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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 ANDRE BATUNGBACAL, an
20 individual,

21 Plaintiff,

22 v.

23 POWER BALANCE LLC, a Delaware
24 Limited Liability Company, TROY
25 JOHN RODARMEL, an individual,
26 JOSH RODARMEL, an individual,
27 KEITH KATO, an individual, and
28 DOES 1 through 10, inclusive,

Defendants.

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

SA CV 11-00018 CJC(MLG)
Case No.

**NATIONWIDE CLASS ACTION
COMPLAINT FOR:**

- 1. UNFAIR BUSINESS PRACTICES (Business & Professions Code § 17200 et seq.)
- 2. FALSE ADVERTISING (Business & Professions Code § 17200 et seq.)
- 3. VIOLATIONS OF CONSUMERS LEGAL REMEDIES ACT

DEMAND FOR JURY TRIAL

1 PLAINTIFF Andre Batungbacal (“PLAINTIFF”), individually and on behalf
2 of all others similarly situated, complains and alleges on information and belief,
3 except as to those paragraphs specifically applicable to PLAINTIFF, which are
4 based upon said named PLAINTIFF’s personal knowledge, as follows:

5 **OVERVIEW**

6 1. This class action seeks relief on behalf of PLAINTIFF and the
7 members of the Class for damages they have sustained as a result of Defendants
8 Power Balance LLC, Josh Rodarmel, Troy Rodarmel, and Keith Kato’s
9 (“DEFENDANTS”) deceptive and misleading conduct in marketing, advertising,
10 selling, promoting and distributing products by them manufactured, sold and/or
11 distributed.

12 2. DEFENDANTS distributed in commerce, among other things, the
13 Power Balance Bracelets, Power Balance Wristbands, Power Balance Pendants,
14 Power Balance necklaces and other Power Balance Jewelry, collectively referred to
15 herein as “Power Balance Accessories” or “Accessories”.

16 3. Beginning in 2007, DEFENDANTS began selling Power Balance
17 Accessories.

18 4. The Power Balance Accessories are sold with one unifying notice, that
19 they contain one or more “Mylar Holograms” which are worn sitting close to the
20 body.

21 5. Since beginning to sell and distribute the Power Balance Accessories,
22 the DEFENDANTS made the same, consistent and repeated representations on their
23 respective websites, on packaging, in store displays, at live exhibitions, through paid
24 testimonials, through press releases and in other forms of marketing and advertising,
25 representing that the “Mylar Holograms” contained in every Power Balance
26 Accessory maintained properties they didn’t as well as gave users and/or consumers
27 that wore a Power Balance Accessory physiological benefits they couldn’t give
28 including, but not limited to:

- 1 a. "Power Balance holograms are embedded with frequencies that
- 2 react positively with your body's natural energy field to improve
- 3 balance, strength and flexibility;
- 4 b. "Power Balance holograms are designed to work with your
- 5 body's natural energy field;
- 6 c. Power Balance is Performance Technology;
- 7 d. Power Balance products boost the body's self defense
- 8 mechanisms creating the immediate benefits of strength, balance
- 9 and flexibility gain;
- 10 e. When the hologram comes into contact with your body it gives
- 11 you that added balance, strength, flexibility;
- 12 f. Use of the Power Balance results in lots of endurance and
- 13 stamina."

14 6. As a result of the aforementioned representations, DEFENDANTS
15 achieved exceptional commercial success, selling over three million units in less
16 than three years.

17 7. The advertisements and representations made in the United States were
18 identical to those made in Australia, namely that the Power Balance Accessories
19 improve strength, balance and flexibility.

20 8. On or about December 21, 2010, in response to investigations by the
21 Australian government (the Australian Competition and Consumer Commission),
22 the Power Balance DEFENDANTS issued a corrective advertisement stating in
23 pertinent part:

24 "In our advertising we stated that Power Balance wristbands improved
25 your strength, balance and flexibility. We admit that there is no credible
26 scientific evidence that supports our claims and therefore we engaged
27 in misleading conduct in breach of s52 of the Trade Practices Act
28 1974."

1 9. Section 52(1) of the Australia's Trade Practices Act 1974 states: "A
2 corporation shall not, in trade or commerce, engage in conduct that is misleading or
3 deceptive or is likely to mislead or deceive." By agreeing to the undertaking and
4 publishing the corrective advertisement, the Power Balance Defendants admit that
5 their representations of improving strength, balance and flexibility were misleading.

