derived from
10 ‘geranium oil’ or other parts of the plant, despite inconclusive evidence that the
11 constituent is found in the species.”
12 <http://www.ahpa.org/Default.aspx?tabid=69&ald=687&zId=1>. The language of the
13 motion is available on AHPA’s website:

14 **MOTION** to establish a trade requirement that AHPA members do not
15 label 1,3-dimethylpentylamine, whether identified by this name or any
16 synonym, as geranium oil or as any part of the geranium plant, whether
17 by the common name of geranium or by the botanical name of any plant
18 known as geranium; except that, nothing in this policy prevents labeling
19 of any compound that is in fact derived from geranium plant materials
20 by that compound’s common or usual name.

21 34. Experts have noted that DMAA has a chemical structure similar to
22 amphetamine. Dr. Pieter Cohen, an assistant professor of medicine at Harvard
23 Medical School and internist at the Cambridge Health Alliance who has studied
24 tainted dietary supplements, told the New York Times in reference to so-called
25 dietary supplements containing DMAA: “Unfortunately, what we have now is
26 pharmacological levels of an amphetamine derivative easily available.”
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1 [http://www.nytimes.com/2012/02/03/business/army-studies-workout-supplements-](http://www.nytimes.com/2012/02/03/business/army-studies-workout-supplements-after-2-deaths.html)
2 [after-2-deaths.html](http://www.nytimes.com/2012/02/03/business/army-studies-workout-supplements-after-2-deaths.html).

3 35. Negative health effects associated with DMAA have been well-
4 documented. DMAA may cause symptoms including headache, nausea, vomiting,
5 increased blood pressure, stroke and even death. In the wake of these concerns,
6 DMAA has effectively been banned in New Zealand. See
7 [http://www.3news.co.nz/DMAA-latest-party-pill-substance-to-get-](http://www.3news.co.nz/DMAA-latest-party-pill-substance-to-get-ban/tabid/423/articleID/245691/Default.aspx)
8 [ban/tabid/423/articleID/245691/Default.aspx](http://www.3news.co.nz/DMAA-latest-party-pill-substance-to-get-ban/tabid/423/articleID/245691/Default.aspx).

9 36. The United States military “has logged cases of kidney and liver failure,
10 seizures, loss of consciousness, heat injury and muscle breakdown that might be
11 connected to DMAA After two soldiers [suffered heart attacks and] died while
12 training last year and autopsies revealed the substance in their bodies, products with
13 DMAA were removed from exchange stores at military bases around the world”
14 [http://www.stripes.com/news/soldiers-to-be-subjects-as-army-studies-whether-dmaa-](http://www.stripes.com/news/soldiers-to-be-subjects-as-army-studies-whether-dmaa-is-dangerous-1.170432)
15 [is-dangerous-1.170432](http://www.stripes.com/news/soldiers-to-be-subjects-as-army-studies-whether-dmaa-is-dangerous-1.170432); see also [http://www.stripes.com/news/army-probing-](http://www.stripes.com/news/army-probing-connection-between-body-building-supplement-2-deaths-1.163652)
16 [connection-between-body-building-supplement-2-deaths-1.163652](http://www.stripes.com/news/army-probing-connection-between-body-building-supplement-2-deaths-1.163652).

17 37. Some sports organizations including the World Anti-Doping Agency, the
18 foundation that monitors the World Anti-Doping Code, and several professional
19 sports leagues have listed DMAA as a banned stimulant.

20 **Defendants Illegally Marketed C-4 Extreme As A “Dietary Supplement”**

21 38. The Dietary Supplement Health and Education Act (“DSHEA”) of 1994
22 amended the Food Drug and Cosmetics Act (“FDCA”) to establish a new regulatory
23 framework for dietary supplements. Under DSHEA, a “dietary supplement” is a
24 product (other than tobacco) that:

- 25 a. is intended to supplement the diet;
- 26 b. contains one or more “dietary ingredients” (defined to include
27 vitamins, minerals, herbs or other botanicals, amino acids, and

- 1 substances such as enzymes, organ tissues, glandulars, and
2 metabolites) or their constituents;
- 3 c. is intended to be taken by mouth as a pill, capsule, tablet, or
4 liquid; and
- 5 d. is labeled on the front panel as being a dietary supplement.

