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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DOREEN GARCIA, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiff,

v.

BPI SPORTS, LLC, a Florida limited
liability company,

Defendant.

Case No.: **'20CV0620 WQHAHG**

**CLASS ACTION COMPLAINT
FOR:**

- 1) Violations of California's
Consumers Legal Remedies Act,
Cal Civ. Code 1750 § *et seq.*
- 2) Violations of Unfair Competition
Law, California Business &
Professions Code § 17500 *et seq.*
- 3) Violations of Unfair Competition
Law, California Business &
Professions Code § 17200 *et seq.*
- 4) Unjust Enrichment

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff Doreen Garcia (“Plaintiff”) brings this action on behalf of
3 herself and on behalf of all others similarly situated, against Defendant BPI Sports,
4 LLC (“BPI Sports” or “Defendant”), based on Defendant’s misleading business
5 practices with respect to the packaging and sale of BPI BCAA dietary supplement
6 powders, and substantially similar BPI products (hereafter, collectively referred to
7 as “BPI Supplement Powders”).¹

8 2. Defendant advertises and sells its BPI Supplement Powders in sealed,
9 opaque plastic containers that contain much less product than the size of the
10 containers indicates. In reality, the containers are filled with an unreasonable and
11 unnecessary amount of non-functional empty space. This intentionally deceptive
12 packaging prevents the consumer from directly seeing the product’s contents, and
13 it leads reasonable consumers to believe that the containers are filled with
14 significantly more product than they are, much to consumers’ surprise after
15 purchase.

16 3. Defendant’s intentional practice of substantially under-filling its BPI
17 Supplement Powders’ opaque containers with powder creates non-functional slack
18 fill, in violation of state and federal laws. The use of non-functional slack fill
19 allows Defendant to lower its costs by deceiving customers into paying a price
20 premium for what they are led to think is a large amount of product, when in
21 reality, the amount of product consumers receive is much less than the large
22 containers lead them to expect.. As a result, Defendant has realized sizable profits
23 to the detriment of consumers.

24 4. Indeed, the State of California has recognized the misleading nature
25 of this non-functional slack fill. California Business and Professions Code

26
27 ¹ On information and belief, the BPI Supplement Powders include, without
28 limitation: Best BCAA (Original, Shredded, Energy, Recharged); One More
Rep; 1.M.R. Vortex; Clinical Essential Aminos; Pump HD; Nitro HD; and Keto
Weight Loss.

1 §12606.2(c) provides that “A container that does not allow the consumer to fully
2 view its contents *shall be considered to be filled as to be misleading* if it
3 contains nonfunctional slack fill.”

4 5. Plaintiff and other consumers have reasonably relied on Defendant’s
5 deceptive packaging in purchasing the BPI Supplement Powders. If Plaintiff and
6 other consumers had known that the products they purchased were packaged with
7 large and non-functional amounts of empty space, they would not have purchased
8 the BPI Supplement Powders or would have paid less for them. Therefore,
9 Plaintiff and other consumers have suffered injury-in-fact as a result of
10 Defendant’s deceptive practices, including, but not limited to, out-of-pocket costs
11 incurred in purchasing the BPI Supplement Powders for a price premium.

12 PARTIES

13 Plaintiff Doreen Garcia

14 6. Plaintiff Doreen Garcia is a California citizen who resides in San
15 Diego, California. In or around mid-2018, Plaintiff Garcia purchased a container
16 of BPI One More Rep dietary supplement powder from Walmart, a BPI-
17 authorized retailer, in San Diego, California, which is located in San Diego
18 County. Plaintiff Garcia purchased the BPI product for her own personal use.

19 7. When Plaintiff purchased the BPI One More Rep dietary supplement
20 powder, she reasonably believed the product’s container was substantially filled
21 with powder, and she relied on the container’s size to gauge how much product
22 she was purchasing. Because of its opaque packaging, the contents of the
23 container were not visible to Plaintiff at the time of purchase, and Plaintiff had no
24 reason to believe that the container was not full, or at least substantially full, of the
25 BPI Supplement Powder. Further, Plaintiff had no way to determine the fill level
26 based on either the packaging or labeling of the powder.

27 8. However, upon opening the container after purchase, Plaintiff was
28 surprised and upset to find that the container was mostly filled with air, and that

1 the supplement powder only took up half of the container's space. In fact,
2 Plaintiff contacted BPI Sports shortly thereafter to complain about the under-
3 filling. Plaintiff subsequently began purchasing a different dietary supplement
4 from another manufacturer.

5 9. If Plaintiff had known at the time of purchase that the BPI One More
6 Rep dietary supplement powder container largely contained empty space and was
7 less than halfway filled with the actual powder, she would not have purchased it or
8 would have paid less for the product.

9 10. Plaintiff would consider purchasing a BPI Supplement Powder in the
10 future if the labeling and packaging were no longer misleading and deceptive,
11 such that she could determine, prior to purchase, the level to which the containers
12 are actually filled with dietary supplement powder as opposed to empty space.

13 **Defendant**

14 11. Defendant BPI Sports, LLC is a limited liability company organized
15 and in existence under the laws of the State of Florida, and it conducts business
16 throughout the State of California. The corporate headquarters of BPI Sports,
17 LLC, are located at 3149 SW 42nd Street, Suite 200, Hollywood, Florida 33312.
18 BPI Sports, LLC, tests, manufactures, markets, distributes, and sells BPI
19 Supplement Powders nationwide and in California.

20 12. At all relevant times, Defendant was, and is, engaged in the business
21 of designing, testing, manufacturing, marketing, distributing, and selling the BPI
22 Supplement Powders in Los Angeles County, California, and throughout the
23 United States of America.

24 **JURISDICTION**

25 13. This is a class action.

26 14. This Court has subject matter jurisdiction over this matter pursuant to
27 28 U.S.C. § 1331, because this action arises under the Constitution or laws of the
28 United States and the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) and (6),

1 in that, as to each Class defined herein:

- 2 a. the matter in controversy exceeds \$5,000,000.00, exclusive of
- 3 interest and costs;
- 4 b. this is a class action involving 100 or more class members; and
- 5 c. this is a class action in which at least one member of the
- 6 Plaintiff class is a citizen of a State different from at least one
- 7 Defendant.

8 15. The Court has personal jurisdiction over Defendant, which has at
9 least minimum contacts with the State of California because it has conducted
10 business there and has availed itself of California's markets through the
11 marketing, distributing, and selling of BPI Supplement Powders.

12 VENUE

13 16. Defendant, through its business of advertising, distributing, and
14 selling BPI Supplement Powders, has established sufficient contacts in this district
15 such that personal jurisdiction is appropriate. Defendant is also deemed to reside
16 in this district pursuant to 28 U.S.C. § 1391(a).

17 17. In addition, a substantial part of the events or omissions giving rise to
18 these claims, and a substantial part of the property that is the subject of this action,
19 are in this district. Plaintiff's Declaration, as required under California Civil Code
20 § 1780(d) (but not pursuant to *Erie* and federal procedural rules), reflects that a
21 substantial part of the events or omissions giving rise to the claims alleged herein
22 occurred, or a substantial part of property that is the subject of this action, is
23 situated in Los Angeles County, California. It is attached as **Exhibit 1**.

24 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

25 FACTUAL ALLEGATIONS

26 19. At all relevant times, Defendant has distributed, marketed, advertised,
27 and sold BPI Supplement Powders across California and the United States.
28 Defendant sells BPI Supplement Powders at major retail and online outlets

1 including, without limitation, the BPI Sports website, Giant Eagle, GNC, Kroger,
 2 The Vitamin Shoppe, Walgreens, Walmart, and Amazon.com.²

3 20. Pursuant to California Business and Professions Code §12606.2(c):
 4 A container that does not allow the consumer to fully view its contents
 5 **shall be considered to be filled as to be misleading** if it contains
 6 nonfunctional slack fill. Slack fill is the difference between the actual
 7 capacity of a container and the volume of product contained therein.
 8 Nonfunctional slack fill is the empty space in a package that is filled to
 9 substantially less than its capacity for reasons other than any one or
 10 more of the following:

- 11 (1) Protection of the contents of the package.
- 12 (2) The requirements of machines used for enclosing the contents
 13 of the package.
- 14 (3) Unavoidable product settling during shipping and handling.
- 15 (4) The need for the package to perform a specific function, such
 16 as where packaging plays a role in the preparation or
 17 consumption of a food, if that function is inherent to the
 18 nature of the food and is clearly communicated to consumers.
- 19 (5) The fact that the product consists of a food packaged in a
 20 reusable container where the container is part of the
 21 presentation of the food and has value that is both significant
 22 in proportion to the value of the product and independent of
 23 its function to hold the food, such as a gift product consisting
 24 of a food or foods combined with a container that is intended
 25 for further use after the food is consumed or durable
 26 commemorative or promotional packages.
- 27 (6) Inability to increase the level of fill or to further reduce the
 28 size of the package, such as where some minimum package
 size is necessary to accommodate required food labeling
 exclusive of any vignettes or other nonmandatory designs or
 label information, discourage pilfering, facilitate handling, or
 accommodate tamper-resistant devices.
- (7) One or more of the following:
 - (A) The dimensions of the product or immediate product
 container are visible through the exterior packaging.

² <https://bpisports.com/store-locator>

(B) The actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging, excluding the bottom, accompanied by a clear and conspicuous disclosure that the depiction is the “actual size” of the product or immediate product container. If there are multiple units of the same product in a package, only one “actual size” depiction is required per same size product or immediate product container.

(C) A line or a graphic that represents the product or product fill and a statement communicating that the line or graphic represents the product or product fill such as “Fill Line,” both of which are clearly and conspicuously depicted on exterior packaging or the immediate product container if visible at point of sale. If the product is subject to settling, the line shall represent the minimum amount of product after settling.

- (8) The mode of commerce does not allow the consumer to view or handle the physical container or product.

(Cal. Bus. & Prof. Code § 12606.2(c) (emphasis added)).

21. Further, the Federal Food, Drug, and Cosmetic Act (FDCA) prohibits the introduction of food products into interstate commerce that are misbranded.

See 21 U.S.C. § 331(a). Relevant here, “a food ***shall be deemed to be misbranded*** if its container is so made, formed, or filled as to be misleading.” 21 C.F.R. § 100.100 (emphasis added). Pursuant to 21 C.F.R. § 100.100(a):

A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is

clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

22. The packaging of Defendant's BPI Supplement Powders products fits squarely within the foregoing definition of containing non-functional slack fill under both California and federal law, and does not meet any of the requirements under Cal. Bus. & Prof. Code § 12606.2(c)(1)-(8) or 21 C.F.R. § 100.100(a)(1)-(6).

23. As shown in the photos below from the BPI Sports official website³, the BPI Supplement Powders are all sold in a fully enclosed opaque container that does not allow consumers to even partially view the contents. Therefore, the packaging "does not allow the consumer to fully view its contents." 21 C.F.R. § 100.100(a).



³ <https://bpisports.com/>



24. BPI Supplement Powders' packaging is "filled to be misleading" due to the amount of non-functional slack fill it employs. The BPI Supplement Powders' packaging is only filled to approximately 25-66% of the container, including the space taken by the internally packaged plastic scoop, and the packaging does not indicate the capacity of the container as it relates to the amount of product contained therein, thus preventing a reasonable consumer from determining the striking difference in volume between the capacity of the container and the fill amount.

25. The BPI Supplement Powders contain "slack fill," as defined in Cal. Bus. & Prof. Code § 12606.2(c) and 21 C.F.R. § 100.100(a), because the empty space in the packaging is filled to substantially less than its capacity. On information and belief, each of the BPI Sports products encompassed in what has been defined herein as BPI Supplement Powders, have substantially similar

1 *container size, density, and fill levels*; and thus, contain substantially similar non-
2 functional slack fill based on the following facts.

3 26. Specifically, all BPI Supplement Powders are sold in similar-sized
4 containers, based on their measured height and widths. Each container has a
5 capacity, or volume, of approximately 611 or 680 cubic centimeters (cc), not
6 including the lid space.

7 27. Lastly, as depicted in the chart below, every BPI Supplement Powder
8 is filled between 25% to 66% of its capacity, *regardless of the slight variations in*
9 *density*. Thus, each container contains substantially similar non-functional and
10 *significant* slack-fill, which is unlawful under both state and federal laws. The
11 columns identified below assumes the container labeling is accurate and are based
12 on: (1) the container volume identified above; (2) the volume of the scoops
13 contained therein based on the engravings on the scooper; (3) the net weight as
14 labeled on the respective products' front panel labeling; and (4) the weight per
15 scoop as labeled on the respective products' back panel labeling. The "Fill Level"
16 column is the *maximum* fill level (volume) using the standard calculation for
17 volume (volume equals weight divided by density) but, as shown in the pictures
18 below, the fill level as received is even lower.

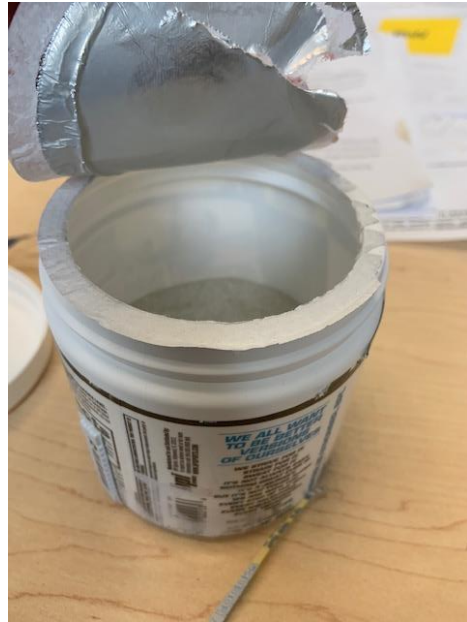
	Net Wt.*	Container Volume**	Density***	Fill Volume (cc)****	Fill %
Best BCAA	300g	680cc	0.68	441cc	65%
Best BCAA Shredded	275g	680cc	0.846	325cc	47%
Best BCAA w/Energy	250g	680cc	0.769	325cc	47%
Best BCAA Recharged	288g	680cc	0.777	370cc	54%
Keto Weight Loss	300g	680cc	0.667	449cc	66%
One More Rep	250g	680cc	0.769	325cc	47%
1.M.R Vortex	120g	680cc	0.75	160cc	25%
Clinical Essential Aminos	180g	611cc	0.8	225cc	36%
Pump HD	220g	611cc	0.743	296cc	48%
Nitro HD	150g	611cc	0.555	270cc	44%

*in grams (g), based on packaging as labeled by BPI Sports.

**in cubic centimeters (cc), based on approximate height and radius of container.

***in cubic centimeters (cc) per gram (g), based on scoop volume (cc) and serving wt. (as labeled on packaging)

****in cubic centimeters (cc), based on net weight (g) and powder density (g/cc)



1 28. Based on the similar weight, density, capacity and fill levels,
2 ingredients, package sizes and engravings on the packages of the BPI Supplement
3 Powders, Plaintiff is informed and believes that all BPI Supplement Powders were
4 produced in the same or similar facilities using the same or similar equipment and
5 methodology.

6 29. The substantial slack fill contained in the BPI Supplement Powders,
7 as it appears to consumers after purchase, is further exemplified in the photos
8 below, depicting the unaltered contents of several of the BPI Supplement Powders
9 and revealing the substantial empty space contained therein.

10 30. Here, as set forth in California Business and Professions Code
11 §12606.2(c), the amount of product that a consumer receives when purchasing
12 BPI Supplement Powders is clearly “filled substantially less than its capacity,”
13 because the product only fills approximately 25-66% of the capacity of the
14 container in which it is packaged.

15 31. Moreover, the BPI Supplement Powders’ slack fill is non-functional,
16 and thus, unlawful, because it does not fit within any of the exclusive, enumerated
17 safe harbor provisions set forth in 21 C.F.R. 100.100(a) and Cal. Bus. & Prof.
18 Code § 12606.2(c):

- 19 a. the slack fill does not protect the contents of the packaging, as the
20 product is not fragile or breakable (*see* 100.100(a)(1) and
21 12606.2(c)(1));
- 22 b. there is no reason that machines used for enclosing the contents of
23 the package would require an outer container which can hold
24 significantly more product than it actually does, especially when
25 the machines used by Defendant are capable of producing higher
26 fill levels in identical-sized containers for substantially similar
27 products (*see* 100.100(a)(2) and 12606.2(c)(2));
28

- 1 c. the slack fill is not necessary to accommodate product settling, as
2 fine powder is not the sort of product that “settles” significantly
3 enough to require double the amount of space; in fact, fine powders
4 are the least likely to “settle” because they fill every space of their
5 containers, similar to sand, such that if there is any settling, it is
6 negligible and would not result in 34-75% of the container being
7 empty (*see* 100.100(a)(3) and 12606.2(c)(3));
- 8 d. the packaging does not perform a specific function other than
9 containing the powder and is not used during the preparation of the
10 food or protein shakes, as the slack fill is not necessary to facilitate
11 mixing, shaking, or dispensing the products because the product is
12 not intended for mixing or shaking within the container and does
13 not dispense the product nor is such function inherent to the nature
14 of the food or communicated to consumers (*see* 100.100(a)(4) and
15 12606.2(c)(4);
- 16 e. the packaging is not decorative or commemorative, does not state
17 or suggest that it is intended to be reused, and does not have value
18 which is significant in proportion to the value of the product
19 independent of containing the food, as evidenced by the photos
20 above (*see* 100.100(a)(5) and 12606.2(c)(5));
- 21 f. the container does not need to be significantly larger than its fill to
22 accommodate necessary labeling information, as there are several
23 sized containers for products sold by BPI Sports, as well as
24 comparable products in various, smaller containers produced by
25 competitors (*see* 100.100(a)(6) and 12606.2(c)(6));
- 26 g. the dimensions of the product are not visible through the exterior
27 packaging, as evidenced in the photos above (*see*
28 12606.2(c)(7)(A));

- 1 h. the actual size of the product is not depicted on any side of the
2 exterior packaging, as evidenced in the photos above (*see*
3 12606.2(c)(7)(B));
- 4 i. the exterior packaging does not have a line or a graphic that
5 represents the product or product fill and a statement
6 communicating that the line or graphic represents the product or
7 product fill such as “Fill Line,” as evidenced in the photos above
8 (*see* 12606.2(c)(7)(C)); and
- 9 j. the product is sold in a manner that allows consumers to view or
10 handle the outer container of the product prior to purchase because
11 it is sold in numerous brick-and-mortar retail locations (fn. 2) (*see*
12 12606.2(c)(8)).

13 32. Defendant’s packaging is misleading to reasonable consumers,
14 including Plaintiff and potential class members, and it serves only to maximize
15 Defendant’s profits by forcing consumers to unknowingly pay more than they
16 otherwise would have, had they known the BPI Supplement Powders contained
17 substantial non-functional slack fill.

18 33. Defendant knows, or should know, that consumers, like Plaintiff and
19 other Class Members, reasonably rely on the size and style of their packaging in
20 purchasing BPI Supplement Powders and would reasonably believe that the
21 packaging contains significantly more powder than it actually does.

22 34. In reasonable reliance on the size and style of their packaging,
23 Plaintiff and Class Members purchased BPI Supplement Powders.

24 35. Plaintiff and Class Members do not know, did not know, and have no
25 reason to know at the time of purchase, that the BPI Supplement Powders’
26 packaging contains a significant amount of empty space, because the containers
27 are opaque with no view of the contents. Further, the containers do not include a
28 fill line, and the net weight labeling provides no indication of the volume

1 contained therein. A reasonable consumer cannot accurately determine the fill of
2 the BPI Supplement Powders by shaking or squeezing the packaging and is
3 certainly not expected to do so prior to purchasing them.

4 36. To this day, Defendant continues to sell BPI Supplement Powders in
5 deceptive packaging, without disclosing the true nature of the contents therein.
6 Because the BPI Supplement Powders' packaging does not contain the amount of
7 product reasonably expected by Plaintiff and Class Members, Defendant's
8 uniform practice of filling and packaging BPI Supplement Powders in the
9 foregoing manner was, and continues to be, misleading and deceptive, and cheats
10 consumers.

11 37. Each consumer has been exposed to the same or substantially similar
12 deceptive practice, with the same misleading size and style of packaging,
13 containing only approximately 25-66% of the container's capacity with powder
14 and the rest with empty space (non-functional slack fill).

15 38. Plaintiff and other consumers have paid an unlawful premium for the
16 BPI Supplement Powders. If Plaintiff and Class Members knew how little product
17 they were purchasing, and how significantly underfilled the containers were,
18 Plaintiff and Class Members would not have purchased BPI Supplement Powders
19 or would have paid less for them. Therefore, Plaintiff and other consumers
20 purchasing the BPI Supplement Powders suffered injury in fact and lost money as
21 a result of Defendant's false, unfair, and fraudulent practices, as described herein.

22 39. As a result of their reliance on Defendant's representations,
23 consumers have suffered an ascertainable loss of money, including, but not limited
24 to, out of pocket costs incurred in purchasing BPI Supplement Powders, for which
25 Plaintiff and other consumers have paid an unlawful premium. Specifically, they
26 have paid for an amount of product that they expected but never received.
27 Plaintiff and other consumers would have paid significantly less for BPI
28 Supplement Powders had they known that the packaging only contained 25-66%

of the product that they had the capacity to hold. Alternatively, Plaintiff and other consumers would not have purchased BPI Supplement Powders at all, had they known that the packaging only contained approximately 25-66% of the product that they had the capacity to hold. Therefore, Plaintiff and Class Members suffered injury-in-fact and lost money as a result of Defendant's false, unfair, and fraudulent practices, as described herein.

40. Further, as a result of its deceptive marketing and unfair competition with other similar manufacturers and brands, Defendant realized sizable profits.

41. As a result of its misleading business practice, and the harm caused to Plaintiff and Class Members, Defendant should be enjoined from using this deceptive packaging, and should be required to pay for all damages caused to Plaintiff and Class Members.

CLASS ALLEGATIONS

42. Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23(c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

43. Plaintiff's proposed Class and Sub Class(es) are defined as:

Class: All individuals who purchased one or more containers of BPI Supplement Powders in the United States from four years prior to the filing of the complaint to the time of class certification.

California Sub-Class: All individuals who purchased one or more containers of BPI Supplement Powders in California from four years prior to the filing of the complaint to the time of class certification.

CLRA Sub-Class: All members of the California Sub-Class who are "consumers" within the meaning of California Civil Code § 1761(d).

44. Members of the Class(es) will collectively be referred to as "Class Members."

1 45. Excluded from the Class and Sub-Classes are: (1) Defendant, any
2 entity or division in which Defendant have a controlling interest, and their legal
3 representatives, officers, directors, assigns, and successors; (2) the Judge to whom
4 this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding
5 state and/or federal court system who may hear an appeal of any judgment
6 entered; and, (4) those persons who have suffered personal injuries as a result of
7 the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-
8 Class definitions if discovery and further investigation reveal that the Class and
9 Sub-Class should be expanded or otherwise modified. There is a well-defined
10 community of interest in the litigation and the class is readily ascertainable.

11 46. Numerosity: Although the exact number of Class Members is
12 uncertain and can only be ascertained through appropriate discovery, the number
13 is great enough such that joinder is impracticable (tens of thousands, if not more).
14 The disposition of the claims of these Class Members in a single action will
15 provide substantial benefits to all parties and to the Court. The Class Members are
16 readily identifiable from information and records in Defendant's possession,
17 custody, or control.

18 47. Typicality: Plaintiff's claims are typical of the claims of the Class in
19 that Plaintiff, like all Class Members, were exposed to Defendant's misleading
20 packaging, purchased a BPI Supplement Powder in reliance on the misleading
21 packaging, and suffered losses as a result of such purchases. The representative
22 Plaintiff, like all Class Members, has been damaged by Defendant's misconduct in
23 that they incurred expenses due to their reliance on Defendant's deceptive
24 packaging, as described throughout this complaint. Furthermore, the factual bases
25 of Defendant's misconduct are common to all Class Members and represent a
26 common thread resulting in injury to all Class Members.

27 48. Adequacy: Plaintiff is an adequate representative of the Classes
28 because his interests do not conflict with the interests of the members of the

Classes she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by Plaintiff and his counsel.

49. Commonality: Numerous questions of law and fact are common to Plaintiff and the Class Members that predominate over any question affecting only individual Class Members. These common legal and factual issues include the following:

- a. Whether BPI Supplement Powders' packaging contains non-functional slack fill;
- b. Whether Defendant's conduct was unlawful, unfair, and/or deceptive;
- c. Whether Defendant's conduct violates federal and/or state consumer protection laws;
- d. Whether Plaintiff and other Class Members are entitled to equitable relief, including, without limitation, a preliminary and/or permanent injunction;
- e. Whether Plaintiff and other Class Members are entitled to damages;
- f. Whether Defendant knew or reasonably should have known of its deceptive representations and omissions relating to its BPI Supplement Powders' packaging; and,
- g. Whether Defendant is obligated to inform Class Members of their right to seek reimbursement for having paid a premium for BPI Supplement Powders in reliance on Defendant's deceptive packaging.

50. Predominance and Superiority: Plaintiff and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims

prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

(Violation of California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)

51. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

52. Plaintiff brings this cause of action on behalf of herself and on behalf of the members of the CLRA Sub-Class.

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

54. Plaintiff and CLRA Sub-Class Members are "consumers" within the meaning of California Civil Code § 1761(d) because they bought BPI Supplement Powders for personal, family, or household purposes.

55. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have" By packaging BPI Supplement Powders in its current misleading containers, Defendant has represented and continues to represent that the Product has quantities and characteristics which it does not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

56. Cal. Civ. Code § 1770(a)(9) prohibits "[a]dvertising goods or services

1 with intent not to sell them as advertised.” By deceitfully packaging BPI
2 Supplement Powders in a container with significantly greater volume than the
3 product contained therein, and then intentionally selling BPI Supplement Powders
4 in a manner that does not meet consumer expectations as to the quantity of powder
5 contained in the packaging, Defendant has violated section 1770(a)(9) of the
6 CLRA.

7 57. At all relevant times, Defendant knew or reasonably should have
8 known that the BPI Supplement Powders packaging contained a significant
9 amount of non-functional slack fill, and that Plaintiff and other members of the
10 CLRA Sub-Class would reasonably and justifiably rely on the size and style of the
11 package in purchasing BPI Supplement Powders.

12 58. Plaintiff and members of the CLRA Sub-Class have reasonably and
13 justifiably relied on Defendant’s misleading and fraudulent conduct when
14 purchasing BPI Supplement Powders. Moreover, Defendant’s fraudulent and
15 misleading conduct is material in that a reasonable consumer would have
16 considered the amount of product contained in the packaging to be important in
17 deciding whether to purchase BPI Supplement Powders or pay less. Therefore,
18 reliance on such conduct as a material reason for the decision to purchase the
19 Product may be presumed or inferred for Plaintiff and members of the CLRA Sub-
20 Class.

21 59. Plaintiff and members of the CLRA Sub-Class have suffered and
22 continue to suffer injuries caused by Defendant, because they would not have
23 purchased BPI Supplement Powders, or would have paid significantly less for it,
24 had they known that the BPI Supplement Powders were significantly and
25 unnecessarily under-filled.

26 60. As a direct and proximate result of Defendant’s unfair methods of
27 competition and/or unfair and deceptive practices, Plaintiff and the Class have
28 suffered and will continue to suffer actual damages.

61. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the CLRA Sub-Class seek restitution, declaratory and injunctive relief, and all other remedies the Court deems appropriate for Defendant's violations of the CLRA. Plaintiff seeks to enjoin Defendant from the further use of deceptive non-functional slack fill in its products.

62. On March 30, 2020, Plaintiff provided Defendant with notice of its violations of the CLRA pursuant to California Civil Code § 1782(a). If Defendant fails to provide appropriate relief for its violations of the CLRA within 30 days, Plaintiff will amend his complaint to seek monetary, compensatory, and punitive damages, in addition to injunctive and equitable relief.

SECOND CAUSE OF ACTION

(Violation of California Business & Professions Code § 17500 *et seq.*)

63. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

64. Plaintiff brings this cause of action on behalf of herself and on behalf of the Class, or in the alternative, on behalf of the California Class.

65. California Business & Professions Code § 17500 prohibits unfair, deceptive, untrue, and misleading advertising in connection with the disposal of personal property (among other things), including, without limitation, false statements as to the use, worth, benefits, or characteristics of the property.

66. Defendant has represented and continues to represent to the public, including Plaintiff and Class Members, through its deceptive packaging, that more product is contained within the BPI Supplement Powders than is actually contained. Defendant's representation is misleading because the packaging contains 25-66% of the amount of product compared to what the packaging could potentially hold, and fill level that reasonable consumers expect. Defendant made such untrue or misleading advertisements with the intent to dispose of said merchandise.

67. Defendant knew, or in the exercise of reasonable care should have known, that these representations were misleading and deceptive, and that such representations continue to be misleading.

68. As a result of their reliance on Defendant's misrepresentations, Class Members suffered an ascertainable loss of money, property, and/or value of the product.

69. As a direct and proximate result of Defendant's unfair and deceptive practices, Plaintiff and Class Members have suffered and will continue to suffer actual damages.

70. Defendant has been unjustly enriched and should be required to make restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business & Professions Code, Plaintiff and Class Members are entitled to an order of this Court enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any money paid for BPI Supplement Powders as a result of the wrongful conduct of Defendant.

THIRD CAUSE OF ACTION

(Violation of California Business & Professions Code § 17200 *et seq.*)

71. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

72. Plaintiff brings this cause of action on behalf of herself and on behalf of the Class, or in the alternative, on behalf of the California Class.

73. As a result of their reliance on Defendant's misrepresentations and omissions, Class Members suffered an ascertainable loss of money, property, and/or value of their BPI Supplement Powders.

74. California Business & Professions Code § 17200 (the UCL) prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

1 75. Under the UCL, a business act or practice is “unlawful” if it violates
2 any established state or federal law.

3 76. Defendant’s false and misleading advertising of BPI Supplement
4 Powders therefore was and continues to be “unlawful” because it contains
5 unlawful non-functional slack fill as detailed herein in violation of 21 C.F.R. §
6 100.100 and Cal. Bus. & Prof. Code § 12606.2(c).

7 77. Furthermore, Defendant’s acts, conduct and practices also constituted
8 violations of California’s Consumers Legal Remedies Act; and violations of
9 California’s False Advertising Law.

10 78. Defendant’s acts, conduct, and practices were unfair because:

- 11 a. the harm to consumers far outweighs the utility of Defendant’s
12 conduct, which is solely to increase Defendant’s profits at the
13 expense of consumers;
- 14 b. consumers could not reasonably avoid harm, as they are
15 unaware of the non-functional slack fill prior to purchase; and
- 16 c. public policy, as set forth in federal and state slack-fill statutes,
17 including 21 C.F.R. 21 C.F.R. § 100.100 and Cal. Bus. & Prof.
18 Code § 12606.2(c), favors consumer protection from
19 Defendant’s specific conduct described herein.

20 79. By its conduct, Defendant has engaged in unfair competition and
21 unlawful, unfair, and fraudulent business practices.

22 80. Defendant’s unfair or deceptive acts or practices occurred repeatedly
23 in Defendant’s trade or business and were capable of deceiving a substantial
24 portion of the purchasing public.

25 81. As a direct and proximate result of Defendant’s unfair and deceptive
26 practices, Plaintiff and Class Members have suffered and will continue to suffer
27 actual damages. Defendant has been unjustly enriched and should be required to
28 make restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the

1 Business & Professions Code.

2 **FOURTH CAUSE OF ACTION**

3 **(For Unjust Enrichment)**

4 82. Plaintiff incorporates by reference the allegations contained in each
5 and every paragraph of this Complaint.

6 83. Plaintiff brings this cause of action on behalf of herself and on behalf
7 of the Class, or, in the alternative, on behalf of the California Class, against
8 Defendant.

9 84. As a direct and proximate result of Defendant's misrepresentations,
10 Defendant have profited through the sale of BPI Supplement Powders. Although
11 some of the powders can be purchased through Defendant's agents, the money
12 from the products' sales flows directly back to Defendant.

13 85. Defendant has therefore been unjustly enriched as a result of
14 Defendant's deceptive business practices in advertising, marketing, and selling the
15 BPI Supplement Powders through the use of funds that earned interest or
16 otherwise added to Defendant's profits when said money should have remained
17 with Plaintiff and Class Members.

18 86. As a result of the Defendant's unjust enrichment, Plaintiff and Class
19 Members have suffered damages.

20 **PRAYER FOR RELIEF**

21 87. Plaintiff, on behalf of herself, and all others similarly situated,
22 requests the Court to enter judgment against Defendant, as follows:

- 23 a. An order certifying the proposed Class and Sub-Class,
24 designating Plaintiff as named representative of the Class, and
25 designating the undersigned as Class Counsel;
- 26 b. An order enjoining Defendant from further deceptive
27 advertising, sales, and other business practices with respect to
28 its BPI Supplement Powders;

- c. A declaration requiring Defendant to comply with the various provisions of California's False Advertising Law and CLRA alleged herein and to make all the required representations;
- d. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of BPI Supplement Powders, or make full restitution to Plaintiff and Class Members;
- e. An award of attorneys' fees and costs, as allowed by law;
- f. An award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;
- g. An award of pre-judgment and post-judgment interest, as provided by law;
- h. Leave to amend the Complaint to conform to the evidence produced at trial; and
- i. Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of any and all issues in this action so triable.

Dated: March 31, 2020

Respectfully submitted,

Capstone Law APC

By: /s/ Steven R. Weinmann

Steven R. Weinmann

Tarek H. Zohdy

Cody R. Padgett

Trisha K. Monesi

Attorneys for Plaintiff Doreen Garcia

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

DOREEN GARCIA, individually, and on behalf of a class of similarly situated individuals

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Steven R. Weinmann, Cody R. Padgett, Tarek H. Zohdy & Trisha K. Monesi; Capstone Law, APC, 1875 Century Park East, Suite 1000, Los Angeles CA 90067, (310) 556-4811

DEFENDANTS

BPI SPORTS, LLC, a Florida limited liability company,

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'20CV0620 WQHAHG

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d); 28 U.S.C. § 1391

Brief description of cause:

Violations of CA's Consumers Legal Remedies Act; Unfair Business Competition Law & Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

03/31/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Steven R. Weinmann

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1

Steven R. Weinmann (SBN 190956)
Steven.Weinmann@capstonelawyers.com
Tarek H. Zohdy (SBN 247775)
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1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Doreen Garcia

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DOREEN GARCIA, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiff,

v.

BPI SPORTS, LLC, a Florida limited
liability company,

Defendant.

Case No.:

**DECLARATION OF DOREEN
GARCIA IN SUPPORT OF VENUE
FOR CLASS ACTION COMPLAINT
PURSUANT TO CIVIL CODE §
1780(d)**

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1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, and as to those matters, I believe them to be true. I am over the age of eighteen, a citizen of the State of California, and a Plaintiff in this action.
2. Pursuant to California Civil Code § 1780(d), this Declaration is submitted in support of Plaintiff's Selection of Venue for the Trial of Plaintiff's Cause of Action alleging violation of California's Consumers Legal Remedies Act.
3. I reside in San Diego, California, which is in the County of San Diego. I purchased a BPI Supplement Powder that is the subject of this lawsuit in the County of San Diego.
4. I am informed and believe that Defendant BPI Sports, LLC is a limited liability company organized and in existence under the laws of the State of Florida and conducts business throughout the State of California.
5. Based on the facts set forth herein, this Court is a proper venue for the prosecution of Plaintiff's Cause of Action alleging violation of California's Consumers Legal Remedies Act because the BPI Supplement Powders that are the subject of this lawsuit are situated here, and a substantial portion of the events giving rise to the claims occurred here.
6. I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

DocuSigned by:

B2566C0955DC473...
Doreen Garcia