6 10. Furthermore, the Power Balance DEFENDANTS admit they had
7 absolutely no credible scientific evidence that supported the representations,
8 including the ones set forth hereinabove. Moreover, DEFENDANTS had no
9 reasonable ground for making the Representations aside from intentionally and
10 fraudulently inducing the general public, the Class members and PLAINTIFF into
11 purchasing their products.

12 11. Despite these admissions, the Power Balance DEFENDANTS continue
13 to mislead the American public.

14 12. As a result of the deceptive and misleading practices in advertising and
15 marketing the Power Balance Accessories, PLAINTIFF and those similarly situated
16 purchased the Power Balance Accessories.

17 **JURISDICTION AND VENUE**

18 13. This Court has subject matter jurisdiction over this Nationwide Class
19 Action arising under the Class Action Fairness Act of 2005, 28 U.S.C. §1332 (the
20 Act). The Act provides for original jurisdiction in the Federal Courts of any Class
21 Action in which any member of the Plaintiff Class is a citizen of a state different
22 from any Defendant, and in which the amount in controversy exceeds in the
23 aggregate Five million dollars (\$5,000,000), exclusive of interest and costs.

24 14. PLAINTIFF alleges that the total claims of individual class members,
25 in the aggregate, exceed Five million dollars (\$5,000,000), as required by 28 U.S.C.
26 §1332(d)(2)&(5), and a member of the class of plaintiffs is a citizen of a state
27 different from any defendant. Therefore, diversity of citizenship exists are required
28 by 28 U.S.C. §1332(d)(2).

1 15. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a
2 substantial part of the events, omissions and acts giving rise to the claims herein
3 occurred in this district. Specifically, PLAINTIFF was exposed to advertising as
4 well as purchased the product in the County of Los Angeles. Moreover
5 DEFENDANTS are all either headquartered or resident in Southern California, and
6 they distributed, manufactured, advertised and sold the products subject of the
7 present complaint, principally from Southern California. The United States District
8 Court – Western Division, located in Los Angeles, California, comprises the
9 Counties of Los Angeles, San Luis Obispo, Santa Barbara and Ventura.

10 **PARTIES**

11 16. Plaintiff Andre Batungbacal is an individual consumer residing in Los
12 Angeles County, California, who, during the proposed class period, purchased a
13 Power Balance bracelet from a Finish Line store located in Los Angeles County,
14 California.

15 17. Defendant Power Balance LLC (“Power Balance”). Power Balance is a
16 Delaware Limited Liability Company, headquartered at 30012 Ivy Glenn, Suite 180,
17 Laguna Niguel, California 92677. PLAINTIFF is informed and believes that
18 DEFENDANTS manufacture, market, advertise, distribute, produce and market the
19 Power Balance Accessories, which are distributed for sale to consumers at retail
20 outlets throughout the United States, Europe, Australia and Asia.

21 18. As mentioned, Power Balance, advertises, sells, and distributes their
22 products, subject of the present lawsuit, throughout California, the United States and
23 several foreign territories.

24 19. On information and belief Power Balance, is wholly owned by
25 Defendants Josh Rodarmel (“J. Rodarmel”), Troy Rodarmel (“T. Rodarmel”) and
26 Keith Kato (“Kato”).

27 20. On information and belief, Defendant J. Rodarmel is co-director, Chief
28 Operating Officer and active owner of the company, and is involved, individually or

1 in concert with others, in the formulation, direction or control of the policies, acts, or
2 practices of Power Balance, including the acts or practices alleged in this complaint.

3 His principal place of business is the same as that of Power Balance.

4 21. On information and belief, Defendant T. Rodarmel is Chief Executive
5 Officer, co-director and active owner of the company, and is involved, individually
6 or in concert with others, in the formulation, direction or control of the policies, acts,
7 or practices of Power Balance, including the acts or practices alleged in this
8 complaint. His principal place of business is the same as that of Power Balance.

9 22. On information and belief, Defendant Kato is a co-director, company
10 owner as well as the company president and chief financial officer. Individually or
11 in concert with others, he formulates, directs or controls the policies, acts, or
12 practices of Power Balance, including the acts or practices alleged in this complaint.
13 His principal place of business is the same as that of Power Balance.

