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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MICHELE MCCARTHY, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

CHARLOTTE’S WEB HOLDINGS,
INC., a Colorado Corporation,

Defendant.

Civil Action

No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Michele McCarthy (“Plaintiff”), through her undersigned attorneys,
Barbat, Mansour & Suci PLLC, Kohn, Swift & Graf, P.C. and Greg Coleman
Law PC, brings this Class Action Complaint against Defendant Charlotte’s Web
Holdings, Inc. (“Defendant”), individually and on behalf of all others similarly

1 situated, and complains and alleges upon personal knowledge as to herself and her
2 own acts and experiences and, as to all other matters, upon information and belief,
3 including investigation conducted by her attorneys:
4

5 **NATURE OF THE ACTION**

6 1. This is a civil class action brought individually by Plaintiff on behalf
7 of consumers who purchased Defendant’s “CBD Oils”, “CBD Liquid Capsules”,
8 “CBD Gummies”, and “CBD Isolate” (collectively the “CBD Products” or the
9 “Products”)¹ all of which are promoted as products containing cannabidiol (CBD),
10 for personal use and not for resale.
11

12 2. Defendant’s Products, however, are illegal to sell.

13 3. Defendant formulates, manufactures, advertises, and sells the CBD
14 Products throughout the United States, including in the State of California.
15

16 4. The CBD (cannabidiol) Product market is a multibillion-dollar business
17 enterprise that is lucrative for its market participants and is expected to further
18 expand into a \$16 billion-dollar industry by 2025.²
19

20 5. With knowledge of growing consumer demand for CBD Products,
21 Defendant has intentionally marketed and sold illegal CBD products.
22

23
24
25 ¹ The Products contain numerous different flavors and dosages.

26 ² <https://www.forbes.com/sites/irisdorbian/2019/03/12/cbd-market-could-pull-in-16-bln-by-2025-says-study/#69e764bb3efd> Last Visited on November 30, 2019.
27

1 6. Defendant’s multiple and prominent systematic mislabeling of the
2 Products form a pattern of unlawful and unfair business practices that harms the
3 public.

4
5 7. Accordingly, Plaintiff and each of the Class members have suffered an
6 injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading
7 practices as set forth herein, and seek compensatory damages and injunctive relief.
8

9 8. Plaintiff brings this suit to halt the unlawful sales and marketing of the
10 CBD Products by Defendant and for damages she sustained as a result. Given the
11 massive quantities of the Products sold all over the country, this class action is the
12 proper vehicle for addressing Defendant’s misconduct and for attaining needed relief
13 for those affected.
14

15 9. Plaintiff and each of the Class members accordingly suffered an injury
16 in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set
17 forth herein, and seek compensatory damages, statutory damages, and declaratory
18 and injunctive relief.
19
20

21 **JURISDICTION AND VENUE**

22 10. This Court has original jurisdiction over this controversy pursuant to 28
23 U.S.C. § 1332(d). The amount in controversy in this class action exceeds
24 \$5,000,000, exclusive of interest and costs, and there are numerous Class members
25 who are citizens of states other than Defendant’s states of citizenship.
26
27

1 11. This Court has personal jurisdiction over Defendant in this matter. The
 2 acts and omissions giving rise to this action occurred in the state of California.
 3 Defendant has been afforded due process because it has, at all times relevant to this
 4 matter, individually or through its agents, subsidiaries, officers and/or
 5 representatives, operated, conducted, engaged in and carried on a business venture
 6 in this state and/or maintained an office or agency in this state, and/or marketed,
 7 advertised, distributed and/or sold products, committed a statutory violation within
 8 this state related to the allegations made herein, and caused injuries to Plaintiff and
 9 putative Class Members, which arose out of the acts and omissions that occurred in
 10 the state of California, during the relevant time period, at which time Defendant was
 11 engaged in business activities in the state of California.

