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9
 10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 OMARI BOBO, individually and on
13 behalf of all other similarly situated,

14 Plaintiff,

15 v.

16 OPTIMUM NUTRITION, INC., a
17 Delaware Corporation,

18 Defendant.
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Case No: '14CV2408 BEN KSC

CLASS ACTION COMPLAINT FOR:

1. **BREACH OF EXPRESS WARRANTY;**
2. **VIOLATION OF 15 U.S.C. §§ 2301 et seq.;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, et seq.;**
4. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, et seq. FOR "UNLAWFUL" BUSINESS PRACTICES;**
5. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, et seq. FOR "UNFAIR" BUSINESS PRACTICES;**
6. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, et seq. FOR "FRAUDULENT" BUSINESS PRACTICES; and**
7. **VIOLATION OF CAL. CIV. CODE §§ 1750, et seq.**

JURY TRIAL DEMANDED

1 Omari Bobo (“Plaintiff”), individually and on behalf of all others similarly
2 situated, based on the investigation of counsel as to the actions and omissions of
3 defendant herein, and by their own individual knowledge as to Plaintiff’s own
4 circumstances, hereby complains against defendant Optimum Nutrition, Inc.
5 (“Defendant” or “Optimum”) as follows:

6 **INTRODUCTION**

7 1. Defendant Optimum formulates, manufactures, advertises and sells the
8 popular “Gold Standard,” along with other other, specialty branded powdered protein
9 supplements. The protein supplements of Optimum are marketed and sold throughout
10 the United States, including in California. Optimum is part of a growing and extremely
11 competitive protein supplement industry. New competitive entrants jumping into the
12 marketplace and the increasing cost of production place incredible competitive
13 pressure on experienced companies within this market. Accordingly, protein
14 supplement manufacturers are continually searching for means to both reduce their
15 manufacturing cost and differentiate their product(s) from competitors in order to
16 remain profitable.

17 2. Optimum markets its products as premium protein supplements suitable
18 for elite athletes, bodybuilders, and others having more moderate athletic and weight
19 management goals. Optimum understands that its target market highly values the
20 amount and quality of certain protein ingredients in its products, including whey
21 protein, casein proteins, egg proteins, and soy proteins (collectively the “Primary
22 Protein Ingredients”). As such, it markets and labels its sports protein supplements in a
23 manner highlighting the high level of Primary Protein Ingredients contained within
24 each of its products.

25 3. By way of example, Defendant names, markets, and labels its “Gold
26 Standard Natural 100% Whey Protein” and “Gold Standard 100% Whey Protein”
27 powders (collectively the “Whey Protein Products”), in a fashion both implies and
28 warrants that these products are comprised of “100% Whey Protein.” The same is true

1 of Defendant's "Gold Standard 100% Natural Casein Protein" and "Gold Standard
2 100% Casein Protein" powders (collectively the "Casein Protein Products"), which are
3 similarly labeled to expressly assert that they contain "100% Casein Protein."
4 Defendant also markets, labels and names its "Gold Standard 100% Egg Protein" (the
5 "Egg Protein Product") and "100% Soy Protein" (the "Soy Protein Product") powders
6 in a manner in which Defendant specifically declares that these Products exclusively
7 comprised of egg protein and soy protein, respectively. However, these representations
8 is false.¹

9 4. Defendant's representations regarding its Class Protein Products' protein
10 contents are deceptive and misleading to an average consumer. The Class Protein
11 Products do not in fact exclusively contain protein derived from the Primary Protein
12 Ingredients, as communicated by the names and labeling of each of Defendant's
13 Products. Instead, each of the above Optimum products contains other ingredients that
14 are not protein. As a result of Defendant's practices, a consumer purchases a product,
15 at a premium price, that contains approximately 68 to 79 percent protein - substantially
16 less than what Defendant states on its labeling and represents in the title of each of the
17 Class Protein Products ("100%"). Simply put, Plaintiff and the Class are not getting
18 the protein promised and for which they paid.

19 5. By labeling and marketing its Class Protein Products as "100% Whey
20 Protein," "100% Casein Protein," "100% Soy Protein," and "100% Egg Protein"
21 while not properly disclosing that the Optimum Products contain non-protein
22 ingredients, Defendant violates specific federal regulations and California law
23 intended to prevent deceptive food labeling. These actions violate a number of state
24 consumer protections laws, including the California Unfair Competition Law
25 ("UCL"), the California False Advertising Law ("FAL"), and the California Consumer
26 Legal Remedies Act ("CLRA"). Additionally, Defendant's labeling practices are a

27 ¹ Collectively, the Whey Protein Products, the Casein Protein Products, the Soy
28 Protein Product and the Egg Protein Product will be referred to as the "Class Protein
Products."

1 breach of express warranty and a violation of the Magnuson–Moss Warranty Act, 15
2 U.S.C. §§ 2301 *et seq.*

3 6. Defendant’s business practices, as alleged herein, have injured Plaintiff
4 and members of the Class. Plaintiff thus seeks damages, restitution, and injunctive or
5 equitable relief deemed proper by the Court. Plaintiff may amend this complaint to
6 seek actual, punitive, and statutory damages pursuant to the CLRA.

7 **JURISDICTION AND VENUE**

8 7. This Court has jurisdiction over the subject matter of this action pursuant
9 to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff
10 allege that Plaintiff and Class members are citizens of different states as Defendant,
11 and the cumulative amount in controversy for Plaintiff and the Class exceed \$5
12 million, exclusive of interest and costs.

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

16 (a) conducts business itself or through agent(s) in this District by advertising,
17 marketing, distributing and/or manufacturing the Class Protein Products in this
18 District; and/or

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

20 (c) otherwise has sufficient contacts with this District to justify Defendant
21 being fairly brought into court in this District.

