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9
 10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re:) No. 3:09-md-02087-BTM(AJB)
)
 13 HYDROXYCUT MARKETING AND SALES) MDL No. 2087
 PRACTICES LITIGATION)
 14) CLASS ACTION

15 FIRST CONSOLIDATED AMENDED
 16 CLASS ACTION COMPLAINT

17 DEMAND FOR JURY TRIAL
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1 Plaintiffs, by and through their attorneys, bring this action on behalf of themselves, and all
2 others similarly situated, against Defendants Iovate Health Sciences Group, Inc.; Iovate Health
3 Sciences, Inc.; Iovate Health Sciences U.S.A. Inc. (“Iovate” or “Manufacturer Defendants”); GNC
4 Corporation; Wal-Mart Stores, Inc.; Walgreens Company; CVS Caremark Corp.; Vitamin Shoppe
5 Industries, Inc.; NBTY, Inc.; BJ’s Wholesale Club, Inc.; Kmart Corporation, and Rite-Aid
6 Corporation (“Retailer Defendants”) (collectively, “Defendants”). The Court has jurisdiction of this
7 action pursuant to 28 U.S.C. §1332(d)(2). Plaintiffs allege, on information and belief, except for
8 information based on personal knowledge, as follows:

9 **NATURE OF THE ACTION**

10 1. This is a consumer rights class action lawsuit. Defendants manufacture, distribute
11 and sell at least 14 Hydroxycut-branded products (the “Products”),¹ “America’s #1 Selling Weight-
12 Loss Supplement.” These Products are dangerous and not effective. When used as directed, the
13 Products have been found to cause hepatotoxicity (chemical-driven liver damage), jaundice, elevated
14 liver enzymes, seizures, cardiovascular disorder, and rhabomyolysis (a type of muscle damage that
15 can lead to other serious health problems such as kidney failure). Despite knowing for years that the
16 use of the Products as intended resulted in severe injury and even death and were ineffective in
17 reducing weight, Defendants marketed and sold the Products to millions of unsuspecting consumers.
18 Further, while claiming the Products are “clinically proven” to reduce weight, no such proof exists.
19 As a result of their false, misleading and deceptive misrepresentations and omissions about the safety
20 and efficacy of the Products, Defendants have taken hundreds of millions of dollars from consumers.
21 The profit reaped from the sale of these Products is so high that it allowed the president of the Iovate
22 Defendants (as defined herein), Paul Gardiner, to be paid a \$49 million bonus in 2003 alone.

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24 _____
25 ¹ The Hydroxycut Products are: Hydroxycut Regular Rapid Release Caplets; Hydroxycut
26 Caffeine-Free Rapid Release Caplets; Hydroxycut Hardcore Liquid Caplets; Hydroxycut Max
27 Liquid Caplets; Hydroxycut Regular Drink Packets; Hydroxycut Caffeine-Free Drink Packets;
28 Hydroxycut Hardcore Drink Packets (Ignition Stix); Hydroxycut Max Drink Packets; Hydroxycut
Liquid Shots; Hydroxycut Hardcore RTDs (Ready-to-Drink); Hydroxycut Max Aqua Shed;
Hydroxycut 24; Hydroxycut Carb Control; and Hydroxycut Natural.

1 Prior to filing his complaint, Plaintiff Dremak learned of the potential serious health-risks caused by
2 the Products and he has stopped consuming the Products and will no longer purchase them. As a
3 result of his purchase, Plaintiff Dremak suffered injury in fact and lost money and property as a
4 result of the unfair, deceptive, untrue and misleading acts and omissions described herein, including
5 the purchase price for a product that is of no value and is dangerous. Had Plaintiff Dremak known
6 of the potential health risks and that it was not proven effective, he would not have purchased the
7 product.

8 9. Plaintiff James Faherty (“Plaintiff Faherty”) is a resident of Norfolk County,
9 Massachusetts. During the Class period, Plaintiff Faherty was exposed to and read Defendants’
10 advertising claims, including the Products’ labeling. Plaintiff Faherty purchased Hydroxycut for
11 personal consumption from CVS in or about 2003 to 2007, for approximately \$28 per bottle.
12 Plaintiff Faherty purchased the product, believing it was reasonably safe and effective as a dietary
13 supplement and for weight-loss purposes. He also used the product as directed. Plaintiff Faherty did
14 not know the product posed serious adverse health risks and was not proven effective when he
15 purchased (and used) the product. Prior to filing his complaint, Plaintiff Faherty learned of the
16 potential serious health-risks caused by the Products and he has stopped consuming the Products and
17 will no longer purchase them. As a result of his purchase, Plaintiff Faherty suffered injury in fact
18 and has lost money and property as a result of the unfair, deceptive, untrue and misleading
19 advertising described herein, including the purchase price for a product that is of no value and is
20 dangerous. Had Plaintiff Faherty known of the potential health risks and that it was not proven
21 effective, he would not have purchased the product.

22 10. Plaintiff Hernan Ferrer (“Plaintiff Ferrer”) is a resident of New York County, New
23 York. During the Class period, Plaintiff Ferrer was exposed to and read Defendants’ advertising
24 claims, including the Products’ labeling. Between approximately August 2007 and February 2008,
25 Plaintiff Ferrer purchased Hydroxycut Hardcore Liquid Caplets from GNC for personal consumption
26 on multiple occasions. Plaintiff Ferrer purchased the product, believing it was reasonably safe and
27 effective as a dietary supplement for weight-loss purposes. He also used the product as directed.
28 Plaintiff Ferrer did not know the product posed serious adverse health risks and was not proven

1 effective when he purchased (and used) the product. Prior to filing his complaint, Plaintiff Ferrer
2 learned of the potential health risks caused by the Products and he has stopped consuming the
3 Products and will no longer purchase them. As a result of his purchases, Plaintiff Ferrer suffered
4 injury in fact and has lost money and property as a result of the unfair, deceptive, untrue and
5 misleading advertising described herein, including the purchase price for a product that is of no
6 value and is dangerous. Had Plaintiff Ferrer known of the potential health risks and that it was not
7 proven effective, he would not have purchased the product.

8 11. Plaintiff Marcos A. Flores (“Plaintiff Flores”) is a resident of Kern County,
9 California. During the Class period, Plaintiff Flores was exposed to and read Defendants’
10 advertising claims, including the Products’ labeling. Plaintiff Flores purchased Hydroxycut Regular
11 Drink Packets and Hydroxycut Hardcore Drink Packets for personal consumption from GNC
12 beginning in August 2006 for two to three years. Plaintiff Flores purchased the Products, believing
13 they were reasonably safe and effective as a dietary supplement and for weight-loss purposes. He
14 also used the Products as directed. Plaintiff Flores did not know the Products posed serious adverse
15 health risks and were not proven effective when he purchased (and used) the Products. Prior to
16 filing his complaint, Plaintiff Flores learned of the potential serious health-risks caused by the
17 Products and he has stopped consuming the Products and will no longer purchase them. As a result
18 of his purchase, Plaintiff Flores suffered injury in fact and has lost money and property as a result of
19 the unfair, deceptive, untrue and misleading advertising described herein, including the purchase
20 price for Products that are of no value and are dangerous. Had Plaintiff Flores known of the
21 potential health risks and that it was not proven effective, he would not have purchased the Products.

22 12. Plaintiff Rhonda M. Hawkins (“Plaintiff Hawkins”) is a resident of Kanawha County,
23 West Virginia. During the Class period, Plaintiff Hawkins was exposed to and read Defendants’
24 advertising claims, including the Products’ labeling. Plaintiff Hawkins purchased Hydroxycut
25 Caffeine-Free Rapid Release Caplets for personal consumption in 2008 from Wal-Mart and Kmart.
26 Plaintiff Hawkins purchased the product, believing it was reasonably safe and effective as a dietary
27 supplement and for weight-loss purposes. She also used the product as directed. Plaintiff Hawkins
28 did not know the product posed serious adverse health risks and was not proven effective when she

1 purchased (and used) the product. Prior to filing her complaint, Plaintiff Hawkins learned of the
2 potential serious health-risks caused by the Products and she has stopped consuming the Products
3 and will no longer purchase them. As a result of her purchase, Plaintiff Hawkins suffered injury in
4 fact and lost money and property as a result of the unfair, deceptive, untrue and misleading
5 advertising described herein, including the purchase price for a product that is of no value and is
6 dangerous. Had Plaintiff Hawkins known of the potential health risks and that it was not proven
7 effective, she would not have purchased the product.

8 13. Plaintiff Alejandro Jimenez (“Plaintiff Jimenez”) is a resident of Sacramento County,
9 California. During the Class period, Plaintiff Jimenez was exposed to and read Defendants’
10 advertising claims, including the Products’ labeling. Plaintiff Jimenez purchased Hydroxycut
11 Hardcore Liquid Caplets for personal consumption from Vitamin Shoppe in or about March 2009 for
12 approximately \$35 per bottle. Plaintiff Jimenez purchased the product, believing it was reasonably
13 safe and effective as a dietary supplement and for weight-loss purposes. He also used the product as
14 directed. Plaintiff Jimenez did not know the product posed serious adverse health risks and was not
15 proven effective when he purchased (and used) the product. Prior to filing his complaint, Plaintiff
16 Jimenez learned of the potential serious health-risks caused by the Products and he has stopped
17 consuming the Products and will no longer purchase them. As a result of his purchase, Plaintiff
18 Jimenez suffered injury in fact and has lost money and property as a result of the unfair, deceptive,
19 untrue and misleading advertising described herein, including the purchase price for a product that is
20 of no value and is dangerous. Had Plaintiff Jimenez known of the potential health risks and that it
21 was not proven effective, he would not have purchased the product.

22 14. Plaintiff Patrice Major (“Plaintiff Major”) is a resident of Fulton County, Georgia.
23 During the Class period, Plaintiff Major was exposed to and read Defendants’ advertising claims,
24 including the Products’ labeling. Plaintiff Major purchased Hydroxycut Regular Rapid Release,
25 Hydroxycut Max Drink Packets and Hydroxycut Liquid Shots for personal consumption from
26 Walgreens and Wal-Mart. Plaintiff Major purchased the Products, believing they were reasonably
27 safe and effective as a dietary supplement and for weight-loss purposes. She also used the Products
28 as directed. Plaintiff Major did not know the Products posed serious adverse health risks and were

1 not proven effective when she purchased (and used) the Products. Prior to filing her complaint,
2 Plaintiff Major learned of the potential serious health-risks caused by the Products and she has
3 stopped consuming the Products and will no longer purchase them. As a result of her purchase,
4 Plaintiff Major suffered injury in fact and has lost money and property as a result of the unfair,
5 deceptive, untrue and misleading advertising described herein, including the purchase price for
6 Products that are of no value and are dangerous. Had Plaintiff Major known of the potential health
7 risks and that they were not proven effective, she would not have purchased the Products.

8 15. Plaintiff Robert Manley (“Plaintiff Manley”) is a resident of Alameda County,
9 California. During the Class period, Plaintiff Manley was exposed to and read Defendants’
10 advertising claims, including the Products’ labeling. Plaintiff Manley purchased Hydroxycut
11 Hardcore Liquid Caplets for personal consumption from Vitamin Shoppe during the period from
12 about November 2008 to March 2009. Plaintiff Manley purchased the product, believing it was
13 reasonably safe and effective as a dietary supplement and for weight-loss purposes. He also used
14 the product as directed. Plaintiff Manley did not know the product posed serious adverse health risks
15 and was not proven effective when he purchased (and used) the product. Prior to filing his
16 complaint, Plaintiff Manley learned of the potential serious health-risks caused by the Products and
17 he has stopped consuming the Products and will no longer purchase them. As a result of his
18 purchase, Plaintiff Manley suffered injury in fact and has lost money and property as a result of the
19 unfair, deceptive, untrue and misleading advertising described herein, including the purchase price
20 for a product that is of no value and is dangerous. Had Plaintiff Manley known of the potential
21 health risks and that it was not proven effective, he would not have purchased the product.

22 16. Plaintiff Raymond Ortiz, II (“Plaintiff Ortiz”) is a resident of Ocean County, New
23 Jersey. During the Class period, Plaintiff Ortiz was exposed to and read Defendants’ advertising
24 claims, including the Products’ labeling. Plaintiff Ortiz purchased Hydroxycut Regular Rapid
25 Release for personal consumption from Wal-Mart in or about 2006 to 2008, for approximately \$20
26 to \$30 per bottle. Plaintiff Ortiz purchased the product, believing it was reasonably safe and
27 effective as a dietary supplement and for weight-loss purposes. He also used the product as directed.
28 Plaintiff Ortiz did not know the product posed serious adverse health risks and was not proven

1 effective when he purchased (and used) the product. Prior to filing his complaint, Plaintiff Ortiz
2 learned of the potential serious health-risks caused by the Products and he has stopped consuming
3 the Products and will no longer purchase them. As a result of his purchase, Plaintiff Ortiz suffered
4 injury in fact and has lost money and property as a result of the unfair, deceptive, untrue and
5 misleading advertising described herein, including the purchase price for a product that is of no
6 value and is dangerous. Had Plaintiff Ortiz known of the potential health risks and that it was not
7 proven effective, he would not have purchased the product.