14 23. The true names or capacities, whether individual, corporate, associate
15 or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to
16 PLAINTIFF, who therefore sues said Defendants by such fictitious names.

17 24. At all relevant times mentioned herein, and during the class period,
18 Defendant Power Balance, was the sole manufacturer, distributor and driving force
19 behind the Power Balance Accessories, as well as one of many retailers.

20 25. Defendant Power Balance, are still manufacturers, distributors and
21 retailers of Power Balance Accessories.

22 26. On information and belief, the individual Defendants J. Rodarmel, T.
23 Rodarmel and Kato, personally benefitted financially from illicit acts complained of
24 herein.

25 27. All the aforementioned Defendants shall be collectively known and
26 wherever appropriate within this complaint referred to as "DEFENDANTS."

27 28. PLAINTIFF is informed and based upon such information believes that
28 each of the DEFENDANTS named herein was, at all times relevant to this action,

1 the agent, employee, representing partner, or joint venture of the remaining
2 DEFENDANTS and was acting within the course and scope of such relationship.

3 29. PLAINTIFF is further informed, believes and thereon alleges that each
4 of the DEFENDANTS herein gave consent to, ratified, and authorized the acts
5 alleged herein as to each of the remaining DEFENDANTS.

6 **SUBSTANTIVE ALLEGATIONS**

7 30. PLAINTIFF incorporates by reference and realleges all paragraphs
8 previously alleged, as if fully set forth herein.

9 31. DEFENDANTS, since the beginning of 2007, distributed in commerce,
10 the Power Balance Accessories throughout the United States, Europe and Australia.
11 The Accessories, which purportedly contain one or more "Mylar Holograms", were
12 marketed as being able to work and react with a body's natural energy flow thereby
13 yielding physiological benefits when worn close to your body. Specifically, the
14 DEFENDANTS represented and marketed that the instant benefits of the Power
15 Balance Accessories included "increased core strength," "greater flexibility," and
16 "improved balance." Indeed, those are the only words depicted on the front of the
17 packaging for the product. As a result of the aforementioned misrepresentations,
18 DEFENDANTS sold millions of units in relatively short span of time, amassing a
19 huge wealth at the cost of innocent consumers.

20 32. In reality, however, DEFENDANTS admit that they did not and do not
21 maintain any credible scientific evidence that supported the representations or the
22 claims made to the public. DEFENDANTS further admitted in or around December
23 21, 2010 that the representations made were misleading. DEFENDANTS had no
24 reasonable ground for making the Representations aside from intentionally and
25 fraudulently inducing the general public, the Class members and PLAINTIFF into
26 purchasing their products.

27 33. Moreover, the same website, in the FAQ section (printout of which is
28 attached hereto as EXHIBIT 1), in relevant part states:

- 1 • “Power Balance is Performance Technology designed to work with
- 2 your body’s natural energy field”
- 3 • “The Power Balance bracelet contains a Mylar hologram designed
- 4 to react with the body’s natural energy flow”
- 5 • “The Hologram in Power Balance is designed to respond to the
- 6 natural energy field of the body. The Mylar material at the core of
- 7 Power Balance has been treated with energy waves at specific
- 8 frequencies”
- 9 • “Power Balance ... is designed to help make you as strong as you
- 10 should be by interacting with your body’s natural energy field”

11 34. Moreover, on information and belief, the same website as well as the
12 Australian sister website, until recently in the FAQ section (printout of which is
13 attached hereto as EXHIBIT 2) displayed the following:

- 14 • “Unlike many other ionic electro-magnetic devices, the Power
- 15 Balance Holographic disks begin to work almost instantly, restoring
- 16 optimal electro-magnetic balance and promoting free flowing
- 17 energy pathways....NO PROMISES, JUST RESULTS”
- 18 • “The benefits are clear: faster synaptic response (brain function),
- 19 enhanced muscle response (in both fast and slow twitch tissues),
- 20 increased stamina (better oxygen uptake and recovery), more
- 21 flexibility (faster recovery), and vastly improved gravitational
- 22 balance.”
- 23 • “the high density Disk acts much like a switch, resonating within
- 24 your system and turning on your energy field while it clears the
- 25 pathways so the electro-chemical exchange functions like the well
- 26 tuned generator it was designed to be.”
- 27 • “When the static Power Balance Hologram comes in contact with
- 28 your body’s energy field, it begins to resonate in accordance with

1 each individual's biological, creating harmonic loop that optimizes
2 your energy field and maintains maximum energy flow while
3 clearing the pathways so the electro-chemical exchange functions
4 like the well tuned generator it was designed to be."

