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10 Attorneys for Plaintiffs

11 IN THE UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 DAVID LUCAS BURGE, ALASTAIR DICK,)
14 LYNDY FORGETTE, PAMELA KRAUSE, FRED)
15 ANTHONY REYES, and DAVID STROBEL, on)
16 behalf of themselves, and a class of persons similarly)
17 situated,)

18 Plaintiffs,)

19 vs.)

20 FREELIFE INTERNATIONAL, INC., a Connecticut)
21 corporation,)

22 Defendant.)

23 **NO. CV 09-1159-PHX-JAT**

24 **FIRST AMENDED**
25 **COMPLAINT**

26 **(Tort, Non-Motor Vehicle)**

18 Plaintiffs David Lucas Burge, Alastair Dick, Lynda Forgette, Pamela Krause,
19 Fred Anthony Reyes, and David Strobel (“Plaintiffs”), individually and on behalf of
20 others similarly situated, bring this action against Defendant FreeLife International,
21 Inc. (“FreeLife”), to remedy its acts of misrepresentation and deception in the
22 marketing and sale of certain products.
23

24 . . .

25 . . .

26 . . .

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JURISDICTION AND VENUE

1. This civil action is filed as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. This Court has jurisdiction over this Class Action pursuant to 28 U.S.C. § 1332(d)(2)(A) in that the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs and this is a Class Action in which most members of the class of Plaintiffs are citizens of a state different from the state of incorporation or principal place of business of Defendant.

3. Upon information and belief, Plaintiffs specifically aver that more than two-thirds of the members of the aggregate classes are citizens of states or foreign states other than the State of Arizona where this action is filed.

4. This Court has personal jurisdiction over Defendant in that it has its principal place of business in this jurisdiction and has engaged in the alleged misconduct in this jurisdiction.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) in that Defendant maintains its principal place of business in and is subject to the personal jurisdiction of this judicial district.

PARTIES AND FREELIFE AGENTS

6. Individual and representative Plaintiff David Lucas Burge is a resident of San Francisco, California, and Kauai, Hawaii.

7. Individual and representative Plaintiff Alastair Dick is a resident of Windsor Gardens, South Australia, Australia.

8. Individual and representative Plaintiff Lynda Forgette is a resident of Oshawa, Ontario, Canada.

9. Individual and representative Plaintiff Pamela Krause is a resident of Almond, Wisconsin.

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1 10. Individual and representative Plaintiff Fred Anthony Reyes is a resident
2 of Kauai, Hawaii.

3 11. Individual and representative Plaintiff David Strobel is a resident of
4 Idaho Falls, Idaho.

5 12. Each of the Plaintiffs purchased and consumed products sold by
6 FreeLife, including Himalayan Goji Juice, and/or GoChi Juice, and/or TAIslim.

7 13. Defendant FreeLife is a Connecticut corporation with its principal place
8 of business located in Maricopa County, Arizona, and conducting operations as a
9 direct sales company marketing and distributing alleged health products through
10 marketing executives located throughout the world.

11 14. Peter James Reilly (“Reilly”) has been employed by FreeLife and served
12 as Chief Operating Officer and Chief Legal Officer of FreeLife since February 2006,
13 responsible for day-to-day management of the Company. Upon information and
14 belief, Reilly is a resident of Maricopa County, Arizona.

15 15. Richard Alan Handel (“Handel”) served as a contract manufacturer for
16 FreeLife from 1995 until June 2007, providing research and development, product
17 development, and marketing services and was employed by FreeLife as Chief Product
18 Officer providing similar services from June 2007, to present date.

19 16. Earl Mindell (“Mindell”) worked with the founders of FreeLife in 1995
20 and allegedly was involved in the formulation of FreeLife’s Himalayan Goji Juice, and
21 the spectral signature process for standardization of the volume and potency of Lycium
22 barbarum polysaccharides (“LBPs”) in each bottle of HGJ. Upon information and
23 belief, Mindell was an officer, employee and/or business partner of FreeLife from in or
24 about 1995 until 2007, and the principal marketing representative for the Company.

25 17. FreeLife has its principal place of business in Arizona, has sufficient
26 minimum contacts with the State of Arizona, and/or otherwise has intentionally

1 availed itself of the markets in Arizona through the promotion, marketing, and sale of
2 FreeLife products in Arizona, so as to render the exercise of jurisdiction by this Court
3 permissible under traditional notions of fair play and substantial justice.

4 18. Plaintiffs aver that at all times mentioned herein, the acts of Reilly,
5 Handel, and Mindell were taken on behalf of FreeLife, within the scope of their
6 authority as representatives and agents of FreeLife, and to promote the business
7 interests of FreeLife. Each of their acts were directed, approved, and/or ratified by
8 FreeLife.

9
10 **STATEMENT OF FACTUAL BACKGROUND**
11 **FOR ALL CAUSES OF ACTION**

12 **I.**

13 **FRELIFE'S PRODUCTS AND MISREPRESENTATIONS**

14 19. This action arises from FreeLife's manufacture, marketing, and sale of
15 three separate Products: Himalayan Goji Juice ("HGJ"), since in or about 2003, GoChi
16 Juice ("GoChi") since in or about January 2008, and TAIslim since in or about
17 January 2009, (hereinafter referred to as "the Products").

18 20. Upon information and belief, FreeLife was formed in or about 1994 to
19 engage in the business of developing and selling nutritional products such as vitamins
20 and herbal remedies.

21 21. FreeLife hired Vita Quest International to provide research and
22 development for its Products and established a joint venture relationship with Mindell
23 for the development of Goji berry Products. Handel was an employee of Vita Quest
24 International who was assigned to work with FreeLife in research and development of
25 its Products.

26 22. Between 1995 and 2003, Handel and Mindell worked together in
developing Goji berry Products for FreeLife. In or about 2003, HGJ was introduced in

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1 the market and thereafter sold to the public through a distributor network and
2 marketing plan also developed by Handel and Mindell.

3 23. FreeLife was established as a direct sales company that distributed its
4 Products through marketing distributors with whom FreeLife contracted. These
5 distributors would purchase FreeLife Products for their own consumption and for
6 resale to other consumers. In addition, FreeLife encouraged the distributors to find
7 other persons to become FreeLife distributors for sale and consumption of the HGJ
8 product.

