IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RYAN PORTER and HAARIN KWON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Case No. 15-cv-11459
v.	)	Hon. Manish S. Shah
NBTY, INC., UNITED STATES NUTRITION, INC., HEALTHWATCHERS (DE), INC., and MET-RX NUTRITION, INC.,	)	Hon. Young B. Kim
Defendants.	)	

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Ryan Porter and Haarin Kwon ("Plaintiffs"), through their undersigned attorneys, Siprut PC, Barbat, Mansour & Suciu PLLC, and Bursor & Fisher, P.A., bring this Second Amended Class Action Complaint against Defendants NBTY, Inc., United States Nutrition, Inc., Healthwatchers (DE), Inc., and Met-Rx Nutrition, Inc. (collectively, the "Defendants"), individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. This is a civil class action brought individually by Plaintiffs and on behalf of all consumers who purchased the protein supplements Body Fortress Super Advanced Whey Protein, Body Fortress Super Advanced Whey Isolate, and Met-Rx MyoSynthesis Whey (collectively, the "Products") from Defendants. Defendants engaged in unfair and/or deceptive business practices by misrepresenting the nature and quality of the Products on the Products' labels, and were unjustly enriched.

2. Defendants make numerous false and misleading claims on the labels of their Products. These false and misleading claims include, but are not limited to, statements relating to protein content in regards to the percent of daily value, sources of the protein content, and quality of protein.

3. Defendants do not comply with federal and parallel state regulations regarding the testing methodology of the Products' protein content, making the Products' protein claims false and misleading.

4. Plaintiffs and each of the Class members accordingly suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth herein, and seek compensatory damages and injunctive relief.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(d), Plaintiffs' claims and the claims of the other members of the Class exceed $5,000,000 exclusive of interest and costs, and there are numerous Class members who are citizens of states other than Defendants' states of citizenship.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to Plaintiff Porter's claims occurred in this District and because Defendants transact business and/or have agents within this District.

PARTIES

7. Plaintiff Ryan Porter is a citizen of Illinois who resides in Algonquin, Illinois. Plaintiff Porter purchased Body Fortress Super Advanced Whey Protein on several occasions over the past three years from retail stores located in Illinois, including at Super Target in Algonquin, Illinois and Walgreens in Carpentersville, Illinois.

8. Plaintiff Haarin Kwon is a citizen of New York. In or about April 2015, Plaintiff Kwon purchased two 1.95 lb. tubs of Body Fortress Super Advanced Whey Protein from Amazon.com for approximately $16.56 each. Prior to purchasing Body Fortress Super Advanced Whey Protein, Plaintiff Kwon reviewed Body Fortress Super Advanced Whey Protein's labeling and packaging. Specifically, Plaintiff Kwon saw and relied upon the Misrepresentations (defined below).

9. NBTY, Inc. is licensed in the state of Delaware, with a principal place of business located at 2100 Smithtown Avenue, Ronkonkoma, New York 11779. Upon information and belief, NBTY, Inc. has a controlling interest in Defendants United States Nutrition, Inc., Healthwatchers (DE), Inc. and Met-Rx, Inc.

10. Defendant NBTY, Inc. ("NBTY") is the parent company of Defendants United States Nutrition, Inc. and Healthwatchers (DE), Inc.

11. United States Nutrition, Inc. is licensed in the state of Delaware, with a principal place of business located at 90 Orville Drive, Bohemia, New York 11716. Upon information and belief, United States Nutrition, Inc. is a subsidiary of Defendant NBTY, Inc.

12. Healthwatchers (DE), Inc. is licensed in the state of Delaware, with a principal place of business located at 90 Orville Drive, Bohemia, New York 11716. Upon information and belief, Healthwatchers (DE), Inc. is a subsidiary of Defendant NBTY, Inc.

13. Met-Rx Nutrition, Inc. is licensed in the state of Delaware, with a principal place of business located at 2100 Smithtown Avenue, Ronkonkoma, New York 11779. Upon information and belief, Met-Rx Nutrition, Inc. is a subsidiary of Defendant NBTY, Inc.

GENERAL ALLEGATIONS

Overview Of Whey Protein And "Protein Spiking"

14. Whey is a complete protein source, meaning it contains all the essential amino acids needed to build protein-based compounds such as muscle tissue, skin, fingernails, hair and enzymes. It is especially rich in branched-chain amino acids—leucine, isoleucine, and valine—which are metabolized directly within the muscles (as opposed to being processed in the liver first).

15. Sales of whey protein products are expected to grow 62% and reach U.S. $7.8 billion by 2018.[1] However, due to the high level of competition in the market and the escalating price of wholesale whey protein, sellers' profit margins are slim.

16. Defendants designed, manufactured, warranted, advertised and sold the Products throughout the United States, including in the state of Illinois, and continue to do so.

17. To reduce their protein manufacturing costs and enhance the nitrogen content of the Products, Defendants engage in what is commonly referred to as "protein-spiking," "nitrogen-spiking," or "amino-spiking." Defendants add nitrogen-containing, cheap, and less beneficial free-form amino acids and non-protein ingredients to the Products.

18. Because nitrogen is the "tag" used in protein content calculation, the addition of such ingredients is not revealed by protein content testing. In fact, the testing method is neither a direct measure of the actual protein content in the Products, nor a measure of the type of nitrogen-containing compounds in the Products.

19. Further, this nitrogen testing is not the mandated testing methodology referenced in the Food, Drug and Cosmetic Act (the "FDCA").

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[1] *See Sports Nutrition in the US*, EUROMONITOR INT'L, http://www.euromonitor.com/sports-nutrition-in-the-us/report (last visited Dec. 18, 2015).

20. Protein-spiking has been condemned by the American Herbal Products Association, which recently issued a standard for manufacturers to measure the true protein content of their products.[2] In addition, General Nutrition Centers, Inc. ("GNC"), one of the largest distributors of whey protein products in the United States, has publicly criticized protein-spiking as having the effect of misleading consumers, who are unaware of the actual protein content of the spiked products they purchase.[3]

21. Not only has the American Herbal Products Association and GNC condemned this deceptive practice, but the United States Food and Drug Administration ("FDA") has done so as well. Indeed, FDA press officer, Jennifer Dooren, explained,

> FDA requires that dietary supplements be labeled in a manner that is truthful and not misleading. With regard to the labeling of protein content, FDA's expectation for proper nutrition labeling is that firms will evaluate the protein content from actual protein sources—not other nitrogen-containing ingredients such as individual amino acids—and label the products consistent with the results of such evaluations.[4]

22. The FDA has also stated that the actual protein is what counts, and loading up on nitrogen-rich ingredients to inflate protein claims does not meet FDA standards.[5]

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[2] The standard: (1) defines protein as a "chain of amino acids connected by peptide bonds"; and (2) provides for the exclusion of non-protein nitrogen-containing substances for protein-content calculation and labeling purposes. AM. PUBLIC HEALTH ASS'N, www.apha.org/default.aspx?tabid=441 (last visited July 14, 2015). The National Academy of Sciences similarly defines protein as macromolecules with links of amino acids; excluded from the definition are free-form amino acids and creatine.

[3] *Is Your Protein Scamming You?*, GNC LIVE WELL, www.gnclivewell.com/realprotein (last visited May 3, 2016).

[4] Alex Morrell, *Lawsuits Say Protein Powders Lack Protein, Ripping Off Athletes*, FORBES (Mar. 12, 2015, 11:21 AM), http://www.forbes.com/sites/alexmorrell/2015/03/12/lawsuits-say-protein-powders-lack-protein-ripping-off-athletes/.

[5] *Id*.

23. The FDCA also represents that free-form amino acids are simply not protein. Under 21 C.F.R. § 101.36(b)(2)(i), a manufacturer is prohibited from claiming a product has any protein content if the product only contains amino acids.

24. Also, the FDCA requires a more sophisticated form of protein testing for products that state the percentage daily value of protein. This testing methodology is called the Protein Digestibility-Corrected Amino Acid Score ("PDCAAS"), which measures the actual ***quality*** of the protein contained in a product.

25. The PDCAAS has been adopted by the Food and Agriculture Organization of the United Nations and the World Health Organization as the preferred method for the measurement of the protein value in human nutrition, and is directly referenced in the FDCA.

26. Under the FDCA, the PDCAAS calculation is as follows:

$$PDCAAS(\%) = \frac{mg\ of\ limiting\ amino\ acid\ in\ 1\ g\ of\ test\ protein}{mg\ of\ same\ amino\ acid\ in\ 1\ g\ of\ reference\ protein} \times fecal\ true\ digestibility\ (\%) \times 100$$

27. The PDCAAS method does not calculate protein by nitrogen, as Defendants would like, but rather by this equation, which requires the manufacturer to determine the amount of essential amino acids contained within the product.

28. This testing method ensures that consumers are being informed about the "quality" of the protein that a product contains.

29. Industry leaders, the FDA, and actual scientific testing are consistent in acknowledging and establishing that the free-form amino acids and creatine monohydrate that Defendants add to their Products are simply ***not*** protein.

30. Despite knowledge that protein spiking is misleading to consumers, Defendants continue to advertise, distribute, label, manufacture, market, and sell the Products in an illegal, misleading and deceptive manner in order to increase their sales and maximize their profits.

31. Several studies show that because free-form amino acids are not absorbed as effectively as whole protein, they do not provide the same beneficial effects as whole protein.[6]

32. Thus, Defendants' consumers pay an inflated price for the Products, which delivers less actual protein than they reasonably expect to receive when purchasing the Products.