5 35. Defendant J. Rodarmel has been quoted as saying, in relevant part, that:
6 "My brother and I worked out a way of putting good frequencies into
7 our holograms so they balance out the body, making it stronger and
8 more flexible."

9 36. In a September 16, 2009 interview with Liz Miersch, of the online blog
10 "SELF" (attached hereto as EXHIBIT 3) Defendant Kato advertised the Power
11 Balance Accessories with a promise that wearing one would boost the body's self
12 defense mechanisms creating the immediate benefits of strength, balance and
13 flexibility gain.

14 37. In a February 26, 2010 interview with Nima Zarrabi, of the online
15 basketball magazine "SLAM" (attached hereto as EXHIBIT 4) J. Rodarmel stated,
16 in relevant part:

17 **SLAM:** "Can you discuss how these Power Balance products benefit
18 the athletes or the weekend warrior?"

19 **J. Rodarmel:** "We put frequencies in the holograms that react
20 positively with your body's energy field. ... We figured out how to put
21 these in the hologram so when it comes into contact with your body, it
22 gives you that added balance, strength, flexibility. We can demonstrate
23 that through the different muscle tests"

24 **SLAM:** "How does this product specifically aid a Basketball player?"

25 **J. Rodarmel:** "...Lot's of endurance and stamina. There are obviously
26 different balance and flexibility benefits that the elite athletes tend to
27 notice more, rather than people like me that aren't very athletic and
28 play for fun."

1 **SLAM:** “What do you say to people who are skeptical?”

2 **J. Rodarmel:** “Everybody is skeptical when they first hear about it.
3 They say it doesn’t make sense and it has to be psychological. It’s not.
4 ...”

5 38. Overall, DEFENDANTS print, online and in-store advertisements
6 misled consumers into believing Power Balance Accessories maintained properties
7 which benefitted users and consumers by delivering improved strength, flexibility
8 and balance. DEFENDANTS continue to circulate these misleading advertisements
9 in various forms, including on the internet, as they have done in prior years.

10 39. The current motto of PowerBalance.com is: “Power Balance®
11 holograms are designed to work with your body’s natural energy field. Balance -
12 Strength – Flexibility”

13 40. In December 2010, the Australian Competition and Consumer
14 Commission (“ACCC”), following the onset of proceedings against
15 DEFENDANTS’ Power Balance’s Australian subsidiary, pursuant to the Australian
16 Trade Practices Act of 1974 for the purposeful misguiding of the public, issued a
17 ruling requiring DEFENDANTS’ Australian subsidiary to engage in a series of
18 public retractions as well as complete refunds of those consumers who relied on
19 DEFENDANTS’ Australian subsidiary’s misrepresentations. A copy of the
20 undertakings is attached hereto as Exhibit 5. In relevant part the ACCC determined
21 that:

22 “Power Balance Australia Pty Ltd (Power Balance) claimed that their
23 wristbands and pendants improve balance, strength and flexibility and
24 worked positively with the body’s natural energy field. It also marketed
25 its products with the slogan “Performance Technology”. These claims
26 made by Power Balance were not supported by any credible scientific
27 evidence and therefore Power Balance has admitted that it has engaged
28 in misleading and deceptive conduct in breach of s 52 of the Trade

1 Practices Act 1974.”

2 41. On or about December 23, 2010, the Italian Anti-Trust, Italian
3 counterpart of the Australian ACCC, issued a fine of 350,000 Euros, against
4 DEFENDANTS’ Power Balance’s Italian subsidiary, based on the fact that the
5 promises made by the sellers were wholly unsubstantiated.

6 42. PLAINTIFF is informed, believes, and thereon alleges that
7 DEFENDANTS, pending the ruling by the ACCC and while under investigation by
8 the Italian Antitrust board, substantively modified their websites, marketing and
9 communications to eliminate numerous deceptive claims previously visible to the
10 public.

