FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
wrr@classactionlaw.com
Trenton R. Kashima, Esq. (SBN 291405)
trk@classactionlaw.com
550 West C St., Suite 1760
San Diego, California 92101
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiffs
and the Putative Classes

[Additional Counsel Listed On Signature Page]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OMARI BOBO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC, d/b/a Cellucor and Nutrabolt, a Delaware limited liability company,

Defendant.

Case No: **'16CV0032 BEN DHB**

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;**
2. **VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
4. **BREACH OF EXPRESS WARRANTY;**
5. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; AND**
6. **NEGLIGENT MISREPRESENTATION**

JURY TRIAL DEMANDED

Plaintiff Omari Bobo ("Plaintiff") individually and on behalf of all others similarly situated, based on the investigation of counsel and his own individual knowledge as to Plaintiff's own circumstances, hereby complains against defendant Woodbolt Distribution, LLC., doing business as Cellucor and Nutrabolt, ("Defendant" or "Woodbolt") as follows:

I. INTRODUCTION

1. Defendant Woodbolt sells the popular Cellucor branded dietary supplements, which include the Alpha Amino: Performance Aminos; Alpha Amino Extreme: Performance Aminos; NO3 Chrome: Nitric Oxide Pump Amplifier; CN3: Strength & Pump Amplifier; C4: Pre-Workout Explosive Energy; C4 Extreme: Pre-Workout; C4 Mass: Pre-Workout Explosive Energy; C4 Neuro: Pre-Workout Explosive Energy; C4 On The Go: Pre-Workout Explosive Energy; and C4 50X: Pre-Workout Supplements (collectively the "Class Products"). These supplements contain Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate, newly formulated ingredients that chemically fuse an amino or organic acid with a nitrate to purportedly increase these ingredients' effectiveness.

2. The safety of these ingredients, however, has not been established by any scientific measure. Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate are New Dietary Ingredients, not previously existing in the food supply, and federal law requires that Defendant provides the Food and Drug Administration ("FDA") with adequate evidence that such ingredients do not present a significant or unreasonable risk of illness or injury before these ingredients can be lawfully sold in any dietary supplement. Defendant has not provided this information to the FDA and has not conducted any studies to establish the innocuous nature of these new ingredients.

3. Additionally, the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained within Defendant's supplements are advertised as providing consumers substantial benefits, but ultimately do not deliver. Defendant advertises and labels that the Class Products, because of their use of unique and novel ingredients, will

increase strength, endurance, muscle mass, and overall performance, and/or will be better absorbed by the body. Industry research establishes that these "cutting-edge" ingredients do not provide the benefits advertised. Rather, the benefits of these new dietary ingredients are, at best, unknown or, alternatively, inferior to their traditional counterparts. Simply put, Defendant has not substantiated the Class Products are efficacious or even safe for consumption.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff alleges that he and the Class members are citizens of different states from Defendant, and the cumulative amount in controversy for Plaintiff and the Class exceeds $5 million, exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District, and because Defendant:

(a) conducts business itself or through agent(s) in this District, by advertising, marketing, distributing and/or manufacturing its products in this District; and/or

(b) is licensed or registered to conduct business in this District; and/or

(c) otherwise maintains sufficient contacts within this District to justify Defendant being fairly brought into Court in this District.

III. PARTIES

6. Plaintiff Omari Bobo is, and at all times relevant hereto was, a resident and a citizen of California. Plaintiff purchased Defendant's C4 Pre-Workout Explosive Energy in late 2013 at a 24 Hour Fitness Balboa Super Sport store located in San Diego, California. Plaintiff relied, in part, on the representations made on the Defendant's supplements' label when purchasing Defendant's products, and believe such representations to be true. Plaintiffs believed that by marketing, distributing, and

selling the Class Products as dietary supplements, Defendant had followed the legally required regulatory procedures and that the Products were established as effective and safe for human consumption. Had Plaintiff known that the Class Products were not safe or that Defendant's marketing and labeling statements were false, he would not have purchased Defendant's products.