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 15 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and
 16 (c) because a substantial part of the events or omissions giving rise to Plaintiff's
 17 claims occurred in this District and because Defendant transacts business and/or has
 18 agents within this District and has intentionally availed itself of the laws and markets
 19 within this district.
 20
 21

PARTIES

22
 23 13. Plaintiff Michele McCarthy is a citizen of California who resides in
 24 Boulder Creek, California. On May 17, 2019, Plaintiff purchased CBD Oil in olive
 25 oil flavor for \$254.77 from Defendant's website, charlottesweb.com. If Plaintiff
 26
 27

1 knew the Products were not legally sold in the United States, Plaintiff would have
2 not purchased them.

3 14. Defendant Charlotte's Web Holdings, Inc. is a Colorado corporation
4 with its principal place of business at 1600 Pearl St., Ste. 300, Boulder, CO 80302.
5

6 **FACTUAL ALLEGATIONS**

7 15. At all relevant times, Defendant has marketed its Products in a
8 consistent and uniform manner. Defendant sells the Products in all 50 states on its
9 website and through various distributors.
10

11 **DEFENDANT'S ILLEGAL PRODUCTS**

12 16. On November 22, 2019, the United States Food & Drug Administration
13 sent roughly 15 Warning Letters discussing numerous violations of CBD products,
14 including but not limited to; Dietary Supplement Labeling, Unapproved New Drugs,
15 Misbranded Drugs, Adulterated Human Foods, Unapproved New Animal Drugs,
16 and Adulterated Animal Foods. All of these violations of the Food, Drug and Cosmetic
17 Act make CBD products illegal to sell.³
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24 ³ See https://www.fda.gov/news-events/press-announcements/fda-warns-15-companies-illegally-selling-various-products-containing-cannabidiol-agency-details?utm_campaign=112519_Statement_FDA%20warns%20companies%20for%20illegally%20selling%20various%20products%20containing%20cannabidiol&utm_medium=email&utm_source=Eloqua Last visited November 27, 2019.
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1 **Dietary Supplement Labeling**

2 17. All of Defendant’s Products are mislabeled as Dietary Supplements or
3 contain the illegal dietary ingredient CBD. Every product contains a Supplement
4 Facts section on the back of the container which is reserved for dietary
5 supplements and explicitly state “Dietary Supplement” on the front of the
6 packaging.
7

8 18. The FDA has stated that CBD may not be labeled as a dietary
9 ingredient or legally be contained within a dietary supplement⁴:
10

- 11 • The FDA has approved only one CBD product, a prescription drug product to treat
- 12 two rare, severe forms of epilepsy.
- 13 • It is currently illegal to market CBD by adding it to a food or labeling it as a dietary
- 14 supplement.
- 15 • The FDA has seen only limited data about CBD safety and these data point to real
- 16 risks that need to be considered before taking CBD for any reason.

17 19. Defendant’s Products cannot be dietary supplements because they do
18 not meet the definition of a dietary supplement under section 201(ff) of the FD&C
19 Act, 21 U.S.C. 321(ff). The FDA has concluded, based on available evidence, that
20 CBD products are excluded from the dietary supplement definition under sections
21 201(ff)(3)(B)(i) and (ii) of the FD&C Act, 21 U.S.C. 321(ff)(3)(B)(i) and (ii).
22
23

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25 _____
26 ⁴ See <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>
27 Last Visited November 27, 2019.

1 Under those provisions, if an article (such as CBD) is an active ingredient in a drug
2 product that has been approved under section 505 of the FD&C Act, 21 U.S.C.
3 355, or has been authorized for investigation as a new drug for which substantial
4 clinical investigations have been instituted and for which the existence of such
5 investigations has been made public, then products containing that substance are
6 outside the definition of a dietary supplement. There is an exception if the
7 substance was “marketed as” a dietary supplement or as a conventional food before
8 the new drug investigations were authorized; however, based on the evidence
9 available to the FDA, the FDA has concluded that this is not the case for
10 CBD. The FDA is not aware of any evidence that would call into question its
11 current conclusion that CBD products are excluded from the dietary supplement
12 definition under sections 201(ff)(3)(B)(i) and (ii) of the FD&C Act.
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16