9 24. This direct sales marketing plan created a pyramid effect with
10 proliferating sales for FreeLife and astounding income for many distributors, all of
11 whom were paid on a commission basis with substantial incentives for signing up new
12 distributors. Upon information and belief, a large number of distributors were earning
13 well in excess of \$500,000 per year distributing HGJ.

14 25. FreeLife advertised its Products through websites, goji events, mass e-
15 mails and brochures, endorsements, business cards, telephone conferences with
16 distributors, seminars, conventions, and direct communications with distributors.

17 26. FreeLife's distributors advertised and promoted FreeLife Products
18 through distributor websites, goji events, e-mails and brochures, endorsements,
19 business cards, and direct communications with potential customers and other
20 distributors. Any distributor websites and any marketing materials used by distributors
21 were required to be reviewed and approved by FreeLife's compliance department.

22 27. At all relevant times, FreeLife has marketed and sold its Products in the
23 United States, Canada, Australia, Asia, and Europe.

24 28. From 2003 until 2008, FreeLife promoted Mindell as "Dr. Earl Mindell,
25 R.Ph., Ph.D., . . . an internationally recognized expert on nutrition, drugs, vitamins,
26 and herbal remedies" and the world's foremost authority on the goji berry. During this

1 period, Mindell likewise made these same representations about himself in connection
2 with promotion, marketing, and sale of HGJ.

3 29. In fact, Mindell received his Ph.D. from Pacific Western University, an
4 unaccredited institution offering “public paid for bogus degrees,” according to the
5 Washington Post. (*See*, Christopher Lee, *Public Paid for Bogus Degrees*, Wash. Post,
6 May 12, 2004, at A21.)

7 30. After FreeLife began marketing and selling HGJ, FreeLife published its
8 7 step process for production of HGJ. Pursuant to the 7 step process, FreeLife
9 expressly or impliedly represented that it harvested vine-ripened berries from the
10 Himalayas, that the berries were juiced to a puree by cold pressing, that the puree was
11 combined with natural ingredients through a proprietary chill blending process to
12 preserve the balance and content of active polysaccharides, that the juice was cold-
13 filled into bottles, and that the product was subjected to a battery of tests, including
14 spectral signature, polysaccharide analysis, and full microbiological testing.

15 31. In connection with publication of its 7 step process, FreeLife made the
16 following representations to actual and potential distributors and actual and potential
17 consumers:

- 18 A. The goji berry is one of the world’s most powerful anti-aging foods;
19 B. Polysaccharides are unique to goji, which is the only plant that contains
20 unique goji bioactive LBPs;
21 C. There are many varieties of goji, but only one that had been discovered
22 by the early Himalayan healers and praised from ancient times in
23 legends;
24 D. Mindell exhaustively analyzed dozens of varieties of goji berries and
25 discovered the one used by the early Himalayan healers and praised in
26 the legends;

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- 1 E. A spectrometer can detect subtle differences between goji berries at the
2 molecular level and can produce a graph which provides a unique
3 fingerprint for any berries being tested;
- 4 F. FreeLife is the only Company in the world that developed a spectral
5 signature to identify, isolate, and harvest only those special goji berries
6 with the exact nutrient profile of the legendary goji from the
7 Himalayans. FreeLife's spectral signature appears on every bottle to
8 demonstrate that the consumer has purchased the highest-quality, most
9 nutrient dense goji berries with the highest absorption in humans and
10 that the consumer always receives the same high potency and LBPs
11 every time;
- 12 G. Each bottle of HGJ contains the identical polysaccharides of 2.2 pounds
13 of fresh goji berries;
- 14 H. FreeLife's cold processing method extracts the juice without destroying
15 any of the delicate, but extremely powerful polysaccharides;
- 16 I. FreeLife does not heat process or pasteurize its Goji Juice because that
17 would destroy all of the vital LPBs and nutrients of the Goji berry;
- 18 J. FreeLife's HGJ contains raw Himalayan goji berries and live bioactive
19 polysaccharides;
- 20 K. HGJ does not contain artificially created chemical preservatives, but
21 rather, contains whole natural preservatives of Peruvian balsam and
22 mountain ash trees;
- 23 L. Himalayan goji berries are superior to all other goji berries because they
24 contain a group of four unique and active polysaccharides which provide
25 wide-ranging health benefits by commanding many of the body's most
26 important biochemical defense systems; and,

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M. HGJ has wide-ranging health benefits that retard the aging process and command and control many of the body's most important biochemical defense systems to fight disease.

32. FreeLife representations relating to HGJ were promises and affirmations of fact used to sell HGJ, but were materially false and deceptive when made because:

- A. There is no reliable scientific evidence which supports the goji berry as an anti-aging food or that it is one of the world's most powerful anti-aging foods;
- B. Goji is not the only plant which contains polysaccharides, and there is no reliable scientific evidence that establishes that the goji berries contain bioactive LBPs;
- C. There is no reliable scientific evidence that the early Himalayan healers discovered only one variety of goji plant that is used for healing purposes;
- D. There is no reliable scientific evidence or factual basis for the assertion that FreeLife discovered the one variety of goji berries used by the early Himalayan healers in legends;
- E. A spectrometer is one of the weakest tools used to identify unique chemical fingerprints for substances, and was not used by FreeLife to detect subtle differences between goji berries at the molecular level;
- F. FreeLife did not develop a spectral signature to identify, isolate, and harvest only special goji berries which contained the exact nutrient profile of the legendary Goji from the Himalayas;
- G. FreeLife's spectral signature is a fake and does not identify any specific type of LBPs nor demonstrate the highest quality, most nutrient dense goji berries with the highest absorption in nature. Nor is there any

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- 1 reliable scientific evidence to support their assertions;
- 2 H. There is no reliable scientific evidence to support that each bottle of HGJ
- 3 contains the identical amount of polysaccharides in 2.2 pounds of fresh
- 4 goji berries;
- 5 I. FreeLife’s 7 step process for production fails to disclose its heat
- 6 processing and pasteurization of the Goji puree necessary to stabilize the
- 7 chemical ingredients and inactivate enzymes;
- 8 J. FreeLife’s HGJ does not contain raw goji berries and live bioactive
- 9 polysaccharides;
- 10 K. HGJ contains artificially created chemical preservatives, not whole
- 11 natural preservatives;
- 12 L. There is no reliable scientific evidence that FreeLife’s alleged
- 13 Himalayan goji berries are superior to all competitors because they
- 14 contain four unique and active polysaccharides; and
- 15 M. There is no reliable scientific evidence that FreeLife’s goji berries
- 16 provide wide-ranging health benefits by commanding many of the
- 17 body’s most important biochemical defense systems to fight disease.