Defendants' False Claims Of Protein Content And Percent Of Daily Value Of Protein

33. According to the FDA,

> The percent of the DRV [Daily Reference Value] is required if a protein claim is made for the product or if the product is represented or purported to be for use by infants or children under 4 years of age. Based on current scientific evidence that protein intake is not a public health concern for adults and children over 4 years of age, and because of the costs associated with a determination of the Protein Digestibility Corrected Amino Acid Score (PDCAAS), FDA has determined that declaration of the percent of the DRV for protein need not be provided when a claim is not made.[7]

34. The Products have a protein claim on the label, and therefore are required to have the percent of Daily Value ("DV") listed in the Supplement Facts section. Defendants list the Products as having 52% DV for protein. This is based on the 50-gram DV determined by the FDCA and the 26-gram protein claim on the Products. 21 C.F.R. § 101.9(c)(7)(iii).

35. When protein is listed as a percent of the 50-gram DV and expressed as % DV, the % DV is calculated by correcting the actual amount of protein in grams per serving by: (a)

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[6] MAURO G. DI PASQUALE, AMINO ACIDS AND PROTEINS FOR THE ATHLETE: THE ANABOLIC EDGE 190 (2d Ed. 2008); Christos S. Katsanos et al., *Whey protein ingestion in elderly results in greater muscle protein accrual than ingestion of its constituent essential amino acid content*, 28 NUTRITION RES. 651 (2008); Hugues Magne et al., *Contrarily to whey and high protein diets, dietary free leucine supplementation cannot reverse the lack of recovery of muscle mass after prolonged immobilization during ageing*, 590 J. PHYSIOLOGY 2035 (2012); Tomohiro Terada & Ken-ichi Inui, *Peptide transporters: structure, function, regulation and application for drug delivery*, 5 CURRENT DRUG METABOLISM 85 (2004).

[7] *Guidance for Industry: A Food Labeling Guide*, U.S. FOOD AND DRUG ADMIN., http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064894.htm#declare (last visited May 3, 2016).

multiplying the amount by its amino acid score corrected for protein digestibility; (b) dividing by 50 grams; and (c) converting to a percentage. 21 C.F.R. § 101.9(c)(7)(ii).

36. However, Defendants simply used the nitrogen testing with a factor of 6.25 to determine the protein content, referenced in 21 C.F.R. § 101.9(c)(7).

37. If Defendants made no protein content claims on the labels of their Products, and if they did not include the % DV of protein under the Supplement Facts section, they could legally use this method. But Defendants did use protein claims and did list the % DV on their Products, and thus are statutorily obligated under the FDCA to determine the protein content and % DV by using the PDCAAS formula, which they did not.

38. Defendants' decision not to use the PDCAAS testing methodology mandated in 21 C.F.R. § 101.9(c)(7)(ii) make the Products misbranded and illegal to sell.

39. PDCAAS is currently considered the most reliable score of protein quality for human nutrition. PDCAAS measures protein quality based on human essential amino acid requirements and our ability to digest it. The test protein is compared to a standard amino acid profile and is given a score from 0 to 1.0, with a score of 1.0 indicating maximum amino acid digestibility. Common protein supplements (whey, casein, and soy) all receive 1.0 scores. Meat and soybeans (0.9), vegetables and other legumes (0.7), and whole wheat and peanuts (0.25-0.55) all provide diminished protein digestibility.[8]

40. The PDCAAS shall be determined by the methods provided in sections 5.4.1, 7.2.1, and 8.00 in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990. 21 C.F.R. § 101.9(c)(7)(ii).

[8] Pasha Gurevich, *Protein Quality-The 4 Most Important Metrics*, LABDOOR MAGAZINE (May 20, 2014), https://labdoor.com/article/protein-quality-the-4-most-important-metrics.

41. Defendants have failed to comply with the applicable sections for determining the protein content making up the % DV. They did not test for individual amino acids, and they did not use the proper factors as referred to in the FDCA.

42. Instead, Defendants simply took the nitrogen count and then used the factor for whey protein, thereby overstating the % DV. Therefore, Defendants are in violation of 21 C.F.R. § 101.9(c)(7)(ii), and their Products are misbranded.

43. All of Defendants' Products have been shown by independent testing to contain these free-form amino acids and non-protein ingredients as part of their total protein count. *See* Whey Protein Product Testing, attached hereto as Exhibits A-C.

44. Defendants' Super Advanced Whey Protein Product claims to have 30 grams of protein per scoop and 60% Daily Value of protein per scoop:

Supplement Facts

Serving Size / Servings Per Container	1 Scoop (42 g) about 21		2 Scoops (84 g) about 11	
Amount Per Serving		**%Daily Value**		**%Daily Value**
Calories	170		340	
Calories from Fat	25		45	
Total Fat	2.5 g	4%†	5 g	8%†
Saturated Fat	1.5 g	8%†	3 g	15%†
Cholesterol	70 mg	23%	140 mg	46%
Total Carbohydrate	7 g	2%†	14 g	5%†
Dietary Fiber	<1 g	4%†	2 g	8%†
Sugars	2 g	††	3 g	††
Protein	30 g	60%†	60 g	120%†
Calcium	72 mg	7%	144 mg	14%
Iron	0.5 mg	3%	1 mg	5%
Phosphorus	74 mg	7%	149 mg	15%
Magnesium	23 mg	6%	45 mg	11%
Zinc	0.09 mg	1%	0.19 mg	1%
Copper	0.05 mg	3%	0.11 mg	5%
Sodium	100 mg	4%	200 mg	8%
Potassium	210 mg	6%	420 mg	12%

†Percent Daily Values are based on a 2,000 calorie diet.
††Daily Value not established.

Ingredients: Super Whey Protein Blend (Whey Protein Concentrate, Whey Protein Isolate), Super Recovery Blend (Glycine, Creatine Monohydrate, Taurine, Threonine, L-Glutamine, Leucine, Valine, Isoleucine), Maltodextrin, Cocoa (processed with alkali), Natural and Artificial Flavors, Soy Lecithin, Cellulose Gum, Acesulfame Potassium, Sucralose.

Contains milk and soy ingredients.

Gluten Free

Typical Amino Acid Profile (milligrams per 42 g scoop*)**

Essential Amino Acids		Nonessential Amino Acids	
Histidine	334 mg	Alanine	903 mg
Isoleucine	1,133 mg	Arginine	469 mg
Leucine	1,974 mg	Aspartic Acid	2,078 mg
Lysine	1,616 mg	Cysteine	422 mg
Methionine	422 mg	Glutamic Acid	3,104 mg
Phenylalanine	623 mg	Glycine	4,357 mg
Threonine	2,222 mg	Proline	1,116 mg
Tryptophan**	320 mg	Serine	915 mg
Valine	1,093 mg	Tyrosine	564 mg

**L-Tryptophan is naturally occurring, not added.
***approximate values

BODY X FORTRESS®

YOUR BODY - YOUR FORTRESS.®

For more information on other Body Fortress® products or for complete training and nutrition programs, visit www.bodyfortress.com.

Directions: For adults, add one (1) scoop (42 g) to 6-8 ounces of water or your favorite beverage daily. Serious athletes and bodybuilders (over 125 pounds) should consume 1-2 scoops immediately after exercise.

BLENDER – SIMPLE
Cover and blend for 20-30 seconds. ^^

SHAKER – SIMPLER
Cover and shake for 25-30 seconds.

GLASS & SPOON – SIMPLEST
Stir for 20-30 seconds or until completely blended.

^^For Mass Gaining: add higher calorie foods such as peanut butter, 1-2% milk, and fruit juices.
For Dieters: add lower calorie foods such as skim milk or just use water.

Please note: Crystalline Taurine will appear as small crystals within the powder.

Body Fortress® Super Advanced Whey Protein is aspartame free.

WARNING: Not intended for use by pregnant or nursing women. If you are taking any medications or have any medical condition, consult your doctor before use. Avoid this product if you have kidney disease. Discontinue use and consult your doctor if any adverse reactions occur. Not intended for use by persons under the age of 18.

KEEP OUT OF THE REACH OF CHILDREN. STORE AT ROOM TEMPERATURE, TIGHTLY CLOSED AND AVOID EXCESSIVE HEAT. FOR YOUR PROTECTION, DO NOT USE IF SEAL UNDER CAP IS BROKEN OR MISSING.

◊These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

PLEASE RECYCLE

Carefully Manufactured by
Healthwatchers (DE), Inc.
Bohemia, NY 11716 U.S.A.
1-800-215-5980

44320 17O B52451 MAB
0 74312 44320 6

45. Defendants' Super Advanced Whey Isolate Product claims to have 30 grams of protein per scoop and 60% Daily Value of protein per scoop:

Supplement Facts

Amount Per Serving		%Daily Value		%Daily Value
Calories	130		260	
Calories from Fat	5		10	
Total Fat	0.5 g	1%†	1 g	2%†
Saturated Fat	<0.5 g	1%†	0.5 g	2%†
Cholesterol	15 mg	5%	30 mg	9%
Total Carbohydrate	1 g	<1%†	2 g	1%†
Dietary Fiber	<1 g	1%†	<1 g	2%†
Sugars	<1 g	††	1 g	††
Protein	30 g	60%†	60 g	120%†
Calcium	57 mg	6%	115 mg	11%
Phosphorus	46 mg	5%	93 mg	9%
Magnesium	12 mg	3%	25 mg	6%
Sodium	95 mg	4%	190 mg	8%
Potassium	70 mg	2%	140 mg	4%

†Percent Daily Values are based on a 2,000 calorie diet.
††Daily Value not established.

Ingredients: Whey Protein Isolate, Super Recovery Blend (Glycine, Taurine, L- Threonine, L-Glutamine, L-Arginine, L-Alanine, L-Lysine Hydrochloride, L-Leucine, L-Isoleucine, L-Valine), Natural and Artificial Flavors, Cellulose Gum, Xanthan Gum, Acesulfame Potassium, Sucralose, Carrageenan.

Contains milk and wheat ingredients.