6 *See* 21 U.S.C. § 321(ff).

7 39. A synthetic copy of a constituent of a botanical was never part of the
8 botanical and thus cannot be a “constituent” of the botanical that qualifies as a dietary
9 ingredient under DSHEA. *See* Draft Guidance for Industry: Dietary Supplements:
10 New Dietary Ingredient Notifications and Related Issues at IV.D.2 (July 2011).

11 40. DSHEA specifically excludes from the definition of “dietary
12 supplement” an article authorized for investigation as a new drug for which
13 substantial clinical investigations were instituted and made public prior to such article
14 being marketed as a dietary supplement. *See* 21 U.S.C. § 321(ff)(3)(B)(ii).

15 41. Under DSHEA, manufacturers and distributors are responsible for
16 ensuring that their dietary supplements are safe and that any representations or claims
17 about them are substantiated by adequate evidence to show that they are not false or
18 misleading.

19 42. Unlike drugs, dietary supplements do not require approval from FDA
20 before they are marketed. However, there is an important exception to the autonomy
21 that marketers and distributors of dietary supplements enjoy in initially putting their
22 products on retail shelves: any supplements containing a “new dietary ingredient” are
23 subject to a pre-marketing notification requirement.

24 43. A “new dietary ingredient” is “a dietary ingredient that was not marketed
25 in the United States before October 15, 1994.” *See* 21 U.S.C. § 350b(d).

26 44. Accordingly, dietary ingredients that were marketed as dietary
27 supplements in the United States prior to October 15, 1994 may be used in dietary

1 supplements without notifying the FDA. But DSHEA provides that a manufacturer
2 or distributor of a “new dietary ingredient” or a dietary supplement that contains a
3 “new dietary ingredient” must submit a premarket notification to FDA at least 75
4 days prior to introducing (or delivering for introduction) the supplement into
5 interstate commerce, unless the new dietary ingredient has “been present in the food
6 supply as an article used for food in a form in which the food has not been chemically
7 altered.” *See* 21 U.S.C. § 350b(a); *see also* 21 CFR 190.6. The notification must
8 contain the information which is the basis on which the manufacturer or distributor
9 has concluded that the dietary supplement containing the new dietary ingredient will
10 reasonably be expected to be safe. *See* 21 U.S.C. § 350b(a); *see also* 21 CFR
11 190.6(b)(4).

12 45. Importantly, if the required premarket notification is not submitted to the
13 FDA, the dietary supplement containing the new dietary ingredient is deemed to be
14 “adulterated” and unlawfully marketed under the FDCA. *See* 21 U.S.C. §§ 342(f),
15 350b(a). Moreover, even if the notification is submitted as required, the dietary
16 supplement containing the new dietary ingredient is adulterated unless there is a
17 history of use or other evidence of safety establishing that the new dietary ingredient,
18 when used under the conditions recommended or suggested in the labeling of the
19 dietary supplement, will reasonably be expected to be safe. *See* 21 U.S.C. §§ 342(f).

20 46. Defendants have marketed and sold C-4 Extreme in violation of the
21 FDCA. DMAA is not a dietary ingredient because it is not a concentrate, metabolite,
22 constituent, extracts, or combination of any vitamin, mineral, amino acid, herb or
23 other botanical, amino acid, or substance such as an enzyme, organ tissue, glandular,
24 or metabolite. *See* 21 U.S.C. § 321(ff)(1). Rather, DMAA is a synthetic stimulant.
25 Accordingly, C-4 Extreme containing DMAA cannot be sold as a dietary supplement
26 pursuant to the FDCA. *See* 21 U.S.C. § 321(ff).

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2 48. By misrepresenting DMAA as a natural component of geranium,
3 Defendants have misled consumers.

4 **CLASS ACTION ALLEGATIONS**

5 49. Plaintiff brings this action on behalf of himself and all other similarly
6 situated persons pursuant to Rule 23 of the *Federal Rules of Civil Procedure*.