17 20. Defendant’s conduct is also deceptive, unfair, and unlawful in that it
18 violates the prohibition against the sale of adulterated and misbranded products
19 under California’s Sherman Laws, which adopt the federal labeling regulations as
20 the food labeling requirements of the state. Cal. Health & Safety Code § 110100.
21

22 21. The introduction of adulterated and misbranded food into interstate
23 commerce is prohibited under the FDCA and the parallel state statute cited in this
24 Class Action Complaint.
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1 22. Plaintiff and Class Members would not have purchased the Products or
2 would have paid less for the Products if they were aware of the misleading labeling
3 of the Products by Defendant.

4
5 23. Defendant intended for Plaintiff and the Class members to be deceived
6 or misled.

7
8 24. Defendant’s deceptive and misleading practices proximately caused
9 harm to the Plaintiff and the Class.

10 25. Plaintiff and Class members would not have purchased the Products, or
11 would have not paid as much for the Products, had they known the truth about the
12 mislabeled and falsely advertised Products.

13
14 **CLASS ACTION ALLEGATIONS**

15 26. Plaintiff brings this action individually and as representatives of all
16 those similarly situated, pursuant to Federal Rule of Civil Procedure 23, on behalf
17 of the below-defined Class:

18
19 **National Class: All persons in the United States who purchased the**
20 **Products.**

21 27. In the alternative, Plaintiff brings this action on behalf of the following
22 State Class:

23
24 **California State Sub-Class: All persons in the State of California who**
25 **purchased the Products.**

1 28. Excluded from the Classes are: (1) Defendant, and any entity in which
2 Defendant has a controlling interest or which have a controlling interest in
3 Defendant; (2) Defendant's legal representatives, assigns and successors; and (3) the
4 judge(s) to whom this case is assigned and any member of the judge's immediate
5 family.
6

7 29. Plaintiff reserves the right to redefine the Class(es), and/or requests for
8 relief.
9

10 30. Certification of Plaintiff's claims for class-wide treatment is
11 appropriate because Plaintiff can prove the elements of her claims on a class-wide
12 basis using the same evidence as would be used to prove those elements in individual
13 actions alleging the same claims.
14

15 31. The members of the proposed Class(es) are so numerous that joinder of
16 all members is impracticable.
17

18 32. The exact number of Class members is unknown. Due to the nature of
19 the trade and commerce involved, as well as the number of online and direct
20 complaints, Plaintiff believes the Class consists of thousands of consumers.
21

22 33. Common questions of law and fact affect the right of each Class
23 member, and a common relief by way of damages is sought for Plaintiff and Class
24 members.
25

1 34. Common questions of law and fact that affect Class members include,
2 but are not limited to:

- 3 a. Whether the Products, when used by consumers in a normal and
4 customary manner and/or in accordance with Defendant's suggested
5 use, works as advertised, marketed, and conveyed to consumers;
- 6 b. Whether, in the course of business, Defendant represented that the
7 Products have characteristics, uses, benefits, or qualities that they do
8 not have when used by consumers in a normal and customary manner
9 and/or in accordance with Defendant's suggested use;
- 10 c. Whether the claims Defendant made and is making regarding the
11 Products are unfair or deceptive; specifically, whether the Products
12 were illegally labeled as dietary supplements;
- 13 d. Whether Defendant knew at the time the consumer transactions took
14 place that consumers would not receive the promised benefits of the
15 Products that Defendant was claiming they would receive;
- 16 e. Whether Defendant knowingly made misleading statements in
17 connection with consumer transactions that reasonable consumers were
18 likely to rely upon to their detriment;
- 19 f. Whether Defendant knew or should have known that the
20 representations and advertisements regarding the Products were
21 unsubstantiated, false, and misleading;
- 22 g. Whether Defendant has breached express and implied warranties in the
23 sale and marketing of the Products;
- 24 h. Whether Defendant's conduct violates public policy;
- 25 i. Whether Defendant's acts and omissions violates California law;
- 26 j. Whether Defendant has been unjustly enriched by the sale of the
27 Products to the Plaintiff and the Class Members;
- 28

1 k. Whether Plaintiff and the Class Members did not receive the benefit of
2 their bargain when purchasing the Products;

3 l. Whether the Plaintiff and the Class Members suffered monetary
4 damages, and, if so, what is the measure of those damages;

5 m. Whether Plaintiff and the Class Members are entitled to an injunction,
6 damages, restitution, equitable relief, and other relief deemed
7 appropriate, and, if so, the amount and nature of such relief.