Typical Amino Acid Profile (milligrams per 34 g scoop**)**

Essential Amino Acids		Nonessential Amino Acids	
Histidine	317 mg	Alanine	982 mg
Isoleucine	1,294 mg	Arginine	467 mg
Leucine	2,139 mg	Aspartic Acid	2,141 mg
Lysine	1,867 mg	Cysteine	474 mg
Methionine	419 mg	Glutamic Acid	3,491 mg
Phenylalanine	588 mg	Glycine	5,825 mg
Threonine	3,368 mg	Proline	1,393 mg
Tryptophan***	393 mg	Serine	872 mg
Valine	1,141 mg	Tyrosine	547 mg

***L-Tryptophan is naturally occurring, not added.
****approximate values

46. Defendants' Met-Rx MyoSynthesis Whey Product claims to have 25 grams of protein per scoop and 50% Daily Value of protein per scoop:

Serving Size 1 Scoop (45g)
Servings Per Container about 27

Amount Per Serving		% Daily Value
Calories	190	
Calories from Fat	50	
Total Fat	6 g	9%**
Saturated Fat	2.5 g	13%**
Cholesterol	50 mg	17%
Total Carbohydrate	10 g	3%**
Dietary Fiber	5 g	20%**
Sugars	2 g	***
Protein	25 g	50%**
Calcium	167 mg	17%
Phosphorus	98 mg	10%
Magnesium	13 mg	3%
Sodium	105 mg	4%
Potassium	105 mg	3%

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

Ingredients:

Protein Blend (Whey Protein Concentrate, Whey Protein Isolate, Calcium Caseinate), Amino Blend (L-Glycine, Taurine, L-Threonine, L-Glutamine, L-Leucine, L-Isoleucine, L-Valine), Fiber Blend (Oat Fiber, Inulin), Non-Dairy Creamer (Sunflower Oil, Maltodextrin, Sodium Caseinate, Mono- & Di-glycerides, Natural Tocopherols, Tricalcium Phosphate), Medium Chain Triglycerides, Creatine Monohydrate, Natural And Artificial Flavors, Cellulose Gum, Salt, Dicalcium Phosphate, Calcium Carbonate, Acesulfame Potassium, Xanthan Gum, Soy Lecithin, Sucralose.

Contains milk and soy ingredients.

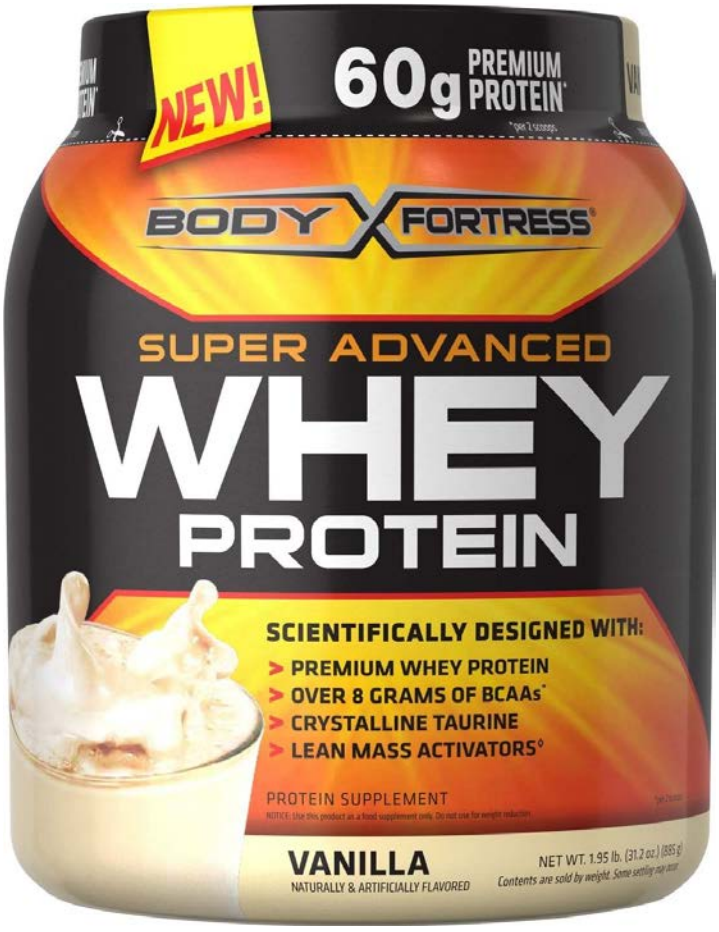
47. The individual free-form amino acids and creatine monohydrate contained within the Products would show up as protein using the nitrogen testing Defendants employed, however, they would not contribute to the final protein content determined by the FDCA's mandated PDCAAS methodology for determining protein as % DV.

48. Also, because the claims at issue are protein claims as defined in 21 C.F.R. § 101.9(c)(7)(i), and are not based on the PDCAAS method, they are illegal, false and misleading.

Defendants' False Claims Regarding The Quality Of Protein Contained Within The Products

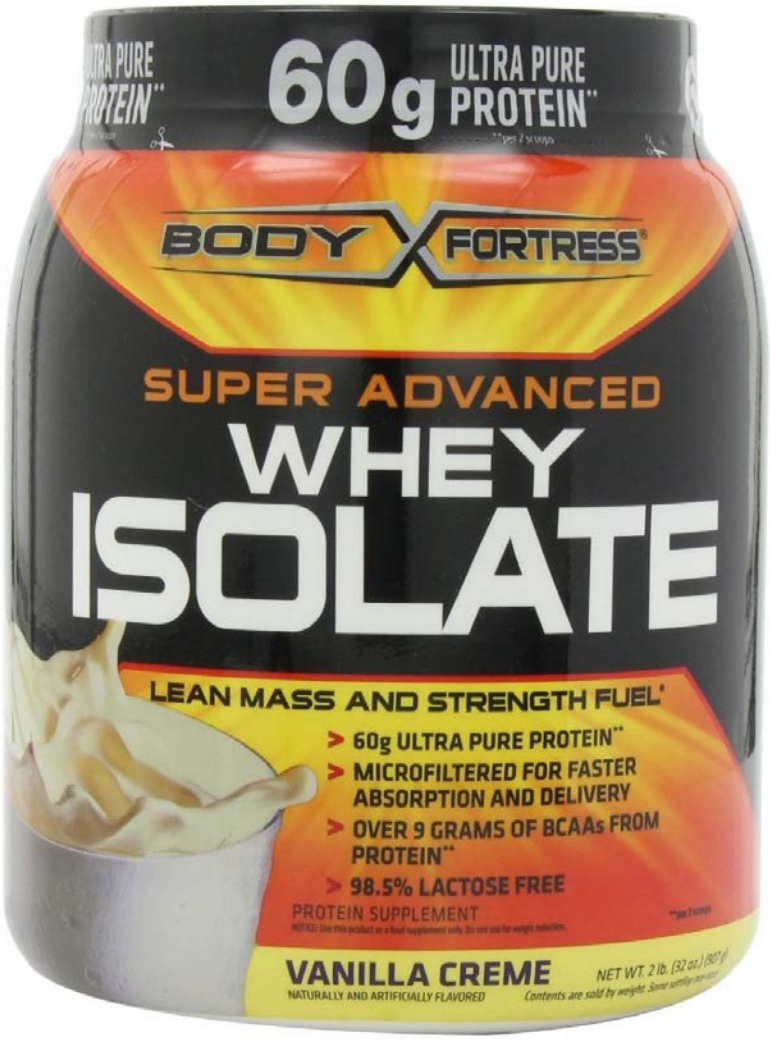
49. The PDCAAS method for testing protein was created specifically to determine the quality of the protein contained within food products.

50. Defendants' Super Advanced Whey Protein Product falsely claims to have 60 grams of "Premium Protein":



51. Defendants chose to include free-form amino acids and creatine monohydrate as part of the protein content in their Super Advanced Whey Protein Product. Because the correct methodology would have produced a smaller amount of "quality" protein contained within the Product, Defendants' claim that the Product contains 60 grams of "Premium" protein is false and misleading.

52. Defendants' Super Advanced Whey Isolate Product falsely claims to have 60 grams of "Ultra-Pure Protein":



53. Defendants chose to include free-form amino acids as part of the protein content in their Super Advanced Whey Isolate Product. Because the correct methodology would have a produced a smaller amount of "quality" protein contained within the Product, Defendants' claim that the Product contains 60 grams of "Ultra Pure" protein is false and misleading.

Defendants' Misleading Statements On The Labels Of The Super Advanced Whey Protein And Whey Isolate Products

54. In violation of 21 C.F.R. § 101.18(b), Defendants mislead consumers by repeatedly referencing whey protein, including in the name of the Super Advanced Whey Protein and Whey Isolate Products, but never disclaim the limited amount of whey protein that the Products actually deliver, or make clear that the Products' protein content is only fractionally whey protein.

55. Defendants use the term "whey protein" in a way that is interchangeable with the term "protein," so the consumer is misled to believe that every gram of protein in the Products is comprised solely of whey protein.

56. For the Product Super Advanced Whey Protein Product, under the "Ingredients" section of the "Supplement Facts," referenced above, Defendants list Whey Protein Concentrate and Whey Protein Isolate in their "Super Whey Protein Blend."

57. By contrast, Defendants disclose the "protein-spiking" agents in a separate category they call the "Super Recovery Blend," which makes no reference to the word "protein."

58. A reasonable consumer, looking at the name of the Product, and reading the "Supplement Facts" section, is misled into believing that the 60 grams of protein per serving claimed by Defendants for the Whey Protein Product are derived exclusively from the "Super Whey Protein Blend."