7 50. Plaintiff seeks to represent a Class defined as all persons in the United
8 States who, within the relevant statute of limitations period, purchased C-4 Extreme
9 (the "Class"). Excluded from the Class are persons or entities that purchased C-4
10 Extreme for resale, Defendants and their subsidiaries and affiliates.

11 51. Plaintiff further seeks to represent a subclass defined as all Class
12 members who are New York residents or who purchased C-4 Extreme in New York
13 (hereafter, the "New York Subclass").

14 52. Plaintiff reserves the right to amend or modify the Class definition with
15 greater specificity or further division into subclasses or limitation to particular issues
16 as discovery and the orders of this Court warrant.

17 53. Members of the Class and New York Subclass are so numerous that
18 joinder of all members is impracticable. While the exact number of Class members is
19 presently unknown, and can only be ascertained through appropriate discovery,
20 Plaintiff believes the members of the Class number in the tens of thousands.

21 54. Common questions of law and fact exist as to all members of the Class
22 and New York Subclass and predominate over any questions solely affecting
23 individual members of the Class and New York Subclass. Among questions of law
24 and fact common to the Class and New York Subclass are:

- 25 a. Whether Defendants' marketing, advertising, packaging, labeling
26 and other promotional materials concerning C-4 Extreme and
27 DMAA were deceptive;

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- b. Whether Defendants knew their claims concerning C-4 Extreme and DMAA were false and/or misleading;
- c. Whether Defendants breached express and/or implied warranties by making the representations above;
- d. Whether Defendants have been unjustly enriched as a result of their unlawful business practices;
- e. Whether Defendants actions as described above violated the Magnuson-Moss Act, 15 U.S.C. § 201, *et seq.*,
- f. Whether Defendants' actions as described above violate the California *Unfair Competition Law*, California *Business & Professions Code* §§ 17200, *et seq.*;
- g. Whether Defendants' actions as described above violate the California *False Advertising Law*, California *Business & Professions Code* §§ 17500, *et seq.*;
- h. Whether Defendants' actions as described above violate the California *Consumers Legal Remedies Act*, California *Civil Code* §§ 1750, *et. seq.*;
- i. Whether Defendants' actions as described above violated New York General Business Law, §§ 349 and 350;
- j. Whether Defendants should be enjoined from continuing the above-described practices;
- k. Whether Plaintiff and members of the Class are entitled to declaratory relief; and
- l. Whether Defendants should be required to make restitution, disgorge profits, reimburse losses, pay damages and pay treble damages as a result of the above described practices.

1 55. Plaintiff's claims are typical of the claims of Class and New York
2 Subclass members because Plaintiff and each member of the Class purchased C-4
3 Extreme and suffered a loss of money as a result of that purchase.

4 56. Plaintiff is an adequate representative of the Class and New York
5 Subclass because his interests do not conflict with the interests of the Class and New
6 York Subclass members he seeks to represent, he has retained competent counsel
7 experienced in prosecuting class actions, and he intends to prosecute this action
8 vigorously. The interests of Class and New York Subclass members will be fairly
9 and adequately protected by Plaintiff and his counsel.

10 57. A class action is superior to all other available methods for the fair and
11 efficient adjudication of this controversy since joinder of all members is
12 impracticable. Furthermore, as the damages suffered by the individual members of
13 the Class and New York Subclass may be relatively small, the expense and burden of
14 individual litigation make it impossible for members of the Class and New York
15 Subclass to individually redress the wrongs done to them. There will be no difficulty
16 in the management of this class action.

17 **COUNT I**

18 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

19 **(15 U.S.C. § 2301, *et seq.*)**

20 58. Plaintiff and Class members reallege and incorporate by reference each
21 allegation set forth above and further allege as follows.

22 59. Plaintiff brings this Count I individually and on behalf of the members
23 of the Class against all Defendants.

24 60. C-4 Extreme is a consumer product as defined in 15 U.S.C. § 2301(1).

25 61. Plaintiff and Class members are consumers as defined in 15 U.S.C. §
26 2301(3).

1 *Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v.*
2 *Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

3 68. Plaintiff and Class members conferred a benefit on Defendants by
4 purchasing C-4 Extreme.