22 **PARTIES**

23 9. Plaintiff Omari Bobo (“Bobo”) is, and at all times relevant hereto was, a
24 resident of San Diego, California, and a citizen of California. Plaintiff Bobo has
25 purchased Defendant’s Class Protein Products during the last four years. He most
26 recently purchased Defendant’s “Gold Standard 100% Whey Protein” powder at
27 Vitamin Shop, an authorized distributor and/or retailer of Optimum products, located
28 in San Diego, California on or about September 29, 2013.

1 10. Defendant Optimum Nutrition, Inc. is a Delaware corporation with its
2 headquarters in Aurora, Illinois. Optimum manufactures sports-oriented nutritional
3 products. Optimum manufactures, markets, advertises, distributes and sells the Class
4 Protein Products throughout the United States, including in California.

5 **SUBSTANTIVE ALLEGATIONS**

6 11. Powdered protein supplements have become increasingly popular during
7 the past decade; protein being seen as important for the development of muscle mass,
8 a key goal of many athletes. Additionally, protein may increase weight-loss when
9 eaten at relatively higher ratios when compared to carbohydrates and fats.
10 Accordingly, athletes, such as bodybuilders, and those who are following protein-rich
11 diets often attempt to ingest at least 100 grams of protein daily. This is difficult to
12 achieve without protein supplementation.

13 12. Defendant is aware that its consumers prize particular sources of protein
14 over others. The proteins most valued by supplement consumers are known as
15 “complete” protein sources. A “Complete protein” source is a product that contains all
16 the essential amino acids humans required to build protein-based compounds such as
17 muscle tissue. The major proteins in milk - casein and whey - are complete protein
18 sources. Both also score the highest rating on the Protein Digestibility Corrected
19 Amino Acid Score (PDCAAS), a measure of protein quality based on both the amino
20 acid requirements of humans and the digestibility of same. Egg-based proteins are
21 another animal derived complete protein that scores high on the PDCAAS. For vegans
22 (and others unable to consume animal-based proteins) soy protein is an excellent
23 complete protein source that scores highly on the PDCAAS. Indeed, casein, egg and
24 soy proteins (like whey protein) each score the highest possible value on the
25 PDCAAS.

26 13. Aware of the above hierarchy, Defendant markets the Class Protein
27 Products primarily as “**protein** powders” for athletes, emphasizing the Class Protein
28 Products’ protein quality and quantity in its advertisements and labeling. In order to

1 impress on the consuming public the enhanced value of the Class Protein Products,
 2 Defendant names each in a manner suggesting to a reasonable customer that the
 3 Products contain protein(s) of an undiluted purity (“**100% Whey Protein**,” “**100%**
 4 **Casein Protein**,” “**100% Soy Protein**,” and “**100% Egg Protein**.”) Defendant
 5 conspicuously places and thus repeats its affirmations of fact regarding its Products’
 6 purity in the Class Protein Products’ labeling - creating a warranty that its Products
 7 contain no agents or fillers other than whey, casein, soy and egg protein, respectively -
 8 as evidenced below:

9 **THE WHEY PROTEIN PRODUCTS***



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100% WHEY GOLD STANDARD

Serving Size 1 Rounded Scoop (30.4g)

Amount Per Serving		Calories from Fat 10	
		% Daily Value*	
Calories	120		
Total Fat	1g		2%
Saturated Fat	0.5g		3%
Trans Fat	0g		
Cholesterol	30mg		10%
Sodium	130mg		5%
Total Carbohydrate	3g		1%
Sugars	1g		
Protein	24g		48%
Vitamin A	0%	Vitamin C	0%
Calcium	8%	Iron	2%

Calories: 2,000 2,500
 Total Fat Less than 65g 80g
 Sat. Fat Less than 20g 25g
 Cholesterol Less than 300mg 300mg
 Sodium Less than 2,400mg 2,400mg
 Total Carbohydrate 300g 375g
 Dietary Fiber 25g 30g
 Protein 50g 65g

Calories per gram:
 Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Protein Blend (Whey Protein Isolates, Whey Protein Concentrate, Whey Peptides), Cocoa (Processed with Alkali), Lecithin, Natural and Artificial Flavors, Acesulfame Potassium, Aminogen®, Lactase.

ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.

(DOUBLE RICH CHOCOLATE SHOWN)



**NATURALLY FLAVORED
100% WHEY**

Serving Size 1 Rounded Scoop (32g)

Amount Per Serving		Calories from Fat 10	
		% Daily Value*	
Calories	130		
Total Fat	1g	2%	
Saturated Fat	0.5g	3%	
Trans Fat	0g		
Cholesterol	30mg	10%	
Sodium	60mg	3%	
Total Carbohydrate	5g	2%	
Sugars	3g		
Protein	24g		
Vitamin A	0%	Vitamin C	0%
Calcium	10%	Iron	0%

Not a Significant Source of Dietary Fiber.
* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

Calories:		2,000	2,500
Total Fat	Less than	65g	80g
Sat. Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Protein Blend (Whey Protein Isolates, Whey Protein Concentrate, Whey Peptides), Sugar, Natural Flavor, Lecithin, Xanthan Gum, Beet Powder, Citric Acid, Rebaudioside A, Aminogen®, Lactase.

ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.