59. Moreover, Defendants make further deceptive references to whey protein on the actual label of the Super Advanced Whey Protein Product:

a. "60g PREMIUM PROTEIN";

b. "**PREMIUM WHEY PROTEIN**";

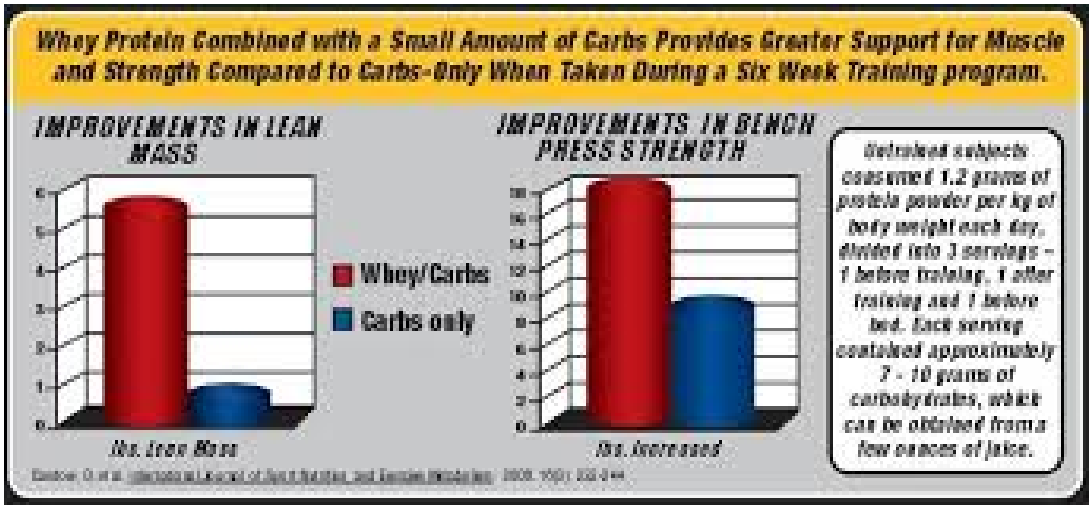
c. "Body Fortress Super Advanced **Whey Protein** delivers a **powerful blend of premium proteins** athletes need to support lean muscle mass and maximize their training.";

d. "Body Fortress Super Advanced **Whey Protein features a Super Recovery Blend to further enhance the benefits of our premium Whey Protein Blend**.";

e. "Whey is the preferred **protein source** in sports and bodybuilding nutrition because it contains superior quality **Branched Chain Amino Acids — made up of Leucine, Isoleucine and Valine** — which are important for the maintenance of muscle tissue."; and

f. "Contains naturally occurring **Branched Chain Amino Acids** from **protein**."[9]

60. Defendants also include graphs on the labels of their Whey Protein Product that explain the benefits of whey protein, exclusively, furthering the false impression that whey protein is the sole source of protein within the Product:



[9] Defendants say "protein" in this statement to mean complete protein which contains Branched Chain Amino Acids ("BCAAs"). Defendants do not differentiate between whey protein and the other non-protein sources they use towards their protein count. Creatine Monohydrate, Glycine, and Taurine do not contain BCAAs.

61. For the Super Advanced Whey Protein Isolate Product, under the "Ingredients" section of the "Supplement Facts" section, referenced above, Defendants list Whey Protein Isolate.

62. A reasonable consumer, looking at the name of the Product, and reading the "Supplement Facts" section, is misled into thinking that the 60 grams of protein per serving claimed by Defendants for the Whey Protein Isolate Product are derived exclusively from "Whey Protein Isolate."

63. Moreover, Defendants make further deceptive references to whey protein on the actual label of the product Super Advanced Whey Protein Isolate:

a. "60g ULTRA PURE PROTEIN";

b. "Over 9 grams of **BCAAs from Protein**"[10];

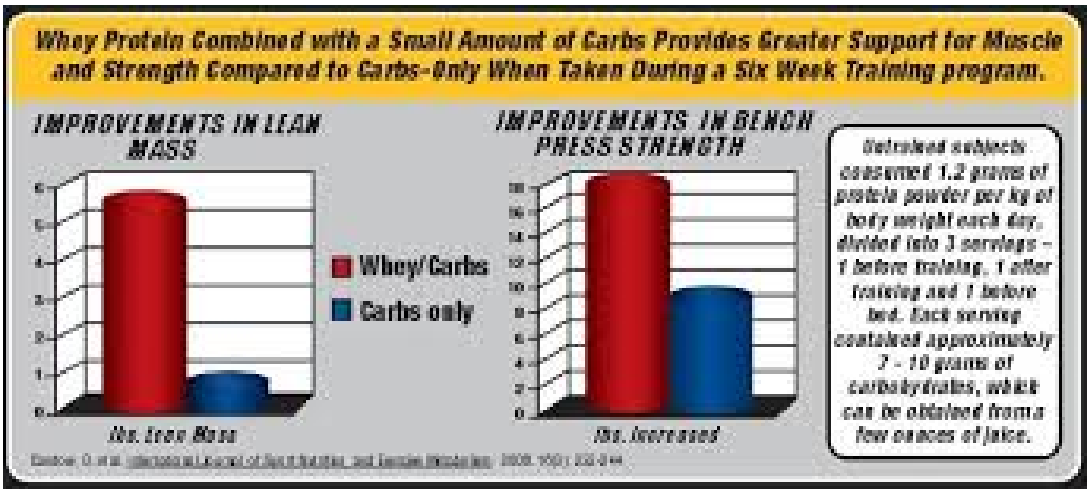
c. "Super Advanced Whey Isolate contains protein that is processed using microfiltration to ensure an isolated whey that contains minimal lactose & fat. **These isolation processes separate the valuable protein from non-protein materials yielding a highly purified whey isolate**.";

d. "State-of-the-art manufacturing processes are used to retain the active **Whey Protein** Peptides & Microfractions —some other **whey isolate** processing methods remove Glycomacropeptides, which are an **important protein component**.";

e. "2 scoops contain over 9 grams of the following **Branched Chain Amino Acids from protein**."

[10] Defendants say "protein" in this statement to mean complete protein which contains BCAAs. Free-form amino acids do not contain BCAAs.

64. Defendants also include graphs on the label of their Whey Protein Isolate Product that explain the benefits of whey protein, exclusively, furthering the false impression that whey protein isolate is the sole source of protein within the Product:



65. All of these misleading label claims, along with the Products' names, "Super Advanced Whey Protein" and "Super Advanced Whey Protein Isolate," (collectively, the "Misrepresentations") taken together, mislead reasonable consumers that the protein content of the Products was derived solely from whey protein.

66. Pursuant to 21 U.S.C. § 321(ff), Defendants' Products constitute a "food" regulated by the FDCA, 21 U.S.C. § 301, *et seq.*, and other FDCA regulations.

67. Defendants' false, deceptive and misleading label statements violate 21 U.S.C. § 343(a)(1) and the so-called "little FDCA" statutes adopted by many states[11], which deem food misbranded when "its labeling is false or misleading in any particular."

68. Defendants' false, deceptive and misleading label statements are unlawful under state Unfair and Deceptive Acts and Practices Statutes and/or Consumer Protection Acts, which prohibit unfair, deceptive or unconscionable acts in the conduct of trade or commerce.

[11] *See, e.g.*, 410 ILCS 620/11.

69. Illinois has expressly adopted the federal food labeling requirements as its own: "[a] federal regulation automatically adopted pursuant to this Act takes effect in this State on the date it becomes effective as a Federal regulation." 410 ILCS 620/21. Thus, a violation of federal food labeling laws is an independent violation of Illinois law and actionable as such.

70. Further, as explained above, Defendants' claims are misleading to consumers in violation of 21 U.S.C. § 343, which states that a food shall be deemed to be misbranded "[i]f its labeling is false or misleading in any particular."

71. Illinois law incorporates the exact language of the FDCA in 410 ILCS 620/11 by stating, "[a] food is misbranded – (a) If its labeling is false or misleading in any particular."

72. The introduction of misbranded food into interstate commerce is prohibited under the FDCA and all state parallel statutes cited in this Second Amended Class Action Complaint.

73. Also, the Illinois Consumer Fraud and Deceptive Business Practices Act provides protection for consumers when purchasing products, including Defendants' Products, by stating,

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . .

815 ILCS 505/2.

74. Defendants intended for Plaintiffs and the Class members to be misled.

75. Defendants' misleading and deceptive practices proximately caused harm to the Plaintiffs and the Class.

CLASS ACTION ALLEGATIONS

76. Plaintiffs bring this action individually and as representatives of all those similarly situated pursuant to Federal Rule of Civil Procedure 23 on behalf of the below-defined Classes:

> **National Class:** All persons in the United States that purchased the Products.
>
> **Consumer Fraud Multi-State Class:** All persons in the states of California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington that purchased the Products.[12]
>
> **Illinois Subclass:** All persons in the state of Illinois that purchased the Products.
>
> **New York Subclass:** All persons in the state of New York that purchased the Products.

Excluded from the Classes are Defendants and their affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

77. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

78. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, Class members number in the thousands to millions. The precise number of Class members and their addresses are presently unknown to Plaintiffs, but may be ascertained from Defendants'

[12] The states in the Consumer Fraud Multi-State Class are limited to those states with similar consumer fraud laws under the facts of this case: California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. §407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law §§ 349, 350 *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

books and records. Class members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

79. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Such common questions of law or fact include:

a. The true nature and quality of the protein in the Products;

b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;

c. Whether Defendants' actions violate the state consumer fraud statutes invoked below;

d. Whether Defendants breached an express warranty to Plaintiffs and Class members; and

e. Whether Defendants were unjustly enriched at the expense of the Plaintiffs and Class members.

80. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of himself and the other Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

81. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other members of the Classes because, among other things, all Class

members were comparably injured through Defendants' uniform misconduct described above. Further, there are no defenses available to Defendants that are unique to Plaintiffs.

82. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class members they seek to represent, they have retained counsel competent and experienced in complex class action litigation, and they will prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and their counsel.

83. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue hardship and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

84. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole.

85. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The

damages or other financial detriment suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CLAIMS ALLEGED

COUNT I
Violation Of State Consumer Fraud Acts
(On Behalf Of The Multi-State Class)

86. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

87. The Consumer Fraud Acts of the states in the Consumer Fraud Multi-State Class[13] prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

88. Defendants intended that Plaintiffs and each of the other members of the Consumer Fraud Multi-State Class would rely upon their deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

[13] California (Cal. Bus. & Prof. Code § 17200, *et seq*.); Florida (Fla. Stat. § 501.201, *et seq*.); Illinois (815 Ill. Comp. Stat. 505/1, *et seq*.); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq*.); Michigan (Mich. Comp. Laws § 445.901, *et seq*.); Minnesota (Minn. Stat. § 325F.67, *et seq*.); Missouri (Mo. Rev. Stat. § 407.010, *et seq*.); New Jersey (N.J. Stat. § 56:8-1, *et seq*.); New York (N.Y. Gen. Bus. Law §§ 349, 350, *et seq*.); and Washington (Wash. Rev. Code § 19.86.010, *et seq*.).

89. As a result of the Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiffs and each of the other members of the Consumer Fraud Multi-State Class have sustained damages in an amount to be proven at trial.

90. In addition, Defendants' conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

COUNT II
Violation Of Illinois Consumer Fraud Act
(In The Alternative To Count I And On Behalf Of The Illinois Subclass)

91. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

92. Plaintiff Porter brings this claim individually and on behalf of members of the Class and Illinois Subclass against all Defendants.

93. The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq.*, prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purpose.

94. Defendants intended that the Plaintiff Porter and each of the other members of the Illinois Subclass would rely upon their deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

95. As a result of the Defendants' use or employment of unfair or deceptive acts or business practices, Plaintiff Porter and each of the other members of the Illinois Subclass have sustained damages in an amount to be proven at trial.

96. In addition, Defendants' conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

COUNT III
Deceptive Acts Or Practices, New York GBL § 349
(In The Alternative To Count I And On Behalf Of The New York Subclass)

97. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

98. Plaintiff Kwon brings this claim individually and on behalf of the members of the New York Subclass against all Defendants.

99. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by making the Misrepresentations.

100. The foregoing deceptive acts and practices were directed at consumers.

101. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics, ingredients, and benefits of the Products to induce consumers to purchase same.

102. Plaintiff Kwon and members of the New York Subclass were injured because: (a) they would not have purchased the Products if they had known that the Products did not contain the represented protein content; (b) they paid a price premium for the Products based on Defendants' Misrepresentations; and (c) the Products do not have the characteristics, uses, or benefits as promised, namely that the Products contained the represented protein content. As a result, Plaintiff Kwon and members of the New York Subclass have been damaged either in the full amount of the purchase price of the Products or in the difference in value between the Products as warranted and the Products as actually sold.

103. On behalf of himself and other members of the New York Subclass, Plaintiff Kwon seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT IV
False Advertising, New York GBL § 350
(In The Alternative To Count I And On Behalf Of The New York Subclass)

104. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

105. Plaintiff Kwon brings this claim individually and on behalf of the members of the New York Subclass against all Defendants.

106. Based on the foregoing, Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York GBL.

107. Defendants' false, misleading, and deceptive statements and representations of fact, including but not limited to, the Misrepresentations, were and are directed to consumers.

108. Defendants' false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

109. Defendants' false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

110. Plaintiff Kwon and members of the New York Subclass have been injured because: (a) they would not have purchased the Products if they had known that the Products did not contain the represented protein content; (b) they paid a price premium for the Products based on Defendants' Misrepresentations; and (c) the Products do not have the characteristics, uses, or benefits as promised, namely that the Products contained the represented protein content. As a result, Plaintiff Kwon and members of the New York Subclass have been damaged either in the

full amount of the purchase price of the Products or in the difference in value between the Products as warranted and the Products as actually sold.

111. As a result of Defendants' false, misleading, and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiff Kwon has suffered and will continue to suffer economic injury.

112. Plaintiff Kwon and members of the New York Subclass suffered an ascertainable loss caused by Defendants' Misrepresentations because they paid more for the Products than they would have had they known the truth about the Products.

113. On behalf of himself and other members of the New York Subclass, Plaintiff Kwon seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT V
Breach Of Express Warranty
(On Behalf Of The National Class)

114. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

115. Plaintiffs, and each member of the National Class, formed a contract with Defendants at the time Plaintiffs and the other National Class members purchased the Products. The terms of the contract includes the promises and affirmations of fact made by Defendants on the Products' packaging and through marketing and advertising, including: (1) the total protein count contained in the Products; (2) the percent of the recommended daily value of protein contained in the Products; and (3) the quality and source of protein contained in the Products. This labeling, marketing and advertising constitute express warranties and became part of the basis of

the bargain, and are part of the standardized contract between Plaintiffs and the members of the National Class and Defendants.

116. Defendants purport through their advertising, labeling, marketing and packaging to create an express warranty that the Products contained specific qualities of protein and protein content.

117. Plaintiffs and the National Class performed all conditions precedent to Defendants' liability under this contract when they purchased the Products.

118. Defendants breached express warranties about the Products and their qualities because Defendants' statements about the Products were false and the Products do not conform to Defendants' affirmations and promises described above.

119. Plaintiffs and each of the members of the National Class would not have purchased the Products had they known the true nature of the Products' ingredients and what the Products contained.

120. As a result of Defendants' breach of express warranty, Plaintiffs and each of the members of the National Class have been damaged in the amount of the purchase price of the Products and any consequential damages resulting from the purchases.

121. On June 1, 2015, prior to filing this action, Defendants were served with a pre-suit notice letter that complied in all respects with U.C.C. §§ 2-313, 2-607. Plaintiff's counsel sent Defendants a letter advising them that they breached an express warranty and demanded that they cease and desist from such breaches and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as Exhibit D.

COUNT VI
Unjust Enrichment
(In The Alternative To Count V And On Behalf Of The National Class)

122. Plaintiffs incorporate paragraphs 1-85 as if fully set forth herein.

123. Plaintiffs and the other members of the National Class conferred benefits on Defendants by purchasing the Products.

124. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiffs and the other members of the National Class' purchase of the Products. Retention of those monies under these circumstances is unjust and inequitable because Defendants' labeling of the Products was misleading to consumers, which caused injuries to Plaintiffs and the other members of the National Class because they would have not purchased the Products if the true facts would have been known.

125. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and the other members of the National Class is unjust and inequitable, Defendants must pay restitution to Plaintiffs and the other members of the National Class for their unjust enrichment, as ordered by the Court.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs and the other Class members respectfully request that the Court:

A. Certify the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Award damages, including compensatory, exemplary, statutory, incidental, consequential, actual, and punitive damages to Plaintiffs and the Classes in an amount to be determined at trial;

C. Award Plaintiffs and the Classes their expenses and costs of the suit, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees;

D. Grant restitution to Plaintiffs and the Classes and require Defendants to disgorge their ill-gotten gains;

E. Permanently enjoin Defendants from engaging in the unlawful conduct set forth herein; and

F. Grant any and all such other relief as the Court deems appropriate.

Dated: May 3, 2016

Respectfully submitted,

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* Admission *Pro Hac Vice* Pending

Counsel For Plaintiffs
And The Proposed Putative Classes

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **Second Amended Class Action Complaint** was filed this 3rd day of May 2016 via the electronic filing system of the Northern District of Illinois, which will automatically serve all counsel of record in this action.

/s/ Michael L. Silverman
Michael L. Silverman

4818-8453-0225, v. 1

EXHIBIT A

ChromaDex®
10005 Muirlands Blvd., Suite G ♦ Irvine, CA 92618
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Process Report

Customer:	Oliver Law Group PC	Report Number:	CDXA-PR-150-01
Address (City. State):	Rochester. MI	Project Number:	ORD66328 (originated from ORD65055)
Purchase Order:	N/A	Date Received:	21 Apr 14
Date of Report:	20-Jun-14	Test Location:	Boulder. CO

Assay: Analysis of Samples from Oliver Law Group

Part Number: CDA-RPTCHG

Prepared By: **Maria Bialecki** — Quality Assurance — 20-Jun-14 — Date

Reviewed By: **Sarah Garthe** — Quality Assurance — 20-Jun-14 — Date

Approved By: Brian Nettles — Digitally signed by Brian Nettles DN: cn=Brian Nettles, o=ChromaDex Analytics, ou=Chemistry Developments, email=BrianN@chromadex.com, c=US Date: 2014.06.20 08:56:09 -06'00' — Manager. Chemistry Development — 20-Jun-14 — Date

Signed original on file at CDXA

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein. this product analysis is for the benefit of our client only. may not be relied upon by any other party without our prior written consent. relates solely to the sample(s) provided to us by our client and therefore cannot by applied to any other material or sample. Unless otherwise noted. samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

SUMMARY

ABSTRACT

One sample was received from Oliver Law Group for a multitude of analyses to investigate potential adulteration in the product.

1) Body Fortress Super Advanced Whey Protein (lot# 784847-01 Q); ChromaDex sample# CDXA-14-2565.

OBJECTIVE

To perform necessary tests to investigate potential adulteration in "Body Fortress Super Advanced Whey Protein product (lot# 784847-01 Q)" provided by Oliver Law Group.

INTRODUCTION

The sample from Oliver Law Group was analyzed for Nitrogen content by the Kjeldahl method; elemental analysis for Carbon. Hydrogen & Nitrogen content; free and bound amino acid content; Taurine. Glycine and Creatine content.