18

19 33. In or about 2003, Handel and Mindell collaborated on the writing of a

20 book entitled *Goji: The Himalayan Health Secret* which was published under

21 Mindell’s name as author. The book set forth 34 reasons why consumers should drink

22 HGJ on a daily basis.

23 34. In the book, Mindell and his collaborator, Handel, represented and

24 claimed that HGJ’s health benefits included curing, arresting or improving arthritis,

25 heart disease, allergy disorders, cancer, diabetes, depressive disorders, digestive

26 disorders, and other medical conditions (hereinafter referred to as the “HGJ curative

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1 health benefits”). Specifically, Mindell’s book claimed that HGJ can fight cancer by
2 repairing damaged DNA, halting genetic mutations that lead to cancer, improving
3 recovery by increasing lymphocyte count, reducing side effects of chemotherapy and
4 radiation, and enhancing production of cancer fighting IL-2.

5 35. Mindell’s book was written, published, and used by FreeLife as a
6 marketing tool to promote its direct marketing program and to convince the public that
7 HGJ provided unique health benefits that prevented or cured disease and prolonged
8 life for daily users of its Products. Handel and Mindell, acting on behalf of FreeLife,
9 also collaborated on the production of a number of brochures including, but not limited
10 to, “Goji and Cancer,” “Goji and Depressive Disorders,” and “34 Reasons to Drink
11 Goji Juice Every Day,” which were circulated to FreeLife distributors and other
12 customers as a sales tool (copies of the brochures are attached hereto as Exhibit A and
13 incorporated herein).

14 36. FreeLife representations relating to the HGJ curative health benefits
15 were promises and affirmations of fact used to sell HGJ and were materially false and
16 deceptive and not supported by any reliable scientific evidence.

17 37. FreeLife sold HGJ at wholesale by the case (4 bottles to a case) for
18 approximately \$130 or by the bottle at a cost of approximately \$35. FreeLife
19 distributors resold each of the bottles at retail to consumers for prices ranging from
20 \$35 to \$50 a bottle. As a result, a daily consumer of HGJ could easily spend \$250 per
21 month or more on their HGJ purchases.

22 38. Upon information and belief, after publication of the Mindell book,
23 FreeLife created a website at www.gojibook.com, which promoted the Mindell book,
24 the 34 reasons for purchasing HGJ from FreeLife, and the health claims, and cures
25 represented in the Mindell book.

26

1 39. Mindell and Handel, acting on behalf of FreeLife, developed and put into
2 place a marketing strategy to further promote its HGJ product and convince the public
3 of the unique health benefits from drinking HGJ on a daily basis. This strategy
4 included the use of distributor meetings, distributor conference calls, and town
5 meetings with prospective customers to promote its health claims and its “unique”
6 process for producing HGJ.

7 40. In 2005 and 2006, Mindell acting on behalf of FreeLife, was the star
8 attraction at these meetings and made the outlandish representations set forth in
9 paragraphs 27, 28, and 31, to distributors, consumers, and guests. During these
10 meetings, Mindell would introduce persons who would give testimonials claiming
11 their medical problems had been cured after taking HGJ.

12 41. At these “religious revival”-like meetings, Mindell repeatedly told his
13 growing audiences that the incredible health benefits of HGJ were undeniable and that
14 the plan was to close down all of the hospitals.

15 42. In 2006, Mindell, acting on behalf of FreeLife, began telling his
16 expanding audience that a breast cancer study produced by scientists at Sloan-
17 Kettering Memorial Hospital had established that goji berries had provided promising
18 results in fighting cancer cells in humans. Shortly after that, certain FreeLife
19 distributors were representing to customers that Sloan-Kettering Memorial Hospital
20 had announced that it was providing Goji berries or Goji Juice to all of its cancer
21 patients to fight cancer cells. Each of these statements were blatantly false when
22 made.

23 43. In January 2007, the Canadian Broadcasting Company (“CBC”)
24 televised a news broadcast of an interview with Mindell discussing the FreeLife
25 misrepresentations and scam perpetrated on consumers. In the broadcast, Mindell
26 once again touted the breast cancer study from Sloan-Kettering Memorial Hospital.

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1 However, the CBC broadcast included an interview with a scientist who denied that
2 the test results showed any promise in the use of goji berries to treat humans for
3 cancer.

4 44. The CBC broadcast completely exposed Mindell as a charlatan and
5 FreeLife’s marketing program as a consumer fraud.

6 45. After the CBC broadcast, FreeLife modified certain of its website
7 representations which had been under attack in the broadcast. For example, FreeLife
8 modified its website to exclude specific representations that the goji berries in the HGJ
9 were “raw” and also deleted references to Mindell’s 34 health reasons.
10 Notwithstanding, FreeLife continued to encourage its distributors to make these
11 representations to potential purchasers of HGJ.