THE CASEIN PROTEIN PRODUCTS*



100% CASEIN

Serving Size 1 Heaping Scoop (34g)

Amount Per Serving		Calories from Fat 10	
		% Daily Value*	
Calories	120		
Total Fat	1g	2%	
Saturated Fat	0.5g	3%	
Trans Fat	0g		
Cholesterol	15mg	5%	
Sodium	280mg	12%	
Total Carbohydrate	3g	1%	
Dietary Fiber	1g	4%	
Sugars	1g		
Protein	24g	48%	
Vitamin A	0%	Vitamin C	0%
Calcium	50%	Iron	4%

Not a Significant Source of Dietary Fiber.
* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

Calories:		2,000	2,500
Total Fat	Less than	65g	80g
Sat. Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Micellar Casein, Cocoa (Processed with Alkali), Natural and Artificial Flavors, Salt, Gum Blend (Cellulose Gum, Xanthan Gum, Carrageenan), Lecithin, Acesulfame Potassium, Sucralose, Aminogen®.

ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.

(CHOCOLATE SUPREME SHOWN)

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**NATURALLY FLAVORED
100% CASEIN**

Serving Size 1 Scoop (36.5g)

Amount Per Serving		Calories: 2,000 2,500	
Calories 140		Calories from Fat 10	
		% Daily Value*	
Total Fat 1g		Less than 65g	80g
Saturated Fat 0.5g		Less than 20g	25g
<i>Trans</i> Fat 0g		Less than 300mg	300mg
Cholesterol 20mg		Less than 2,400mg	2,400mg
Sodium 220mg		300g	375g
Total Carbohydrate 8g		Dietary Fiber 25g	30g
Dietary Fiber 1g		Protein 50g	65g
Sugars 4g		Calories per gram: Fat 9 • Carbohydrate 4 • Protein 4	
Protein 24g		INGREDIENTS: Micellar Casein, Natural Flavors, Honey Powder, Inulin, Sugar, Lecithin, Salt, Cellulose Gum, Reb A (Natural Stevia Leaf Sweetener).	
Vitamin A 0%	•	ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.	
Calcium 40%	•		
Vitamin C 0%	•		
Iron 0%	•		

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs:

THE EGG PROTEIN PRODUCT*



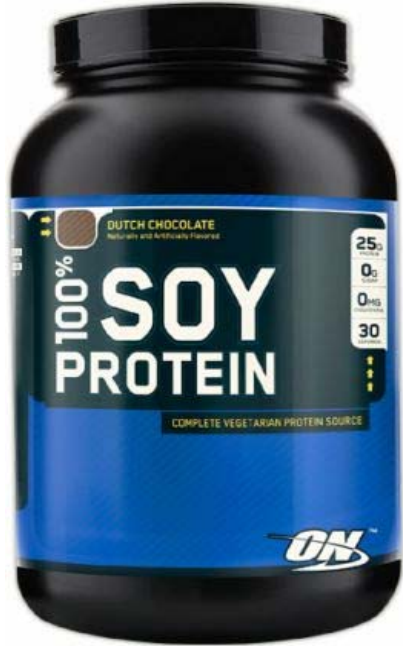
100% EGG PROTEIN

Serving Size 1 Scoop (35g)

Amount Per Serving		Calories: 2,000 2,500	
Calories 130		Calories from Fat 10	
		% Daily Value*	
Total Fat 1g		Less than 65g	80g
Saturated Fat 0.5g		Less than 20g	25g
<i>Trans</i> Fat 0g		Less than 300mg	300mg
Cholesterol 15mg		Less than 2,400mg	2,400mg
Sodium 420mg		300g	375g
Total Carbohydrate 5g		Dietary Fiber 25g	30g
Dietary Fiber 1g		Protein 50g	65g
Sugars <1g		Calories per gram: Fat 9 • Carbohydrate 4 • Protein 4	
Protein 24g		INGREDIENTS: Egg Albumen, Cocoa (Processed with Alkali), Natural and Artificial Flavors, Lecithin, Gum Blend (Cellulose Gum, Xanthan Gum, Carrageenan), Sucralose, Vanillin, Acesulfame Potassium.	
Vitamin A 0%	•	ALLERGEN INFORMATION: CONTAINS EGG AND SOY (LECITHIN) INGREDIENTS.	
Calcium 2%	•		
Vitamin C 0%	•		
Iron 4%	•		

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs:

THE SOY PROTEIN PRODUCT*



100% SOY PROTEIN

Serving Size 1 Rounded Scoop (31.5g)
Servings Per Container 30

Amount Per Serving		Calories from Fat 15	
		% Daily Value*	
Total Fat	1.5g		2%
Saturated Fat	0g		0%
Trans Fat	0g		
Cholesterol	0mg		0%
Sodium	330mg		14%
Total Carbohydrate	2g		1%
Sugars	0g		
Protein	25g		
Vitamin A	0%	Vitamin C	0%
Calcium	0%	Iron	30%

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: Soy Protein Isolate, Cocoa (Processed with Alkali), Natural and Artificial Flavors, Lecithin, Salt, Acesulfame Potassium, Sucralose.

ALLERGEN INFORMATION: CONTAINS SOY INGREDIENTS.

Not a Significant Source of Dietary Fiber.
* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

Each of the above referenced Products is available in different sizes and flavors, however the substantive claims on each Product’s labeling remains the same. To appreciate the scope of Defendant injurious business practices, it charges over 10 dollars per pound of protein for each of the Class Protein Products.

14. Defendant’s nutritional information contradicts the protein content claims made by Defendant in identifying, marketing, selling and/or promoting the Class Protein Products. The Class Protein Products are comprised of far less than “100%” of their respective Primary Protein Ingredient:

- Defendant’s Gold Standard 100% Whey Protein only contains 24 grams of reported protein per serving, when the suggested serving size is 30.4 grams. Thus, Defendant’s Gold Standard 100% Whey Protein is only 78% percent whey protein per serving, not 100%;

* The nutritional labels displayed next to each Class Protein Products were taken from Defendant’s website. It may differ by insubstantially from the label nutritional displayed above. However, the label on each Class Protein Products repeats Defendant’s nutritional mantra of the product being “100% [Primary Protein Ingredient] Protein.”