DISCUSSION

The sample from Oliver Law Group was analyzed for nitrogen content by the Kjeldahl method; elemental analysis for Carbon. Hydrogen & Nitrogen content; free and bound amino acid content; Taurine. Glycine and Creatine content. The results for the individual analyses are included in the appended reports. A summary is included below in Table 1.

Table 1; Sample: CDXA-14-2565

Analysis	Units	Result
Protein by Kjeldahl*	%	74.4*
Protein by Kjeldahl*	g/srv (42g)	31.2*
Nitrogen by Kjeldahl*	%	11.9*
Total Amino acids	mg/srv (42g)	25685
Bound Amino acids	mg/srv(42g)	21425
Free Amino acids	mg/srv(42g)	4260
Taurine (free)	mg/srv(42g)	1810
Glycine (free)	mg/srv(42g)	3260
Creatine	mg/srv(42g)	2930
Elemental Analysis	%	46.02% C; 6.79% H; 11.0% N

***Protein content was determined by Kjeldahl method, which measures Nitrogen content. Conventionally accepted factor of 6.25 was used to convert total Nitrogen (%) by Kjeldahl to total Protein.**

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein, this product analysis is for the benefit of our client only, may not be relied upon by any other party without our prior written consent, relates solely to the sample(s) provided to us by our client and therefore cannot by applied to any other material or sample. Unless otherwise noted, samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

Body Fortress Super Advanced Whey Protein (lot# 784847-01 Q)

The Body Fortress Super Advanced Whey Protein (lot# 784847-01 Q); (CDXA-14-2565) was assayed for the different analytes as mentioned in Table 1 above.

A review of the label claim for this product on the web listed the following for a serving size of 1 scoop (~42g) and a comparison with results obtained is presented below in Table 2.

Table 2: Representative product label specification for 1 scoop serving size (~42g) – from web**

Amount per serving (~42g)	Specification on product label on web**	Results***
Protein	30g	31.1g*
Aspartic Acid	2052	2250
Threonine	2222	2330
Serine	915	1090
Glutamic Acid	3104	3620
Proline	1116	1210
Glycine	4357	4100
Alanine	903	1140
Valine	1076	1130
Isoleucine	1133	1240
Leucine	1974	2270
Tyrosine	564	655
Phenylalanine	613	706
Lysine	1616	1970
Histidine	334	361
Arginine	469	605
Cystine	422	533
Methionine	406	475

see comment under table one.

**(http://images.vitaminimages.com/cdn/sd/pdf/L044320-AE.pdf)

****Results for amino acids are presented as total amino acids**

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REFERENCES

1) Barrow Agee # 893916
2) CDXA-ARS-19987-00; Bound Amino acids by Profile by HPLC
3) CDXA-ATR-6041-00; Amino acids Base Panel of 21
4) CDXA-ATR-6049-00; Taurine by HPLC
5) CDXA-ATR-6037-00; Creatine by HPLC
6) CDXA-ARS-19860-00; Elemental Analysis

REVISION HISTORY

Revision Number	Document/Changes
00	New report
01	Revised statement under table one. corrected results for Nitrogen by Kjeldahl. removed statement under table two.

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services." a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein. this product analysis is for the benefit of our client only. may not be relied upon by any other party without our prior written consent. relates solely to the sample(s) provided to us by our client and therefore cannot by applied to any other material or sample. Unless otherwise noted. samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

EXHIBIT B

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Process Report

Customer:	Barbat, Mansour & Suciu PLLC	Report Number:	CDXA-PR-191-00
Address (City, State):	Detroit, MI	Project Number:	ORD70492
Purchase Order:	N/A	Date Received:	18-Dec-14
Date of Report:	12-Jan-15	Test Location:	Boulder, CO
Assay:	Analysis of Body Fortress Super Advanced Whey Isolate from Barbat, Mansour & Suciu PLLC		
Part Number:	PRJ-CONSOL-RPT; CDA-00100666-ATR; CDA-00100140-ARS		

Prepared By:	**Aron Erickson** Director, Lab Operations	12-Jan-15 Date
Reviewed By:	**Richard Vigil** Manager, Analytics	12-Jan-15 Date
Approved By:	Kristie Kokeny Digitally signed by Kristie Kokeny DN: cn=Kristie Kokeny, o=Chromadex, Inc., ou=Quality Assurance, email=kristiek@chromadex.com, c=US Date: 2015.01.12 14:42:24 -07'00' Quality Assurance	12-Jan-15 Date

Signed original on file at CDXA

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein, this product analysis is for the benefit of our client only, may not be relied upon by any other party without our prior written consent, relates solely to the sample(s) provided to us by our client and therefore cannot by applied to any other material or sample. Unless otherwise noted, samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

SUMMARY

• *ABSTRACT*

The Sample was received from Barbat, Mansour & Suciu PLLC for a multitude of analyses.

1) Body Fortress Super Advanced Whey Isolate (Lot: 792839-01A; ChromaDex sample# CDXA-14-7910)

• *INTRODUCTION*

The sample from Barbat, Mansour & Suciu PLLC was analyzed for Free and Total amino acid content.

• *DISCUSSION*

A summary of the results are included below in Table 1. Table 2 lists the individual amino acids from the total and free amino acids analyses.

Table 1; CDXA-14-7910

Analysis	CDXA-14-7910 (mg/serving 36g)
Total Amino acids	28100
Total Free Amino acids	12100
Total Bound Amino acids	18200

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Table 2 –CDXA-14-7910

Analyte	Units	Total Amino Acids	Free Amino Acids	Bound Amino acids
Aspartic acid	mg/serving	2290	ND	2290
Glutamic acid	mg/serving	3470	ND	3470
Serine	mg/serving	954	BRL	954
Histidine	mg/serving	320	ND	320
Glycine	mg/serving	6050	5900	150
Threonine	mg/serving	3480	1960	1520
Arginine	mg/serving	508	ND	508
Alanine	mg/serving	1120	1620	0
Tyrosine	mg/serving	637	ND	637
Cystine	mg/serving	547	2290	0
Valine	mg/serving	1090	ND	1090
Methionine	mg/serving	454	BRL	454
Phenylalanine	mg/serving	634	ND	634
Isoleucine	mg/serving	1300	ND	1300
Leucine	mg/serving	2170	335	1835
Lysine	mg/serving	1890	ND	1890
Proline	mg/serving	1140	ND	1140
Asparagine	mg/serving		ND	
Glutamine	mg/serving		ND	
Tryptophan	mg/serving		ND	
Hydroxyproline	mg/serving		ND	
Total	mg/serving	28100	12100	18200
Serving Size = 36g				

- ***REFERENCES***

1) CDXA-ATR-6966-00; Free Amino Acids Base Panel of 21 by HPLC
2) Sub12; Report# 1146636-0 Total Amino acids by Profile by HPLC

REVISION HISTORY

Revision Number	Document/Changes
00	New report

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Analytical Test Report

Customer:	Barbat, Mansour & Suciu PLLC	Report Number:	CDXA-ATR-6966-00
Address (City, State):	Detroit, MI	Project Number:	ORD70492
Purchase Order:	Not Provided	Date Received:	18-Dec-14
Date of Report:	06-Jan-15	Test Location:	Boulder, CO

Assay: Free Amino Acids Base Panel of 21 by HPLC

Part Number: CDA-00100666-ATR

Prepared By: **Devon Cruz** — Analyst I, Analytical Services — 06-Jan-15 (Date)

Reviewed By: **Hadi Cassier** — Analyst II — 06-Jan-15 (Date)

Approved By: Kristie Kokeny — Digitally signed by Kristie Kokeny DN: cn=Kristie Kokeny, o=Chromadex, Inc., ou=Quality Assurance, email=kristiek@chromadex.com, c=US Date: 2015.01.12 14:29:30 -07'00' — Quality Assurance Specialist I — 06-Jan-15 (Date)

Signed original on file at CDXA

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SUMMARY

- ***SAMPLE(S)***

	Lot #	CDXA #
Body Fortress Super Advanced Whey Isolate	792839-01A	CDXA-14-7910

- ***RESULTS***

Table 1 –CDXA-14-7910

Analyte	Units	Spec	Result	Reporting Limit
Aspartic acid	mg/serving		ND	119
Glutamic acid	mg/serving		ND	132
Serine	mg/serving		BRL	94
Histidine	mg/serving		ND	139
Glycine	mg/serving		5900	68
Threonine	mg/serving		1960	107
Arginine	mg/serving		ND	156
Alanine	mg/serving		1620	80
Tyrosine	mg/serving		ND	162
Cystine	mg/serving		2290	215
Valine	mg/serving		ND	105
Methionine	mg/serving		BRL	134
Phenylalanine	mg/serving		ND	148
Isoleucine	mg/serving		ND	118
Leucine	mg/serving		335	118
Lysine	mg/serving		ND	131
Proline	mg/serving		ND	189
Asparagine	mg/serving		ND	36
Glutamine	mg/serving		ND	36
Tryptophan	mg/serving		ND	36
Hydroxyproline	mg/serving		ND	38

Serving Size = 36 g

ND – Not detected above reporting Limit

BRL – Below reporting limit (compound detected below RL)

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ANALYTICAL METHOD

- **STANDARD(S)** *All standards supplied by ChromaDex, unless otherwise specified.*

	Part/Lot #
Ready to Inject Amino Acid Mix	Agilent-5061-3330
Norvaline	Agilent-BCBL0180V
Hydroxyproline	Agilent-BCBK363V
Asparagine	ASB-00011043
Glutamine	Agilent-BCBK3328V
Tryptophan	Agilent-BCBB7661

- **LABORATORY SUPPLIES**

Analytical Balance
Ultrasonication Bath
Assorted and Volumetric glassware
Syringes and Syringe Filters
HPLC glass vials and caps

- **SOLVENTS AND REAGENTS**

Milli-Q Water
Methanol (MeOH)
Sodium Phosphate, dibasic (Na_2HPO_4)
2 N KOH
Acetonitrile (ACN)
Hydrochloric acid (HCl)
OPA (o-phthalaldehyde) – Derivatization reagent for primary amino acids
FMOC (9-fluorenyl-methyl chloroformate) – Derivatization reagent for secondary amino acids
Borate buffer (0.4N in water)
Phosphoric Acid (H_3PO_4)

- **SOLUTION PREPARATION**

Diluent – 0.1 N HCl

The diluent was prepared by transferring 16.8 mL of HCl to a 2000 mL volumetric flask and diluting it to volume with water.