8 35. Defendant engaged in a common course of conduct giving rise to the
9 legal rights sought to be enforced by Plaintiff, on behalf of herself and the other
10 Class members. Similar or identical statutory and common law violations, business
11 practices, and injuries are involved. Individual questions, if any, are pale by
12 comparison, in both quality and quantity, to the numerous common questions that
13 dominate this action.
14

15 36. Additionally, the factual basis of Defendant's conduct is common to all
16 Class members and represents a common thread of misconduct resulting in injury
17 and damages to all members of the Class.
18

19 37. The named Plaintiff will fairly and adequately assert and protect the
20 interests of the Class. Specifically, she has hired attorneys who are experienced in
21 prosecuting class action claims and will adequately represent the interests of the
22 Class; and they have no conflict of interests that will interfere with the maintenance
23 of this class action.
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- 1 a. The common questions of law and fact set forth herein predominate
2 over any questions affecting only individual Class members;
- 3 b. The Class is so numerous as to make joinder impracticable but not so
4 numerous as to create manageability problems;
- 5 c. There are no unusual legal or factual issues which would create
6 manageability problems, and depending on discovery, manageability
7 will not be an issue as much information is solely in Defendant’s
8 possession;
- 9 d. Prosecution of separate actions by individual members of the Class
10 would create a risk of inconsistent and varying adjudications against
11 Defendant when confronted with incompatible standards of conduct;
- 12 e. Adjudications with respect to individual members of the Class could,
13 as a practical matter, be dispositive of any interest of other members
14 not parties to such adjudications, or substantially impair their ability to
15 protect their interests; and
- 16 f. The claims of the individual Class members are small in relation to the
17 expenses of litigation, making a Class action the only procedure in
18 which Class members can, as a practical matter, recover. However, the
19 claims of individual Class members are collectively large enough to
20 justify the expense and effort in maintaining a class action.

CAUSES OF ACTION

COUNT I

**California’s Unfair Competition Law
Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”)
(On Behalf of the California State Sub-Class)**

21 38. Plaintiff realleges and incorporates by reference the allegations
22 contained in Paragraphs 1 through 37, as though set forth fully herein.
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1 39. The UCL prohibits any “unlawful, unfair or fraudulent business act or
2 practice.” Cal. Bus. & Prof. Code § 17200.

3 40. The acts, omissions, misrepresentations, practices, and non-disclosures
4 of Defendant as alleged herein constitute business acts and practices.
5

6 41. Unlawful: The acts alleged herein are “unlawful” under the UCL in
7 that they violate at least the following laws:
8

9 a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;

10 b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;

11 c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.;

12 and

13 d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health &
14 Safety Code §§ 110100 et seq.

15 42. Unfair: Defendant’s conduct with respect to the labeling, advertising,
16 and sale of the Products was “unfair” because Defendant’s conduct was immoral,
17 unethical, unscrupulous, or substantially injurious to consumers and the utility of
18 their conduct, if any, does not outweigh the gravity of the harm to their victims.
19

20 43. Defendant’s conduct with respect to the labeling, advertising, and sale
21 of the Products was and is also unfair because it violates public policy as declared
22 by specific constitutional, statutory or regulatory provisions, including but not
23 limited to the applicable sections of: the Consumers Legal Remedies Act, the False
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1 Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the California
2 Sherman Food, Drug, and Cosmetic Law.