7. Defendant Woodbolt Distribution, LLC., doing business as Cellucor, is a Delaware limited liability corporation having its headquarters in Bryan, Texas. Woodbolt manufactures, markets, advertises, distributes, and/or sells the Cellucor branded supplements, including the Class Products, throughout the United States, including California.

IV. SUBSTANTIVE ALLEGATIONS

8. As noted above, the Class Products contain New Dietary Ingredients – Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate. The term "New Dietary Ingredient" is a term of legal art and is any ingredient contained in, or for use in, a dietary supplement that was not previously marketed in a dietary supplement, in the United States, before October 15, 1994. *See* section 413(d) of the Federal Food, Drug, and Cosmetic Act (the "FDCA"), *codified at* 21 U.S.C. 350b(d). There is no authoritative list of dietary ingredients that were marketed in dietary supplements prior to October 15, 1994. Therefore, manufacturers and distributors are necessarily responsible for determining if an ingredient is a "New Dietary Ingredient."

9. The FDCA provides that a supplement containing a New Dietary Ingredient can only be marketed or sold if it meets one of two requirements:

> (1) The dietary supplement contains only dietary ingredients which have been present in the food supply as an article used for food in a form in which the food has not been chemically altered [or]
>
> (2) There is a history of use or other evidence of safety establishing that the dietary ingredient when used under the conditions recommended or suggested in the labeling of the dietary supplement will reasonably be expected to be safe and, at least 75 days before being introduced or delivered for introduction into interstate commerce, the manufacturer or distributor of the dietary ingredient or dietary supplement provides the FDA with information, including any citation to published articles, which

> is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

21 U.S.C. § 350b(a). A producer or distributor of a dietary supplement cannot rely on a "75-Day Premarket Notification" from another manufacturer of a dietary supplement that contains the same dietary ingredient. Nonetheless, even if a 75-Day Premarket Notification of New Dietary Ingredient is provided to the FDA, the New Dietary Ingredient must still meet the requirements of 21 U.S.C. § 342(f) – that is the ingredient must be demonstrably established as safe for human consumption. If either the 75-Day Premarket Notification is not provided or the New Dietary Ingredient does not satisfy the requirements of 21 U.S.C. § 342(f), the product containing the New Dietary Ingredient is deemed adulterated and thus has no economic value as it cannot be sold in the United States.

10. The labeling adhered to each of the Class Products confirms that the Class Products are intended to be sold as a dietary supplements. The patent for creating Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate was only filed in 2007, and these ingredients were not used or marketed in dietary supplements before this date. Accordingly, Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate are New Dietary Ingredients as defined by federal regulations. Despite the fact that they are New Dietary Ingredients, Woodbolt has not provided the FDA with the required 75-Day Premarket Notification establishing Leucine Nitrate's, Creatine Nitrate's, and Arginine Nitrate's harmless use in food products/supplements or any other evidence of these New Dietary Ingredients' safety. This lack of compliance with the FDCA's clear requirements renders the Class Products adulterated.

11. There are significant and genuine concerns regarding the safety of these New Dietary Ingredients. The patent holder of these nitrate hybrids – ThermoLife International, LLC – filed a 75-Day Premarket Notification to the FDA for Creatine Nitrate but not for any of the amino acid nitrates. The 75-Day Premarket Notification for Creatine Nitrate was provided on February 3, 2011. The FDA responded on May

9, 2011 and voiced "significant concerns" about the evidence upon which ThermoLife relied when concluding that Creatine Nitrate was a safe additive. The FDA further stated that the product "may be adulterated under 21 U.S.C. § 342(f)(1)(B) as a dietary supplement that contains a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury."

12. Concerns have also been raised about the other amino acid nitrates – such as Leucine Nitrate and Arginine Nitrate. Leucine Nitrate and Arginine Nitrate are chemically processed in the same manner as the Creatine Nitrate and has the same purported physiological properties. Accordingly, the FDA's stated reservations regarding Creatine Nitrate equally apply to Leucine Nitrate and Arginine Nitrate as no safety studies have ever been conducted on these ingredients to dispel the safety concerns. Nonetheless, the FDA's apprehensions remain unaddressed. The addition of Nitrates to Leucine, Creatine and Arginine, as understood by reference to Defendant's marketing and the relevant patent, should promote enhanced Nitric Oxide (NO) production in the human body and there by acting as a vasodilator – a substance that dilates blood vessels. Vasodilators, however, are within a powerful class of drugs known to decrease blood pressure and they are reported to have a number of side effects including chest pain, rapid heartbeat (tachycardia), heart palpitations, nausea, vomiting, dizziness, and headache. Thus, if Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate actually have the properties and characteristics claimed, then Defendant should have known that there is sufficient health risk that must be properly addressed and studied.