12 46. In September 2007, Plaintiff David Lucas Burge published a website at
13 www.breathe.org (“breathe website”) which exposed many misrepresentations by
14 FreeLife in its promotion and sale of HGJ. It exposed the following
15 misrepresentations, *inter alia*:

- 16 A. FreeLife’s goji berries are grown in China, not the Himalayas;
- 17 B. Polysaccharides are not unique to goji and there is no reliable scientific
18 support for FreeLife’s claim that HGJ contains the four active
19 polysaccharides (LBP-I, LBP-II, LBP-III, and LBP-IV);
- 20 C. There is no evidence that each bottle of HGJ contains the identical
21 polysaccharides of 2.2 pounds of fresh goji berries and such a claim is
22 scientifically impossible;
- 23 D. HGJ contains artificially created chemical preservatives, rather than
24 whole natural preservatives of Peruvian balsam and mountain ash as
25 represented;
- 26 E. FreeLife’s spectral signature is a fake and does not identify any specific

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1 type of LBPs. It is not a graph from any spectral signature analysis, but
2 rather is merely an artist's drawing;

3 F. FreeLife's 7 step process for production of HGJ fails to disclose that it
4 heat processes the goji Juice for sterilization purposes, which destroys
5 certain of the LBPs and nutrients of the Goji berry;

6 G. FreeLife's HGJ does not contain raw goji berries with live bioactive
7 polysaccharides; and,

8 H. There has been no reliable scientific testing or findings that goji berries
9 and/or HGJ provide the health benefits and medical cures represented by
10 FreeLife.

11 47. Shortly after the CBC broadcast and the appearance of the breathe
12 website, FreeLife announced that Mindell was no longer associated with the Company.
13 From that point forward, Reilly and Handel assumed responsibilities as public
14 spokespersons for FreeLife and principal marketing representatives.

15 48. FreeLife modified again the FreeLife website to remove any association
16 with Mindell and to avoid the controversy over its preservative claims and its claim of
17 goji berry origin in the Himalayas. To accomplish this, FreeLife publicized a new
18 product, GoChi, which eliminated the Himalayan connection and represented that the
19 product was preservative free.

20 49. After these modifications to the FreeLife website, FreeLife continued to
21 encourage its distributors to make many of the same misrepresentations openly made
22 before the CBC broadcast, but now deleted from the FreeLife website and promotional
23 materials.

24 50. Thereafter, FreeLife used a series of anonymous websites such as
25 www.gojibook.com and www.gojitoools.com to provide false and/or misleading
26 information to its distributors about FreeLife's Goji Products which information was

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1 intended to be used by distributors to promote and sell FreeLife's goji Products. These
2 websites were specifically used to continue its misrepresentations that HGJ was
3 produced by a cold process to ensure that the juice contained raw berries and live
4 bioactive polysaccharides. These websites also anonymously continued to make the
5 false representations regarding health benefits and medical cures.

6 51. In promoting these anonymous websites, FreeLife represented to its
7 distributors that these websites were independently posted by authoritative and
8 impartial parties unrelated to FreeLife. FreeLife also encouraged its distributors to
9 direct customers and potential customers to the sections of these websites which
10 claimed the health benefits and curative powers of the goji berry. In fact, each of these
11 websites had been created by FreeLife or persons acting at the direction of the
12 FreeLife.

13 52. Although FreeLife has denied that it sponsored or created these
14 anonymous websites, the compliance department for FreeLife must review and
15 approve all websites used by its distributors and Reilly has admitted in a deposition in
16 another case that the FreeLife's compliance department reviewed and approved most
17 of these websites.

18 53. On or about January 8, 2008, FreeLife announced the development of a
19 new product, GoChi, which was offered for sale at wholesale prices of \$36.50 per
20 bottle, \$134.95 for a case of 4 bottles, and \$674 for a 6 case value pack. The bottles
21 were then sold at retail for prices up to \$52 per bottle.

22 54. In connection with the promotion and sale of GoChi, FreeLife's official
23 website represented the following:

- 24 A. GoChi contains 30% more LBPs than present in HGJ;
25 B. GoChi is the next generation in HGJ and is scientifically demonstrated to
26 deliver results in just 14 days;

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- 1 C. GoChi only uses berries that conform to FreeLife’s precise spectral
- 2 signature balance and potency of LBPs;
- 3 D. A statistical testing study between day 1 and day 15 reveals significant
- 4 health benefits, including increased energy, less fatigue, increased focus
- 5 and mental acuity, improved athletic performance, reduced stress,
- 6 increased feelings of calmness and contentment, feeling happier and
- 7 healthier, better quality of sleep, easier ability to awaken in the morning,
- 8 and promoting bowel regularity (hereinafter referred to as the “GoChi
- 9 health benefits”); and,
- 10 E. FreeLife has an immune system study and an antioxidant study, which
- 11 provides scientific evidence of the health benefits from GoChi,
- 12 including but not limited to, benefits to the immune system and the
- 13 musculoskeletal system.

14 The references to the immune system study and antioxidant study were similar to the
15 representations openly made by FreeLife and Mindell prior to 2008, claiming the
16 curative powers of the goji for treating cancer, arthritis, and other medical conditions.

17 55. FreeLife’s representations relating to GoChi were promises and
18 affirmations of fact used to sell GoChi, but were materially false and deceptive in the
19 following respects:

- 20 A. GoChi does not contain 30% more LBPs than present in HGJ and there
- 21 is no reliable scientific evidence to support that representation;
- 22 B. GoChi was not an improved or advanced product to HGJ, but was
- 23 substantially identical except that GoChi did not contain any
- 24 preservatives;
- 25 C. GoChi does not use berries picked to conform to a precise spectral
- 26 signature balance and potency of LBPs and there is no scientific support

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for same;

D. There is no reliable scientific evidence to support the GoChi health benefits or the representation of health improvements after 15 days;

E. FreeLife failed to disclose that its statistical testing study was performed by FreeLife on its own employees and did not constitute an independent, randomized testing study scientifically reliable under the circumstances; and,

F. There was no reliable scientific evidence to support its claim that GoChi provided health benefits to the immune system and the musculoskeletal system.

56. FreeLife continued to encourage expressly and/or impliedly its distributors to use the same false and deceptive representations in the distributor websites previously used by FreeLife, including, but not limited to, the representations of cold-processing, no heat processing, raw berries with live bioactive polysaccharides, the 34 health reasons, and the curative powers of goji juice in fighting cancer and other medical diseases and conditions.

57. As a result, in 2008 FreeLife distributor websites contained false representations that GoChi contained raw berries with live bioactive polysaccharides, was not heat processed, and provided curative powers to fight cancer and other diseases.

58. FreeLife ratified each of the representations in distributor websites by action of its compliance department in approving or not objecting to the representations in the distributor websites.