5 69. Defendants have been unjustly enriched in retaining the revenues
6 derived from Class members' purchases of C-4 Extreme, which retention under these
7 circumstances is unjust and inequitable because Defendants misrepresented the facts
8 concerning the safety and legality of the product and caused Plaintiff and the Class to
9 lose money as a result thereof.

10 70. Plaintiff and Class members suffered a loss of money as a result of
11 Defendants' unjust enrichment because: (a) they would not have purchased C-4
12 Extreme on the same terms if the true facts concerning C-4 Extreme had been known;
13 and (b) they paid a price premium due to the false representations about C-4 Extreme.

14 71. Because Defendants' retention of the non-gratuitous benefit conferred on
15 them by Plaintiff and Class members is unjust and inequitable, Defendants must pay
16 restitution to Plaintiff and Class members for their unjust enrichment, as ordered by
17 the Court.

18 **COUNT III**

19 **BREACH OF EXPRESS WARRANTY**

20 72. Plaintiff and Class members reallege and incorporate by reference each
21 allegation set forth above and further allege as follows.

22 73. Plaintiff brings this Count III individually and on behalf of the members
23 of the Class against all Defendants.

24 74. Defendants expressly warranted in their marketing, advertising and
25 promotion of C-4 Extreme that C-4 Extreme is a "dietary supplement" and that
26 DMAA is "a component of geranium." These statements are untrue as detailed
27 above.

1 83. C-4 Extreme is not fit for the ordinary purpose for which it was sold. C-
2 4 Extreme was purchased to, among other things, provide a safe, legal and enhanced
3 workout experience. In fact, C-4 Extreme was formulated with DMAA, a synthetic
4 stimulant with serious, documented health risks.

5 84. C-4 Extreme was not adequately labeled nor did it conform to the
6 promises or affirmations of fact made on the container or label because the labeling
7 misrepresented that C-4 Extreme was a dietary supplement containing a component
8 of geranium, and failed to disclose that C-4 Extreme instead contained a synthetic
9 stimulant with serious, documented health risks.

10 85. Had Plaintiff and the members of the Class known the true facts, they
11 either would not have purchased C-4 Extreme or would not have been willing to pay
12 the premium price Defendants charged for C-4 Extreme.

13 86. As a result of Defendant's unlawful conduct, Plaintiff and the members
14 of the Class have suffered and will continue to suffer damages.

15 87. Plaintiff seeks injunctive relief pursuant to California Civil Code § 1794.

16 88. Plaintiff also seeks an award of attorneys' fees and costs under
17 California Civil Code § 1794.

18 **COUNT V**

19 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

20 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

21 **(Injunctive Relief and Restitution Only)**

22 89. Plaintiff and Class members reallege and incorporate by reference each
23 allegation set forth above and further allege as follows.

24 90. This Count V is asserted by Plaintiff on behalf of the Class under
25 California law.

26 91. Defendants are subject to the Unfair Competition Law ("UCL"),
27 *Business & Professions Code* §§ 17200, *et seq.* The UCL provides, in pertinent part:

1 “Unfair competition shall mean and include unlawful, unfair or fraudulent business
2 practices and unfair, deceptive, untrue or misleading advertising” The UCL also
3 provides for injunctive relief and restitution for violations.

4 92. Defendants violated the “unlawful” prong of the UCL by violating
5 California’s *Consumers Legal Remedies Act* (“CLRA”) as described in Count VII,
6 below.

7 93. Defendants also violated the “unlawful” prong of the UCL by violating
8 California’s *False Advertising Law* (“FAL”) as described in Count VI, below.

9 94. Defendants’ conduct, described herein, violated the “unfair” prong of the
10 UCL by using false and misleading statements to promote the sale of C-4 Extreme, as
11 described above.

12 95. Defendants’ conduct is unfair in that the harm to Plaintiff and the Class
13 arising from Defendants’ conduct outweighs the utility, if any, of those practices.

14 96. Defendants’ conduct, described herein, violated the “fraudulent” prong
15 of the UCL by misrepresenting that C-4 Extreme is a “dietary supplement,” by falsely
16 characterizing DMAA as “a component of geranium,” and by providing false
17 information about the safety and legality of C-4 Extreme.