13. Indeed, Defendant recognizes the potential adverse effects of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in its products. The label on many of the Class Products, and Defendant' own website, contains the following disclaimer:

> Do not use this product if you are pregnant, nursing, or are currently taking nitrates for chest pain or if you are taking medication used to treat erectile dysfunction such as PDE-5 inhibitors. Before using this product,

> consult a licensed, qualified, healthcare professional, including but not limited to, if: you are taking antidepressants such as MAOI (Monoamine Oxidase Inhibitor) or SSRI, blood thinners, nonsteroidal anti-inflammatory drugs, pseudoephedrine, or you are taking any other dietary supplement, prescription drug or over-the-counter medication; or if, you suspect you have or have been treated for, diagnosed with or have a family history of, any medical condition, including but not limited to: high or low blood pressure, diabetes, glaucoma, anxiety, cardiovascular, psychiatric or seizure disorders, cardiac arrhythmia, stroke, heart, liver, kidney or thyroid disease, or difficulty urinating due to prostate enlargement.

This disclaimer acknowledges that vasodilators, including Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate, can seriously affect the human body and are not ingredients generally safe for human consumption – given the number of contraindications which covers a majority of the general consuming population.

14. Despite Defendant's actual knowledge of the potential dangers and side effects of the ingredients in its products, Defendant has failed to provide any evidence of the safety of the Class Products to the FDA. Accordingly, the Class Products are adulterated and may not be sold as dietary supplements. As adulterated supplements have no economic value and are worthless as a matter of law, consumer purchasers of the adulterated supplements are entitled to a restitution/refund of the purchase price of the Class Products.

15. Also, because of the lack of peer reviewed research, it is unknown if the addition of Nitrates to Leucine, Creatine, and Arginine provides any benefit over raw Leucine, Creatine, or Arginine. Defendant, nonetheless, advertises its use of "Creative Nitrate" because of its name is similar to Creatine Monohydrate (commonly known as "Creatine") – a popular supplement for those seeking to gain muscle mass and increase strength. Creatine Nitrate, however, is not the same as Creatine Monohydrate and it is unknown if Creatine Nitrate confers a single health benefit (let alone a substantial increase) over its more common Monohydrate cousin. Studies conducted on the effectiveness of Creatine Nitrate have been inconclusive, or show that the Creatine Nitrate is not as efficacious as Creatine Monohydrate.

16. Similarly, no scientific evidence supports that Defendant's inclusion of

Leucine Nitrate and Arginine Nitrate in the Class Products provides any additional benefit to consumers. A recent study suggests otherwise; "[t]hough raw arginine may significantly increase vessel diameter compared to placebo at 30 minutes post-exercise, arginine peptide induced significantly higher percent change values for blood flow volume compared to raw Arginine, placebo and arginine nitrate at specific time points, and therefore may be the best option for increased blood flow." Simply bonding a nitrate to Leucine, Creatine or Arginine has no effect on the effectiveness of these ingredients.

17. Defendant's failure to substantiate the safety of the Class Products is a violation of 21 U.S.C. 342(f)(1)(B), making the Products adulterated. Additionally, Defendant's misrepresentations regarding the safety and effectiveness of the Creatine Nitrate, Leucine Nitrate, and Arginine Nitrate in the Class Products are unauthorized under California law, portions of which parallels the FDCA through the "Sherman Law", Health & Safety Code § 109875 *et seq*. The Sherman Law explicitly incorporates by reference "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the FDCA," as the food labeling regulations of California Health & Safety Code, § 110100, subd. (a).