59. On or about January 10, 2009, FreeLife announced the development of TAIslim, a “triple patent pending weight loss product (drink) with Goji Juice that helps you lose weight, fight abdominal fat, enhance mental control appetite while feeling

1 more energy.” This product was offered for sale at \$36.50 per single bottle or \$134.95
2 per case (4 bottles).

3 60. In connection with the promotion and sale of TAIslim, FreeLife’s
4 official website represented the following:

- 5 A. TAIslim is a simple weight loss drink that you take with a full glass of
6 water for 2 – 3 meals each day;
- 7 B. The TAIslim formula “is backed by years of scientific research and
8 study” (www.TAI-Fit.com, *What is TAIslim?*);
- 9 C. TAIslim is the first weight loss product to target all 4 different causes of
10 weight gain and fat storage determined by scientists;
- 11 D. TAIslim contains GoChi Juice which is clinically shown to reduce the
12 body’s production of stress hormones which attribute to unwanted belly
13 fat;
- 14 E. TAIslim contains nothing but natural ingredients with no synthetic
15 additives;
- 16 F. TAIslim increases metabolism so that more calories can be burned;
- 17 G. TAIslim works to early on release the CCK hormone responsible for
18 your brain sending the message that you are full, thereby controlling
19 appetite and unhealthy cravings;
- 20 H. TAIslim is the only weight loss product that contains NuFlora. NuFlora
21 works to clean the body of metabolic toxins and rid the body of bacteria
22 that can cause weight gain;
- 23 I. There are 27 health reasons to continue to take at least one daily serving
24 of TAIslim, including but not limited to, cleansing and detoxifying,
25 absorbing fewer calories from the foods you eat, fighting insulin
26 resistance, improving regularity and maintaining colon health, keeping a

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healthy heart, maintaining normal, healthy cholesterol and triglycerides, inhibiting dangerous lipid peroxidation, supporting normal blood pressure, building healthy muscles, improving your immune system defenses, and improving thyroid health. A copy of the *27 Reasons to Drink TAIslim*, published by FreeLife, is attached hereto as Exhibit B and incorporated herein; and,

J. TAIslim is a safe product.

61. FreeLife's representations regarding TAIslim are promises and affirmations of fact which are materially false and deceptive in the following respects:

- A. There is insufficient reliable scientific or medical evidence that TAIslim is effective and safe as a weight loss supplement;
- B. TAIslim's formula is not backed by years of scientific research and study;
- C. There is insufficient reliable scientific or medical evidence that TAIslim is the first weight loss product to target all causes of weight gain and fat storage;
- D. There is no reliable scientific or medical evidence which clinically shows that TAIslim reduces the body's production of stress hormones which attribute to belly fat;
- E. TAIslim contains synthetic additives such as sucralose;
- F. There is insufficient reliable scientific or medical evidence that TAIslim increases metabolism so that more calories can be burned;
- G. There is no reliable scientific evidence that TAIslim works to early on release the CCK hormone for controlling appetite and food craving;
- H. There is no reliable scientific evidence to support its claim that NuFlora cleans the body of metabolic toxins and bacteria that can cause weight

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gain;

- I. There is no reliable scientific evidence to support the 27 health reasons for continued use of TAIslim; and,
- J. There is no reliable scientific evidence to support the safety of this product for prolonged use.

62. Defendant has elected to market its goji Products with wild claims that long-term use of them will stop or slow the aging process, cure diseases such as cancer, and provide a safe weight loss remedy along with a multitude of other exaggerated health benefits. Defendant has falsely promised that these health results are based on pure science and well documented health studies.

63. When a consumer is diagnosed with a serious disease, with little hope of recovery, or is frightened of aging and the changes in health brought by the aging process, or overweight, the consumer becomes particularly vulnerable to any claim that a product could lessen or eliminate such illness or condition. By targeting these consumers, Defendant has focused its marketing efforts upon a predominantly wide and susceptible group of consumers.

64. American history is filled with legends and stories of snake oil salesmen selling tonics to consumers with promises that such miraculous potions would cure most common illnesses. Today, salesmen may no longer sell snake oil, but the modern consumer continues to search for and buy herbal products which claim to remedy health conditions.

65. FreeLife is a modern day snake oil salesman, churning out herbal goji Products for purchase by consumers, based upon outrageous claims of health benefits unsupported in science. Vulnerable consumers have been targeted and have spent thousands of dollars for consumption of these over-priced and deceptive Products.

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1 71. After consuming the product, Plaintiff Burge elected not to become a
2 distributor or further user of the HGJ.

3 **B. Plaintiff Alastair Dick**

4 72. In or about April 2006, a FreeLife distributor solicited and recruited
5 Plaintiff Alastair Dick (“Dick”) to purchase and consume HGJ and to serve as a
6 FreeLife distributor in Australia. The FreeLife distributor made each of the false and
7 deceptive representations to Plaintiff Dick about HGJ set forth in Paragraphs 27-28 of
8 this Complaint. It was also represented to Plaintiff Dick the 34 health reasons for
9 continued use of HGJ as set forth in the Mindell book and the curative powers of HGJ.

10 73. In reliance upon these representations, Plaintiff Dick signed up as a
11 FreeLife distributor and began consuming and selling HGJ. Plaintiff Dick sold and
12 consumed HGJ from April 2006, through September 2007.

13 74. Plaintiff Dick consumed HGJ on the representation of FreeLife that it
14 would improve his arthritis and eyesight, and would improve his natural health. After
15 he determined that HGJ was providing him no health benefits and that FreeLife was
16 soliciting sales based on false and deceptive information, he stopped selling and
17 consuming HGJ.

18 **C. Plaintiff Lynda Forgette**

19 75. In or about January 2004, FreeLife’s distributor, Jerry Shaw, advised
20 Plaintiff Lynda Forgette (“Forgette”) of the health benefits of HGJ and signed her up
21 as a distributor of HGJ in Ontario, Canada. In soliciting Plaintiff Forgette, Mr. Shaw,
22 as FreeLife’s agent represented that Forgette’s consumption of HGJ would relieve her
23 back pain, reduce her high blood pressure, reduce risk of diabetes and heart disease, as
24 well as provide her many other health benefits. In addition, Plaintiff Forgette was told
25 that she could pay for the costs of her consumption and earn substantial additional
26 income by becoming a FreeLife distributor.