- 1 • Defendant's Gold Standard Natural 100% Whey Protein contains 24
2 grams of reported protein per serving, when the suggested serving size is
3 32 grams. Thus, Defendant's Gold Standard Natural 100% Whey Protein
4 powder is only 75% percent whey protein per serving, not 100%;
- 5 • Defendant's Gold Standard 100% Casein Protein contains 24 grams of
6 reported protein per serving, when the suggested serving size is 34 grams.
7 Thus, Defendant's Gold Standard 100% Casein Protein powder is only
8 71% percent casein protein per serving, not 100%;
- 9 • Defendant's Gold Standard Natural 100% Casein Protein contains 24
10 grams of reported protein per serving, when the suggested serving size is
11 36.5 grams. Thus, Gold Standard Natural 100% Casein Protein powder is
12 only 68% percent casein protein per serving, not 100%;
- 13 • Defendant's Gold Standard 100% Egg Protein contains 24 grams of
14 reported protein per serving, when the suggested serving size is 35 grams.
15 Thus, Defendant's Gold Standard 100% Egg Protein powder is only 69%
16 percent egg protein per serving, not 100%; and
- 17 • Defendant's 100% Soy Protein contains 24 grams of reported protein per
18 serving, when the suggested serving size is 31.5 grams. Thus,
19 Defendant's 100% Soy Protein powder is only 79% percent soy protein
20 per serving, not 100%.

21 15. The above comparisons only represent the relationship between
22 Defendant's reported protein content in each of the Class Protein Products when
23 compared to their serving size. The actual amount of protein contained in each of the
24 Class Protein Products may be less than reported on the Class Protein Products'
25 nutritional labels.

26 16. Even if the reported protein contents in each of the Class Protein Products
27 are accurate, each Product contains nothing approaching the advertised and warranted
28 "100%" of each Primary Protein Ingredient. The reason for the disparity between the

1 “100%” used in the name of each Class Protein Products and the actual protein of each
2 Product is that each Product invariably contains non-protein substances. For example,
3 a close review of the Class Protein Products nutritional labels, including with the
4 Products’ ingredients list, reveals that many of the Products contain salts,
5 carbohydrates, fats, natural and artificial flavors and other ingredients which are not
6 proteins.

7 17. Furthermore, even without the above non-protein ingredients, the
8 ingredients that Defendant lists as proteins for the Class Protein Products, such as
9 protein isolates and concentrates, do not contain proteins exclusively. Instead, protein
10 isolates and concentrates also contain fats and carbohydrates from the protein’s
11 original source (*i.e.*, milk, eggs or soy). Accordingly, Defendant’s representations that
12 any of the Class Protein Products is “100%” protein are demonstratively false.

13 18. The Class Protein Products’ front label does not state, or even infer, that
14 the Class Protein Products contain any, let alone substantial amounts of, non-protein
15 ingredients. Naming each of the Class Products respectively “100% Whey Protein,”
16 “100% Casein Protein,” “100% Soy Protein,” “100% Egg Protein,” or a similar
17 variation is deceptive and misleading to a reasonable consumers who would properly
18 assume that such Products contain exclusively protein. Defendant also has no basis to
19 expressly warrant that its products exclusive contain the Primary Protein Ingredients,
20 when admittedly they do not.

21 19. Defendant’s business practices are unlawful under federal and California
22 law. The Federal Food, Drug, and Cosmetic Act (“FDCA”), passed by Congress in
23 1938, grants the Food and Drug Administration (“FDA”) power to ensure “foods are
24 safe, wholesome, sanitary, and properly labeled.” 21 U.S.C. § 393(b)(2). In 1990,
25 Congress amended the FDCA with the Nutrition Labeling and Education Act
26 (“NLEA”), which clarified and strengthened the Food and Drug Administration’s
27 authority to designate the proper nutrition labeling on foods, and to define
28 circumstances under which claims can be made about nutrients in foods. 21 U.S.C. §§

1 343, *et seq.* The above laws, and regulations enacted pursuant thereto, are incorporated
2 into California law. HEALTH & SAF. CODE § 110100.

3 20. Federal Regulations, enacted by the FDA pursuant to the FDCA, speaks
4 directly to the misleading nature of Defendant’s labeling and naming of the Class
5 Products. Specially, 21 C.F.R. § 101.18(b) states:

6 The labeling of a food which contains two or more ingredients may be
7 misleading by reason (among other reasons) of the designation of such
8 food in such labeling by a name which includes or suggests the name of
one or more but not all such ingredients, even though the names of all
such ingredients are stated elsewhere in the labeling.

9 In violation of 21 C.F.R. § 101.18(b), Defendant misrepresents, misleads, and deceives
10 consumers by naming each Class Protein Products a variation of “100% [Primary
11 Protein Ingredient] Protein” while repeatedly referencing “protein” in its labeling, but
12 never disclaiming that its Products actually contain admittedly non-protein ingredients.

13 21. The difference between the Class Protein Products promised protein
14 content and the content in the product actually sold is significant. The amount of
15 actual protein provided and the measure of protein per serving have a significant
16 impact on the benefits provided by ingesting the Products and the actual value of the
17 Products themselves. Additionally, misbranded food products cannot legally be
18 manufactured, held, advertised, distributed or sold. Thus, misbranded food has no
19 economic value and is worthless.