Mobile Phase A - 10 mM Na_2HPO_4, 10 mM $Na_2B_4O_7$ pH= 8.2

Solution was prepared by adding 2.8 g Na_2HPO_4 and 7.6 g of $Na_2B_4O_7$ to 2000 mL of water and stirring until completely dissolved. The pH was adjusted to 8.4 with 2.4 ml of HCl, followed by drop-wise addition of HCl until the pH was 8.2.

Mobile Phase B - 45:45:10 ACN-MeOH-Water

Solution was prepared by combining 900 mL Acetonitrile, 900 mL Methanol, and 200 mL Milli-Q water and mixing well.

Injection diluent

Add 40 ul of concentrated H_3PO_4 to 10 ml of water

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- ***STANDARD PREPARATION***

Amino Acid Mix A Stock Standard – Includes the Amino Acids Alanine, Arginine, Aspartic Acid, Cystine, Glutamic Acid, Glycine, Histidine, Isoleucine, Leucine, Lysine, Methionine, Phenylalanine, Proline, Serine, Threonine, Tyrosine, and Valine

A mixed amino acid standard containing 17 amino acids was purchased from Agilent and arrived in 0.1N HCl. Calibration standards were then prepared from this mixed stock by diluting with 0.1 N HCl.

Supplemental mixed standard- Asparagine, Glutamine, Tryptophan, and Hydroxyproline

Mixed standard solution was prepared by weighing approximately 5 mg of Asparagine into a 50 mL volumetric flask. An aliquot of Glutamine, Tryptophan, and Hydroxyproline were added to the volumetric flask. 50 mL of diluent were added, and the flask was sonicated for 30 minutes.

Internal Standard

Solution was prepared by weighing 50 mg of Norvaline into a 50 mL volumetric flask. Brought to volume with diluent and mixed well.

- ***SAMPLE PREPARATION***

Sample Preparation

~500 mg of sample were weighed into a 25 mL volumetric flask. 25 mL of diluent were added, and the flask was sonicated for 30 minutes. The solution was diluted 10x and 50x with diluent and mixed well. An aliquot of each dilution was filtered through a PTFE filter. 900 µL of each filtrate were combined with 100 µL of IS and mixed well.

- ***INSTRUMENT PARAMETERS***

Instrument	Agilent 1100 Series HPLC System
Detection	UV-Vis
Mobile Phase A	10 mM $Na_2B_4O_7$ pH= 8.2
Mobile Phase B	45:45:10 ACN-MeOH-Water

Gradient Program

Time (min)	%A	%B
0.0	98	2
0.5	98	2
20.0	43	57
20.1	0	100
23.5	0	100
23.6	98	2
25	98	2

Column	Agilent Zorbax Eclipse Plus C18 RR, 150 x 4.6mm, 3.5 µm
Flow Rate	1.5 mL/min

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Detectior Settings:		***UV Detection***
	OPA Amino Acids:	338 nm, 10 nm bandwidth (bw) Reference 390, 20
	FMOC-Amino Acids	262 nm, 16 nm bw Reference 324, 8

Injection Volume	Injector Program
Column Temperature	40 °C

Autosampler Injector Set-Up and Program:

Draw speed: 200 µL/min
Eject speed: 200uL/min
Draw Position: 0.0 mm
Equilibration Time 2.0 sec

Vial 1 = Borate Buffer (HPLC vial, screw-cap)
Vial 2 = Injection Diluent
Vial 3 = OPA (GC vial w/ insert, crimp-cap)
Vial 4 = FMOC (GC vial w/ insert, crimp-cap)
Vial 5 = Water (HPLC vial, no cap)
Vial 6 = Water (HPLC vial, no cap)
Vial 7 = Acetonitrile (HPLC vial, no cap)

Row	**Action**
1	Needle wash in Vial 6, 1 times
2	Needle wash in Vial 5, 1 times
3	Needle wash in Vial 7, 1 times
4	Draw 2.5 µL from Vial 1 def. speed, def. offset
5	Draw 1.0 µL from Sample, def. speed, def. offset
6	Mix 3.5 µL "in seat", max. speed, 5 times
7	Wait 0.20 minutes
8	Draw 1.0 µL from Vial 3
9	Mix 4.5 µL in seat, max. speed, 10 times
10	Wait 1.00 min
11	Draw 0.4 µL from Vial 4 def. speed, def. offset
12	Mix 4.9 µL in seat, max. speed, 10 times
13	Wait 1.00 min
14	Draw 32. µL from Vial 2 def. speed, def. offset
15	Mix 36.9 µL in seat, max. speed, 8 times
16	Inject
17	Wait 0.20 min
18	Valve bypass

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DATA

- ***FIGURES***

Figure 1: Amino Acids Mix Standard (UV Chromatogram) Base Panel (17)

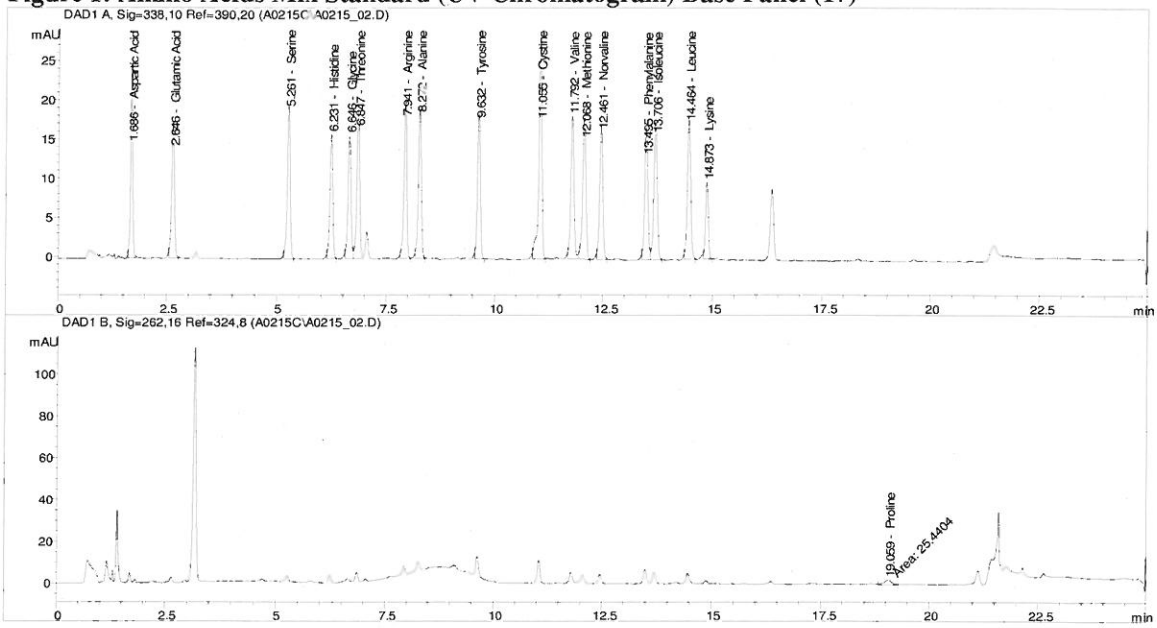

Figure 2: Supplemental Amino Acids Standards Mix (UV Chromatogram)