1 76. From January 2004, through February 2009, Plaintiff Forgette was a
2 FreeLife distributor purchasing not less than 1 case of HGJ per month prior to January
3 2008, or 1 case of GoChi per month, after its introduction in January 2008.

4 77. Prior to the CBC broadcast exposing Mindell, Plaintiff Forgette actively
5 promoted the sale of HGJ and consumed within her family unit (including her
6 grandchildren) 4 to 5 cases per month. In fact, she and her family members consumed
7 as much as 5 to 6 cases per month during 2004-2005.

8 78. After the CBC broadcast, Plaintiff Forgette became uncomfortable
9 promoting HGJ to consumers and she thereafter declined to personally promote and
10 sell HGJ and other FreeLife Products to the consuming public.

11 79. Without the income from active distributor sales, Plaintiff Forgette and
12 her family members reduced their purchases of the HGJ, but continued to consume 1
13 to 4 cases per month.

14 80. In 2008, FreeLife announced its introduction of GoChi which it claimed
15 had been produced after 4 years of testing and was superior as a product to HGJ in all
16 respects.

17 81. At that time, Plaintiff Forgette stopped purchasing HGJ and started
18 purchasing and consuming GoChi. She and certain of her family members continued
19 to consume the product until in or about March 2009.

20 82. Upon information and belief, Plaintiff Forgette alleges that FreeLife has
21 been diluting its GoChi product during the last 4 to 6 months without disclosure to its
22 distributors or the public.

23 **D. Pamela Krause**

24 83. In January of 2006, Plaintiff Pamela Krause (“Krause”) joined FreeLife
25 as a distributor after learning from a family member (who was a FreeLife distributor
26 and authorized representative), of the many alleged health benefits of HGJ.

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1 Subsequently she learned from FreeLife representative Otis DeWitt, who made a
2 number of presentations to promote and hype the product, that HGJ would help relieve
3 her husband's conditions of diabetes and erectile dysfunction, and Krause's weight and
4 sleeping problems.

5 84. In connection with her signing up as a distributor, FreeLife through its
6 authorized representatives made each of the representations to Plaintiff Krause as
7 alleged in Paragraphs 27-28 of the Complaint, as well as many of the health benefit
8 representations contained in Mindell's book, "The Himalayan Health Secret." Plaintiff
9 Krause relied upon the truth of these representations in conducting a FreeLife
10 distributorship as well as in consuming HGJ.

11 85. After approximately 8 months of consuming HGJ, Plaintiff Krause and
12 her husband saw no improvement in their health and she decided to end her
13 distributorship and stop consuming HGJ.

14 86. In December 2008, FreeLife, through its authorized agent John
15 Roesener, approached Plaintiff Krause and explained to her FreeLife's new product
16 TAIslim which he described as a miracle weight loss liquid supplement. In January
17 2009, after the product was publicly announced and marketed, he made the
18 representations to her on behalf of FreeLife as alleged in Paragraph 53 of this
19 Complaint and asked her to sign up as a distributor.

20 87. At that time Plaintiff Krause was provided with various brochures and
21 promotional materials produced by FreeLife which she reviewed and relied upon in
22 signing up as a TAIslim distributor.

23 88. In January 2009, Plaintiff Krause began consuming the product on a
24 daily basis and selling the product to others for consumption and resale.

25 89. After a short period of use, Plaintiff Krause began experiencing shoulder
26 pain. After stopping use of the product, the pain disappeared. She decided to start

1 using TAIslim again, but the pain returned at an increased level. She stopped using
2 the product again and then resumed taking it with the same results.

3 90. Plaintiff Krause also received complaints from multiple customers who
4 had purchased the product within Krause's distributor group that they had experienced
5 adverse effects.

6 91. Upon investigation, Plaintiff Krause discovered that TAIslim contained
7 sucralose, a substance linked to adverse health effects, including abdominal pain, joint
8 pain, achiness, back pain, dizziness, eye pain, fibromyalgia, and headaches. She also
9 learned that, despite FreeLife's representations, there were no reliable long-term
10 studies proving that the substance was safe.

11 92. After Plaintiff Krause became aware of a TAIslim customer who had
12 ended up in a hospital emergency room after taking TAIslim, she determined that it
13 was not safe to sell the product and she subsequently went inactive with her
14 distributorship. She gave notice of her resignation to FreeLife in or about April 2009.

15 93. Plaintiff Krause notified a consumer's organization of her concerns
16 about TAIslim and its misrepresentations regarding the safety of the product by e-mail
17 dated April 5, 2009, a copy of which is attached hereto as Exhibit C and incorporated
18 herein.

19 94. Plaintiff Krause's April 5, 2009, e-mail was forwarded to FreeLife and
20 Defendant Handel responded on behalf of FreeLife in April 2009, admitting use of
21 sucralose in TAIslim, but denying that the product was in any way unsafe. A copy of
22 his e-mail is included in Exhibit C and incorporated herein by reference.

23 **E. Plaintiff Fred Anthony Reyes**

24 95. In or about June 2007, FreeLife's distributor, Neil Chantara, solicited
25 Plaintiff Fred Anthony Reyes ("Reyes") to purchase and consume HGJ and recruited
26 him as a FreeLife distributor in Hawaii.

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1 96. In the solicitation, Mr. Chantara, as FreeLife’s sales agent, made each of
2 the false and deceptive representations to Reyes set forth in Paragraphs 27-28 of the
3 Complaint, as well as the health benefits of drinking HGJ daily as set forth in the
4 Mindell book.

5 97. Plaintiff Reyes relied upon these representations and purchased 3 cases
6 of HGJ. During 2007, he consumer over 12 bottles of HGJ.

7 98. Prior to making any distributor sales, Reyes learned that FreeLife and its
8 sales agent had made multiple misrepresentations to him regarding the product.
9 Reyes, thereafter, terminated his distributorship and stopped purchasing and/or
10 consuming HGJ.