3 44. Defendant's conduct with respect to the labeling, advertising, and sale
4 of the Products was and is unfair because the consumer injury was substantial, not
5 outweighed by benefits to consumers or competition, and not one consumer
6 themselves could reasonably have avoided.
7

8 45. Fraudulent: A statement or practice is "fraudulent" under the UCL if it
9 is likely to mislead or deceive the public, applying an objective reasonable consumer
10 test.
11

12 46. As set forth herein, Defendant's claims relating the ingredients stated
13 on the Products' labeling and moreover that the Products are labeled as illegal dietary
14 supplements is likely to mislead reasonable consumers to believe the Products are
15 legal to purchase.
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18 47. Defendant profited from its sale of the falsely, deceptively, and
19 unlawfully advertised and packaged Products to unwary consumers.
20

21 48. Plaintiff and Class Members are likely to continue to be damaged by
22 Defendant's deceptive trade practices, because Defendant continues to disseminate
23 misleading information on the Products' packaging. Thus, injunctive relief
24 enjoining Defendant's deceptive practices is proper.
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1 49. Defendant’s conduct caused and continues to cause substantial injury
2 to Plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a
3 result of Defendant’s unlawful conduct.
4

5 50. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
6 enjoining Defendant from continuing to conduct business through unlawful, unfair,
7 and/or fraudulent acts and practices, and to commence a corrective advertising
8 campaign.
9

10 51. Plaintiff and the Class also seek an order for and restitution of all
11 monies from the sale of the Products, which were unjustly acquired through acts of
12 unlawful competition.
13

14 **COUNT II**
15 **California’s False Advertising Law**
16 **Cal. Bus. & Prof. Code § 17500 (“FAL”)**
17 **(On Behalf of the California State Sub-Class)**

18 52. Plaintiff realleges and incorporates by reference paragraphs 1 through
19 37 as if fully set forth herein.

20 53. The FAL provides that “[i]t is unlawful for any person, firm,
21 corporation or association, or any employee thereof with intent directly or indirectly
22 to dispose of real or personal property or to perform services” to disseminate any
23 statement “which is untrue or misleading, and which is known, or which by the
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1 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus.
2 & Prof. Code § 17500.

3 54. It is also unlawful under the FAL to disseminate statements concerning
4 property or services that are “untrue or misleading, and which is known, or which
5 by the exercise of reasonable care should be known, to be untrue or misleading.” Id.
6

7 55. As alleged herein, the advertisements, labeling, policies, acts, and
8 practices of Defendant relating to the Products misled consumers acting reasonably
9 as to the ingredients and effectiveness of the Products and moreover because the
10 Products are illegally labeled as dietary supplements.
11

12 56. Plaintiff suffered injury in fact as a result of Defendant’s actions as set
13 forth herein because she purchased the Products in reliance on Defendant’s false and
14 misleading labeling claims that the Products, among other things, contained the
15 ingredients stated on the Products’ labeling and moreover that the Products were
16 legal dietary supplements as claimed on the Products’ labeling and Defendant’s
17 website.
18

19 57. Defendant’s business practices as alleged herein constitute deceptive,
20 untrue, and misleading advertising pursuant to the FAL because Defendant has
21 advertised the Products in a manner that is untrue and misleading, which Defendant
22 knew or reasonably should have known, and omitted material information from its
23 advertising.
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1 58. Defendant profited from its sale of the falsely and deceptively
2 advertised Products to unwary consumers.

3 59. As a result, Plaintiff, the California Sub-Class, and the general public
4 are entitled to injunctive and equitable relief, restitution, and an order for the
5 disgorgement of the funds by which Defendant was unjustly enriched.
6

7 60. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of
8 herself and the California Sub-Class, seeks an order enjoining Defendant from
9 continuing to engage in deceptive business practices, false advertising, and any other
10 act prohibited by law, including those set forth in this Complaint.
11

12
13 **COUNT III**
14 **California’s Consumer Legal Remedies Act**
15 **Cal. Civ. Code § 1750 et seq. (“CLRA”)**
16 **(On Behalf of the California State Sub-Class)**

17 61. Plaintiff realleges and incorporates by reference paragraphs 1 through
18 37 as if fully set forth herein.