18 97. Plaintiff and members of the Class suffered lost money or property as a
19 result of Defendants’ UCL violations because: (a) they would not have purchased C-
20 4 Extreme on the same terms if the true facts concerning C-4 Extreme had been
21 known; and (b) they paid a price premium due to the false representations about C-4
22 Extreme.

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1 COUNT VI

2 FOR VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL")

3 (Bus. & Prof. Code §§ 17500 *et seq.*)

4 98. Plaintiff and Class members reallege and incorporate by reference each
5 allegation set forth above and further allege as follows.

6 99. This Count VI is asserted by Plaintiff on behalf of the Class under
7 California law.

8 100. California's False Advertising law (Bus. & Prof. Code §§ 17500, *et seq.*)
9 makes it "unlawful for any person to make or disseminate or cause to be made or
10 disseminated before the public in this state, . . . in any advertising device . . . or in any
11 other manner or means whatever, including over the Internet, any statement,
12 concerning . . . personal property or services, professional or otherwise, or
13 performance or disposition thereof, which is untrue or misleading and which is
14 known, or which by the exercise of reasonable care should be known, to be untrue or
15 misleading."

16 101. Defendants committed acts of false advertising, as defined by § 17500,
17 by using false and misleading statements to promote the sale of C-4 Extreme, as
18 described above.

19 102. Defendants' misleading and false advertisements were disseminated to
20 increase sales of C-4 Extreme.

21 103. Defendants knew or should have known, through the exercise of
22 reasonable care that the statements were untrue and misleading.

23 104. Defendants' actions in violation of § 17500 were false and misleading
24 such that the general public is and was likely to be deceived.

25 105. As a direct and proximate result of these acts, consumers have been and
26 are being harmed. Plaintiff brings this action pursuant to § 17535 for injunctive relief
27 to enjoin the practices described herein, to require Defendants to issue corrective

1 disclosures to consumers, and for restitution for all monies wrongfully obtained and
2 disgorgement of all ill-gotten revenues and/or profits.

3 **COUNT VII**

4 **VIOLATION OF CALIFORNIA'S CONSUMER**

5 **LEGAL REMEDIES ACT ("CLRA")**

6 **(Civil Code §§ 1750, *et. seq.*)**

7 106. Plaintiff and Class members reallege and incorporate by reference each
8 allegation set forth above and further allege as follows.

9 107. This Count VII is asserted by Plaintiff on behalf of the Class under
10 California law.

11 108. C-4 Extreme is a "good" as that term is defined in California Civil Code
12 § 1761(a).

13 109. Defendants are "persons" as that term is defined in California Civil Code
14 § 1761(c).

15 110. Plaintiff's purchases of C-4 Extreme constituted "transactions" as that
16 term is defined in California Civil Code § 1761(e).

17 111. The policies, acts, and practices described in this Complaint were
18 intended to and did result in the sale of C-4 Extreme to Plaintiff and the Class.
19 Defendants' practices, acts, policies, and course of conduct violated the CLRA, in
20 that, as described above:

21 a. Defendants represented that C-4 Extreme has sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or quantities
23 which it does not have in violation of California Civil Code
24 § 1770(a)(5);

25 b. Defendants represented that C-4 Extreme was of a particular
26 standard or quality, when Defendants were aware that it was of
27 another in violation of California Civil Code § 1770(a)(7); and

1 c. Defendants advertised C-4 Extreme with intent not to sell it as
2 advertised in violation of California Civil Code § 1770(a)(9).

3 112. Plaintiff and Class members suffered injuries caused by Defendants'
4 misrepresentations because: (i) they were induced to purchase a product they would
5 not have otherwise purchased if they knew C-4 Extreme was not a dietary supplement
6 containing a component of geranium, but instead is a substance containing a synthetic
7 stimulant with serious, documented health risks; and (ii) Plaintiff and the Class were
8 induced to pay substantially more for C-4 Extreme than they would have paid if its
9 true characteristics had not been concealed or misrepresented.