20 22. Purchasers of misbranded food are entitled to restitution *via* a refund for
21 the purchase price of the misbranded supplement. Plaintiff and members of the Class
22 have suffered actual injuries. Had Plaintiff known that the Class Protein Products’
23 protein content was significantly misstated, he would not have purchased Defendant’s
24 protein powders or, alternatively, paid significantly less for them.

25 **CLASS ACTION ALLEGATIONS**

26 23. Plaintiff bring this action as a class action pursuant to Federal Rule of
27 Civil Procedure 23 for the following Classes of persons:

28 **Nationwide Class:** All persons in the United states who, within four

1 (4) years of the filing of this Complaint, purchased Gold Standard
2 Natural 100% Whey Protein, Gold Standard 100% Whey Protein, Gold
3 Standard 100% Natural Casein Protein, Gold Standard 100% Casein
4 Protein, Gold Standard 100% Egg Protein, and/or 100% Soy Protein
5 powders.

6 **California Sub-Class:** All persons residing in California who, within
7 four (4) years of the filing of this Complaint, purchased Gold Standard
8 Natural 100% Whey Protein, Gold Standard 100% Whey Protein, Gold
9 Standard 100% Natural Casein Protein, Gold Standard 100% Casein
10 Protein, Gold Standard 100% Egg Protein, and/or 100% Soy Protein
11 powders.

12 Excluded from the Class and the California Sub-Class are all legal entities, Defendant
13 herein and any person, firm, trust, corporation, or other entity related to or affiliated
14 with Defendant, any entities that purchased the Class Products for resale, as well as
15 any judge, justice or judicial officer presiding over this matter and members of their
16 immediate families and judicial staff.

17 24. While the exact number of Class members is unknown to Plaintiff at this
18 time, and will be approximately ascertained through discovery, Plaintiff is informed
19 and believes that there are tens of thousands of members in the proposed Class, if not
20 more. The number of individuals who comprise the Class are so numerous that joinder
21 of all such persons is impracticable and the disposition of their claims in a class action,
22 rather than in individual actions, will benefit both the parties and the courts.

23 25. Defendant has acted with respect to the Class in a manner generally
24 applicable to each Class member. Common questions of law and fact exist as to all
25 Class members and predominate over any questions wholly affecting individual Class
26 members. There is a well-defined community of interest in the questions of law and
27 fact involved in the action, which affect all Class members. Among the questions of
28 law and fact common to the Class are, *inter alia*:

(a) Whether Defendant labels, markets, sells and/or otherwise advertises the
Class Protein Products in a deceptive, false, or misleading manner;

(b) Whether the Class Protein Products contain less protein than what is
represented in each Products' name and labeling;

1 (c) Whether Defendant’s business practices relative to the Class Protein
2 Products constitutes unfair methods of competition and unfair or deceptive acts or
3 practices in violation of, *inter alia*, CAL. BUS. & PROF. CODE §§ 1770, *et seq.*,
4 including:

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

7 (ii) Whether Defendant misrepresents that the Class Protein Products
8 have benefits or quantities which they do not have; and

9 (iii) Whether Defendant represents that the Class Protein Products is of
10 a particular standard [or] quality... if it is of another;

11 (d) Whether Defendant’s sale of the Class Protein Products constitutes
12 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§
13 17500.

14 (e) Whether Defendant’s sale of the Class Protein Products constitutes
15 “unlawful,” “unfair,” or “fraudulent” business acts or practices under, *inter alia*, CAL.
16 BUS. & PROF. CODE §§ 17200, including:

17 (i) Whether Defendant’s sale of the Class Protein Products constitutes
18 “unlawful” or “unfair” business practices by violating the public policies set out
19 in CAL. BUS. & PROF. CODE §§ 1770, *et seq.*, CAL. BUS. & PROF. CODE §§
20 17500, HEALTH & SAF. CODE §§ 109875, *et seq.*, and other California and
21 federal statutes and regulations;

22 (ii) Whether Defendant’s sale of the Class Protein Products is
23 immoral, unethical, oppressive, unscrupulous or substantially injurious to
24 consumers;

25 (iii) Whether Defendant’s sale of the Class Protein Products constitutes
26 an “unfair” business practice because consumer injury outweighs any
27 countervailing benefits to consumers or competition, and because such injury
28 could not be reasonably avoided by consumers; and

1 (iv) Whether Defendant’s mischaracterization of protein content in the
2 Class Protein Products constitutes a “fraudulent” business practice because
3 members of the public are likely to be deceived;

4 (f) Whether Defendant’s inclusion of non-protein ingredients in the Class
5 Protein Products constitutes a breach of expressed warranty;

6 (g) Whether Defendant’s inclusion of non-protein ingredients in the Class
7 Protein Products constitutes a violation of the Magnuson–Moss Warranty Act, 15
8 U.S.C. §§ 2301 *et seq.*;

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

11 (i) Whether Plaintiff and the Class should be awarded attorneys’ fees and the
12 costs of suit for Defendant’s violations of the Magnuson–Moss Warranty Act, UCL
13 and the CLRA.

14 26. Plaintiff’s claims are typical of the claims of the other members of the
15 Class. All members of the Class have been and/or continue to be similarly affected by
16 Defendant’s wrongful conduct as complained of herein, in violation of California law.
17 Plaintiff is unaware of any interests that conflict with or are antagonistic to the
18 interests of the Class.

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

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

1 difficulty in managing this action as a class action.

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

5 **FIRST COUNT**

6 **BREACH OF EXPRESS WARRANTY**
7 **(On Behalf of the Nationwide Class)**

8 30. Plaintiff hereby incorporates by reference the allegations contained in the
9 preceding paragraphs of this Complaint.