19 62. The CLRA prohibits deceptive practices in connection with the conduct
20 of a business that provides goods, property, or services primarily for personal,
21 family, or household purposes.
22

23 63. Defendant’s false and misleading labeling and other policies, acts, and
24 practices were designed to, and did, induce the purchase and use of the Products for
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1 personal, family, or household purposes by Plaintiff and Class Members, and
2 violated and continue to violate the following sections of the CLRA:

- 3 a. § 1770(a)(5): representing that goods have characteristics, uses, or
4 benefits which they do not have;
- 5 b. § 1770(a)(7): representing that goods are of a particular standard,
6 quality, or grade if they are of another;
- 7 c. § 1770(a)(9): advertising goods with intent not to sell them as
8 advertised; and
- 9 d. § 1770(a)(16): representing the subject of a transaction has been
10 supplied in accordance with a previous representation when it has not.

11 64. Defendant profited from the sale of the falsely, deceptively, and
12 unlawfully advertised Products to unwary consumers.

13 65. Defendant's wrongful business practices constituted, and constitute, a
14 continuing course of conduct in violation of the CLRA.

15 66. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will
16 provide a letter to Defendant concurrently with the filing of this Class Action
17 Complaint or shortly thereafter with notice of its alleged violations of the CLRA,
18 demanding that Defendant correct such violations, and providing it with the
19 opportunity to correct its business practices. If Defendant does not thereafter correct
20 its business practices, Plaintiff will amend (or seek leave to amend) the complaint to
21 add claims for monetary relief, including restitution and actual damages under the
22 Consumers Legal Remedies Act.
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1 67. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive
2 relief, her reasonable attorney fees and costs, and any other relief that the Court
3 deems proper.
4

5 **COUNT IV**
6 **Breach of Express Warranties**
7 **Cal. Com. Code § 2313(1)**
8 **(On Behalf of the California State Sub-Class)**

9 68. Plaintiff realleges and incorporates by reference paragraphs 1 through
10 37 as if fully set forth herein.

11 69. Through the Products’ labels and advertising, Defendant made
12 affirmations of fact or promises, or description of goods, described above, which
13 were “part of the basis of the bargain,” in that Plaintiff and the Class purchased the
14 Products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).
15

16 70. Defendant breached the express warranties by selling Products that do
17 not and cannot provide the promised benefits and moreover by selling Products that
18 are illegally labeled as dietary supplements.
19

20 71. Plaintiff and the Class Members would not have purchased the Products
21 had they known the true nature of the Products’ ingredients and what the Products
22 contained and that the Products are illegally labeled as dietary supplements.
23

24 72. That breach actually and proximately caused injury in the form of the
25 lost purchase price that Plaintiff and Class members paid for the Products.
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1 73. Furthermore, Defendant had actual knowledge of the defect in the
2 Products purchased by Plaintiff, as well as the Products purchased by other members
3 of the Class, because it had actual knowledge of the nature, ingredients and qualities
4 of the ingredients in its Products by virtue of its own Products' testing and it knows
5 that the affirmations and representations it makes concerning the nature, benefits,
6 ingredients and quantities on the Products' labeling and Defendant's website and
7 advertising is false.
8

9
10 74. As a result of Defendant's breach of warranty, Plaintiff and Class
11 Members have been damaged in the amount of the purchase price of the Products
12 and any consequential damages resulting from the purchases.
13

14 **COUNT V**
15 **Breach of Implied Warranty of Merchantability**
16 **Cal. Com. Code § 2314**
17 **(On Behalf of the California State Sub-Class)**

18 75. Plaintiff realleges and incorporates by reference paragraphs 1-37 as if
19 fully set forth herein.

20 76. Defendant, through its acts and omissions set forth herein, in the sale,
21 marketing, and promotion of the Products, made representations to Plaintiff and the
22 Class that, among other things, the Products were labeled as legal dietary
23 supplements.
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1 77. Plaintiff and the Class bought the Products manufactured, advertised,
2 and sold by Defendant, as described herein.

3 78. Defendant is a merchant with respect to the goods of this kind which
4 were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other
5 consumers, an implied warranty that those goods were merchantable.
6

7 79. However, Defendant breached that implied warranty in that the
8 Products provide no benefits, as set forth in detail herein, and moreover that the
9 Products are actually labeled as illegal dietary supplements.
10

11 80. As an actual and proximate result of Defendant's conduct, Plaintiff and
12 the Class did not receive goods as impliedly warranted by Defendant to be
13 merchantable in that they did not conform to promises and affirmations made on the
14 container or label of the goods nor are they fit for their ordinary purpose of providing
15 the benefits as promised.
16
17

18 81. Plaintiff and the Class have sustained damages as a proximate result of
19 the foregoing breach of implied warranty in the amount of the Products' purchase
20 prices.
21

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COUNT VI
Declaratory Relief Under the Declaratory Judgment Act
(On Behalf of the Nationwide Class or,
Alternatively, the California State Sub-Class)

82. Plaintiff realleges and incorporates by reference paragraphs 1-37 as if fully set forth herein.

83. Plaintiff brings this cause of action on behalf of the Nationwide Class and/or the California State Sub-class.

84. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

85. Pursuant to 28 U.S.C. § 2201, et seq., there is an actual controversy between Defendant and Plaintiff concerning whether:

- a. Defendant has misrepresented the nature, ingredients and effectiveness of the Products; and
- b. Defendant knew or should have known of the misrepresentations regarding the efficacy of the Products.

86. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

87. Despite findings which have proven Defendant’s representations false, Defendant continues to represent the nature, ingredients and effectiveness of the

1 Products, specifically labeling the Products as illegal “dietary supplements” and has
2 otherwise failed to correct those misrepresentations.

3 88. Accordingly, based on Defendant’s repeated and continued
4 misrepresentations, Plaintiff seeks a declaration that Defendant has misrepresented
5 the nature, ingredients and effectiveness of the Products and that its actions are
6 unlawful.
7

8 89. The declaratory relief requested herein will generate common answers
9 that will settle the controversy related to the misrepresented labeling of the Products.
10 There is an economy to resolving these issues as they have the potential to eliminate
11 the need for continued and repeated litigation.
12

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that this case be certified and maintained as a
16 class action and for judgment to be entered against Defendant as follows:
17

- 18
- 19 A. Enter an order certifying the proposed Class (and subclasses, if
20 applicable), designating Plaintiff as the class representative, and
designating the undersigned as class counsel;
 - 21 B. Enter an order awarding Plaintiff and the class members their actual
22 damages, treble damages, and/or any other form of monetary relief
23 provided by law, except that no monetary relief is presently sought for
24 violations of the Consumers Legal Remedies Act;
 - 25 C. Declare that Defendant is financially responsible for notifying all Class
26 members of the problems with the Products;
- 27

- 1 D. Declare that Defendant must disgorge, for the benefit of the Class, all
2 or part of the ill-gotten profits it received from the sale of the Products,
3 or order Defendant to make full restitution to Plaintiff and the members
4 of the Class, except that no monetary relief is presently sought for
5 violations of the Consumers Legal Remedies Act;
6
7 E. Defendant shall audit and reassess all prior customer claims regarding
8 the Products, including claims previously denied in whole or in part;
9
10 F. An order awarding Plaintiff and the classes pre-judgment and post-
11 judgment interest as allowed under the law;
12
13 G. For reasonable attorneys' fees and reimbursement of all costs for the
14 prosecution of this action, including expert witness fees; and
15
16 H. For such other and further relief as this Court deems just and
17 appropriate.

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury on all issues so triable.

20 Dated: November 30, 2019

21 Respectfully Submitted,

22 By: /s/ Jonathan Shub
23 Jonathan Shub (CA Bar
24 #237708)
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****Pro Hac Vice Application
Forthcoming***

***Counsel For Plaintiff
And The Class***