18. Had Plaintiffs and putative Class members known the true nature of the Class Products, including that they had not been established as safe through required regulatory fillings to the FDA, they would not have purchased such Products. Accordingly, Plaintiffs and other Class members have been, and continue to be, harmed by Defendant's misrepresentations.

V. CLASS ALLEGATIONS

19. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 for the following Class of persons:

> All persons who, within four (4) years of the filing of this Complaint, purchased from a retailer located in California any dietary supplement, manufactured, distributed, or sold by Defendant that contained Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate for personal or household use.

Excluded from the Class are all legal entities, Defendant herein and any person, firm, trust, corporation, or other entity related to or affiliated with Defendant, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

20. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

21. While the exact number of Class members is unknown to Plaintiff at this time, and will be ascertained through appropriate discovery, Plaintiff are informed and believe that there are tens of thousands of members in the proposed Class. The number of individuals who comprise the Class is so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

22. Plaintiff's claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant's wrongful conduct as complained of herein, in violation of federal and state law. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class.

23. Plaintiff will fairly and adequately protect the Class members' interests and have retained counsel competent and experienced in consumer class action lawsuits and complex litigation. Plaintiff and his counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff is aware of their duties and responsibilities to the Class.

24. Defendant has acted with respect to the Class in a manner generally applicable to each Class member. Common questions of law and fact exist as to all Class members and predominate over any questions wholly affecting individual Class members. There is a well-defined community of interest in the questions of law and

fact involved in the action which affect all Class members. Among the questions of law and fact common to the Class are, *inter alia*:

a) Whether the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products are a new dietary ingredient which has not been present in the food supply as an article used for food in a form in which the food has not been chemically altered;

b) Whether Defendant provided the FDA with a proper 75-Day Premarket Notification for Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products;

c) Whether the Class Products are adulterated supplements;

d) Whether Defendant's sale of the Class Products constitutes unfair methods of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. CIV. CODE §§ 1770 *et seq.*, including:

(i) Whether Defendant misrepresents the source, sponsorship, approval, or certification of the Class Products;

(ii) Whether Defendant misrepresents that the Class Products have benefits which they do not have;

(iii) Whether Defendant represents that the Class Products are of a particular standard or quality if it is of another; and

(iv) Whether Defendant advertises the Class Products with intent not to sell them as advertised;

e) Whether Defendant's sale of the Class Products constitutes misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE § 17500.

f) Whether Defendant's sale of the Class Products constitutes "unlawful," "unfair," or "fraudulent" business acts or practices under, inter alia, CAL. BUS. & PROF. CODE §§ 17200 et seq., including:

(i) Whether Defendant's sale of the Class Products constitutes

"unlawful" or "unfair" business practices by violating the public policies set out in CAL. BUS. & PROF. CODE §§ 1770 *et seq.*, CAL. BUS. & PROF. CODE §§ 17500 and other California and federal statutes and regulations;

(ii) Whether Defendant's sale of the Class Products is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

(iii) Whether Defendant's sale of the Class Products constitutes an "unfair" business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant's mischaracterization of the Class Products products constitutes a "fraudulent" business practice because members of the public are likely to be deceived;

g) Whether Defendant's sale of adulterated supplements constitutes a breach of express warranty;

h) Whether Defendant's sale of adulterated supplements constitutes a breach of implied warranty of merchantability;

i) The nature and extent of damages, restitution, equitable remedies, and declaratory and injunctive relief to which Plaintiff and the Class are entitled; and

j) Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of suit.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

26. Defendant has acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FIRST COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* - Untrue, Misleading and Deceptive Advertising (On Behalf of the Class)

27. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

28. At all material times, Defendant engaged in a scheme of offering the Class Products for sale to Plaintiff and other members of the Class by way of, *inter alia*, commercial marketing, and advertising, internet content, product packaging and labelling, and other promotional materials.

29. These materials, advertisements and other inducements misrepresented and/or omitted the true approval, contents, and benefits of Defendant's products as alleged herein. Said materials, advertisements, and other inducements were directed at consumers in the State of California by Defendant.