10 31. Plaintiff and each member of the Class formed a contract with Defendant
11 at the time Plaintiff and the other members of the Class purchased one or more of the
12 Products. The terms of that contract include the promises and affirmations of fact
13 made by Defendant on the packaging of the Class Protein Products.

14 32. The Class Protein Products' packaging constitutes express warranties,
15 became part of the basis of the bargain, and are part of a standardized contract between
16 Plaintiff and the members of the Class on the one hand and Defendant on the other.

17 33. All conditions precedent to Defendants' liability under this contract have
18 been performed by Plaintiff and the Class.

19 34. Defendant breached the terms of this contract, including the express
20 warranties, with Plaintiff and the Class by not providing the Class Protein Products
21 that conformed with the promises made, *i.e.* that the Products contains "100%" of the
22 Primary Protein Ingredient.

23 35. Plaintiff and members of the Class were injured by Defendant's failure to
24 comply with its obligations under the written warranty, since Plaintiff and members of
25 the Class paid for products that did not have the promised qualities and nature, did not
26 receive the, defect-free food products that were promised to them and that they
27 bargained for, paid a premium for the Class Protein Products when they could have
28 instead purchase d other less expensive alternative protein supplements.

1 36. As a result of Defendant's breach of its warranty, Plaintiff and the Class
2 have been damaged in the amount of the purchase price of any and all of the Products
3 they purchased.

4 **SECOND COUNT**

5 **VIOLATION OF 15 U.S.C. § 2301 *et seq.* -**
6 **Breach of Written Warranty**
7 **(On Behalf of the Nationwide Class)**

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

10 38. This claim is brought by Plaintiff on behalf of themselves and the Class
11 solely for breach of federal law. This claim is not based on any violation of state law.

12 39. The Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, creates a
13 private federal cause of action for breach of a “written warranty” as defined by the
14 Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

15 40. The Class Protein Products are “consumer products” as that term is
16 defined by 15 U.S.C. § 2301(1), as they constitute tangible personal property which is
17 distributed in commerce and which is normally used for personal, family or household
18 purposes.

19 41. Plaintiff and members of the Class are “consumers” as defined by 15
20 U.S.C. § 2301(3), since they are buyers of Class Protein Products for purposes other
21 than resale.

22 42. Defendant is an entity engaged in the business of making dietary
23 supplements available, either directly or indirectly, to consumers such as Plaintiff and
24 the Class. As such, Defendant is a “supplier” as defined in 15 U.S.C. § 2301(4).

25 43. Through its labeling, Defendant gave and offered a written warranty to
26 consumers relating to the nature and quantity of protein ingredients in the Class
27 Protein Products. As a result, Defendant is a “warrantor” within the meaning of 15
28 U.S.C. § 2301(5).

 44. Defendant provided a “written warranty” within the meaning of 15 U.S.C.

1 2301(6) for the Class Protein Products by name each of the Class Protein Products a
2 variation of “100% _____ Protein” These affirmations of fact regarding the nature
3 and quantity of the ingredients in the Class Protein Products constituted, and were
4 intended to convey to purchasers, a written promise that the ingredients/materials in
5 the products were free of a particular type of defect (*i.e.*, that they did not contain any
6 non-protein alterants). As such, these written promises and affirmations were part of
7 the basis of Plaintiffs’ and the Class’s bargain with Defendant in purchasing the Class
8 Protein Products.

9 45. Defendant breached the written warranty by failing to provide and supply
10 the Class Protein Products as promised. Specifically, the Class Protein Products
11 contained numerous non-protein ingredients.

12 46. Plaintiff and members of the Class were injured by Defendant’s failure to
13 comply with its obligations under the written warranty, since Plaintiff and members of
14 the Class paid for products that did not have the promised qualities and nature, did not
15 receive the, defect-free food products that were promised to them and that they
16 bargained for, paid a premium for the Class Protein Products when they could have
17 instead purchased other less expensive alternative protein supplements.

18 47. Plaintiffs and the Class therefore for this claim seek and are entitled to
19 recover “damages and other legal and equitable relief” and “costs and expenses
20 (including attorneys’ fees based upon actual time expended)” as provided in 15 U.S.C.
21 § 2310(d).

22 **THIRD COUNT**

23 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -** 24 **Untrue, Misleading and Deceptive Advertising** **(On Behalf of the California Sub-Class)**

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

27 49. At all material times, Defendant engaged in a scheme of offering the
28 Class Protein Products for sale to Plaintiff, and other members of the Class by way of,

1 *inter alia*, commercial marketing, and advertising, internet content, product packaging
2 and labeling, and other promotional materials.

3 50. These materials, advertisements and other inducements misrepresented
4 and/or omitted the true contents and benefits of the Class Protein Products. Said
5 materials, advertisement and other inducements were made to consumers located
6 within the State of California, and come within the definition of advertising as
7 contained in CAL. BUS. PROF. CODE §§ 17500, *et seq.*, in that such promotional
8 materials were intended as inducements to purchase the Class Protein Products and are
9 statements disseminated by Defendant to Plaintiff and other members of the California
10 Sub-Class. Defendant knew, or in the exercise of reasonable care should have known,
11 that the statements regarding the Class Protein Products and protein content were
12 false, misleading and/or deceptive.

13 51. In furtherance of said plan and scheme, Defendant has prepared and
14 distributed within the State of California, *via* commercial marketing, and advertising,
15 internet content, product packaging and labeling, and other promotional materials
16 statements that misleadingly, falsely, and deceptively represent the protein contents
17 and ingredients contained in the Class Protein Products. Consumers, including
18 Plaintiff and members of the California Sub-Class, necessarily and reasonably relied
19 on Defendant's statements regarding the contents of its products. Consumers,
20 including Plaintiff and members of the California Sub-Class, were among the intended
21 targets of such representations.