11 **F. Plaintiff David David Strobel**

12 99. In or about the fall 2005, FreeLife’s distributor Garth Romrell advised
13 Plaintiff David Strobel (“Strobel”) of the many health benefits of HGJ and signed him
14 up as a customer and distributor of HGJ in Idaho Falls, Idaho. In soliciting Plaintiff
15 Strobel, Mr. Romrell, as FreeLife’s agent, represented that Strobel’s consumption of
16 HGJ would prevent cancer, reduce high blood pressure, reduce the risk of diabetes and
17 heart disease, as well as provide many other health benefits. He also encouraged
18 Strobel to sell the product to others which would pay for his costs of consumption as
19 well as earn substantial additional income.

20 100. Mr. Romrell, acting on behalf of FreeLife as its sales agent, made each
21 of the false and deceptive representations to Strobel about HGJ set forth in Paragraphs
22 27-28 of the Amended Complaint. He also represented the 34 health reasons for
23 continued use of HGJ set forth in the Mindell book and the curative powers of HGJ.

24 101. Based upon these representations, Stobel purchased and consumed
25 approximately 1 bottle per week.
26

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1 102. From fall 2005 through approximately fall of 2007, Strobel purchased
2 and consumed HGJ and sold a small quantity of HGJ to customers for their
3 consumption.

4 103. In 2006 and 2007, Strobel attended several telephone conferences with
5 Handel and Mindell who affirmed many of the same misrepresentations made by Mr.
6 Romrell, including HGJ's curative powers from cancer, diabetes, heart disease, and
7 many other serious medical conditions, and encouraged its distributors to make the
8 same representations to potential customers.

9 104. On February 8, 2007, Strobel attended a FreeLife meeting and leadership
10 dinner at the Shilo Inn Conference Center in Idaho Falls, hosted by FreeLife CEO Ray
11 Faltinsky and Mike Zundel. At this meeting which was scripted like a religious
12 revival, the FreeLife executives presented a series of people who claimed to be cured
13 from cancer and other disease by taking HGJ on a continuous basis. The FreeLife
14 executives boasted of the incredible curative powers of HGJ and encouraged FreeLife
15 executives to make the very same health representations to potential customers.

16 105. Strobel became increasing uncomfortable with HGJ after becoming
17 aware of the breathe.org website which disclosed certain of FreeLife's
18 misrepresentations. After inquiry to FreeLife, Strobel was dissatisfied with the
19 FreeLife responses and determined to end his distributorship.

20 106. After Strobel had ended his distributorship and terminated consumption
21 of HGJ, Strobel learned that one of his former customers developed testicular cancer
22 and another former customer was diagnosed with diabetes, both after prolonged use of
23 the product.

24 **CLASS ACTION ALLEGATIONS**

25 107. Plaintiffs bring this action both on behalf of themselves, and as a class
26 action on behalf of the following Class ("the Class").

1 All individuals who, within the four years prior to the filing of this
2 Complaint (“Class Period”), purchased HGJ, GoChi, and/or TAIslim
3 (hereinafter referred to as the “Products”) from FreeLife International,
4 Inc.

5 108. Although Plaintiffs do not know the exact number of the members of the
6 Class, since such information is within the exclusive control of FreeLife, Plaintiffs
7 believe that due to the nature of the commerce involved, the number of members of the
8 Class are sufficiently numerous, most likely thousands of purchasers, that joinder of all
9 Class members is impracticable. Indeed, Plaintiffs believe that FreeLife’s revenues
10 from the sale of the Products exceed \$100,000,000 per year.

11 109. The claims of Plaintiffs are typical of the Class claims in that Plaintiffs
12 purchased the Products in reliance upon the misrepresentations, omissions, and
13 concealments, and believed that:

- 14 A. HGJ contained 2.2 pounds of fresh Himalayan goji berries;
- 15 B. FreeLife’s unique spectral analysis enabled it to identify and harvest a
16 certain type of goji berry with the exact nutrient profile of the legendary
17 goji from the Himalayas;
- 18 C. FreeLife’s spectral signature on each bottle of HGJ demonstrated that the
19 goji berries used met the highest standards for density of
20 polysaccharides, absorption in humans, and highest potency;
- 21 D. FreeLife produced HGJ by a cold processing method with no heating so
22 that the vital LPBs and nutrients of the goji would not be destroyed;
- 23 E. HGJ contains raw Himalayan goji berries with live bioactive
24 polysaccharides;
- 25 F. HGJ contains only whole natural preservatives and no artificially created
26 chemical preservatives;
- G. HGJ contains four unique and active polysaccharides which provide

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- 1 wide-ranging health benefits that retard the aging process and control
2 many of the body's most important biochemical defense systems to fight
3 disease;
- 4 H. HGJ had the ability to cure, arrest, or improve certain diseases and
5 medical conditions;
- 6 I. GoChi contained 30% more LPBs than present in HGJ;
- 7 J. GoChi goji berries also conformed to FreeLife's spectral signature
8 analysis assuring that it met the highest standards for density of
9 polysaccharides, absorption in humans, and highest potency;
- 10 K. GoChi was produced using the same cold process as HGJ to assure that
11 the vital polysaccharides of the goji were not destroyed;
- 12 L. GoChi provided significant health benefits as represented;
- 13 M. FreeLife had authoritative scientific studies which confirmed the health
14 benefits from long-term use;
- 15 N. TAIslim formula using goji juice was backed by years of scientific
16 research and study;
- 17 O. TAIslim is a safe weight loss product using a unique formula; and,
- 18 P. TAIslim provides significant health benefits besides weight loss from
19 long-term use.
- 20 110. In addition, the claims of Plaintiffs are typical of the Class in that
21 FreeLife made the same representations, directly or indirectly, to all members of the
22 Class, the representations were false or misleading as to all members of the Class, and
23 FreeLife benefitted and was unjustly enriched from the sales in the same manner as to
24 all members of the Class.