10 113. On March 22, 2012, prior to the filing of this Complaint, a CLRA notice
11 letter was served on Defendants which complies in all respects with California *Civil*
12 *Code* § 1782(a). Plaintiff sent Defendants a letter *via* certified mail, return receipt
13 requested, advising Defendants that they are in violation of the CLRA and must
14 correct, repair, replace or otherwise rectify the goods alleged to be in violation of §
15 1770. Defendants were further advised that in the event that the relief requested has
16 not been provided within thirty (30) days, Plaintiff would amend his Complaint to
17 include a request for monetary damages pursuant to the CLRA.

18 114. Wherefore, Plaintiff seeks restitution and injunctive relief for violations
19 of the CLRA.

20 **COUNT VIII**

21 **VIOLATION OF N.Y. GEN. BUS. LAW § 349**

22 115. Plaintiff and Class members reallege and incorporate by reference each
23 allegation set forth above and further allege as follows.

24 116. This Count VIII is asserted by Plaintiff on behalf of the New York
25 Subclass under New York law.

1 117. Defendants engaged in a false and misleading marketing and advertising
2 claim, representing that C-4 Extreme is a “dietary supplement” and that DMAA is “a
3 component of geranium.” These statements are untrue as detailed above.

4 118. As set forth above, by advertising, marketing, distributing and/or selling
5 C-4 Extreme to Plaintiff and the New York Subclass, Defendants engaged in, and
6 continue to engage in, deceptive acts and practices.

7 119. Plaintiff and other members of the New York Subclass further seek to
8 enjoin such unlawful deceptive acts and practices as described above. Each of the
9 members of the New York Subclass will be irreparably harmed unless the unlawful
10 actions of Defendants are enjoined in that Defendants will continue to falsely and
11 misleadingly advertise that C-4 Extreme is a “dietary supplement” and that DMAA is
12 “a component of geranium.” Therefore, Plaintiff and the New York Subclass request
13 an order granting them injunctive relief ordering appropriate labeling and disclosures
14 in the advertising, marketing and promotion of C-4 Extreme.

15 120. Absent such injunctive relief, Defendants will continue to falsely
16 advertise, market and sell C-4 Extreme as a “dietary supplement” and DMAA as “a
17 component of geranium” to the detriment of consumers.

18 121. In this regard, Defendants have violated, and continue to violate, N.Y.
19 Gen. Bus. Law § 349, which makes deceptive acts and practices unlawful. As a
20 direct and proximate result of Defendants’ violation of N.Y. Gen. Bus. Law. § 349 as
21 alleged above, Plaintiff and other members of the New York Subclass have suffered
22 damages.

23 **COUNT IX**

24 **VIOLATION OF N.Y. GEN. BUS. LAW § 350**

25 122. Plaintiff and Class members reallege and incorporate by reference each
26 allegation set forth above and further allege as follows.

1 123. This Count IX is asserted by Plaintiff on behalf of the New York
2 Subclass under New York law.

3 124. Defendants engaged in a false and misleading marketing and advertising,
4 representing that C-4 Extreme is a “dietary supplement” and that DMAA is “a
5 component of geranium,” when in fact C-4 Extreme is not a dietary supplement and
6 DMAA is a synthetic stimulant with serious health risks.

7 125. N.Y. Gen. Bus. Law § 350-a defines “false advertising” as “advertising,
8 including labeling, of a commodity, or of the kind, character, terms or conditions of
9 any employment opportunity if such advertising is misleading in a material respect.”

10 126. As set for above, by advertising, marketing, distributing and/or selling
11 C-4 Extreme to Plaintiff and the New York Subclass, Defendants engaged in, and
12 continue to engage in, false advertising.

13 127. Plaintiff and other members of the New York Subclass further seek to
14 enjoin such false advertising as described above. Each of the members of the New
15 York Subclass will be irreparably harmed unless the unlawful actions of Defendants
16 are enjoined in that Defendants will continue to falsely and misleadingly advertise
17 and market that C-4 Extreme is a “dietary supplement” and that DMAA is “a
18 component of geranium.” Therefore, Plaintiff and the New York Subclass request an
19 order granting them injunctive relief ordering appropriate disclosures and/or
20 disclaimers in the advertising, marketing and promotion of C-4 Extreme.