30. Defendant's advertisements and other inducements come within the definition of advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq*., in that such promotional materials were intended as inducements to purchase Defendant's products and are statements disseminated by Defendant to Plaintiff and other members of the Class.

31. Defendant knew, or in the exercise of reasonable care should have known, that the statements made in advertisements and other inducements regarding the Class Products were false, misleading, and/or deceptive. Defendant has no evidence to substantiate the safety of its use of Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in its product and the effectiveness of these same ingredients.

32. Defendant did not file the required 75-Day Premarket Notification for the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class

Products, and should have known that it was not entitled to sell these Products in the United States.

33. Consumers, including Plaintiff and members of the Class necessarily and reasonably relied on Defendant's representations that their products were safety, effective, and could be legally sold as dietary supplements. The falsity and misleading nature of Defendant's statements could not be discovered based on common knowledge and/or by examining face of the Class Product's labels. Consumers, including Plaintiff and members of the Class were among the intended targets of Defendant's representations.

34. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California, including to Plaintiff and members of the Class, were and are likely to deceive reasonable consumers by obfuscating the true nature, safety, and approval of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in Defendant's products, and thus are violations of CAL. BUS. PROF. CODE §§ 17500, *et seq*.

35. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17500, *et seq*. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

36. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, an adulterated supplement has no economic value and is worthless as a matter of law, and purchasers of adulterated supplement are entitled to a restitution refund of the purchase price of the supplement.

///

///

SECOND COUNT

Violation of CAL. CIV. CODE §§ 1750, *et seq.* -
Consumer Legal Remedies Act
(On Behalf of the Class)

37. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

38. 70. Defendant's supplements are a "good" as defined by California Civil Code section 1761(a).

39. Defendant is a "person" as defined by California Civil Code §1761(c).

40. Plaintiff and Class members are "consumers" within the meaning of California Civil Code section 1761(d) because they purchased the Class Products for personal, family or household use.

41. The sale of the Class Products to Plaintiff and Class members is "transaction" as defined by California Civil Code §1761(e).

42. By failing to provide the FDA with the required 75-Day Premarket Notification for the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products needed to lawfully and safely sell the Class Products, Defendant violated California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its products.

43. Additionally, the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products does not deliver the benefits stated. Therefore, Defendant violated California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its products.

44. As a result of Defendant's conduct, Plaintiff and Class members were harmed and suffered actual damages as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature and/or not falsely represented the Class Products, Plaintiff and the Class would not have been

misled into purchasing Defendant's products, or, alternatively, pay significantly less for them.

45. Additionally, adulterated supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of the purchase price of the adulterated supplements.

46. Plaintiff, on behalf of himself and all other similarly situated California consumers, and as appropriate, on behalf of the general public of the State of California, seeks injunctive relief prohibiting Defendant continuing these unlawful practices pursuant to California Civil Code § 1782(a)(2).

47. Plaintiff provided Defendant with notice of its alleged violations of the CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendant correct such violations concurrently with the filing of this complaint. If Defendant fails to adequately respond to Plaintiff's notice within 30 days, Plaintiff will amend this complaint, and seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, statutory damages, punitive damages, and any other relief that the Court deems proper.

THIRD COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unlawful Business Acts and Practices (On Behalf of the Class)

48. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

49. The Sherman Law, HEALTH & SAF. CODE §§ 109875 *et seq.*, broadly prohibits any adulterated food products or dietary supplements. California has adopted federal food and dietary supplement laws and regulations as its own, and as the Sherman Law expressly incorporates, "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on

January 1, 1993, or adopted on or after that date" as "the food labeling regulations of this state" including, but not limited to, 21 U.S.C. § 342(f)(1)(B).

50. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or certification of food products, as noted in above.

51. The business practices alleged above are unlawful under Business and Professional Code §§ 17500, *et seq*., California Civil Code §§ 1770(a)(2), (5), (7) and (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement, packaging and labelling of food products and dietary supplements.

52. Defendant's sale of the Class Products violates 21 U.S.C. § 342(f)(1)(B) which require Defendant to establish the safety of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products and file a 75-Day Premarket Notification with the FDA. Defendant's failure to do so renders the Class Products adulterated under federal and corresponding state law.

53. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq*. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

54. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated supplements have no economic value and are worthless as a matter of law, and purchasers of adulterated supplements are entitled to a restitution refund of the purchase price of the Class Products.

///

///

FOURTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unfair Business Acts and Practices (On Behalf of the Class)

55. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

56. Plaintiff and other members of the Class who purchased the Class Products suffered a substantial injury by virtue of buying a product that misrepresented the true nature of the Class products, as alleged herein. Had Plaintiff and members of the Class known that Defendant's materials, advertisement and other inducements misrepresented the true benefits of its products, they would not have purchased said products. Additionally, the Class Products are adulterated under federal law, and may not be purchased and sold.

57. Defendant's actions alleged herein violate the laws and public policies of California and the United States, as set out preceding paragraphs of this Complaint.

58. There is no benefit to consumers or competition by allowing Defendant to sell adulterated supplements and deceptively market, advertise, package and label its products.

59. Plaintiff and Class members who purchased the Class Products had no way of reasonably knowing that these products were deceptively marketed, advertised, packaged and labeled, and/or adulterated. Thus, Plaintiff and Class members could not have reasonably avoided the injury they suffered.

60. The gravity of the harm suffered by Plaintiff and Class members who purchased the Class Products outweighs any legitimate justification, motive or reason for marketing, advertising, packaging and labeling the adulterated Products in a deceptive and misleading manner. Accordingly, Defendant's actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and state law and is substantially injurious to Plaintiff and members of the Class.

61. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq*. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

62. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated food has no economic value and is worthless as a matter of law, and purchasers of adulterated food are entitled to a restitution refund of the purchase price of the Class Products.

FIFTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Fraudulent Business Acts and Practices (On Behalf of the Class)

63. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

64. The acts of Defendant as described above constitute a fraudulent business practice under Business and Professional Code §§ 17200, *et seq*.

65. As more fully described above, Defendant does not state that the Class Products are adulterated under federal law, and may not be purchased and sold.

66. Defendant's misleading marketing, advertising, packaging, and labeling are likely to, and do, deceive reasonable consumers. Indeed, Plaintiffs were deceived about the approval and benefits of Defendant's products, as Defendant's marketing, advertising, packaging, and labeling of its products misrepresents the true nature of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in the Class Products. Said acts are fraudulent business practice and acts.

///

///

67. Defendant's misleading and deceptive practices caused Plaintiff to purchase Defendant's products and/or pay more than he would have otherwise had he known that the Class Products are adulterated under federal law.

68. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq*. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

69. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated food has no economic value and is worthless as a matter of law, and purchasers of adulterated food are entitled to a restitution refund of the purchase price of the Class Products.

SIXTH COUNT

Breach of Implied Warranty of Merchantability (On Behalf of the Class)

70. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

71. Defendant is a merchant with regards to the dietary supplements it regularly markets and sells to consumers within California.

72. At the time Defendant marketed, distributed, and sold the Class Products to Plaintiff and other members of the Class, Defendant knew of the intended, reasonably foreseeable and/or ordinary use of its dietary supplements and warranted that the Class Products was merchantable, safe and fit for such use.

73. Members of the consuming public, including consumers such as Plaintiff, were intended beneficiaries of the warranty.

74. Plaintiff, and other members of the Class, in purchasing the Class Products, reasonably relied upon the skill and judgment of Defendant as to whether the Class Products was of merchantable quality and safe for its intended, reasonably foreseeable and/or ordinary use.

75. Defendant breached the implied warranty of merchantability by failing to deliver that is generally acceptable in trade and/or was not fit for the ordinary purposes for which such goods are used because the Class Products are adulterated under federal law and may not be sold or possessed in the United States.

76. Defendant's breach of the implied warranty of merchantability was the direct and proximate cause of Plaintiff's injury

77. As a result of Defendant's breach of warranty, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product and any consequential damages resulting from the purchases.