1 111. Numerous questions of law and fact are common to the Class, which
2 predominate over any individual issues. Questions of law and fact which are common
3 to the Class include, without limitation:

- 4 A. Whether FreeLife made representations to consumers about the quality,
5 characteristics, and benefits of the goji berries used in its Products that
6 rendered the Products effective in curing, arresting, or improving certain
7 diseases and medical conditions, and retarding the aging process, and
8 whether such representations were false and/or misleading;
- 9 B. Whether FreeLife made representations to consumers about the methods
10 of production of its Products and the characteristics and benefits of the
11 Products resulting therefrom and whether such representations were false
12 and/or misleading;
- 13 C. Whether FreeLife made representations to consumers about the
14 characteristics, uses, benefits, or qualities of its Products and whether
15 such representations were false and/or misleading;
- 16 D. Whether FreeLife made representations to consumers about its use of
17 spectral signature analysis in identifying, isolating, and harvesting goji
18 berries and its use of a unique spectral signature on each bottle of HGJ
19 and GoChi and whether such representations were false and/or
20 misleading;
- 21 E. Whether FreeLife targeted a predominantly susceptible group of
22 consumers and thus whether the “reasonable consumer standard should
23 apply”;
- 24 F. Whether FreeLife truthfully advertised its Products to its distributors;
- 25 G. Whether FreeLife and/or its compliance department reviewed, approved,
26 and/or ratified the product representations of its distributors in websites

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- 1 and other forms of promotion, advertising, and solicitations;
- 2 H. Whether FreeLife created, approved, and/or ratified the anonymous
- 3 websites used by distributors for promotion, advertising, and solicitation
- 4 of FreeLife's Products;
- 5 I. Whether FreeLife misled and/or confused consumers, committed unfair
- 6 business practices, and/or false advertising by relying upon and referring
- 7 consumers to Mindell's book and certain alleged health studies;
- 8 J. Whether FreeLife knew or should have known that the Products did not
- 9 have the characteristics, uses, benefits, or qualities for which it
- 10 advertised and marketed the Products;
- 11 K. Whether FreeLife breached express or implied warranties;
- 12 L. Whether FreeLife was unjustly enriched by its conduct; and,
- 13 M. The nature and extent of damages and other remedies to the Class
- 14 members caused by FreeLife's conduct.

15 112. Plaintiffs will fairly and adequately represent the interests of the Class in

16 that Plaintiffs are typical purchasers of the Products. Furthermore, Plaintiffs have

17 retained competent counsel experienced in class action litigation. Plaintiffs' counsel

18 will fairly and adequately protect the interests of the Class.

19 113. This class action is superior to the alternatives, if any, for the fair and

20 efficient adjudication of this controversy. The Class is readily definable. A class

21 action will enable claims to be handled in an orderly and expeditiously manner. A

22 class action will save time and expense and will ensure uniformity of decisions.

23 114. The relief sought per individual member of the Class is small given the

24 burden and expense of individual prosecution of the potentially extensive litigation

25 necessitated by the conduct of FreeLife. Furthermore, it would be virtually impossible

26 for the Class members to seek redress on an individual basis. Even if the Class

1 members themselves could afford such individual litigation, the court system could
2 not.

3 115. Individual litigation of the legal and factual issues raised by the conduct
4 of FreeLife would increase delay and expense to all parties and to the court system.
5 The class action device presents far fewer management difficulties and provides the
6 benefits of a single, uniform adjudication, economies of scale and comprehensive
7 supervision by a single court. Given the similar nature of the Class members' claims
8 and the law applicable thereto, the Court and the parties will easily be able to manage
9 a class action.

10 116. Prosecution of separate actions by individual Class members would
11 create the risk of inconsistent or varying adjudications, establishing incompatible
12 standards of conduct for FreeLife.

13 117. Injunctive relief is appropriate to the Class as a whole because FreeLife
14 has acted or refused to act on grounds generally applicable to the Class.

15 **COUNT ONE**

16 **UNJUST ENRICHMENT**

17 118. Plaintiffs incorporate by reference all of the preceding allegations of this
18 Complaint.

19 119. FreeLife has benefited and been unjustly enriched by the above-alleged
20 wrongful conduct. FreeLife has sold the Products HGJ, GoChi, and TAIslim to
21 Plaintiffs and members of the Class, based upon misrepresentations as to the
22 composition, production process, and health benefits from prolonged use of the
23 Products and its employment of deceptive practices.

24 120. FreeLife was aware of the falsity of these representations and its
25 employment of deceptive practices and intended to mislead and deceive individuals
26 into the purchase and prolonged use of these Products.

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1 121. FreeLife has knowledge of the benefits received from the sale of
2 Products by false representation and deception, and has voluntarily accepted and
3 retained these benefits.

4 122. The circumstances as described herein are such that it would be
5 inequitable for FreeLife to retain these ill-gotten benefits without paying the value
6 thereof to Plaintiffs and members of the Class.

7 123. Plaintiffs and members of the Class are entitled to the amount of
8 FreeLife's ill-gotten gains, including interest, resulting from its unlawful, unjust, and
9 inequitable conduct as described above.

10 **COUNT TWO**

11 **BREACH OF EXPRESS WARRANTY (A.R.S. § 47-2313)**

12 124. Plaintiffs incorporate by reference all of the preceding allegations of this
13 Complaint.

14 125. This claim is asserted on behalf of Plaintiffs and a Class of all purchasers
15 of the Products who purchased them within four years of the filing of this Complaint.

16 126. The Products are merchandise and consumer goods advertised and sold
17 to the public by FreeLife.

18 127. The Products were sold by FreeLife to Plaintiffs and members of the
19 Class pursuant to affirmations of fact or promises relating to the goods and
20 descriptions of the goods which became part of the basis of the bargain.

21 128. The affirmations of fact, promises, and descriptions of the goods failed
22 to conform to the affirmation, promise, or description.

23 129. By reason thereof, FreeLife breached expressed warranties made to
24 Plaintiffs and members of the Class.

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- b. Selling, marketing or advertising the Products with any reference to health benefits unsupported by reliable scientific evidence;
- 10. For reasonable attorneys' fees;
- 11. For costs incurred herein;
- 12. For prejudgment interest; and
- 13. For all general, special, and equitable relief to which the Plaintiffs and the members of the Class are entitled to by law.

DATED this 30th day of June, 2009.

KELLER ROHRBACK, P.L.C.

By: /s/Gary D. Greenwald
 Gary A. Gotto
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **June 30, 2009**, Plaintiffs' **First Amended Complaint** was filed electronically. Notice of this filing will be sent to all parties listed below by the Operation of the Court's electronic system.

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