8 17. Plaintiff Enjoli Pennier (“Plaintiff Pennier”) is a resident of Saint Charles Parish,
9 Louisiana. During the Class period, Plaintiff Pennier was exposed to and read Defendants’
10 advertising claims, including the Products’ labeling. Plaintiff Pennier purchased Hydroxycut
11 Hardcore Liquid Caplets in July 2007 for personal consumption from Vitamin World for
12 approximately \$60 and in December 2007 purchased Hydroxycut Max Liquid Caplets for personal
13 consumption from GNC for approximately \$60 per bottle. Plaintiff Pennier purchased the Products,
14 believing they were reasonably safe and effective as a dietary supplement and for weight-loss
15 purposes. She also used the Products as directed. Plaintiff Pennier did not know the Products posed
16 serious adverse health risks and were not proven effective when she purchased (and used) the
17 Products. Prior to filing her complaint, Plaintiff Pennier learned of the potential serious health-risks
18 caused by the Products and she has stopped consuming the Products and will no longer purchase
19 them. As a result of her purchase, Plaintiff Pennier suffered injury in fact and has lost money and
20 property as a result of the unfair, deceptive, untrue and misleading advertising described herein,
21 including the purchase price for Products that are of no value and are dangerous. Had Plaintiff
22 Pennier known of the potential health risks and that they were not proven effective, she would not
23 have purchased the Products.

24 18. Plaintiff Joseph Pickett (“Plaintiff Pickett”) is a resident of Napa County, California.
25 During the Class period, Plaintiff Pickett was exposed to and read Defendants’ advertising claims,
26 including the Products’ labeling. Plaintiff Pickett purchased Hydroxycut Caffeine-Free Rapid
27 Release Caplets for personal consumption from GNC from July 2008 to February 2009 for
28 approximately \$40 per bottle. Plaintiff Pickett purchased the product, believing it was reasonably

1 safe and effective as a dietary supplement and for weight-loss purposes. He also used the product as
2 directed. Plaintiff Pickett did not know the product posed serious adverse health risks and was not
3 proven effective when he purchased (and used) the product. Prior to filing his complaint, Plaintiff
4 Pickett learned of the potential serious health-risks caused by the Products and he has stopped
5 consuming the Products and will no longer purchase them. As a result of his purchase, Plaintiff
6 Pickett suffered injury in fact and has lost money and property as a result of the unfair, deceptive,
7 untrue and misleading advertising described herein, including the purchase price for a product that is
8 of no value and is dangerous. Had Plaintiff Pickett known of the potential health risks and that it
9 was not proven effective, he would not have purchased the product.

10 19. Plaintiff Melissa Reed (“Plaintiff Reed”) is a resident of Queens County, New York.
11 During the Class period, Plaintiff Reed was exposed to and read Defendants’ advertising claims,
12 including the Products’ labeling. In 2008, Plaintiff Reed purchased Hydroxycut Hardcore Liquid
13 Caplets from CVS, Hydroxycut Max Liquid Caplets from CVS and Hydroxycut Regular Rapid
14 Release from Rite-Aid for personal consumption for approximately \$40 per bottle. Plaintiff Reed
15 purchased the Products, believing they were reasonably safe and effective as a dietary supplement
16 and for weight-loss purposes. She also used the Products as directed. Plaintiff Reed did not know
17 the Products posed serious adverse health risks and were not proven effective when she purchased
18 (and used) the Products. Prior to filing her complaint, Plaintiff Reed learned of the potential serious
19 health-risks caused by the Products and she has stopped consuming the Products and will no longer
20 purchase them. As a result of her purchase, Plaintiff Reed suffered injury in fact and has lost money
21 and property as a result of the unfair, deceptive, untrue and misleading advertising described herein,
22 including the purchase price for Products that are of no value and are dangerous. Had Plaintiff Reed
23 known of the potential health risks and that they were not proven effective, she would not have
24 purchased the Products.

25 20. Plaintiff Tonya Rhoden (“Plaintiff Rhoden”) is a resident of St. George, Georgia.
26 During the Class period, Plaintiff Rhoden was exposed to and read Defendants’ advertising claims,
27 including the Products’ labeling. In 2005 and 2006, Plaintiff Rhoden purchased Hydroxycut
28 Caffeine-Free Rapid Release Caplets for personal consumption from Wal-Mart for approximately

1 \$20 to \$25 per bottles. Plaintiff Rhoden purchased the product, believing it was reasonably safe and
2 effective as a dietary supplement and for weight-loss purposes. She also used the product as
3 directed. Plaintiff Rhoden did not know the product posed serious adverse health risks and was not
4 proven effective when she purchased (and used) the product. Prior to filing her complaint, Plaintiff
5 Rhoden learned of the potential serious health-risks caused by the Products and she has stopped
6 consuming the Products and will no longer purchase them. As a result of her purchase, Plaintiff
7 Rhoden suffered injury in fact and lost money and property as a result of the unfair, deceptive,
8 untrue and misleading advertising described herein, including the purchase price for a product that is
9 of no value and is dangerous. Had Plaintiff Rhoden known of the potential health risks and that it
10 was not proven effective, she would not have purchased the product.

11 21. Plaintiff Byron J. Ronan (“Plaintiff Ronan”) is a resident of Edison, New Jersey.
12 During the Class period, Plaintiff Ronan was exposed to and read Defendants’ representations,
13 advertising and promotional claims prepared and approved by the Defendants that were disseminated
14 on local and national media, including television and the Internet. Relying on Defendants’
15 representations in their advertising concerning the safety, efficacy, quality and performance of
16 Hydroxycut, Plaintiff Ronan purchased a two-month supply of Hydroxycut Caplets for personal
17 consumption from BJ’s Wholesale Club, Inc., in Edison, New Jersey in or about January 2009 for
18 approximately \$30 to \$40. Plaintiff Ronan purchased the product, believing it was reasonably safe
19 and effective as a dietary supplement and for weight-loss purposes. He also used the product as
20 directed. Plaintiff Ronan did not know the product posed serious adverse health risks and was not
21 proven effective when he purchased (and used) the product. Because of the adverse symptom (a
22 rapid heart beat) he experienced while using the product and ineffectiveness of the product to reduce
23 his weight, Plaintiff Ronan stopped consuming the Products and will no longer purchase them. As a
24 result of his purchase, Plaintiff Ronan suffered injury in fact and lost money and property as a result
25 of the unfair, deceptive, untrue and misleading advertising described herein, including the purchase
26 price for a product that is of no value and is dangerous. Had Plaintiff Ronan known of the potential
27 health risks and that it was not proven effective, he would not have purchased the product.

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1 22. Plaintiff Randall Scott Shortridge (“Plaintiff Shortridge”) is a resident of Maricopa
2 County, Arizona. During the Class period, Plaintiff Shortridge was exposed to and read Defendants’
3 advertising claims, including the Products’ labeling. Plaintiff Shortridge purchased Hydroxycut
4 Hardcore Liquid Caplets for personal consumption from GNC in or about January 2007 for
5 approximately six weeks. Plaintiff Shortridge purchased the product, believing it was reasonably
6 safe and effective as a dietary supplement and for weight-loss purposes. He also used the product as
7 directed. Plaintiff Shortridge did not know the product posed serious adverse health risks and was
8 not proven effective when he purchased (and used) the product. Prior to filing his complaint,
9 Plaintiff Shortridge learned of the potential serious health-risks caused by the Products and he has
10 stopped consuming the Products and will no longer purchase them. As a result of his purchase,
11 Plaintiff Shortridge suffered injury in fact and has lost money and property as a result of the unfair,
12 deceptive, untrue and misleading advertising described herein, including the purchase price for a
13 product that is of no value and is dangerous. Had Plaintiff Shortridge known of the potential health
14 risks and that it was not proven effective, he would not have purchased the product.

15 23. Plaintiff Nicholas Torres (“Plaintiff Torres”) is a resident of Philadelphia County,
16 Pennsylvania. During the Class period, Plaintiff Torres was exposed to and read Defendants’
17 advertising claims, including the Products’ labeling. Plaintiff Torres purchased Hydroxycut Regular
18 Rapid Release for personal consumption from GNC in or about October 2008. Plaintiff Torres
19 purchased the product, believing it was reasonably safe and effective as a dietary supplement and for
20 weight-loss purposes. He also used the product as directed. Plaintiff Torres did not know the
21 product posed serious adverse health risks and was not proven effective when he purchased (and
22 used) the product. Prior to filing his complaint, Plaintiff Torres learned of the potential serious
23 health-risks caused by the Products and he has stopped consuming the Products and will no longer
24 purchase them. As a result of his purchase, Plaintiff Torres suffered injury in fact and has lost
25 money and property as a result of the unfair, deceptive, untrue and misleading advertising described
26 herein, including the purchase price for a product that is of no value and is dangerous. Had Plaintiff
27 Torres known of the potential health risks and that it was not proven effective, he would not have
28 purchased the product.

1 24. Plaintiff Courtney Walker (“Plaintiff Walker”) is a resident of Dallas County, Texas.
2 During the Class period, Plaintiff Walker was exposed to and read Defendants’ advertising claims,
3 including the Products’ labeling. Plaintiff Walker purchased Hydroxycut for personal consumption
4 from Walgreens. Plaintiff Walker purchased the product, believing it was reasonably safe and
5 effective as a dietary supplement and for weight-loss purposes. She also used the product as
6 directed. Plaintiff Walker did not know the product posed serious adverse health risks and was not
7 proven effective when she purchased (and used) the product. Prior to filing her complaint, Plaintiff
8 Walker learned of the potential serious health-risks caused by the Products and she has stopped
9 consuming the Products and will no longer purchase them. As a result of her purchase, Plaintiff
10 Walker suffered injury in fact and has lost money and property as a result of the unfair, deceptive,
11 untrue and misleading advertising described herein, including the purchase price for a product that is
12 of no value and is dangerous. Had Plaintiff Walker known of the potential health risks and that it
13 was not proven effective, she would not have purchased the product.

14 25. Plaintiff Traczjubruthais Walquer (“Plaintiff Walquer”) is a resident of Broward
15 County, Florida. During the Class period, Plaintiff Walquer was exposed to and read Defendants’
16 advertising claims, including the Products’ labeling. Plaintiff Walquer purchased Hydroxycut
17 Regular Drink Packets for personal consumption from Wal-Mart, Walgreens and Sam’s Club for six
18 to eight months for approximately \$29 per box. Plaintiff Walquer purchased the product, believing it
19 was reasonably safe and effective as a dietary supplement and for weight-loss purposes. He also
20 used the product as directed. Plaintiff Walquer did not know the product posed serious adverse
21 health risks and was not proven effective when he purchased (and used) the product. Prior to filing
22 his complaint, Plaintiff Walquer learned of the potential serious health-risks caused by the Products
23 and he has stopped consuming the Products and will no longer purchase them. As a result of his
24 purchase, Plaintiff Walquer suffered injury in fact and has lost money and property as a result of the
25 unfair, deceptive, untrue and misleading advertising described herein, including the purchase price
26 for a product that is of no value and is dangerous. Had Plaintiff Walquer known of the potential
27 health risks and that it was not proven effective, he would not have purchased the product.

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1 26. Plaintiff Connie L. Williams (“Plaintiff Williams”) resides in California. During the
2 Class period, Plaintiff Williams was exposed to and read Defendants’ advertising claims, including
3 the Products’ labeling. Plaintiff Williams purchased Hydroxycut Hardcore Liquid Caplets for
4 personal consumption in or about August 2007. Plaintiff Williams purchased the product, believing
5 it was reasonably safe and effective as a dietary supplement and for weight-loss purposes. She also
6 used the product as directed. Plaintiff Williams did not know the product posed serious adverse
7 health risks and was not proven effective when she purchased (and used) the product. Prior to filing
8 her complaint, Plaintiff Williams learned of the potential serious health-risks caused by the Products
9 and she has stopped consuming the Products and will no longer purchase them. As a result of her
10 purchase, Plaintiff Williams suffered injury in fact and lost money and property as a result of the
11 unfair, deceptive, untrue and misleading acts and omissions described herein, including the purchase
12 price for a product that is of no value and is dangerous. Had Plaintiff Williams known of the
13 potential health risks and that it was not proven effective, she would not have purchased the product.

14 **II. Manufacturer Defendants**

15 27. Defendant Iovate Health Sciences Group, Inc., n/k/a Kerr Investment Holding
16 Corporation (“Iovate Group”) is a Canadian corporation headquartered in Oakville, Ontario, Canada.
17 The decisions, acts and omissions alleged were conceived by, implemented, and at all times carried
18 out by Iovate Group, directly or in concert with the other Manufacturer Defendants. Iovate Group
19 was the co-participant in all of the conduct and omissions alleged. Iovate Group’s subsidiaries
20 include Iovate Health Sciences, Inc., Iovate Health Sciences Research, Inc., Iovate Health Sciences
21 International, Inc., Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences Capital, Inc., and
22 Iovate Copyright, Inc. The Paul Gardiner Family Trust owns all of the common shares of Iovate
23 Group. Paul Gardiner was during the relevant time period President and Chief Executive Officer of
24 Iovate Group and other Iovate subsidiaries. Iovate Group also paid for the Iovate Defendants’
25 defense costs in connection with United States class action litigation entitled *In re Ephedra Products*
26 *Liability Litigation*, Case No. 1:04-md-01598-JSR (S.D.N.Y.). Furthermore, in connection with
27 prior Hydroxycut-related litigation and at the request of MuscleTech Research and Development,
28 Inc., a former Iovate-related entity, RSM Richter Inc., became the Court-appointed monitor of

1 MuscleTech and other Iovate Group entities. According to the first monitor report of RSM Richter,
2 dated January 23, 2006:

3 [A]ll new product formulations (the inventory and intellectual property, excluding
4 the Ephedra or Prohormones Products), including the business functions related
5 thereto, were purchased and continued by Iovate Health Sciences Group Inc.
6 (“Iovate”) and its subsidiaries. Iovate was inactive prior to this transaction[.]

7 As part of and following the transaction noted above, [MuscleTech] and
8 Iovate entered into license agreements (the “License Agreements”) which, *inter alia*,
9 set forth: (a) the royalties to apply to products sold by Iovate based on [MuscleTech]
10 formulations, (b) the business activities Iovate would assume on behalf of
11 [MuscleTech], (c) indemnity provisions and other terms[.]

12 28. Defendant Iovate Health Sciences, Inc. is a Canadian corporation headquartered in
13 Oakville, Ontario, Canada. Iovate Health Sciences, Inc. does business in the State of California.
14 Iovate Health Sciences, Inc. promotes, markets, distributes and sells Hydroxycut-branded Products
15 throughout the United States, including to thousands of consumers in California. Iovate Health
16 Sciences, Inc. distributes Hydroxycut-branded Products through its wholly-owned division, Iovate
17 Health Sciences U.S.A. Inc. Iovate Health Sciences, Inc. owns and maintains websites, including
18 muscletech.com, through which it advertised, promoted and marketed the Products.

19 29. Defendant Iovate Health Sciences U.S.A. Inc. is incorporated in the State of Delaware
20 and is headquartered in Blasdell, New York. Iovate Health Sciences U.S.A. Inc. is registered to do
21 business in the State of California, and does business in the State of California. Iovate Health
22 Sciences U.S.A. Inc. promotes, markets, distributes and sells Hydroxycut-branded Products
23 throughout the United States, including to thousands of consumers in California. Iovate Health
24 Sciences U.S.A. Inc. marketed and sold the Products to retailers, including GNC Corporation, who
25 make the Products available to Plaintiffs and Class members.

26 30. Iovate Group, Iovate Health Sciences U.S.A. Inc., and Iovate Health Sciences, Inc.
27 are referred collectively to as “Iovate” or “Iovate Defendants.”

28 **III. Retailer Defendants**

31. Defendant GNC Corporation (“GNC”) is incorporated in the State of Delaware and is
headquartered in Pittsburgh, Pennsylvania. GNC operates more than 4,800 retail locations
throughout the United States, including California, and specializes in the sale of and advice to

1 consumers about nutritional supplements. GNC is the nation's largest retailer of its kind. GNC is
2 registered to do business in the State of California and does business in the State of California.
3 During the Class period, GNC promoted, marketed and sold the Hydroxycut-branded Products
4 throughout the United States.

5 32. Defendant Wal-Mart Stores, Inc. ("Wal-Mart") (NYSE: WMT) is one of the world's
6 largest retailers with \$401 billion in sales for the 2008 fiscal year. Wal-Mart operates Wal-Mart
7 Discount Stores, Wal-Mart Supercenters, Sam's Club warehouse stores, Neighborhood Markets,
8 walmartstores.com, and walmart.com. Wal-Mart is a Delaware corporation with its principal
9 executive offices in Bentonville, Arkansas. During the Class period, Wal-Mart promoted, marketed
10 and sold the Hydroxycut-branded Products throughout the United States.

11 33. Defendant Walgreens Company ("Walgreens") (NYSE: WAG) is a provider of
12 consumer goods and services, including pharmacy, health and wellness services and products.
13 Walgreens had \$63 billion in sales during the 2009 fiscal year. Walgreens operates over 7,400 retail
14 stores and Walgreens.com. Walgreens is an Illinois corporation headquartered in Deerfield, Illinois.
15 During the Class period, Walgreens promoted, marketed and sold the Hydroxycut-branded Products
16 throughout the United States.

17 34. Defendant CVS Caremark Corp. ("CVS") (NYSE: CVS) is a provider of consumer
18 goods and services, including pharmacy, health and wellness services and products. CVS had \$87
19 billion in sales during the 2008 fiscal year. CVS operates over 6,900 CVS/pharmacy and Longs
20 Drugs retail stores, mail order, retail outlets, health clinics where it sells retail goods, and CVS.com.
21 CVS is a Delaware corporation headquartered in Woonsocket, Rhode Island. During the Class
22 period, CVS promoted, marketed and sold the Hydroxycut-branded Products throughout the United
23 States.

24 35. Defendant Vitamin Shoppe Industries, Inc. ("Vitamin Shoppe") (NYSE: VSI) is a
25 leading specialty retailer and direct marketer of vitamins, minerals, herbs, and supplements. Vitamin
26 Shoppe operates vitaminshoppe.com and bodytech.com. Vitamin Shoppe had \$601 million in sales
27 during the 2008 fiscal year. Vitamin Shoppe is a Delaware corporation headquartered in North
28

1 Bergen, New Jersey. During the Class period, Vitamin Shoppe promoted, marketed and sold the
2 Hydroxycut-branded Products throughout the United States.

3 36. Defendant Kmart Corporation (“Kmart”) bought and merged with Sears, Roebuck in
4 2005, and is now owned by Sears Holdings Corporation. Sears Holdings operates Big Kmart stores,
5 traditional Kmart discount stores, Kmart Super Centers, and Kmart.com. Kmart’s principal
6 executive offices are located in Hoffman Estates, Illinois. During the Class period, Kmart promoted,
7 marketed and sold the Hydroxycut-branded Products throughout the United States.

8 37. Defendant NBTY, Inc., (“Vitamin World”) (NYSE: NTY) operates the Vitamin
9 World retail locations. Vitamin World is a Delaware corporation headquartered in Bahemia, New
10 York. Vitamin World has approximately 450 retail stores throughout the United States. Vitamin
11 World has approximately \$2 billion in annual revenues. During the Class period, Vitamin World
12 promoted, marketed and sold the Hydroxycut-branded Products throughout the United States.

13 38. Defendant BJ’s Wholesale Club, Inc. (“BJ’s Wholesale”) (NYSE: BJ) operates
14 warehouse clubs in the eastern United States. BJ’s Wholesale is a Delaware corporation
15 headquartered in Natick, Massachusetts. BJ’s Wholesale is the nation’s number three membership
16 warehouse club and number one in New England, with nearly 10 million members and about 180
17 locations in 15 states. BJ’s Wholesale stores sell some 7,300 products, including health and beauty
18 aides, food products and household paper products, and general merchandise products. During the
19 Class period, BJ’s Wholesale promoted, marketed and sold the Hydroxycut-branded Products
20 throughout the eastern United States.

21 39. Defendant Rite-Aid Corporation (“Rite-Aid”) (NYSE: RAD) states on its website that
22 it is one of the nation’s leading drugstore chains with more than 4,900 stores in 31 states and the
23 District of Columbia. Rite-Aid is a Delaware corporation headquartered in Camp Hill,
24 Pennsylvania. Rite-Aid claims it is “the largest drugstore chain on the East Coast and the third
25 largest drugstore chain in the U.S.” During the Class period, Rite-Aid promoted, marketed and sold
26 the Hydroxycut-branded Products throughout the United States.

27
28

1 **FACTUAL ALLEGATIONS**

2 **The Hydroxycut Products**

3 40. In 1999, the Iovate Defendants announced the release of Hydroxycut-branded
4 Products, their self-described “highly effective weight-loss supplement.”

5 41. Each of the Products contain overlapping ingredients and proprietary blends that
6 cause them to be dangerous. They also do not work. The Products are sold under various names and
7 come in various forms, but each contains the subject ingredients. These names include: Hydroxagen
8 Plus; Hydroxy Tea; HydroxyTea CF; Hydroxycut Proprietary Blend; Max! Liqui-Burn; Max!
9 Weight-Loss Matrix; Hydroxycut Hardcore Proprietary Blend Proxyclylene; Noreidrol Intensity Focus
10 Blend; Lasidrate Delivery Blend; and Yohimbacore. The Products contain herbal extracts from
11 *Garcinia cambogia*, *Guarana*, *Gymnema sylvestre*, *Rhodiola rosea* and *Camillia sinensis*.
12 Hydroxycut Cleanse and Hydroxycut Hoodia contain different ingredients than the 14 Products at
13 issue and are not included in this lawsuit.

14 42. *Chromium*, *Garcinia cambogia*, *Gymnema sylvestre* and *Camellia sinensis* have been
15 associated with cases of severe hepatotoxicity.

16 43. *Garcinia cambogia* is a fruit native to Asia and Africa and used by very poor people
17 to make meals more filling. The main component of *Garcinia cambogia* and the root of the name
18 Hydroxycut is hydroxycitric acid (“HCA”). HCA was initially studied in rodents for dietary
19 treatment of obesity, but randomized controlled trials in humans have conflicting results, and no
20 clinical proof.

21 **Defendants’ Hydroxycut Claims**

22 44. Defendants have spent tens of millions of dollars advertising and marketing
23 Hydroxycut products since the nationwide launch. Defendants conveyed their deceptive claims
24 about the Hydroxycut products through a variety of media, including television, newspapers,
25 magazines, direct mail, the Internet, point of sale displays, and on the Products’ labels and
26 packaging. In addition, retailers, including defendant GNC, promote, market and sell the Products in
27 stores, on their websites and through other mediums of advertising.

28

1 45. In their advertisements, Defendants represented that Hydroxycut products were
2 created and endorsed by doctors. For instance, Iovate's hydroxycut.com website had a page
3 dedicated to "doctor endorsement" of the Products. Iovate's website stated that "[t]he following
4 doctors endorse and have used Hydroxycut themselves to help themselves achieve their weight-loss
5 goals." Substantially similar doctor-endorsement promotions appear in Defendants' print and
6 television advertisements as well.

7 46. On its website, Iovate stated:

8 Plain and simple, Hydroxycut was created to help you reach your weight-loss
9 goals. This medical doctor-formulated supplement contains ingredients that are of
10 the highest quality and have been combined to make it one of the most effective
11 weight-loss supplements available on the market today. Hydroxycut® is comprised
12 of a blend of research-proven key ingredients that can help you lose up to 4.5 times
13 the weight than diet and exercise alone.

14 On top of that, this top selling weight-loss supplement increases your energy
15 and helps control your appetite too. With Hydroxycut in your diet and exercise plan,
16 you'll be well on your way to achieving your weight-loss goals in no time!

17 47. Similarly, in their television commercials, Iovate conveys the same message:

18 Announcer: Millions of Americans have made Hydroxycut the #1 SELLING
19 Weight-Loss Supplement.

20 Consumer: I'm Gillian from Illinois, and I lost 39 pounds FAST with
21 Hydroxycut.

22 Dr. Jon Marshall: [Picturing man in white lab coat and prominently stamping
23 "Dr. Jon Marshall Resident Physician" on the screen]
24 Subjects using the patented primary ingredients in
25 Hydroxycut lost an average of up to four and a half times the
26 weight than with diet and exercise alone. I strongly
27 recommend it, both as a new doctor and as someone who
28 used it with fantastic results.

Consumer: I'm Catherine from Texas, and I lost 41 pounds with Hydroxycut. It
really works fast.

Announcer: Get Hydroxycut today, and new Hydroxycut drink mix packets at
stores everywhere.

The above efficacy claims are false, misleading and likely to deceive the consuming public. Iovate
does not have competent and reliable scientific evidence supporting the claims.

48. The Retailer Defendants, including GNC, further enabled Iovate and MuscleTech to
make representations concerning the quality of the Products. The retailers that sold the Products

1 adopted, and are responsible for, the representations Iovate and MuscleTech made on packaging
2 regarding the safety and efficacy of the Products, when they decided to place such Products on their
3 store shelves and on retail websites, and thereafter advertised and sold such Products to Plaintiffs
4 and other members of the Class. Further, GNC advertised and included a prominent link to its own
5 website on Iovate’s Hydroxycut websites.

6 49. GNC reinforces these claims of safety and efficacy. For example, it states that it “sets
7 the standard in the nutritional supplement industry by demanding truth in labeling, ingredient safety
8 and product potency, all while remaining on the cutting-edge of nutritional science. . . . From
9 scientific research and new product discovery to the manufacturing and packaging process, GNC
10 takes pride in our rigorous approach to ensuring quality.”

11 50. Similarly, Vitamin Shoppe states that it “is recognized as an innovator in providing
12 product information” and that “The Health Enthusiasts who work at The Vitamin Shoppe are the
13 most knowledgeable associates in the industry.”

14 51. Additionally, GNC has made specific representations concerning the Products.
15 GNC’s statements on its website included the following:

16 Hydroxycut® Hardcore makes all other fat burners obsolete. It is the most
17 extraordinary powerful fat burner ever developed.

18 * * *

19 Beyond a shadow of a doubt, there is no other women’s fat burner on the market
20 more extreme than Hydroxycut® Max!* We dare you to try it!

21 * * *

22 Introducing new and advanced Hydroxycut® – an effective, patent-pending weight
23 loss formula with key components that have been scientifically proven to help you
24 lose weight fast, increase energy, burn calories, and control appetite.

25 52. Defendants advertise and market Hydroxycut Products as effective, extremely safe,
26 and without any unwanted side effects. However, according to former Missouri Attorney General
27 Jay Nixon, “MuscleTech’s own consultants had serious concerns about the safety of Hydroxycut, but
28 the company continued to market the product.”

29 53. In addition, Defendants advertise and market Hydroxycut as safe and effective for all
30 persons. The following was posted on Iovate’s website:

1 *I'm in my 40s, and in good health. Can Hydroxycut work for someone my age?*

2 Hydroxycut can work as well for those who are in the prime of their lives as it
3 can for younger adults. For example, at the age of 41, Joe Barrett, while following a
4 diet and exercise program, and using Hydroxycut, lost 29 pounds of fat and 6 inches
5 from his waist! He said, "I feel half my age!" This feeling has been echoed by many
6 users of Hydroxycut.

7 However, there is no support for this claim. Defendants' "studies" do not test the safety and
8 effectiveness of Hydroxycut-branded Products over a statistically accurate cross-section of
9 Americans and are otherwise not well-designed studies.

10 54. Without requisite proof, Defendants also claim that Hydroxycut is "clinically proven"
11 to help consumers "lose weight fast." In addition to the Defendants' marketing material, advertising
12 and websites, the Products' packaging promotes their use to "increase energy," "burn calories" and
13 "control appetite." Specifically, the Products' packaging states:

14 Hydroxycut® is America's #1 selling weight-loss supplement. Hydroxycut
15 really does work – fast! Utilizing sophisticated Rapid-Release Caplets, Hydroxycut
16 is doctor formulated with clinically proven ingredients to help you lose up to 4.5
17 times the weight than diet and exercise alone. Now with an improved HydroxyTea®
18 blend, there's even more reason to love Hydroxycut®.

19 55. The Products' packaging also states: "Don't take chances – you deserve the best! Put
20 your trust in the power of Hydroxycut® and discover for yourself why millions of men and women
21 all across America have used Hydroxycut. For fast weight loss, make Hydroxycut® your #1 choice
22 today!"

23 56. The Products' packaging emphasizes that the products are "doctor formulate" and
24 approved. In this regard, the Products' packaging boasts that the Products are "Backed by Science"
25 and include a picture of Dr. John Marshall, D.O., "Resident Physician," and his statement that
26 "Hydroxycut® a product that has ingredients proven to work. I've recommended it to a number of
27 men and women and have used it myself with fantastic results." The Products' packaging also
28 credits Dr. Marvin Heuer, FAAFP, Iovate's Chief Scientific Officer, with formulating the Products.

57. Based upon Defendants' marketing, labeling, distribution and sale of the Hydroxycut-
branded Products, it was and is reasonable for Plaintiffs to rely on Defendants' representations in
purchasing and taking the Hydroxycut-branded Products.

1 58. For the types of marketing claims at issue, the Federal Trade Commission rules
2 require that Defendants actually have the level of proof claimed, here clinical proof, at the time the
3 claims are made. However, Defendants did not, and have never possessed the requisite level of
4 proof.

5 59. For example, in a study commissioned by Iovate, the subjects using Hydroxycut
6 actually lost less weight than the placebo group. According to Stuart Lowther, Iovate's director of
7 research until 2002, "the bottom line is the majority of products they put on their shelves don't have
8 pure clinical research to support them. . . . They use over-exaggerated claims – [Defendants] do[] it
9 and so does everybody else – to sell their products."

10 60. In fact, for nearly a decade, doctors and scientists have questioned the safety and
11 efficacy of the Products. Nevertheless, Defendants claimed and continue to claim that the Products
12 are safe.

13 61. In the January 2009 volume of the *American Journal of Health-System Pharmacy*,
14 Drs. Sarah Dehoney and Marlea Wellein reported the story of an 18-year old male who arrived at an
15 urgent care center complaining of bilateral leg pain and weakness. The patient reported taking
16 Hydroxycut caplets, within the dosage range per package instructions. The patient was diagnosed
17 with rhabdomyolysis (the rapid breakdown of skeletal muscle tissue leading to the release of
18 damaged muscle cells into the bloodstream) and instructed to discontinue Hydroxycut.
19 Rhabdomyolysis can become life threatening, causing hepatic inflammation, cardiac arrhythmia and
20 arrest, acute renal failure, disseminated intravascular coagulation, or compartment syndrome.

21 62. Published in the March 2005 volume of the journal *Annals of Internal Medicine* is a
22 letter from Drs. Stevens, Qadri and Zein of the Cleveland Clinic Foundation. The doctors reported
23 that two men presented to their emergency department within a two-month period after ingesting
24 Hydroxycut. Except for Hydroxycut, which had been taken at the recommended daily doses, the
25 men reported no recent use of herbal or prescription medicines. Among other symptoms the men,
26 aged 27 and 30, experienced fatigue and jaundice and severe hepatotoxicity. The doctors concluded
27 that "the lack of evidence for other causes and the temporal relationship of Hydroxycut ingestion to
28 liver injury suggest a causative relationship." The doctors further stated that the "[e]vidence for the

1 efficacy of [the Hydroxycut ingredient] *Garcinia cambogia* in promoting weight loss is not
2 compelling.”

3 63. In the July 2008 volume of the journal *Digestive Diseases and Sciences*, Drs. Sammy
4 Saab and Michael Shim of UCLA Medical School published a case report detailing the story of a 28-
5 year old male who was transferred to their hospital complaining of three weeks of fatigue, dyspnea
6 on exertion, jaundice and dark urine. In an effort to lose weight the patient had been taking
7 Hydroxycut within the recommended dosing. The patient’s presentation was most consistent with
8 hepatotoxicity associated with Hydroxycut. The report concluded, “[t]here is evidence that extracts
9 of *Garcinia cambogia*, *Gymnema sylvestre*, and green tea (*Camellia sinensis*) contained in
10 *Hydroxycut* may be associated with severe and even fatal hepatotoxicity.”

11 64. In the December 2008 volume of the *World Journal of Gastroenterology*, Lily Dara et
12 al., “present two patients who experienced severe acute hepatitis in the setting of documented
13 Hydroxycut exposure.” The case series and review states that “[b]oth patients . . . used the dietary
14 supplement Hydroxycut within a short time frame before presenting with acute hepatitis, suggesting
15 Hydroxycut as the most likely etiology for acute liver injury.”

16 65. The FDA also reported that in March and April 2009 discussions with doctors from
17 the University of Southern California and University of Texas Southwestern Medical Center, it
18 became aware of a series of additional patients with severe liver disease associated with Hydroxycut.
19 Two of the patients underwent liver transplantation following acute liver failure.

20 66. In January 2005, doctors at Health Canada reported an incident involving a 47-year-
21 old female who experienced rhabdomyolysis after using Hydroxycut. The Health Canada officials
22 stated “[i]t is also possible that other ingredients contained in Hydroxycut (Ephedra Free), such as
23 *G. cambogia* (which contains hydroxycitric acid) and chromium picolinate, may play a role in the
24 development of rhabdomyolysis.”

25 67. On May 1, 2009, Health Canada officials announced that they had received 17
26 adverse reaction reports associated with Hydroxycut products in Canada. The reactions relate to the
27 cardiovascular, respiratory, gastrointestinal and neurological systems.

28

1 68. As stated by public health consultant Ano Lobb on January 14, 2009, “[t]here is a
2 growing number of case reports of hepatotoxicity from the widely marketed weight-loss supplement
3 Hydroxycut, which contains the botanical ingredient *Garcinia cambogia*.” But, in fact, Ms. Lobb
4 believes the reported cases “may underestimate the true incidence of hepatotoxicity by several degrees
5 of magnitude.”

6 69. The Dietary Supplement Health and Education Act of 1994 (“DSHEA”), Pub. L. No.
7 103-417, 108 Stat. 4325 (1994), was enacted to help ensure that safe and appropriately-labeled
8 dietary supplement are available to consumers who want to use them. Under the DSHEA, dietary
9 supplement products must bear ingredient labeling that includes the name and quantity of each
10 dietary ingredient, and for proprietary blends, like those in the Products, the total quantity of all
11 dietary ingredients in the blend. Furthermore, unless a product’s dietary ingredients were present in
12 the United States’ food supply prior to October 15, 1994, a manufacturer must notify the FDA at
13 least 75 days before marketing products containing new dietary ingredients. This requirement is
14 meant to assure the dietary supplement that contains new ingredients will be safe under conditions
15 described on the label. Finally, starting December 22, 2007, any serious adverse events involving a
16 dietary supplement and reported to a manufacturer must be provided to the FDA within 15 days of
17 receiving the serious adverse event report.

18 70. The health problems associated with Hydroxycut manifest themselves when
19 consumers use the Products at recommended dosage levels. In fact, the FDA considers Hydroxycut
20 Products to be adulterated under §402(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act, 21
21 U.S.C. §342, in that Hydroxycut Products present a significant or unreasonable risk of illness or
22 injury under conditions of use recommended or suggested in labeling.

23 71. Notwithstanding significant and mounting evidence that Hydroxycut-branded
24 Products are falsely labeled and pose significant health risks, Iovate did not recall the Products until
25 May 1, 2009. Despite the evidence of significant health risks, Defendants continued to make
26 material misrepresentations and omissions on the Products’ packaging and labeling. Moreover, as
27 stated herein, Defendants continue to downplay the true health risks involved with consuming the
28 Products.

1 **The FDA on Hydroxycut**

2 72. On April 30, 2009, the FDA wrote to defendant Iovate Health Sciences, Inc., stating
3 “the Agency has concluded that the ingestion of the dietary supplement Hydroxycut presents a
4 severe potentially life-threatening hazard to some users.”

5 73. The April 30, 2009 FDA letter describes several of the Hydroxycut-associated health
6 incidents, including the following:

7 In one instance, a 26-year-old consumer increased her daily intake of Hydroxycut
8 from 2 to 4 caplets on December 6, 2008. At 2 p.m. that day, following ingestion of
9 the second serving of 2 caplets, the consumer felt tired and lay down. She was found
10 by another person to be having a “seizure” (shaking and drooling). The consumer
11 was taken to the emergency room where a physician told her to discontinue using
12 Hydroxycut.

13 74. The April 30, 2009 FDA letter also described a fatality involving Hydroxycut:

14 The patient was a 20-year-old male who presented to an emergency room on January
15 19, 2007 in liver failure and hepatic encephalopathy. He was subsequently
16 transferred to a liver transplant center where, in the operating room, he was found to
17 have necrosis of both the large and small intestines. Given these findings, the
18 procedure was aborted and the patient was returned to the intensive care unit. He
19 died on February 12, 2007.

20 75. The FDA concluded that “[t]hree lines of evidence derived from multiple disparate
21 sources suggest it is very likely that exposure to Hydroxycut capsules/caplets can cause idiosyncratic
22 hepatotoxicity [sic].”

23 76. In fact, the FDA has received 23 reports of adverse liver effects in users of
24 Hydroxycut-branded Products, ranging from asymptomatic hyperbilirubinemia, jaundice, liver
25 damage, liver transplant and death. Hydroxycut-associated injuries occur in consumers of all ages,
26 regardless of gender or preexisting medical condition.

27 77. On May 1, 2009, the FDA issued a press release titled “FDA Warns Consumers to
28 Stop Using Hydroxycut Products Dietary Supplements Linked to One Death; Pose Risk of Liver
Injury.” In the press release, the FDA stated in pertinent part:

The U.S. Food and Drug Administration is warning consumers to immediately stop using Hydroxycut products by Iovate Health Sciences Inc., of Oakville, Ontario and distributed by Iovate Health Sciences USA Inc. of Blasdell, N.Y. Some Hydroxycut products are associated with a number of serious liver injuries. Iovate has agreed to recall Hydroxycut products from the market.

1 The FDA has received 23 reports of serious health problems ranging from jaundice
2 and elevated liver enzymes, an indicator of potential liver injury, to liver damage
3 requiring liver transplant. ***One death due to liver failure has been reported to the***
4 ***FDA.*** Other health problems reported include seizures; cardiovascular disorders; and
5 rhabdomyolysis, a type of muscle damage that can lead to other serious health
6 problems such as kidney failure.

7 Liver injury, although rare, was reported by patients ***at the doses of Hydroxycut***
8 ***recommended on the bottle.***

9 78. It is not known whether discontinuation of Hydroxycut usage will result in recovery
10 of liver function.

11 79. A day after the FDA's letter detailing the Products' "severe potentially life-
12 threatening hazard to some users," Iovate quietly announced a belated recall of the following 14

13 Hydroxycut-branded Products:

- 14 • Hydroxycut Regular Rapid Release Caplets;
- 15 • Hydroxycut Caffeine-Free Rapid Release Caplets;
- 16 • Hydroxycut Hardcore Liquid Caplets;
- 17 • Hydroxycut Max Liquid Caplets;
- 18 • Hydroxycut Regular Drink Packets;
- 19 • Hydroxycut Caffeine-Free Drink Packets;
- 20 • Hydroxycut Hardcore Drink Packets (Ignition Stix);
- 21 • Hydroxycut Max Drink Packets;
- 22 • Hydroxycut Liquid Shots;
- 23 • Hydroxycut Hardcore RTDs (Ready-to-Drink);
- 24 • Hydroxycut Max Aqua Shed;
- 25 • Hydroxycut 24;
- 26 • Hydroxycut Carb Control; and
- 27 • Hydroxycut Natural.

28 80. Downplaying the Products' true health risks, Iovate stated that although its own risk
assessment of the Hydroxycut-branded Products differs from that expressed by the FDA, "out of an

1 abundance of caution and because consumer safety is Iovate's top priority, Iovate is voluntarily
2 recalling these Hydroxycut-branded products."

3 81. Despite the FDA's warnings, Defendants continue to misstate their previous steps
4 taken to ensure the safety of Hydroxycut-branded Products. At www.hydroxycutininformation.com, a
5 website created following the FDA announcements, Iovate states:

6 **What steps do you take to ensure the safety of Hydroxycut-branded products?**

7 We conduct internal analyses of individual ingredients, and undertake
8 extensive medical, scientific and toxicological literature reviews on the safety of the
9 ingredients during the development stage of each product. Additionally, third-party
10 experts from the leading independent scientific firm specializing in ingredient
11 assessment, toxicology and product safety for the nutritional and pharmaceutical
industry review the safety of Iovate's ingredients and formulas before products are
introduced in the marketplace. Only after this external review is completed does
Iovate release a formula.

12 And Defendants continue to downplay the seriousness of the harm from Hydroxycut ingestion:

13 **Why did Iovate voluntarily recall Hydroxycut-branded products?**

14 Iovate initiated a voluntary recall when it became aware that the U.S. Food
15 and Drug Administration's assessment of 23 reports about consumers having
16 experienced liver-related problems, as well as a small number of published case
reports, was different from Iovate's analysis. On May 1, 2009, the FDA issued an
advisory which states that, "Although the liver damage appears to be relatively rare,
FDA believes consumers should not be exposed to unnecessary risk."

17 The number of adverse event reports described by the FDA is small relative
18 to the many millions of people who have used Hydroxycut products over the 7 years
19 referenced by the FDA. Iovate's own assessment of the potential risk associated with
20 the use of these products differs from that expressed by the Agency. Every product
21 marketed by Iovate is evaluated during its development for the safety of its
22 individual ingredients. Additionally, independent third-party experts from the
leading independent scientific firm specializing in ingredient assessment, toxicology
and product safety for the nutritional and pharmaceutical industry review the safety
of Iovate's ingredients and formulas before products are introduced in the
marketplace. Only after this external review is completed does Iovate release a
formula.

23 However, out of an abundance of caution and because consumer safety is
24 Iovate's top priority, Iovate is voluntarily recalling these Hydroxycut-branded
products.

25 Defendants' statements were and are deceptive, misleading and dangerous. For years, scientific
26 literature has questioned the safety and efficacy of Hydroxycut-branded Products. Nevertheless,
27 Defendants made and continue to make material misrepresentations and omissions regarding the
28 Products' true safety and efficacy.

1 82. Defendants' advertising and marketing campaign was designed to cause consumers to
2 buy Hydroxycut Products as a result of this deceptive message, and Defendants succeeded. As a
3 result of this campaign, Hydroxycut became the top selling weight-loss supplement with over
4 nine million units sold in 2008. Hydroxycut sales exceeded \$350 million in a single year alone.

5 **CLASS ACTION ALLEGATIONS**

6 83. As detailed below in the individual counts, Plaintiffs bring this lawsuit on behalf of
7 themselves and proposed nationwide Class or, in the alternative, statewide Classes under Rules
8 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The proposed Class consists of:

9 All persons who purchased Hydroxycut-branded products (the "Class"). Excluded
10 from the Class are Defendants' officers, directors and employees and those who
purchased the Hydroxycut-branded products for the purpose of resale.

11 84. The Classes comprise many tens of thousands of consumers throughout the United
12 States, including Alabama, Arizona, California, Florida, Georgia, Louisiana, Massachusetts, New
13 Jersey, New York, Pennsylvania, Texas, and West Virginia. The Classes are so numerous that
14 joinder of all members of the Classes is impracticable. There are questions of law and fact common
15 to the Classes. The common questions include:

16 (a) whether Defendants had adequate substantiation for their claims prior to
17 making them;

18 (b) whether the Products were effective and reasonably safe for consumption;

19 (c) whether Defendants concealed or omitted material information concerning the
20 safety and efficacy of the Products;

21 (d) whether the claims discussed above are true, or are misleading, or reasonably
22 likely to deceive;

23 (e) whether Defendants' alleged conduct violates public policy;

24 (f) whether the alleged conduct constitutes violations of the laws asserted herein;

25 (g) whether Defendants engaged in false or misleading advertising;

26 (h) whether Plaintiffs and Class members have sustained monetary loss and the
27 proper measure of that loss;

28

1 (i) whether Plaintiffs and Class members are entitled to an award of punitive
2 damages;

3 (j) whether Plaintiffs and Class members are entitled to reimbursement for the
4 cost of medical testing; and

5 (k) whether Plaintiffs and Class members are entitled to declaratory and
6 injunctive relief.

7 85. Plaintiffs' claims are typical of the claims of the proposed Classes, and Plaintiffs will
8 fairly and adequately represent and protect the interests of the proposed Classes. Plaintiffs do not
9 have any interests antagonistic to those of the Classes. Plaintiffs have retained counsel competent
10 and experienced in the prosecution of this type of litigation. The questions of law and fact common
11 to the Class members, some of which are set out above, predominate over any questions affecting
12 only individual Class members.

13 86. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy. The expense and burden of individual litigation would make it
15 impracticable or impossible for proposed Class members to prosecute their claims individually. The
16 trial and the litigation of Plaintiffs' claims are manageable.

17 87. Unless a Class is certified, Defendants will retain monies received as a result of their
18 conduct that was taken from Plaintiffs and proposed Class members. Unless a classwide injunction
19 is issued, Defendants will continue to commit the violations alleged, and the members of the Classes
20 and the general public will continue to be misled.

21 88. Defendants have acted and refused to act on grounds generally applicable to the
22 Class, making appropriate final injunctive relief with respect to the Classes as a whole.

23 **COUNT I**

24 **For Violations of the State Consumer Protection Laws**
25 **on Behalf of Plaintiffs and a Nationwide Class**

26 89. Plaintiffs reallege and incorporate by reference the allegations contained in each of
27 the foregoing paragraphs as if fully set forth herein.
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1 90. Plaintiffs and the Class allege that Defendants violated the substantive consumer
2 protection and unfair deceptive trade practices acts or statutes of all 50 states and United States
3 territories where their consumers reside.

4 91. By reason of the conduct as alleged herein, by advertising and marketing the
5 Hydroxycut Products in various media, including broadcasts, website and written promotional and
6 other materials, Defendants misled consumers about the safety and efficacy of the Products.
7 Defendants intentionally engaged in these deceptive acts and made false or misleading
8 representations, capable of causing Plaintiffs and Class Members harm if Plaintiffs and or the Class
9 relied upon these representations.

10 92. Defendants violated the laws prohibiting unfair and deceptive trade practices of the
11 states and territories wherein Class members reside: Alaska Stat. §44-1522 *et seq.*; Ariz. Rev. Stat.
12 §44-1522 *et seq.*; Ark. Code §4-88-101 *et seq.*; Cal. Bus. & Prof. Code §17200 *et seq.*; Colo. Rev.
13 Stat. §6-1-105 *et seq.*; Conn. Gen. Stat. §42-110b *et seq.*; 6 Del. Code §2511 *et seq.*; D.C. Code §28-
14 3901 *et seq.*; Fla. Stat. §501.201 *et seq.*; Ga. Code Ann. §10-1-392 *et seq.*; Haw. Rev. Stat. §480 *et*
15 *seq.*; Idaho Code §48-601 *et seq.*; Kan. Stat. §50-623 *et seq.*; Ky. Rev. Stat. §367.110 *et seq.*; La.
16 Rev. Stat. §51:1401 *et seq.*; Mass. Gen. Laws ch.93A *et seq.*; Md. Com. Law Code §13-101 *et seq.*;
17 Mich. Stat. §445.901 *et seq.*; Minn. Stat. §8.31 *et seq.*; Vernon's Missouri Stat. §407.010 *et seq.*;
18 Mont. Code §30-14-101 *et seq.*; Neb. Rev. Stat §59-1601 *et seq.*; Nev. Rev. Stat. §598.0903 *et seq.*;
19 N.H. Rev. Stat. §358-A:1 *et seq.*; N.J. Rev. Stat. §56:8-1 *et seq.*; N.M. Stat. §57-12-1 *et seq.*; N.Y.
20 Gen. Bus. Law §349 *et seq.*; N.C. Gen. Stat. §75-1.1 *et seq.*; N.D. Cent. Code §51-15-01 *et seq.*;
21 Ohio Rev. Stat. §1345.01 *et seq.*; Okla. Stat. 15 §751 *et seq.*; Or. Rev. Stat. §646.605 *et seq.*; 73 Pa.
22 Stat. §201-1 *et seq.*; R.I. Gen. Laws. §6-13.1-1 *et seq.*; S.C. Code Laws §39-5-10 *et seq.*; S.D. Code
23 Laws §37-24-1 *et seq.*; Tenn. Code §47-18-101 *et seq.*; Tex. Bus, & Com. Code §17.41 *et seq.*; Utah
24 Code. §13-11-1 *et seq.*; 9 Vt. §2451 *et seq.*; Va. Code §59.1-196 *et seq.*; Wash. Rev. Code.
25 §19.86.010 *et seq.*; West Virginia Code §46A-6-101 *et seq.*

26 93. As a direct and proximate result of Defendants' statutory violations, Plaintiffs and
27 Class members have been injured and suffered damages, including, but not limited to, all monies
28 paid for the Products and an increased risk of serious health problems.

1 101. Plaintiff Shortridge and all Class members purchased Defendants' Products in
2 packages that uniformly misrepresented their safety and efficacy and/or omitted material facts
3 including that the Products pose potentially serious adverse health risks and the nature of those risks.

4 102. Neither Plaintiff Shortridge nor any of the Class members knew about or were privy
5 to any information about the potential health risks posed by Defendants' Products at the time they
6 purchased the Products.

7 103. Plaintiff Shortridge and Class members read and relied on the accuracy of the
8 representations on Defendants' advertising and marketing, including the Products' packaging and
9 labeling, in purchasing the Products.

10 104. Plaintiff Shortridge and Class members have been actually injured by Defendants'
11 false, misleading and fraudulent business acts and practices and are entitled to damages in the
12 amount they paid for the Products.

13 105. Defendants' unlawful and deceptive conduct was knowing, deliberate, wanton,
14 reckless and malicious, and undertaken in conscious disregard of, and with reckless indifference to,
15 Plaintiff's interests, and otherwise of a character warranting punitive damages. The gravity of
16 Defendants' alleged wrongful conduct outweighs any purported benefits attributable to such
17 conduct. There also were reasonably available alternative dietary and weight-loss formulations that
18 Defendants could have manufactured and distributed that did not have the same potentially serious
19 adverse health risks.

20 106. Plaintiff Shortridge and Class members are entitled to equitable relief in the form of
21 restitution of all monies paid for Defendants' Products and disgorgement of the profits Defendants
22 received from the sale of the Products.

23 107. Because Defendants' false, misleading and fraudulent conduct has exposed Plaintiff
24 Shortridge and Class members to potentially serious health risks, Plaintiff Shortridge and Class
25 members' damages include the costs of diagnostic and medical examinations.

26 108. Plaintiff Shortridge is also entitled to an award of attorneys' fees and costs.

27
28

COUNT III

For Violations of the California Consumers Legal Remedies Act, California Civil Code §1750 et seq., on Behalf of Plaintiffs Dremak, Flores, Jimenez, Pickett, Williams and a California Class

109. Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams reallege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

110. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750 et seq. (the "California Act"). Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams are consumers as defined by California Civil Code §1761(d). The Products are goods within the meaning of the California Act.

111. Defendants violated and continue to violate the California Act by engaging in the following practices proscribed by California Civil Code §1770(a), in transactions with Plaintiffs Dremak, Flores, Jimenez, Pickett, Williams and the Class, which were intended to result in, and did result in, the sale of the Products:

(5) Representing that [the Products] have . . . characteristics, . . . uses [or] benefits . . . which they do not have

* * *

(7) Representing that [the Products] are of a particular standard, quality, or grade . . . if they are of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that the [Products] [have] been supplied in accordance with a previous representation when [they] [have] not.

112. Defendants violated the California Act by representing through their advertisements the Products as described above when they knew, or should have known, that the representations and advertisements were unsubstantiated, false and misleading.

113. Pursuant to §1782 of the California Act, Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams notified Defendants in writing by certified mail of the particular violations of §1770 of

1 the California Act and demanded that Defendants rectify the problems associated with the actions
2 detailed above and give notice to all affected consumers of its intent to so act.

3 114. Pursuant to California Civil Code §1782(d), Plaintiffs Dremak, Flores, Jimenez,
4 Pickett, Williams and the Class seek a Court order enjoining the above-described wrongful acts and
5 practices of Defendants and for restitution, disgorgement and damages.

6 115. Defendants have failed to rectify or agree to rectify the problems associated with the
7 actions detailed above and give notice to all affected consumers within 30 days of the date of written
8 notice pursuant to §1782 of the California Act. Therefore, Plaintiffs Dremak, Flores, Jimenez,
9 Pickett, and Williams further seek claims for actual, punitive and statutory damages, as appropriate.
10 Defendants' conduct is malicious, fraudulent and wanton, and provides misleading information that
11 can lead to serious and life-threatening illness. There also were reasonably available alternative
12 dietary and weight-loss formulations that Defendants could have manufactured and distributed that
13 did not have the same potentially serious adverse health risks.

14 116. Pursuant to California Civil Code §1780(e), Plaintiffs Dremak, Flores, Jimenez,
15 Pickett, Williams and the Class make claims for damages, attorneys' fees and costs.

16 **COUNT IV**

17 **Unlawful Business Acts and Practices in Violation of California Business and**
18 **Professions Code §17200 et seq. on Behalf of Plaintiffs Dremak, Flores,**
Jimenez, Pickett, Williams, and a California Class

19 117. Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams reallege and incorporate by
20 reference the allegations contained in the paragraphs above as if fully set forth herein.

21 118. California Business and Professions Code §17200 prohibits any "unfair, deceptive,
22 untrue or misleading advertising." For the reasons discussed above, Defendants have engaged in
23 unfair, deceptive, untrue and misleading advertising in violation of California Business and
24 Professions Code §17200.

25 119. California Business and Professions Code §17200 also prohibits any "unlawful . . .
26 business act or practice." Defendants have violated §17200's prohibition against engaging in
27 unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts,
28 as set forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711,

1 1770, California Business and Professions Code §17200 *et seq.*, California Health and Safety Code
2 §§110660, 110760, 110765, the DSHEA (Pub. L. No. 103-417, 108 Stat. 4325 (1994)), 21 U.S.C.
3 §343, 21 U.S.C. §379aa-1, 15 U.S.C. §45(a)(1), 49 Fed. Reg. 30999 (Aug. 2, 1984), Federal Food,
4 Drug and Cosmetic Act §402(f)(1)(A) (21 U.S.C. §342), and common law.

5 120. Plaintiffs Dremak, Flores, Jimenez, Pickett, Williams and the Class reserve the right
6 to allege other violations of law which constitute other unlawful business acts or practices. Such
7 conduct is ongoing and continues to this date.

8 121. California Business and Professions Code §17200 also prohibits any “unfair . . .
9 business act or practice.”

10 122. Defendants’ acts, omissions, misrepresentations, practices and non-disclosures as
11 alleged herein also constitute “unfair” business acts and practices within the meaning of California
12 Business and Professions Code §17200 *et seq.*, in that their conduct is substantially injurious to
13 consumers, offends public policy, and is immoral, unethical, oppressive and unscrupulous as the
14 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

15 123. As stated in this Complaint, Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams
16 allege violations of consumer protection, unfair competition, and truth-in-advertising laws in
17 California and other states resulting in harm to consumers. Plaintiffs Dremak, Flores, Jimenez,
18 Pickett, and Williams assert violation of the public policy against engaging in false and misleading
19 advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes
20 violations of the unfair prong of California Business and Professions Code §17200 *et seq.*

21 124. There were reasonably available alternatives to further Defendants’ legitimate
22 business interests, other than the conduct described herein.

23 125. California Business and Professions Code §17200 also prohibits any “fraudulent
24 business act or practice.”

25 126. Defendants’ claims, nondisclosures and misleading statements, as more fully set forth
26 above, were false, misleading and/or likely to deceive the consuming public within the meaning of
27 California Business and Professions Code §17200.

28

1 127. Defendants' conduct caused and continues to cause substantial injury to Plaintiffs
2 Dremak, Flores, Jimenez, Pickett, Williams and the other Class members. Plaintiffs Dremak, Flores,
3 Jimenez, Pickett, Williams and Class members have suffered injury in fact and have lost money as a
4 result of Defendants' unfair conduct.

5 128. Defendants have thus engaged in unlawful, unfair and fraudulent business acts and
6 practices and false advertising, entitling Plaintiffs Dremak, Flores, Jimenez, Pickett, Williams and
7 the Class to injunctive and equitable relief against Defendants, as set forth in the Prayer for Relief.

8 129. Additionally, pursuant to California Business and Professions Code §17203,
9 Plaintiffs Dremak, Flores, Jimenez, Pickett, and Williams seek an order requiring Defendants to
10 immediately cease such acts of unlawful, unfair and fraudulent business practices, and requiring
11 Defendants to engage in a corrective advertising campaign, including notification of the Products'
12 health risks.

13 130. Pursuant to California Code of Civil Procedure §1021.5, Plaintiffs Dremak, Flores,
14 Jimenez, Pickett, Williams and the Class make claims for damages, attorneys' fees and costs.

15 **COUNT V**

16 **For Violations of the Florida Deceptive and Unfair Trade Practices Act, Florida**
17 **Statute §501.201 *et seq.*, on Behalf of Plaintiff Walquer and a Florida Class**

18 131. Plaintiff Walquer realleges and incorporates by reference the allegations contained in
19 the paragraphs above as if fully set forth herein.

20 132. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade
21 Practices Act, Fla. Stat. §501.201 *et seq.* ("FDUTPA"). The stated purpose of the FDUTPA is to
22 "protect the consuming public . . . from those who engage in unfair methods of competition, or
23 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla.
24 Stat. §501.202(2).

25 133. Plaintiff Walquer and Class members are consumers as defined by Fla. Stat.
26 §501.203. The Products are goods within the meaning of the FDUTPA. Defendants are engaged in
27 trade or commerce within the meaning of the FDUTPA.
28

1 Hydroxycut Products are “consumer acts or practices” as defined by the Georgia Act. The sale of
2 the Hydroxycut Products to Plaintiffs Major, Rhoden and the Class are “consumer transactions”
3 within the meaning of the Georgia Act.

4 150. Defendants violated and continue to violate the Georgia Act by engaging in the
5 following practices proscribed by Ga. Code Ann. St. §10-1-393(b), in the conduct of transactions
6 with Plaintiffs Major, Rhoden and the Class:
7

8 (5) Representing that goods or services have sponsorship, approval,
characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ;

9 * * *

10 (7) Representing that goods or services are of a particular standard, quality, or
11 grade . . . if they are of another; [and]

12 * * *

13 (9) Advertising goods or services with intent not to sell them as advertised[.]

14 151. Defendants violated the Georgia Act by representing through their advertisements of
15 the Hydroxycut Products when such representations and advertisements were unsubstantiated, false,
16 and misleading.

17 152. Defendants’ conduct, including misrepresenting the safety and efficacy of the
18 Hydroxycut Products in the course of consumer transactions, inflicted real and potential damage
19 upon Plaintiffs Major, Rhoden and the Class.
20

21 153. Thus, as a result of Defendants’ unlawful conduct, Plaintiffs Major, Rhoden and the
22 Class are entitled to judgment, full restitution and damages, including treble damages.

23 154. Plaintiffs Major, Rhoden and Class members also seek attorneys’ fees and expenses.
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COUNT VIII

For Violations of Louisiana’s Unfair Trade Practices and Consumer Protection Law, Louisiana Revised Statute §51:1401 *et seq.* and §51:411, on Behalf of Plaintiff Pennier and a Louisiana Class

155. Plaintiff Pennier repeats and realleges each and every allegation contained above as if fully set forth herein, including any and all allegations made in the original class action complaint.

156. This cause of action is brought under the Louisiana Unfair Trade Practices and Consumer Protection Law.

157. The Louisiana Unfair Trade Practices and Consumer Protection Law §51:1401 *et seq.* prohibits acts of unfair competition, which means and includes any “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce,” and further §51:411 prohibits any “untrue, deceptive, or misleading” advertising.

158. Defendants violated the Louisiana Unfair Trade Practices and Consumer Protection Law §51:1401 *et seq.*’s prohibition against engaging in an “unfair or deceptive act,” *inter alia*, engaging in the conduct alleged, including the misrepresentations, deceptive statements and omissions of the Products on the Products’ labels, in product advertisements and in other marketing materials, which information Defendants had a duty to disclose under the Louisiana Unfair Trade Practices and Consumer Protection Law, §51:1401 *et seq.*

159. Defendants also violated the Louisiana Unfair Trade Practices and Consumer Protection Law §51:1401 *et seq.*’s prohibition against engaging in “unfair or deceptive acts” by, *inter alia*, failing to warn consumers and materially omitting from its labeling, advertising, and marketing materials that the Products pose potentially serious health risks and was not effective for its intended purpose. Defendant’s conduct offends public policy and is unethical, oppressive, unscrupulous and violates the law stated. The gravity of Defendants’ alleged wrongful conduct outweighs any purported benefits attributable to such conduct. There also were reasonably available alternative dietary and weight-loss formulations that Defendants could have manufactured and distributed that did not have the same potentially serious adverse health risks and were actually effective.

1 such concealment, suppression and omission, constitute unlawful practices within the meaning of
2 Mass. Gen. Laws ch.93A, §§2 and 9.

3 168. Defendants engaged in unlawful practices by marketing and selling the Products as
4 safe and effective. In reality, however, the Products are not proven effective and exposed Plaintiff
5 Faherty and Class members to serious adverse health effects.

6 169. Defendants' unfair and deceptive acts and practices were willful and knowing.

7 170. As a result of the use and employment by Defendants of the unlawful acts, Plaintiff
8 Faherty and other Class members have suffered damages and have suffered injury, including an
9 increased risk of serious health problems, the cost of the Products, and the costs of testing their
10 health and/or medical treatment.

11 171. These unfair and deceptive acts and practices have a capacity, tendency, and/or
12 likelihood to deceive or confuse reasonable consumers in that such consumers had a good faith basis
13 for believing the Products were safe and effective.

14 172. Plaintiff Faherty and members of the Class may be irreparably harmed and/or denied
15 an effective and complete remedy if injunctive relief is not granted.

16 173. The unfair and deceptive acts and practices of Defendants, as described above,
17 present a serious threat to Plaintiff Faherty and members of the Class.

18 174. Plaintiff Faherty made a demand for relief, in writing, to Defendants at least 30 days
19 prior to filing this amended complaint, as required by Mass. Gen. Laws ch.93A, §9.

20 175. Based on the foregoing, Plaintiff Faherty and other members of the Class are entitled
21 to all remedies available pursuant to Mass. Gen. Laws ch.93A, including, but not limited to, refunds,
22 actual damages, or statutory damages in the amount of \$25 per violation, whichever is greater,
23 double or treble damages, attorneys' fees and other reasonable costs.

24 176. Pursuant to Mass. Gen. Laws ch.231, §6B, Plaintiff Faherty and other members of the
25 Class are further entitled to prejudgment interest as a direct and proximate result of Defendants'
26 wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of
27 calculation and Plaintiff Faherty and Class members are entitled to interest in an amount according
28 to proof.

COUNT X

**For Violations of the New Jersey Consumer Fraud Act, N.J. Stat. §56:8-1 *et seq.*
on Behalf of Plaintiffs Ortiz and Ronan and a New Jersey Class**

177. Plaintiffs Ortiz and Ronan repeat and allege each and every allegation contained above as if fully set forth herein.

178. This Count arises under the New Jersey Consumer Fraud Act, N.J. Stat. §56:8-1, *et seq.* (“NJCFA”), and is brought on behalf of Plaintiffs Ortiz, Ronan and members of the Class pursuant to §§56:8-19 and 56:8-2.12 of the NJCFA.

179. Section 56:8-2 provides, in relevant part:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

180. The actions and failures to act of Defendants, including the false and misleading representations, concealment, and omissions of material facts regarding the safety and efficacy of the Products, and the above-described course of fraudulent conduct and fraudulent concealment, constitute acts, uses, or employment by Defendants of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentations, and the knowing concealment, suppression or omission of material facts regarding the efficacy, value, standard, characteristics, and benefits of the Products, with the intent that others rely upon such concealment, suppression or omission of material facts in connection with the Products, in violation of the NJCFA.

181. Plaintiffs Ortiz, Ronan and other members of the Class are consumers who purchased consumer goods – the Products – pursuant to a consumer transaction for personal use and are, therefore, subject to protection under the NJCFA.

182. Defendants designed, manufactured, sold, distributed and/or advertised the Products and are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

1 183. The acts, practices, misrepresentations, concealments, and omissions by Defendants
2 made in connection with the distribution, sale, and advertisement of the Products, and with the intent
3 that others rely upon such concealment, suppression and omission, constitute unlawful practices
4 within the meaning of the NJCFA.

5 184. Defendants engaged in unlawful practices by marketing and selling the Products as
6 safe and effective. In reality, however, the Products are not proven effective and further expose
7 Plaintiffs Ortiz, Ronan and Class members, to serious adverse health effects.

8 185. Plaintiffs Ortiz, Ronan and other members of the Class are consumers who purchased
9 consumer goods – the Products – pursuant to a consumer transaction for personal use and are,
10 therefore, subject to protection under the NJCFA. Plaintiffs Ortiz, Ronan and Class members read,
11 and relied upon, the representations on the product packages, as well as Defendants’ advertising and
12 marketing materials before purchasing the Products.

13 186. As a result of the use and employment by Defendants of the unlawful acts, Plaintiffs
14 Ortiz, Ronan and other Class members have suffered damages and ascertainable loss, and have been
15 injured, including an increased risk of serious health problems, the cost of the Products, and the costs
16 of testing their health and/or medical treatment.

17 187. Under N.J. Stat. §§56:8-2.11, 56:8-2.12 and 56:8-19, Plaintiffs Ortiz, Ronan and
18 other Class members are entitled to a refund of all moneys acquired by Defendants by means of the
19 unlawful practices alleged above, as well as compensatory damages, including treble damages and
20 attorneys’ fees.

21 **COUNT XI**

22 **Violations of §349 of New York General Business Law: Deceptive Acts and Practices**
23 **on Behalf of Plaintiff Reed and a New York Class**

24 188. Plaintiff Reed repeats and realleges each and every allegation contained above as if
25 fully set forth herein.

26 189. Defendants’ unfair marketing of the Products as safe and effective and failing to warn
27 consumers of the potentially serious adverse health risks associated with consumption of the
28 Products on the Products’ labels, and in the Products’ advertising and marketing materials

1 constitutes unlawful, unfair, deceptive and fraudulent business practices in violation of §349 of New
2 York's General Business Law.

3 190. Defendants knew or should have known of the falsity of their representations and
4 omissions at all material times.

5 191. Defendants concealed or omitted mention of Products' adverse health effects to
6 consumers.

7 192. The implied and expressly represented safety and efficacy of the Products were
8 material to consumers deciding to purchase the Products.

9 193. The unfair and deceptive trade acts and practices of Defendants have directly,
10 foreseeably and proximately caused damages and injury to Plaintiff Reed and the other members of
11 the Class.

12 194. Plaintiff Reed and the other members of the Class have no adequate remedy of law.

13 195. Plaintiff Reed, on her own behalf and on behalf of a Class of New York purchasers,
14 seek injunctive relief and damages under §349 of New York's General Business Law.

15 **COUNT XII**

16 **For Violations of Pennsylvania's Unfair Trade Practices and Consumer Protection**
17 **Law, 73 Pa. Stat. §201 *et seq.* on Behalf of Plaintiff Torres and a Pennsylvania Class**

18 196. Plaintiff Torres repeats and realleges each and every allegation contained above as if
19 fully set forth herein.

20 197. This cause of action is brought under the Pennsylvania Unfair Trade Practices and
21 Consumer Protection Law, Pennsylvania Trade and Commerce 73 Pa. Stat. §201 *et seq.* (the
22 "UTPCPL").

23 198. The UTPCPL prohibits methods of unfair competition and unfair or deceptive acts
24 and practices. Plaintiff Torres and Class members come within the UTPCPL's protection as they
25 purchased the Products for personal consumption in accordance with 73 Pa. Stat. §201-9.2.

26 199. Defendants violated the UTPCPL by engaging in the following practices prohibited
27 by 73 Pa. Stat. §201-2(4) in transactions with Plaintiff Torres and Class members which were
28 intended to and did cause Plaintiff Torres and Class members to purchase Defendants' Products:

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(v) Representing that goods and services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . ;

* * *

(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

* * *

(ix) Advertising goods or services with intent not to sell them as advertised;

* * *

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

200. Defendants misrepresented the safety and efficacy of the Products and failed to warn consumers of the Products’ potentially serious adverse health risks in their advertising, marketing materials and on the Products’ packaging. Defendants had a duty not to misrepresent and to disclose this material information pursuant to DSHEA.

201. As the manufacturer and distributor of the Products, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in the Products. Thus, Defendants are in superior positions to learn of the effects and have learned of the harmful effects their Products will have on consumers. This information was not known by or available to the public. As a result, Defendants knew, should have had reason to know, or recklessly disregarded that their representations were false and misleading.

202. Defendants’ misrepresentation of the Products’ efficacy and safety and failure to warn consumers of the potentially serious adverse health risks associated with consumption of the Products in their advertising, marketing materials and on the Products’ packaging was intended to, had the capacity to, and did deceive reasonable consumers into purchasing the Products.

203. Plaintiff Torres and all Class members purchased Defendants’ Products in packages that uniformly misrepresented their safety and efficacy and/or omitted material facts, including that the Products pose potentially serious adverse health risks and the nature of those risks.

1 204. Neither Plaintiff Torres nor any of the Class members knew about or were privy to
2 any information about the potential health risks posed by Defendants' Products at the time they
3 purchased the Products.

4 205. Plaintiff Torres and Class members read and justifiably relied on the accuracy of the
5 representations on the Products' packages, as well as Defendants' advertising and marketing
6 materials in purchasing the Products.

7 206. Plaintiff Torres and Class members have been actually injured and have suffered an
8 ascertainable loss of money proximately caused by Defendants' unfair methods of competition
9 and/or unfair or deceptive acts and practices in the amount they paid for each of Defendants'
10 Products.

11 207. Plaintiff Torres and Class members therefore are entitled to actual damages in the
12 amount of the price they paid for the Products or \$100, whichever is greater.

13 208. Plaintiff Torres and Class members also are entitled to treble and/or punitive damages
14 as, among other things, Defendants' conduct was knowing, deliberate, wanton, reckless and
15 malicious, and undertaken in conscious disregard of, and reckless indifference to, Plaintiff Torres'
16 and Class members' interests. Further, Defendants' conduct caused and continues to cause
17 substantial injury to consumers. The gravity of Defendants' alleged wrongful conduct outweighs
18 any purported benefits attributable to such conduct. There are reasonably available alternative
19 dietary and weight-loss formulations that Defendants could have manufactured and distributed that
20 did not have the same potentially serious adverse health risks.

21 209. Plaintiff Torres and Class members also are entitled to equitable relief in the form of
22 restitution, including all monies paid for Defendants' Products and disgorgement of the profits
23 Defendants received from sales of the Products.

24 210. Plaintiff Torres is also entitled to an award of attorneys' fees and costs.

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COUNT XIII

For Violations of Texas’ Deceptive Trade Practices-Consumer Protection Act, V.T.C.A. §17.41, et seq. on Behalf of Plaintiff Walker and a Texas Class

211. Plaintiff Walker realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

212. This cause of action is brought under the Texas Deceptive Trade Practices – Consumer Protection Act, Texas Business and Commerce Code §17.41 *et seq.* (the “TDTP-CPA”).

213. Plaintiff Walker and Class members are “consumers” and Defendants’ Products are “goods” as defined by §17.45 of the TDTP-CPA.

214. The TDTP-CPA prohibits false, misleading and deceptive acts and practices.

215. Defendants violated the TDTP-CPA by engaging in the following practices prohibited by §17.46(b) in transactions with Plaintiff Walker and Class members which were intended to and did cause Plaintiff Walker and Class members to purchase Defendants’ Products:

(5) representing that goods and services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ;

* * *

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

* * *

(9) advertising goods or services with intent not to sell them as advertised;

* * *

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed[.]

216. Defendants’ false, misleading and deceptive acts or practices were made in connection with the advertisement and sale of goods within the scope of the TDTP-CPA.

1 217. Defendants misrepresented the safety of the Products and failed to warn consumers of
2 the Products' potentially serious adverse health risks in their advertising, marketing and on the
3 Products' packaging.

4 218. Defendants' acts, omissions, misrepresentations, practices and non-disclosures, as
5 alleged herein, also constitute "unconscionable" business acts or practices within the meaning of the
6 TDTP-CPA. Defendants took advantage of Plaintiff Walker's and Class members' lack of
7 knowledge, ability, experience and/or capacity to a grossly unfair degree by misrepresenting the
8 safety of the Products and failing to warn consumers of the Products' potentially serious adverse
9 health risks in their advertising, marketing materials and on the Products' packaging. As the
10 manufacturer and distributor of the Products, Defendants possess specialized knowledge regarding
11 the content and effects of the "proprietary blend" of ingredients contained in the Products and are in
12 superior positions to learn of the effects and have learned of the harmful effects their Products will
13 have on consumers. This information was not known by or available to the public. Further, this
14 information was not widely disseminated among Defendants' employees, but was known only to
15 higher level employees within the Companies that had reason to know of such information. As a
16 result, Defendants knew, should have had reason to know, or recklessly disregarded that their
17 representations were false, misleading and deceptive. Further, there is a gross disparity between the
18 value consumers received and the price they paid for Defendants' Products given the potentially
19 serious health risks associated with consumption of the Products.
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23 219. Defendants' misrepresentation of the Products' efficacy, safety and failure to warn
24 consumers of the potentially serious adverse health risks associated with consumption of the
25 Products in their advertising, marketing and on the Products' packaging was intended to, had the
26 capacity to and did, deceive Plaintiff Walker and Class members into purchasing the Products.
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1 220. Plaintiff Walker and all Class members purchased Defendants' Products in packages
2 that uniformly misrepresented their safety and/or omitted material facts including that the Products
3 pose potentially serious adverse health risks and the nature of those risks.

4 221. Neither Plaintiff Walker nor any of the Class members knew about or were privy to
5 any information about the potential health risks posed by Defendants' Products at the time they
6 purchased the Products.

7 222. Plaintiff Walker and the Class members read the representations on the Products'
8 packages and relied on them, as well as Defendants' advertising and marketing materials in
9 purchasing the Products.

10 223. Plaintiff Walker and the Class members are entitled to equitable relief in the form of
11 restitution, including all monies paid for Defendants' Products and disgorgement of the profits
12 Defendants received from sales of the Products.

13 224. Pursuant to §17.505 of the TDTP-CPA, Plaintiff Walker has notified Defendants in
14 writing of the particular violations of the TDTP-CPA and demanded Defendants rectify the actions
15 described above by providing complete monetary relief, agreeing to be bound by its legal obligations
16 and providing notice to all affected consumers of its intent to do so. Plaintiff Walker sent this notice
17 by certified mail, return receipt requested, to Defendants' principal places of business.

18 225. If Defendants fail to rectify or agree to rectify the situation by providing full
19 monetary relief and providing notice to all affected consumers within 60 days of the date of the
20 written notification pursuant to §17.505 of the TDTP-CPA, Plaintiff Walker will seek actual, treble
21 and punitive damages.

22 226. Plaintiff Walker and the Class also are entitled to an award of attorneys' fees and
23 costs.

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COUNT XIV

For Violations of West Virginia’s Consumer Credit and Protection Act, W. Va. Code §46A-6-101 et seq. on Behalf of Plaintiff Hawkins and a West Virginia Class

227. Plaintiff Hawkins restates and realleges every allegation herein as if repeated verbatim;

228. This cause of action is brought under the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-6-101 et seq. (the “West Virginia Act”).

229. Plaintiff Hawkins and all Class members are “consumers” and the subject transactions are all “consumer transactions” pursuant to §46A-6-102(2) of the West Virginia Act.

230. Defendants violated the West Virginia Act, which pertains to unfair methods of competition and unfair or deceptive acts or practices, in that Plaintiff Hawkins and members of the Class purchased and used Hydroxycut Products, and thereby suffered ascertainable loss as a result of Defendant’s actions in violation of the West Virginia Act, as set forth below.

231. Defendants’ conduct constitutes the employment of unfair and deceptive acts and practices as identified at W.Va. Code §46A-6-102(7), including, but not limited to:

- (a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. W.Va. Code §46A-6-102(7)(B);
- (b) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have W.Va. Code §46A-6-102(7)(E);
- (c) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another. W.Va. Code §46A-6-102(7)(G);
- (d) Advertising goods or services with intent not to sell them as advertised. W.Va. Code §46A-6-102(7)(I);

- 1 (e) Engaging in any other conduct which similarly creates a likelihood of
- 2 confusion or of misunderstanding. W.Va. Code §46A-6-102(7)(L);
- 3 (f) The act, use or employment by any person of any deception, fraud, false
- 4 pretense, false promise or misrepresentation, or the concealment, suppression
- 5 or omission of material facts with intent that others rely upon such
- 6 concealment, suppression or omission, in connection with the sale or
- 7 advertisement of any goods or services, whether or not any person has in fact
- 8 been misled, deceived or damaged thereby. W.Va. Code §46A-6-102(7)(M);
- 9 and
- 10 (g) Advertising, printing, displaying, publishing, distributing or broadcasting, or
- 11 causing to be advertised, printed, displayed, published, distributed or
- 12 broadcast in any manner, any statement or representation with regard to the
- 13 sale of goods or the extension of consumer credit including the rates, terms or
- 14 conditions for the sale of such goods or the extension of such credit, which is
- 15 false, misleading or deceptive or which omits to state material information
- 16 which is necessary to make the statements therein not false, misleading or
- 17 deceptive. W.Va. Code §46A-6-102(7)(N).

18 232. Defendants' misrepresentations, concealments, and omissions constitute

19 unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation and/or the

20 knowing concealment, suppression, or omission of material facts with the intent that others rely on

21 such concealment, suppression, or omission in connection with the sale and advertisement of

22 Hydroxycut Products in violation of these statutes.

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24 233. As a result of the acts of these unfair and deceptive trade practices and/or ongoing,

25 like pattern and practice of consumer fraud described above, Plaintiff Hawkins and Class members

26 have suffered ascertainable loss and damages including, but not limited to, the purchase price of the

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1 Products, for which Defendant is liable to Plaintiff Hawkins and the Class for their ascertainable
2 losses.

3 234. Plaintiff Hawkins and the Class are also entitled to attorneys' fees and costs.

4 **COUNT XV**

5 **Breach of Express Warranty**
6 **on Behalf of Plaintiffs and the Class**

7 235. Plaintiffs reallege and incorporate by reference the allegations contained in the
8 paragraphs above as if fully set forth herein.

9 236. Each Plaintiff brings this Count for breach of express warranty on behalf of himself
10 or herself as a nationwide Class or in the alternative on behalf of a Class of similarly situated persons
11 from his or her respective state of residence.

12 237. The Uniform Commercial Code §2-313 provides that an affirmation of fact or
13 promise, including a description of the goods, becomes part of the basis of the bargain and creates an
14 express warranty that the goods shall conform to the promise and to the description.

15 238. Plaintiffs, and each member of the Class, formed a contract with Defendants at the
16 time Plaintiffs and the other members of the Class purchased the Products. The terms of that
17 contract include the promises and affirmations of fact made by Defendants on the Products' labels
18 and through Defendants' marketing campaign, as described above. The Products' labeling and
19 advertising constitutes an express warranty, became part of the basis of the bargain, and is part of a
20 standardized contract between Plaintiffs and the members of the Class on the one hand, and
21 Defendants on the other.

22 239. At all times, California and the following 48 states, including the District of
23 Columbia, have codified and adopted the provisions the Uniform Commercial Code governing the
24 express warranty of merchantability: Ala. Code 1975 §7-2-313; Alaska Stat. §45.02.313; Ariz. Rev.
25 Stat. §47-2313; Ark. Code Ann. §4-2-313; Cal. Com. Code §2313; Colo. Rev. Stat. Ann. §4-2-313;
26 Conn. Gen. Stat. §42a-313; Del. Code Ann. tit. 6 §2-313; D.C. Code §28:2-313; Fla. Stat. Ann.
27 §672.313; Ga. Code Ann. §11-2-313; Haw. Rev. Stat. §490:2-313; Idaho Code Ann. §28-2-313;
28 810 Ill. Comp. Stat. 5/2-313; Ind. Code. Ann. §26-1-2-313; Iowa Code Ann. §554.2313; Kansas

1 245. Each Plaintiff brings this Count for breach of implied warranty on behalf of himself
2 or herself as a nationwide Class or in the alternative on behalf of a Class of similarly situated persons
3 from his or her respective state of residence.

4 246. The Uniform Commercial Code §2-314 provides that, unless excluded or modified, a
5 warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a
6 merchant with respect to goods of that kind.

7 247. Defendants are in the business of manufacturing, marketing and selling dietary
8 supplements for the benefit of consumers.

9 248. By placing the Products in the stream of commerce, Defendants impliedly warranted
10 that the Products are effective and reasonably safe for their intended use, *i.e.*, to be used for weight
11 loss.

12 249. Defendants' Products are not merchantable. In breach of their implied warranty,
13 Defendants' Products are unsafe and ineffective.

14 250. Defendants' Products were not reasonably safe for their intended use when they left
15 Defendants' control and entered the market.

16 251. The Products' defects were not open or obvious to consumers.

17 252. The Products cause serious and even fatal health problems, have not been proven
18 effective for their intended uses, and are not effective for their intended uses.

19 253. At all times, California and the following 48 states, including the District of
20 Columbia, have codified and adopted the provisions the Uniform Commercial Code governing the
21 implied warranty of merchantability: Ala. Code §7-2-314; Alaska Stat. §45.02.314; Ariz. Rev. Stat.
22 §47-2314; Ark. Code Ann. §4-2-314; Cal. Com. Code §2314; Colo. Rev. Stat. Ann. §4-2-314; Conn.
23 Gen. Stat. §42a-2-314; Del. Code Ann. tit. 6, §2-314; D.C. Code §28:2-314; Fla. Stat. Ann.
24 §672.314; Ga. Code. Ann. §11-2-314; Haw. Rev. Stat. §490:2-314; Idaho Code Ann. §28-2-314;
25 810 Ill. Comp. 810, 5/2-314; Ind. Code. Ann. §26-1-2-314; Iowa Code Ann. §554.2314; Kansas Stat.
26 Ann. §84-2-314; Ky. Rev. Stat. Ann. §355.2-314; La. Civ. Code Ann. art. §2520; Me. Rev. Stat.
27 Ann. tit. 11, §2-314; Md. Com. Law Code Ann. §2-314; Mass. Gen. Laws ch.106, §2-314; Mich.
28 Comp. Laws Ann. §440.2314; Minn. Stat. Ann. §336.2-314; Miss. Code. Ann. §75-2-314; Mo. Rev.

1 Stat. §400.2-314; Mont. Code. Ann. §30-2-314; Nev. Rev. Stat. Ann. §104.2314; N.H. Rev. Stat.
2 Ann. §382-A:2-314; N.J. Stat. Ann. §12A:2-314; N.M. Stat. Ann. §55-2-314; N.Y. U.C.C. Law §2-
3 314; N.C. Gen. Stat. Ann. §25-2-314; N.D. Cent. Code §41-02-31; Ohio Rev. Code Ann. §1302.27;
4 Okla. Stat. Ann. tit. 2A, §2-314; Or. Rev. Stat. §72.3140; Pa. Stat. Ann. §2314; R.I. Gen. Laws §6A-
5 2-314; S.C. Code Ann. §36-2-314; S.D. Stat. 57A-2-314; Tenn. Code Ann. §47-2-314; Tex. Bus. &
6 Com. Code Ann. §2.314; Utah Code Ann. §70A-2-314; Va. Code Ann. §8.2-314; Vt. Stat. Ann. tit.
7 9A, §2-314; W. Va. Code §46-2-314; Wis. Stat. Ann. §402.314; and Wyo. Stat. Ann. §34.1-2-314.

8 254. Further, the Products are “goods,” as defined in the various states’ commercial codes
9 governing the implied warranty of merchantability.

10 255. As designers, manufacturers, licensors, producers, marketers, and sellers of the
11 Products, Defendants are “merchants” within the meaning of the various states’ commercial codes
12 governing the implied warranty of merchantability.

13 256. As merchants of the Products, Defendants knew that purchasers relied upon them to
14 design, manufacture, license and sell dietary supplements that were effective for their intended use
15 and reasonably safe.

16 257. As a result of Defendants’ breach of implied warranties, Plaintiffs and Class members
17 have sustained damages.

18 **COUNT XVII**

19 **Unjust Enrichment**
20 **on Behalf of Plaintiffs and the Class**

21 258. Plaintiffs repeat and reallege each and every allegation contained above as if fully set
22 forth herein.

23 259. At all times relevant hereto, Defendants designed, manufactured, licensed, produced,
24 promoted, marketed and/or sold the ineffective and dangerous dietary supplement Products.

25 260. Plaintiffs and members of the Class conferred upon Defendants non-gratuitous
26 payments for Products that may expose them to serious illnesses. Defendants accepted or retained
27 the non-gratuitous benefits conferred by Plaintiffs and members of the Class, with full knowledge
28 and awareness that, as a result of Defendants’ unconscionable wrongdoing, Plaintiffs and members

1 of the Class were not receiving Products of the quality, nature, fitness or value that had been
2 represented by Defendants and reasonable consumers would have expected.

3 261. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiffs and
4 members of the Class under these circumstances made Defendants' retention of the non-gratuitous
5 benefits unjust and inequitable.

6 262. Because Defendants' retention of the non-gratuitous benefits conferred by Plaintiffs
7 and members of the Class is unjust and inequitable, Plaintiffs and members of the Class are entitled
8 to, and hereby seek disgorgement and restitution of Defendants' wrongful profits, revenue, and
9 benefits in a manner established by the Court.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs pray for a judgment:

12 A. Certifying the Classes as requested herein;

13 B. That the Court adjudge and decree that Defendants have engaged in the conduct
14 alleged herein;

15 C. Awarding Plaintiffs and the proposed Class members damages;

16 D. Awarding restitution and disgorgement to Plaintiffs and the other Class members;

17 E. Awarding declaratory and injunctive relief as permitted by law or equity, including:
18 enjoining Defendants from continuing the unlawful practices as set forth herein, and directing
19 Defendants to identify, with Court supervision, victims of their conduct and pay them restitution and
20 disgorgement of all monies acquired by Defendants by means of any act or practice declared by this
21 Court to be wrongful;

22 F. Awarding Plaintiffs and the Classes punitive damages;

23 G. Ordering Defendants to engage in a corrective advertising campaign, including
24 warning Class members of the health risks presented by the Products;

25 H. Awarding attorneys' fees and costs; and

26 I. Providing such further relief as may be just and proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: December 22, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 22, 2009.

s/ Timothy G. Blood
TIMOTHY G. BLOOD

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