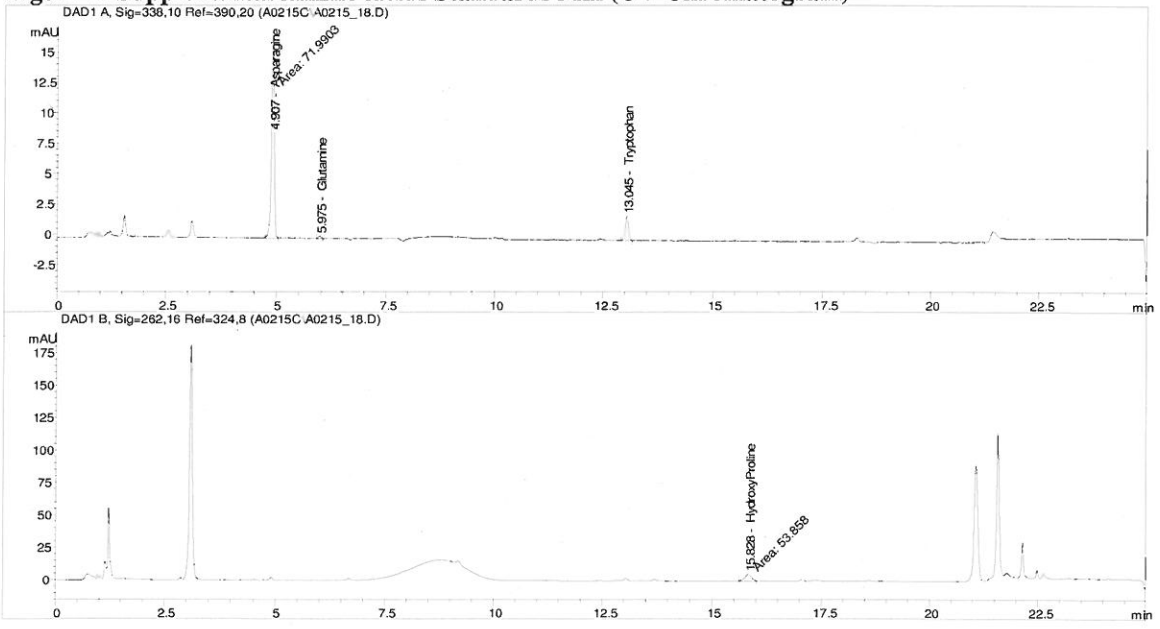

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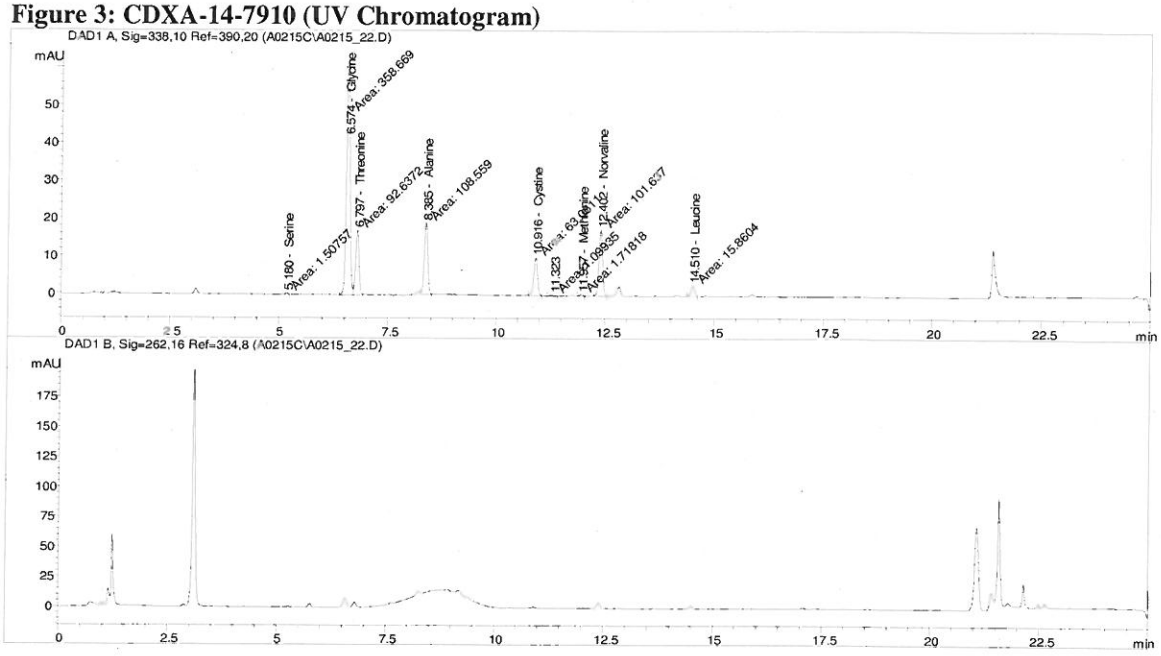
Figure 3: CDXA-14-7910 (UV Chromatogram)



- ***REFERENCES***

Analytical Method: 99.1-CD-5.0-000186 "Amino Acids by Pre-Column Derivitization HPLC."

Laboratory Notebook	Page(s)
402	6
412	18

- ***REVISION HISTORY***

Revision Number	Document/Changes
00	New report

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EXHIBIT C

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Process Report

Customer:	Barbat, Mansour & Suciu PLLC	Report Number:	CDXA-PR-235-00
Address (City, State):	Detroit, MI	Project Number:	ORD73477
Purchase Order:	N/A	Date Received:	17-Apr-15
Date of Report:	04-May-15	Test Location:	Boulder, CO; Sub12
Assay:	Analysis of Met-Rx MyoSynthesis Whey from Barbat, Mansour & Suciu PLLC		
Part Number:	PRJ-CONSOL-RPT; CDA-00100666-ATR; CDA-00100140-ARS		

Prepared By: **Aron Erickson**, Director, Lab Operations — 04-May-15 (Date)

Reviewed By: **Richard Vigil**, Manager, Analytical Services — 04-May-15 (Date)

Approved By: Kristie Kokeny, Quality Assurance — 04-May-15 (Date)

Digitally signed by Kristie Kokeny
DN: cn=Kristie Kokeny, o=Chromadex, Inc., ou=Quality Assurance, email=kristiek@chromadex.com, c=US
Date: 2015.05.04 16:11:45 -06'00'

Signed original on file at CDXA

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SUMMARY

• ABSTRACT

The Sample was received from Barbat, Mansour & Suciu PLLC for a multitude of analyses.

1) Met-Rx MyoSynthesis Whey (Lot # 782817-01 L; ChromaDex sample# CDXA-15-3102)

• INTRODUCTION

The sample from Barbat, Mansour & Suciu PLLC was analyzed for Free and Total amino acid content.

• DISCUSSION

A summary of the results are included below in Table 1. Table 2 lists the individual amino acids from the total and free amino acids analyses.

Table 1: CDXA-15-3102

Analysis	CDXA-15-3102 (mg/serving 45g)
Total Amino acids	22400
Total Free Amino acids	3660
Total Bound Amino acids	18800

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Table 2 –CDXA-15-3102

Analyte	Units	Total Amino Acids	Free Amino Acids	Bound Amino acids
Aspartic acid	mg/serving	1990	ND	1990
Glutamic acid	mg/serving	3230	ND	3230
Serine	mg/serving	950	16.7	933
Histidine	mg/serving	334	ND	334
Glycine	mg/serving	3140	2800	340
Threonine	mg/serving	2150	761	1390
Arginine	mg/serving	558	ND	558
Alanine	mg/serving	959	ND	959
Tyrosine	mg/serving	567	14.9	552
Cystine	mg/serving	417	ND	417
Valine	mg/serving	1070	ND	1070
Methionine	mg/serving	424	11.8	412
Phenylalanine	mg/serving	599	ND	599
Isoleucine	mg/serving	1220	ND	1220
Leucine	mg/serving	1920	43.0	1880
Lysine	mg/serving	1710	ND	1710
Proline	mg/serving	1170	ND	1170
Asparagine	mg/serving		ND	
Glutamine	mg/serving		9.76	
Tryptophan	mg/serving		ND	
Hydroxyproline	mg/serving		ND	
Total	mg/serving	22400	3660	18800
Serving Size = 45g				

- ***REFERENCES***

1) CDXA-ATR-7463-00; Free Amino acids Base Panel of 21 by HPLC
2) Sub12; Report# 1223607-0 Total Amino acids Profile by HPLC

REVISION HISTORY

Revision Number	Document/Changes
00	New report

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EXHIBIT D

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JOSEPH I. MARCHESE
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FAX: 212.989.9163
JMARCHESE@BURSOR.COM

June 1, 2015

Via FedEx 2Day Delivery

NBTY, Inc.
2100 Smithtown Avenue
Ronkonkoma, NY 11779

United States Nutrition, Inc.
90 Orville Drive
Bohemia, NY 11716

Healthwatchers, Inc.
90 Orville Drive
Bohemia, NY 11716

Re: Violation of Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.; Violation of U.C.C. §§ 2-313, 2-314; and all other applicable laws

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by NBTY, Inc., United States Nutrition, Inc., and Healthwatchers, Inc., (collectively, "Defendants") arising from breaches of warranty under the Magnuson-Moss Warranty Act on behalf of our client, Dalton Becky, and a class of all similarly situated purchasers of Body Fortress Protein Powder. This letter also serves as notice pursuant to U.C.C. § 2-607(3)(a) concerning the breaches of express and implied warranties described herein. This letter additionally serves as notice of violations of all applicable consumer protection laws.

You have participated in the manufacture, marketing, and sale of Body Fortress Protein Powder. Body Fortress Protein Powder has been marketed and sold as having "60 Grams Premium Protein" from "Premium Whey Protein" (collectively, the "Misrepresentations"). In fact, Body Fortress Protein Powder does not have "60 Grams Premium Protein" from "Premium Whey Protein," because Body Fortress Protein Powder contains free form amino acids and non-protein ingredients, including creatine monohydrate. Independent laboratory testing reveals that Body Fortress Protein Powder only contains approximately 21 grams of protein per serving, when accounting for free form amino acids and creatine monohydrate. Accordingly, these representations, made on Body Fortress Protein Powder's labeling, are false and misleading.

Prior to August 2014, Mr. Becky purchased Body Fortress Protein Powder in reliance on the Misrepresentations. Defendants expressly warranted that Body Fortress Protein Powder protein's content is "Premium Whey Protein." Defendants breached that express warranty because Body Fortress Protein Powder's protein content is not "Premium Whey Protein," but includes free form amino acids and other non-protein ingredients, including creatine monohydrate. *See* U.C.C. § 2-313.

Defendants' conduct is also a deceptive business practice under all applicable consumer protection laws.

Mr. Becky is acting on behalf of a class defined as all persons in the United States who purchased Body Fortress Protein Powder.

To cure these defects, we demand that you (1) cease and desist from further sales of mislabeled Body Fortress Protein Powder; (2) issue an immediate recall of mislabeled Body Fortress Protein Powder; and (3) make full restitution to all purchasers of Body Fortress Protein Powder.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the design, development, supply, production, extraction, and/or testing of Body Fortress Protein Powder;

2. All documents concerning the advertisement, marketing, or sale of Body Fortress Protein Powder;

3. All documents concerning communications with any retailer involved in the marketing or sale of Body Fortress Protein Powder;

4. All documents concerning communications with purchasers of Body Fortress Protein Powder;

5. All documents concerning protein content testing;

6. All documents concerning communications with federal or state regulators; and

7. All documents concerning the total revenue derived from sales of Body Fortress Protein Powder in the United States.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me right away. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,

Joseph I. Marchese