21 128. Absent such injunctive relief, Defendants will continue to advertise,
22 market and sell C-4 Extreme as a “dietary supplement” and DMAA as “a component
23 of geranium” to the detriment of consumers.

24 129. In this regard, Defendants have violated, and continue to violate, N.Y.
25 Gen. Bus. Law § 350, which makes deceptive acts and practices unlawful. As a
26 direct and proximate result of Defendants’ violation of N.Y. Gen. Bus. Law § 350 as
27

1 alleged above, Plaintiff and other members of the New York Subclass have suffered
2 damages.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on his own behalf and on behalf of the Class, prays for the following
5 relief:

6 A. For an order certifying the nationwide Class and the New York Subclass
7 under Rule 23 of the *Federal Rules of Civil Procedure* and naming Plaintiff as Class
8 Representatives and his attorneys as Class Counsel to represent the Class members;

9 B. For an order declaring that Defendants' conduct violates the statutes
10 referenced herein;

11 C. For an order finding in favor of Plaintiff, the Class and the New York
12 Subclass on all counts asserted herein;

13 D. For an order awarding compensatory, treble, and punitive damages in
14 amounts to be determined by the Court and/or jury;

15 E. For prejudgment interest on all amounts awarded;

16 F. For an order of restitution and all other forms of equitable monetary
17 relief;

18 G. For injunctive relief as pleaded or as the Court may deem proper; and

19 H. For an order awarding Plaintiff and the Class their reasonable attorneys'
20 fees and expenses and costs of suit.

21 **JURY DEMAND**

22 Plaintiff demands trial by jury on all issues herein stated.

23 Dated: March 22, 2012

24 **FARUQI & FARUQI, LLP**

25 By: 

26 David E. Bower (State Bar No. 119546)
27 *Attorneys for Plaintiff*

1 I, Mario Acquaviva, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of New York. I
3 have personal knowledge of the facts herein and if called as a witness, I could and
4 would testify competently thereto.

5 2. This is a proper place for trial under Civil Code Section 1780(d) in that
6 a substantial portion of the transaction alleged occurred in the Central District of
7 California because the defendants, General Nutrition Centers, Inc. ("GNC"),
8 Cellucor Sports Nutrition, Woodbolt Distribution, LLC, Woodbolt Management,
9 LLC and Woodbolt International (collectively "Defendants") do business in this
10 District.

11 3. I read Defendants' label on the outside of C-4 Extreme and read about
12 the product on Defendants' websites. I purchased C-4 Extreme at a GNC store in
13 New York County, New York after reading that C-4 Extreme is a pre-workout
14 "dietary supplement." Moreover, prior to my purchase, I read that the ingredient list
15 for C-4 Extreme included 1, 3-Dimethylamylamine ("DMAA"), "a component of
16 geranium." The product label and advertising claims were a substantial factor
17 influencing my decision to purchase C-4 Extreme. At the time of my purchase, I did
18 not know that DMAA was not a component of geranium, but was a synthetic
19 stimulant with serious health risks. I would not have purchased C-4 Extreme if I
20 had known that it was a drug containing DMAA, a synthetic stimulant with serious,
21 documented health risks.

22 4. I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct, and that this declaration was executed
24 in Staten Island, New York this 20th day of March, 2012.

25 

26

Mario Acquaviva
27
28

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

CV-71

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) MARIO ACQUAVIVA, on Behalf of Himself and All Others Similarly Situated,	DEFENDANTS GNC Holdings, Inc., General Nutrition Centers, Inc., Cellucor Sports Nutrition, Woodbolt Distribution, LLC, Woodbolt Distribution, LTD., Woodbolt Management, LLC, and Woodbolt International
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) David E. Bower (119546) of FARUQI & FARUQI, LLP 10866 Wilshire Boulevard, Suite 1470, Los Angeles, CA 90024 Tel: (424) 256-2884, Fax: (424) 256-2885	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify): _____
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ IN EXCESS OF \$75,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 USC §§ 2031 et. seq BREACH OF WARRANTY AS TO USE OF PRODUCTS SOLD BY DEFENDANTS

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV12-2542

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	NEW YORK

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	DELAWARE; TEXAS

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date March 23, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))