11 43. Moreover, PLAINTIFF is informed, believes, and thereon alleges that
12 DEFENDANTS attempted to “sanitize” publicly available information by
13 employing specialized services, and removing several deceptive statements from
14 otherwise visible locations.

15 **CLASS ACTION ALLEGATIONS**

16 44. PLAINTIFF brings this Nationwide Class Action pursuant to Rule
17 23(a) & (b) of the Federal Rules of Civil Procedure as follows:

18 All persons or entities who purchased Power Balance Accessories
19 (comprised of Power Balance Bracelets, Wristbands, Necklaces and
20 Pendants) in the United States for purposes other than resale or
21 distribution during the Class period, which is defined as the four years
22 preceding the filing of this action.

23 45. The foregoing Class shall exclude all federal, state, governmental and
24 national entities, and DEFENDANTS, their co-conspirators, and their respective
25 predecessors, subsidiaries, affiliates, and business partners.

26 46. The Class is so numerous that joinder of all members is impracticable.
27 DEFENDANTS sold, marketed and distributed the product through retail and online
28 outlets in both the Unites States and foreign territories. The identity and exact

1 number of Class members is unknown, but PLAINTIFF anticipates the total
2 membership of the Class members in the hundreds of thousands.

3 47. PLAINTIFF's claims are typical of those of other Class members, all of
4 whom have suffered harm due to DEFENDANTS' uniform course of conduct.
5 PLAINTIFF is a member of the Class.

6 48. Common questions of law and fact affect each and every Class
7 member. These common questions of law or fact predominate over any questions
8 affecting only individual members of the Class. Common questions include:

- 9 a. Whether DEFENDANTS' made statements constituting untrue
10 and/or misleading advertising in violation of California Business
11 & Professions Code § 17500 et. seq.;
- 12 b. Whether DEFENDANTS' conduct in misrepresenting the
13 benefits of the Power Balance Accessories constituted unfair
14 business practices in violation of California Business &
15 Professions Code § 17200 et seq.;
- 16 c. Whether DEFENDANTS' conduct in misrepresenting the
17 benefits of the Power Balance Accessories constituted fraudulent
18 business practices in violation of California Business &
19 Professions Code § 17200 et seq.;
- 20 d. Whether DEFENDANTS represented that the Power Balance
21 Accessories have characteristics, uses, or benefits which they do
22 not have;
- 23 e. Whether DEFENDANTS' conduct, as alleged in this Complaint,
24 caused injury to the PLAINTIFF and/or other member of the
25 Class; and
- 26 f. The appropriate measure of damages sustained by the
27 PLAINTIFF and/or other members of the Class.

28 49. PLAINTIFF will fairly and adequately protect the interests of the Class,

1 and have retained attorneys experienced in class actions and complex litigation as
2 their counsel.

3 50. A class action is superior to other methods for fair and efficient
4 adjudication of this controversy. Treatment as a class action will permit a large
5 number of similarly situated persons to adjudicate their common claims in a single
6 forum simultaneously, efficiently, and without the duplication of effort and expense
7 that numerous individual actions would entail.

8 51. Class treatment will also permit the adjudication of relatively small
9 claims by many members who otherwise could not afford to litigate the claims as
10 asserted in this Complaint.

11 52. This class action presents no difficulties in management that would
12 preclude maintenance of a class action.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATIONS OF UNFAIR BUSINESS PRACTICE ACT – CALIFORNIA**
15 **BUSINESS AND PROFESSIONS CODE §17200 et seq.**

16 53. PLAINTIFF incorporates by reference and realleges all paragraphs
17 previously alleged, as if fully set forth herein.

18 54. California Business & Professions Code § 17200 et seq., also known as
19 the California Unfair Competition Law (“UCL”), prohibits acts of “unfair
20 competition,” including any unlawful, unfair, fraudulent, or deceptive business act
21 or practice as well as “unfair, deceptive, untrue or misleading advertising.”

22 55. By engaging in the false, deceptive, and misleading conduct alleged
23 above, DEFENDANTS have engaged in unlawful business acts and practices in
24 violation of the UCL by violating state and federal laws including but not limited to
25 Business and Professions code § 17500 et seq., which makes false and deceptive
26 advertising unlawful.

27 56. In addition to being unlawful, DEFENDANTS’ acts, conduct and
28 practices as alleged above are unfair. DEFENDANTS, through deceptive and

1 misleading advertising and representations, induced PLAINTIFF and class members
2 to purchase Power Balance Accessories believing them to have beneficial
3 properties, both general and specific physiological benefits, they actually didn't
4 have. This injury is not outweighed by any countervailing benefits to consumers or
5 competition.

6 57. In addition to being unlawful and unfair, DEFENDANTS' acts,
7 conduct and business practices as alleged above are fraudulent and/or deceptive.
8 DEFENDANTS' packaging labeling, advertising, and marketing characterized the
9 Power Balance Accessories as having both general and specific beneficial
10 physiological properties. The DEFENDANTS have admitted that such packaging,
11 labeling, advertising and marketing were misleading. DEFENDANTS' deceptive
12 and fraudulent representations as to the benefits of the Power Balance Accessories
13 have a capacity, tendency or likelihood to deceive and/or confuse reasonable
14 consumers.

15 58. As a direct and proximate result of DEFENDANTS' unlawful, unfair
16 and fraudulent business practices, PLAINTIFF and the members of the class have
17 been injured in fact. They purchased Power Balance Accessories in reliance on
18 DEFENDANTS' false and misleading advertising and representations to the general
19 public regarding the benefits of wearing a Power Balance Accessory and coming in
20 close contact or range with the Mylar Holograms contained therein, and they would
21 not have purchased Power Balance Accessories had they known the products truly
22 maintained no benefit what so ever.

23 59. DEFENDANTS' unlawful, unfair and fraudulent business practices as
24 alleged above present a continuing threat to PLAINTIFF, the class and members of
25 the public because DEFENDANTS persist and continue to engage in such practices,
26 and will not cease doing so unless enjoined or restrained by this Court.

27 60. Under California Business & Profession Code § 17203, PLAINTIFF,
28 on behalf of himself, class members and members of the general public, seeks an

1 order of this Court:

- 2 a. Enjoining DEFENDANTS from continuing to engage, use, or
- 3 employ any unlawful, unfair and/or deceptive business act or
- 4 practice and unfair, deceptive, untrue, or misleading labeling,
- 5 advertising, promotion, testimonials, or marketing and any act
- 6 prohibited by California Business Code § 17200 et seq.; and
- 7 b. Restoring all monies that may have been acquired by
- 8 DEFENDANTS as a result of such unlawful, unfair or deceptive
- 9 acts or practices.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW –**
12 **CALIFORNIA BUSINESS AND PROFESSIONS CODE §17500 et seq.**

13 61. PLAINTIFF incorporates by reference and realleges all paragraphs
14 previously alleged, as if fully set forth herein.

15 62. California Business & Professions Code § 17500 et seq., also known as
16 California False Advertising Law, makes it “unlawful for any person, ... corporation
17 or association, or any employee thereof with intent directly or indirectly to dispose
18 of ... personal property ... or anything of any nature whatsoever ... to make or
19 disseminate or cause to be made or disseminated from this state before the public in
20 any state, in any newspaper or other publication, or any advertising device, or by
21 public outcry or proclamation, or in any other manner or means whatsoever,
22 including over the Internet, any statement, concerning that ... personal property ...
23 or concerning any circumstance or matter of fact connected with the proposed
24 performance or disposition thereof, which is untrue or misleading, and which is
25 known, or which by the exercise of reasonable case should be known, to be untrue
26 or misleading...”

27 63. As alleged above, DEFENDANTS disseminated or caused to be
28 disseminated deceptive advertising of Power Balance Accessories to the general

1 public through various media. Such advertising, including but not limited to, product
2 packaging, advertising and marketing represented Power Balance Accessories as
3 having specific characteristics yielding general and specific physiological benefits
4 upon a user and/or consumer. These advertisements were false and misleading
5 because the DEFENDANTS admitted they were misleading. Moreover, the
6 DEFENDANTS admitted they had absolutely no credible scientific evidence
7 supporting the representations made that the Power Balance Accessories had the
8 benefits or properties as advertised

9 64. DEFENDANTS continue to disseminate or cause to be disseminated
10 such deceptive statements as alleged herein.

11 65. The false and deceptive statements regarding the benefits of the Power
12 Balance Accessories, as disseminated, or as caused to be disseminated by
13 DEFENDANTS, are likely to deceive the consuming public.

14 66. While disseminating or causing to be disseminated the false and
15 deceptive statements regarding the benefits of the Power Balance Accessories, as
16 alleged above, the DEFENDANTS knew or should have known that the statements
17 were false or misleading.

18 67. As a direct and proximate result of DEFENDANTS' false and
19 misleading advertising, PLAINTIFF and the members of the class have been injured
20 in fact, in that they purchased Power Balance Accessories in reliance on
21 DEFENDANTS' false and misleading advertising as to the benefits of their
22 products, and they would not have purchased said products had they known them to
23 be devoid of any of the claimed benefits.

24 68. DEFENDANTS' false and misleading advertising as alleged above
25 presents a continuing threat to PLAINTIFF, the Class, and members of the public
26 because DEFENDANTS persist and continue to disseminate false and misleading
27 advertising, and will not cease doing so unless and until enjoined or restrained by
28 this Court.

1 69. Under California Business & Professions Code § 17535, PLAINTIFF,
2 on behalf of himself, the class members, and members of the general public, seeks
3 an order of this Court:

- 4 a. Enjoining DEFENDANTS from continuing to engage, use, or
- 5 employ any act prohibited by California Business Code § 17500
- 6 et seq.; and
- 7 b. Restoring all monies that may have been acquired by
- 8 DEFENDANTS' false and misleading statements in
- 9 advertisements, promotions, testimonials, and/or marketing, as
- 10 described herein.

11 **THIRD CAUSE OF ACTION**
12 **VIOLATIONS OF CONSUMERS LEGAL REMEDIES ACT – CALIFORNIA**
13 **CIVIL CODE §1750 et seq.**

14 70. PLAINTIFF incorporates by reference and realleges all paragraphs
15 previously alleged, as if fully set forth herein.

16 71. This cause of action is brought pursuant to California Consumers Legal
17 Remedies Act, California Civil Code § 1750, et seq. ("CLRA")

18 72. PLAINTIFF is a consumer as defined by the CLRA and
19 DEFENDANTS are either suppliers or sellers as defined by the CLRA.

20 73. DEFENDANTS' conduct described herein involves consumer
21 transactions as defined by the CLRA.

22 74. In violation of CLRA, California Civil Code § 1770(a)(5),
23 DEFENDANTS represented that the Power Balance Accessories had characteristics,
24 uses, and benefits that they did not have. Those represented benefits included
25 "increased core strength," "greater flexibility," and "improved balance."
26 DEFENDANTS have admitted that such representations were misleading and
27 unsupported by any credible scientific evidence.

28 75. Under California Civil Code § 1780, PLAINTIFF, on behalf of himself,

1 the class members, and members of the general public, seek an order of this Court
2 enjoining DEFENDANTS from continuing to engage, use, or employ any act
3 prohibited by California Civil Code §1770 et seq.. PLAINTIFF further intends to
4 amend the Complaint pursuant to Civil Code §1782(d) should DEFENDANTS not
5 timely comply with the impending preliminary notice to be served in compliance
6 with Civil Code §1782.

7 **PRAYER**

8 PLAINTIFF, on his own behalf and on behalf of the Class, respectfully prays
9 for judgment against DEFENDANTS as follows:

- 10 1. For an Order certifying this action as a class action under Rule 23 of
11 the Federal Rules of Civil Procedure and directing that reasonable notice of this
12 action be given to members of the Class;
- 13 2. For an Order finding and declaring DEFENDANTS' acts and practices
14 as challenged herein unlawful, unfair, deceptive and/or fraudulent;
- 15 3. For an Order preliminarily and permanently enjoining DEFENDANTS
16 from engaging in the practices complained and alleged herein;
- 17 4. For an Order requiring DEFENDANTS to make restitution of all
18 revenues, earnings, compensation and benefits obtained as a result of
19 DEFENDANTS' wrongful conduct;
- 20 5. For prejudgment interest to the extent permitted by law;
- 21 6. For an award of attorney's fees, costs, and expenses incurred in the
22 investigation, filing, and prosecution of this action to the extent permitted by law;
23 and
- 24 7. For such other and further relief as the Court deems just and proper.

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JURY TRIAL DEMANDED

PLAINTIFF hereby demands a trial by jury on all issues so triable.

DATED: January 4, 2011

PANISH SHEA & BOYLE LLP

By: 

Kevin Boyle
Attorneys for Plaintiff