22 52. The above acts of Defendant, in disseminating said misleading and
23 deceptive statements throughout the State of California, including Plaintiff and
24 members of the California Sub-Class, were and are likely to deceive reasonable
25 consumers by obfuscating the true nature and amount of the ingredients in the Class
26 Protein Products, thus were violations of CAL. BUS. PROF. CODE §§ 17500, *et seq.*

27 53. As a result of Defendant's conduct, Plaintiff and California Sub-Class
28 members were harmed and suffered actual damages as a result of Defendant's

1 violations of the Cal. BUS. PROF. CODE §§ 17500, *et seq.* Defendant has been unjustly
2 enriched at the expense of Plaintiff and the members of the California Sub-Class.

3 **FOURTH COUNT**

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

7 54. Plaintiff hereby incorporates by reference the allegations contained in the
8 preceding paragraphs of this Complaint.

9 55. California's Sherman Food, Drug, and Cosmetic Law (the "Sherman
10 Law"), HEALTH & SAF. CODE §§ 109875, *et seq.*, broadly prohibits the misbranding of
11 any food products. The Sherman Law provides that food is misbranded "if its labeling
12 is false or misleading in any particular." HEALTH & SAF. CODE § 110660.

13 56. Defendant is a person within the meaning of HEALTH & SAF. CODE §
14 109995.

15 57. Additionally, California has adopted as its own, and as the Sherman Law
16 expressly incorporates, "[a]ll food labeling regulations and any amendments to those
17 regulations adopted pursuant to the federal act, in effect on January 1, 1993, or
18 adopted on or after that date" as "the food labeling regulations of this state." Federal
19 regulations, including by not limited to 21 C.F.R. § 101.18(b), prohibit the mislabeling
20 and misbranding of food products.

21 58. Federal regulations prohibit "[t]he labeling of a food which contains two
22 or more ingredients that may be misleading by reason (among other reasons) of the
23 designation of such food in such labeling by a name which includes or suggests the
24 name of one or more but not all such ingredients, even though the names of all such
25 ingredients are stated elsewhere in the labeling."

26 59. California Civil Code §1770(a)(2), (5) and (7) also prohibits mislabeling
27 food, misrepresenting the standard, quality, sponsorship, approval, and/or certification
28 of food products, as noted below.

60. The business practices alleged above are unlawful under Business and

1 Professional Code §§ 17500, *et seq.*, California Civil Code §1770(a)(2), (5) and (7)
2 and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive, and/or
3 misleading marketing, advertisement, packaging and labeling.

4 61. As a result of Defendant's above unlawful, unfair and fraudulent acts and
5 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
6 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
7 Defendant from continuing these wrongful practices, and such other equitable relief,
8 including full restitution of all improper revenues and ill-gotten profits derived from
9 Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded food
10 products cannot legally be manufactured, held, advertised, distributed or sold. Thus
11 misbranded food has no economic value and is worthless as a matter of law, and
12 purchasers of misbranded food are entitled to a restitution refund of the purchase price
13 of the misbrand food.

14 **FIFTH COUNT**

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

17 62. Plaintiff hereby incorporates by reference the allegations contained in the
18 preceding paragraphs of this Complaint.

19 63. Plaintiff and other members of the California Sub-Class who purchased
20 the Class Protein Products suffered a substantial injury by virtue of buying a product
21 that misrepresented and/or omitted the true contents and benefits of its protein
22 contents. Had Plaintiff and members of the California Sub-Class known that
23 Defendant's materials, advertisement and other inducements misrepresented and/or
24 omitted the true contents and benefits of the Class Protein Products, they would not
25 have purchased said Products.

26 64. Defendant's actions alleged herein violate the laws and public policies of
27 California and the federal government as set out preceding paragraphs of this
28 Complaint.

1 65. There is no benefit to consumers or competition by allowing Defendant to
2 deceptively market, advertise, package and label the Class Protein Products.

3 66. Plaintiff and California Sub-Class members who purchased the Class
4 Protein Products had no way of reasonably knowing that these Products were
5 deceptively marketed, advertised, packaged and labelled. Thus, Class members could
6 not have reasonably avoided the injury they suffered.

7 67. The gravity of the harm suffered by Plaintiff and California Sub-Class
8 members who purchased the Class Protein Products outweighs any legitimate
9 justification, motive or reason for marketing, advertising, packaging and labeling the
10 Class Protein Products in a deceptive and misleading manner. Accordingly,
11 Defendant's actions are immoral, unethical, unscrupulous and offend the established
12 public policies as set out in federal regulations and is substantially injurious to
13 Plaintiff and members of the Class.

14 68. The above acts of Defendant, in disseminating said misleading and
15 deceptive statements throughout the State of California to consumers, including
16 Plaintiff and members of the Class, were and are likely to deceive reasonable
17 consumers by obfuscating the true nature and amount of the ingredients in the Class
18 Protein Products, and thus were violations of CAL. BUS. PROF. CODE §§ 17500, *et seq.*

19 69. As a result of Defendant's above unlawful, unfair and fraudulent acts and
20 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
21 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
22 Defendant from continuing these wrongful practices, and such other equitable relief,
23 including full restitution of all improper revenues and ill-gotten profits derived from
24 Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded food
25 products cannot legally be manufactured, held, advertised, distributed or sold. Thus
26 misbranded food has no economic value and is worthless as a matter of law, and
27 purchasers of misbranded food are entitled to a restitution refund of the purchase price
28 of the misbrand food.