SEVENTH COUNT

Breach of Express Warranty (On Behalf of the Class)

78. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

79. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiffs and the other Class members purchased the Products. The terms of the contract includes representations made by Defendant on the Products' packaging and through marketing and advertising, as described above. This labeling, marketing and advertising constitute express warranties and became part of the basis of bargain, and are part of the standardized contract between Plaintiffs and the members of the Class and Defendant.

80. Defendant breached express warranties about the Product because Defendant's representations about the Product were false and the Products do not conform to Defendant's affirmations and promises described above.

81. Defendant warranted that the Class Products were Dietary Supplements, which could be used, possessed, and purchased in the United States. They were not.

82. Plaintiffs and each of the members of the Class would not have purchased the Products had they known the true nature of the Class Products.

83. Defendant's breach of the breach of its express warranty was the direct and proximate cause of Plaintiff's injury

84. As a result of Defendant's breach of warranty, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product and any consequential damages resulting from the purchases.

EIGHTH COUNT

Negligent Misrepresentation (On Behalf of the Class)

85. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

86. Defendant has a duty, as a manufacturer, distributor, and retailer of dietary supplements, to comply with the applicable laws governing the production and distribution of dietary supplements.

87. Defendant states on each of the Class Products, that such products are "dietary supplements" and can be possessed, used, and sold as such.

88. Plaintiff and other members of the Class relied on Defendant's representations that the Class Products were indeed dietary supplements, which may be sold and possessed in the United States and are safe to be used as such. This reliance was reasonable, as a rational consumer would only purchase products deemed safe for human consumption and approved to be sold as dietary supplements in the United States.

89. However, the Class Products were not dietary supplements approved for use in the United States, but were instead considered misbranded and adulterated

under federal law. Accordingly, the Class Products cannot be possessed, sold, or used as dietary supplements.

90. Defendant knew, or with reasonable care should have known, that its products were not dietary supplements approved for use in the United States, but were considered misbranded and adulterated under federal law.

91. As a result of Defendant's misrepresentation, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

A. For an order declaring that this action is properly maintained as a class action and appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class counsel;

B. That Defendant bear the costs of any notice sent to the Class;

C. For an order awarding Plaintiffs and the members of the Class actual damages, restitution and/or disgorgement;

D. For an order requiring Defendant to pay punitive and statutory damages, as allowable by law, to Plaintiffs and the other members of the Classes;

E. For an order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

F. For an order awarding Plaintiffs and the members of the Class pre- and post-judgment interest;

G. For an order awarding attorneys' fees and costs of suit, including expert witnesses fees as permitted by law; and

H. Such other and further relief as this Court may deem just and proper.

///

///

///

VII. JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

DATED: January 6, 2016

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: /s/ Trenton R. Kashima
Trenton R. Kashima, Esq.

Jeffrey R. Krinsk, Esq.
Mark L. Knutson, Esq.
William R. Restis, Esq.
550 West C St., Suite 1760
San Diego, CA 92101-3593
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

DECLARATION OF OMARI BOBO

I, Omari Bobo, declare and state as follows:

1. I am a plaintiff in the above captioned case alleging a violation of the Consumer Legal Remedies Act.

2. The Defendant in this action, Woodbolt Distribution, LLC., is doing business in San Diego County, California. Namely, Defendant Woodbolt Distribution, LLC. distributes, sells, or offers its Cellucor or Nutrabolt branded products for sale in San Diego County, California. Indeed, I purchased Defendant's products in San Diego County.

3. The transaction that gives rise the cause of action under Consumer Legal Remedies Act, as set forth in the attached Complaint, occurred in San Diego County.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 31 th day of December, 2015, in San Diego, California

Omari Bobo

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
OMARI BOBO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Finkelstien & Krinsk, LLP
550 West C Street, Ste. 1760
San Diego, CA 92101, Tel (619)238-1333; Fax (619) 238-5425

DEFENDANTS
WOODBOLT DISTRIBUTION, LLC d/b/a Celluocr and Nutrabolt, a Delaware limited liability company

County of Residence of First Listed Defendant Brazos, TX
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

'16CV0032 BEN DHB

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b)
Brief description of cause:
Product mislabeling case under state consumer protection warranty and tort law.

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
JUDGE _____ DOCKET NUMBER _____

DATE
01/06/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____