SIXTH COUNT

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

1
2
3
4 70. Plaintiff hereby incorporates by reference the allegations contained in the
5 preceding paragraphs of this Complaint.

6 71. Such acts of Defendant as described above constitute a fraudulent
7 business practice under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

8 72. As more fully described above, Defendant misleadingly markets,
9 advertises, packages, and labels the Class Protein Products as containing “100%”
10 protein when in fact the constituting ingredients are not all protein but instead contain
11 unnecessary fillers and other ingredients. Defendant’s misleading marketing,
12 advertisements, packaging, and labeling are likely to, and do, deceive reasonable
13 consumers. Indeed, Plaintiff and other members of the California Sub-Class were
14 unquestionably deceived about the nutritional benefits of the Class Protein Products,
15 as Defendants marketing, advertising, packaging, and labeling of the Class Protein
16 Products misrepresents and/or omits the true nature of the Products nutritional
17 contents and benefits. Said acts are fraudulent business practices and acts.

18 73. Defendant’s misleading and deceptive practices caused Plaintiff and other
19 members of the California Sub-Class to purchase the Class Protein Products and/or
20 pay more than they would have otherwise had they know the true nature of said
21 Products’ contents.

22 74. As a result of Defendant’s above unlawful, unfair and fraudulent acts and
23 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
24 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
25 Defendant from continuing these wrongful practices, and such other equitable relief,
26 including full restitution of all improper revenues and ill-gotten profits derived from
27 Defendant’s wrongful conduct to the fullest extent permitted by law. Misbranded food
28 products cannot legally be manufactured, held, advertised, distributed or sold. Thus

1 misbranded food has no economic value and is worthless as a matter of law, and
2 purchasers of misbranded food are entitled to a restitution refund of the purchase price
3 of the misbrand food.

4 **SEVENTH COUNT**

5 **Violation of CAL. CIV. CODE §§ 1750 *et seq.*-**
6 **Misrepresentation of a Product's standard, quality,**
7 **sponsorship, approval, and/or certification**
8 **(On Behalf of the California Sub-Class)**

8 75. Plaintiff hereby incorporates by reference the allegations contained in the
9 preceding paragraphs of this Complaint.

10 76. Defendant's Class Protein Products are a "good" as defined by California
11 Civil Code §1761(a).

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

13 78. Plaintiff and California Sub-Class members are "consumers" within the
14 meaning of California Civil Code §1761(d) because they purchased the Class Protein
15 Products for personal, family or household use.

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

18 80. By failing to give notice to consumers regarding the true composition of
19 the ingredients in the Class Protein Products and labeling said products in a misleading
20 and deceptive manner, as alleged above, Defendant violated California Civil Code
21 §1770(a)(2), (5) and (7), as it misrepresented the standard, quality, sponsorship,
22 approval, and/or certification of the Class Protein Products.

23 81. As a result of Defendant's conduct, Plaintiff and California Sub-Class
24 members were harmed and suffered actual damages as a result of Defendant's unfair
25 competition and deceptive acts and practices. Had Defendant disclosed the true nature
26 of the contents of the Class Protein Products' protein content, Plaintiff and the Class
27 would not be misled into purchasing the Class Protein Products, or, alternatively, pay
28 significantly less for them.

1 82. Additionally, misbranded food products cannot legally be manufactured,
2 held, advertised, distributed or sold. Thus, misbranded food has no economic value
3 and is worthless as a matter of law, and purchasers of misbranded food are entitled to a
4 refund of the purchase price of the misbrand food.

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

9 84. Plaintiff provided Defendant with notice of its alleged violations of the
10 CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that
11 Defendant correct such violations.

12 85. If Defendant's fail to respond to Plaintiff's CLRA notice within 30 days,
13 Plaintiff may amend this Complaint to seek all available damages under the CLRA for
14 all violations complained of herein, including, but not limited to, statutory damages,
15 punitive damages and costs and any other relief that the Court deems proper.
16 Additionally, Plaintiff will request that the Court award all members of the Class, who
17 have attained the age of 65 at the time of the Defendant's wrongful acts and omissions
18 as alleged herein, to receive a statutory trebling of their restitutionary award pursuant
19 to California Civil Code § 3345.

20 **PRAYER FOR RELIEF**

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

22 A. For an order declaring that this action is properly maintained as a class
23 action and appointing Plaintiff as representative for the Class, and appointing
24 Plaintiff's counsel as Class counsel;

25 B. For an order awarding Plaintiff and the members of the Class damages
26 and restitution;

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

1 D. For restitution of the funds which were unjustly enriched by Defendant, at
2 the expense of the Plaintiff and Class Members.

3 E. For an order awarding Plaintiff and the members of the Class pre- and
4 post-judgment interest;

5 F. For an order awarding attorneys' fees and costs of suit, including experts'
6 witness fees as permitted by law; and

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

8 **JURY TRIAL DEMAND**

9 Plaintiff demands a trial by jury for all of the claims asserted in this Complaint
10 so triable.

11 Respectfully submitted,

12
13 FINKELSTEIN & KRINSK LLP

14 Dated: October 8, 2014

15 By: /s/ Mark L. Knutson
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Finkelstien & Krinsk LLP, Jeffery Krinsk, Mark Knutson, William Restis, Trenton R. Kashima (admission pending), 501 West Broadway, Ste. 1250, T: 619.238.1333, F: 619.238.5425

DEFENDANTS

OPTIMUM NUTRITION, INC., a Delaware Corporation,

County of Residence of First Listed Defendant DuPage, IL (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'14CV2408 BEN KSC

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1446 (CAFA)
Brief description of cause: California State law claims based on alleged violation of federal food-labeling laws.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/08/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark L. Knutson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE