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9 putative Classes

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

12 CORY BRANNON, individually, and
13 on behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 BARLEAN'S,

17 Defendant.

Case No.: '18CV0981 BEN WVG

**CLASS ACTION COMPLAINT
FOR:**

1. **UNFAIR AND UNLAWFUL BUSINESS ACTS AND PRACTICES (CAL. BUS & PROF. CODE §17200 *ET SEQ.*);**
2. **DECEPTIVE ADVERTISING PRACTICES (CAL. BUS & PROF. CODE §§ 17500, *ET SEQ.*);**
3. **CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, *ET SEQ.*);**
4. **BREACH OF EXPRESS WARRANTY; AND**
5. **QUASI-CONTRACT.**

DEMAND FOR JURY TRIAL

1 Plaintiff Cory Brannon on behalf of himself and others similarly situated, by and
2 through his undersigned counsel, hereby files this Class Action Complaint against
3 Defendant Barlean’s (“Defendant”) and states as follows:

4 **NATURE OF THE ACTION**

5 1. This case arises out of Defendant’s unlawful merchandising practices with
6 respect to its Barlean’s Greens Supplement Powders (collectively, the “Products”).
7 Defendant labels and advertises the Products as, among other things, “NATURE’S
8 PERFECT SUPERFOOD,” a “Pathway to a better life,” “Vegan Superfood,” and as
9 containing “Antioxidant Power.” In addition, Defendant states on the label of the
10 Products that they are a “premium superfood created to:” “Support cleansing of organs
11 and tissues”; “Super-Boost your health and ENERGY”; “Help improve digestion”;
12 “Aid the body’s natural detoxification”; and “Promote a healthy immune system.”
13 Defendant also states that the Products are “superfoods designed to invigorate and
14 nourish both your mind and body. Masterfully formulated with Nature’s most
15 vitalizing plant-based ingredients” (collectively, “Representations”).

16 2. These uniform, material Representations are false and misleading because
17 they are not substantiated, and therefore violate the Dietary Supplement Health and
18 Education Act of 1994 (“DSHEA”). In addition, the Representations are false and
19 misleading because the Products contain lead, which is harmful, rather than beneficial,
20 to a consumer’s health.

21 3. In addition, the Products contain lead in amounts that exceed the .5
22 mcg/day allowable limit for lead under California’s Proposition 65. According to
23 independent laboratory testing, the Products substantially exceed the .5 mcg/day
24 allowable limit. The Product purchased by Plaintiff, for example, contained 1.43 mcg
25 of lead per serving, or almost three times the daily limit set by Prop 65. *See* Product
26 Test Results for Barlean’s Greens, Project ID No. 000019-001-001, attached hereto as
27 Exhibit A. On information and belief, the directions for use suggest or previously
28 suggested taking the Product one to three times per day; thus, the total amount of lead

1 consumed in the Product purchased by Plaintiff, for example, could be as much as 4.29
2 mcg, or almost 9 times the .5 mcg/day allowable limit under Proposition 65.

3 4. Notably absent from the label of the Products is a “clear and reasonable
4 warning” pursuant to California’s Proposition 65 that the Products exceed the .5
5 mcg/day allowable limit for lead under Proposition 65. *See* 27 C.C.R. 27001(c);
6 Health & Safety Code § 25249.6. Defendant’s failure to include the required
7 Proposition 65 warning on the Products constitutes a material misrepresentation and/or
8 omission, in violation of California consumer protection law.

9 5. This Complaint does not allege a violation of Proposition 65. Proposition
10 65 is relevant, however, to the extent it provides information concerning the material
11 misrepresentations and omissions in violation of California’s Consumer Protection
12 laws, and guidance as to a reasonable consumer’s purchasing decisions in California.
13 Reasonable consumers purchased the Products believing, among other things, that they
14 were in compliance with all applicable California regulations and safe according to
15 California regulatory thresholds. Reasonable consumers would not have purchased the
16 Products if they had known that they contained lead in excess of the California
17 Proposition 65 limits, or would have purchased them on different terms.

18 6. Plaintiff brings this action individually and on behalf of those similarly
19 situated and seeks to represent a National Class, and California Subclass (defined
20 *infra*). Plaintiff seeks damages, interest thereon, reasonable attorneys’ fees and costs,
21 restitution, other equitable relief, and disgorgement of all benefits Defendant has
22 enjoyed from its unlawful and/or deceptive business practices, as detailed herein. In
23 addition, Plaintiff seeks injunctive relief to stop Defendant’s unlawful conduct in the
24 labeling and marketing of the Products. Plaintiff makes these allegations based on his
25 personal knowledge as to himself and his own acts and observations and, otherwise, on
26 information and belief based on investigation of counsel.

27 **JURISDICTION AND VENUE**

28 7. This Court has original jurisdiction over this action pursuant to 28 U.S.C.

1 § 1332(d) because this is a class action in which: (1) there are over 100 members in the
2 proposed class; (2) members of the proposed class have a different citizenship from
3 Defendant; and (3) the claims of the proposed class members exceed \$5,000,000 in the
4 aggregate.

5 8. This Court has personal jurisdiction over Barlean's because Defendant's
6 contacts with the forum are continuous and substantial, and Defendant intentionally
7 availed itself of the markets within California through its sales of the Products to
8 California consumers.

9 9. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
10 Defendant engages in continuous and systematic business activities within the State of
11 California. Moreover, a substantial part of the events and omissions giving rise to the
12 claims alleged herein occurred in this District. *See also* Declaration of Cory Brannon
13 Regarding Venue Pursuant to Cal. Civ. Code § 1780(d), attached hereto as Exhibit B.

14 **PARTIES**

15 10. Plaintiff Cory Brannon is a resident of San Diego, California, who
16 purchased Barlean's Greens during the class period, as described below. Plaintiff's
17 claim is typical of all Class members in this regard. In addition, the advertising and
18 labeling on the package of the Product purchased by Plaintiff, including the
19 Representations and omission of any Proposition 65 warning, is typical of the
20 advertising and labeling of the Products purchased by members of the Classes.

21 11. Defendant Barlean's is a Washington Corporation, with principal offices
22 at 3660 Slater Road, Ferndale, WA 98248.

23 12. Defendant and its agents promoted, marketed and sold the Products at
24 issue in this jurisdiction and in this judicial district. The unfair, unlawful, deceptive,
25 and misleading advertising and labeling of the Products was prepared and/or approved
26 by Defendant and its agents, and was disseminated by Defendant and its agents
27 through labeling and advertising containing the misrepresentations alleged herein.
28

FACTUAL ALLEGATIONS

A. Defendant Manufactures, Labels and Advertises the Products

13. Defendant manufactures, labels, markets, promotes, advertises, and sells Barlean's Greens Products.

14. Defendant markets and labels the Products with the Representations described herein. The following images depict the Products and the uniform, material Representations made on the Products:



B. Defendant's Failure to Include the Proposition 65 Warning Is A Material Misrepresentation and Omission

15. Absent from the label of the Products is any disclosure that the Products contain lead and a "clear and reasonable warning" pursuant to California's Proposition 65, that the Products exceed the .5 mcg/day allowable limit for lead.

16. The People of the State of California declared by initiative under Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Proposition 65, § 1(b). To effectuate this goal, California's Proposition 65, Health & Safety Code § 25249.5, *et*

1 *seq.*, prohibits exposing people to chemicals listed by the State of California as known
2 to cause cancer, birth defects or other reproductive harm above certain levels without a
3 “clear and reasonable warning,” unless the business responsible for the exposure can
4 prove that it fits within a statutory exemption.

5 17. In 1987, the State of California officially listed lead as a chemical known
6 to cause reproductive harm, and in 1992, California officially listed lead and lead
7 compounds as chemicals known to cause cancer. One year later, in 1993, lead and lead
8 compounds became subject to the clear and reasonable warning requirement regarding
9 carcinogens under Proposition 65. *See* 27 C.C.R. 27001(c); Health & Safety Code §
10 25249.6. Specifically, a Proposition 65 warning is required where a total daily intake
11 of lead exceeds .5 mcg.

12 18. Lead is dangerous to humans, and can affect almost every organ and
13 system in the body. Lead accumulates in the body over time, and can lead to health
14 risks and toxicity, including inhibiting neurological function, anemia, kidney damage,
15 seizures, and in extreme cases, comas and death. Lead can also cross the fetal barrier
16 during pregnancy, exposing the mother and developing fetus to serious risks, including
17 reduced growth and premature birth.

18 19. Defendant’s Products exceed the Proposition 65 daily limit of .5 mcg of
19 lead. *See, e.g.*, Exhibit A. In fact, based on independent testing, the Products exceed
20 the allowable limit in a single serving. *Id.* The Products do not, however, contain the
21 required Proposition 65 warning.

22 20. Defendant materially misled and failed to adequately inform consumers,
23 including Plaintiff, that the Products contain lead in excess of the Proposition 65 limit
24 of .5 mcg per day.

25 21. In addition, Defendant materially misled consumers by making the
26 Representations described herein, and failing to disclose that the Products contain lead
27 and/or that they contain lead in excess of the Proposition 65 limits.

28

1 **C. Defendant’s Structure/Function Claims Constitute Material**
2 **Misrepresentations**

3 22. The Products are dietary supplements.

4 23. Defendant makes numerous claims on the Products’ labels and in
5 advertising concerning how the Products affect the structure and/or function of the
6 body, including that the Products: “Support cleansing of organs and tissues”; “Super-
7 Boost your health and ENERGY”; “Help improve digestion”; “Aid the body’s natural
8 detoxification”; “Promote a healthy immune system”; and “invigorate and nourish both
9 your mind and body.” (collectively, “Structure/Function Representations”).

10 24. Dietary supplements are governed by the Dietary Supplement Health and
11 Education Act of 1994 (“DSHEA”). Pursuant to DSHEA, a supplement manufacturer
12 may only make claims concerning how a product affects the structure or function of
13 the body without obtaining prior FDA approval if certain requirements are met,
14 including that the manufacturer is able to substantiate that the claims are truthful and
15 not misleading. 21 U.S.C. § 343(r)(6)(B).

16 25. The FDA has adopted the FTC’s substantiation standard of “competent
17 and reliable scientific evidence” for dietary supplements.

18 26. The universally accepted form of scientific evidence recognized by
19 experts in the field for determining whether a substance provides any human health
20 benefit is by demonstrating its value over placebo through high-quality, well-
21 conducted randomized controlled clinical trials (“RCTs”). *See, e.g.*, 21 CFR 314.126.
22 Also, it is generally recognized that RCTs that are of sufficient quality to be relied
23 upon for reaching efficacy conclusions should be subjected to a peer review process
24 and published in a peer reviewed journal.

25 27. Competent and reliable scientific evidence is defined as: “tests, analysis,
26 research, studies, or other evidence based on the expertise of professionals in the
27 relevant area that has been conducted and evaluated in an objective manner by persons
28 qualified to do so, using procedures generally accepted in the profession to yield
accurate and reliable results.” *See* Guidance for Industry Substantiation for Dietary

1 Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and
2 Cosmetic Act (Dec. 2008).

3 28. Despite this clear standard, on information and belief, Defendant has not
4 performed any reliable or high-quality RCTs substantiating any of its
5 Structure/Function Representations about the Products, and cannot substantiate that the
6 Structure/Function Representations are truthful and not misleading.

7 29. Defendant's Structure/Function Representations are materially false and
8 misleading, and fail to comply with the clear standards set forth under DSHEA.

9 30. In addition, the Structure/Function Representations are materially false
10 and misleading because the Products contain lead and contain lead in excess of the
11 Proposition 65 limits, which directly contravenes the Structure/Function
12 Representations.

13 31. Moreover, the fact that the Products contain a small disclaimer on the
14 bottom of the side label, which states: "These statements have not been evaluated by
15 the Food and Drug Administration. This product is not intended to diagnose, cure or
16 prevent any disease" does not insulate Defendant's conduct. *See* 21 U.S.C. §
17 343(r)(6)(B) (setting forth the labeling conditions in the conjunctive; that the
18 manufacturer must have substantiation *and* the statement must contain a disclaimer).

19 **D. Plaintiff and Consumers Purchased the Products to Their Detriment**

20 32. Based on Defendant's uniform material misrepresentations and omissions,
21 Plaintiff and consumers have purchased the Products to their detriment.

22 33. Plaintiff Cory Brannon purchased Barlean's Greens Organic Powder
23 Formula from a Sprouts Farmers Market in Lemon Grove, California on or about May
24 13, 2017 for \$41.99. Plaintiff purchased the Product for personal and family use.

25 34. Defendant labeled and sold the Products with the Structure/Function
26 Representations, which are wholly unsubstantiated.

27 35. In addition, Defendant labeled and sold the Products with the express
28 Representations and without any labeling information or warning indicating to

1 consumers that they contained lead. Defendant knew or should have known that
2 reasonable consumers would consider the Representations and presence of lead in
3 deciding to purchase the Products. Accordingly, Defendant's Representations and
4 omissions are false, misleading and reasonably likely to mislead reasonable consumers.

5 36. Defendant made the material misrepresentations and omissions with the
6 intent to defraud consumers in that, among other things, consumers would be less
7 likely to purchase the Products if they knew the truth, *e.g.*, that the Representations
8 were false and/or misleading, and that the Products contained lead.

9 37. Plaintiff relied on the Product label and Defendant's Representations in
10 making the decision to purchase the Product.

11 38. At the time Plaintiff purchased the Product, Plaintiff did not know, and
12 had no reason to know, that the Representations were misleading, deceptive and
13 unlawful. In addition, Plaintiff did not know, and had no reason to know that the
14 Product contained lead. Nor did Plaintiff know, and had no reason to know, that the
15 Product labels omitted the required Proposition 65 warning, and otherwise wholly
16 failed to disclose the presence of lead in the Product. Plaintiff would not have
17 purchased the Products, or would have purchased them on different terms, if he had
18 known the truth.

19 39. It is possible, however, that Plaintiff would purchase the Products in the
20 future if the Representations were truthful, and/or if the Products complied with the
21 required California disclosure standards.

22 **CLASS DEFINITION AND CLASS ALLEGATIONS**

23 40. Plaintiff brings this action as a class action pursuant to Federal Rules of
24 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself, on behalf of all others
25 similarly situated, and as a member the Classes defined as follows (collectively, the
26 "Class"):

27 All citizens of the United States who, within the relevant statute
28 of limitations periods, purchased Defendant's Products
("Nationwide Class");

1 All citizens of California who, within four years prior to the
2 filing of the initial Complaint, purchased Defendant's Products
3 ("California Subclass");

4 41. Excluded from the Class are: (i) Defendant, its assigns, successors, and
5 legal representatives; (ii) any entities in which Defendant has controlling interests;
6 (iii) federal, state, and/or local governments, including, but not limited to, their
7 departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or
8 subdivisions; (iv) all persons presently in bankruptcy proceedings or who obtained a
9 bankruptcy discharge in the last three years; and (v) any judicial officer presiding over
10 this matter and person within the third degree of consanguinity to such judicial officer.

11 42. Plaintiff reserves the right to amend or otherwise alter the class definition
12 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in
13 response to facts learned through discovery, legal arguments advanced by Defendant,
14 or otherwise.

15 43. This action is properly maintainable as a class action pursuant to Federal
16 Rule of Civil Procedure 23 for the reasons set forth below.

17 44. **Numerosity**: Members of the Class are so numerous that joinder of all
18 members is impracticable. Upon information and belief, the Class consist of hundreds
19 of thousands of purchasers dispersed throughout the United States, and the Subclass
20 likewise consists of at least thousands of purchasers throughout the State of California.
21 Accordingly, it would be impracticable to join all members of the Class before the
22 Court.

23 45. **Common Questions Predominate**: There are numerous and substantial
24 questions of law or fact common to all members of the Class that predominate over any
25 individual issues. Included within the common questions of law or fact are:

- 26 • Whether the Product Representations and omissions are, or any single
27 Representation or omission is, false, misleading and/or deceptive;
- 28 • Whether Defendant made a material misrepresentation or omission by
failing to provide a Proposition 65 warning on the Products;

- 1 • Whether Defendant engaged in unlawful, unfair or deceptive business
- 2 practices by advertising and selling its Products;
- 3 • Whether Defendant violated California Bus. & Prof. Code § 17200, *et*
- 4 *seq.*; Cal. Bus. & Prof. Code § 17500, *et seq.*; and the Consumers
- 5 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*;
- 6 • Whether Defendant committed a breach of express warranty;
- 7 • Whether Plaintiff and the Class are entitled to equitable and/or
- 8 injunctive relief;
- 9 • Whether Plaintiff and the Class have sustained damage as a result of
- 10 Defendant's unlawful conduct;
- 11 • The proper measure of damages sustained by Plaintiff and the Class;
- 12 and
- 13 • Whether Defendant was unjustly enriched by its unlawful practices.

14 46. **Typicality:** Plaintiff's claims are typical of the claims of the members of
15 the Class he seeks to represent because Plaintiff, like the Class members, purchased
16 Defendant's misbranded Products. Defendant's unlawful, unfair and/or fraudulent
17 actions concern the same business practices described herein irrespective of where they
18 occurred or were experienced. Plaintiff and the Class sustained similar injuries arising
19 out of Defendant's conduct. Plaintiff's and Class Member's claims arise from the
20 same practices and course of conduct and are based on the same legal theories.

21 47. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to
22 represent because his interests do not conflict with the interests of the members of the
23 Class Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the
24 interests of the members of the Class and has retained counsel experienced and
25 competent in the prosecution of complex class actions, including complex questions
26 that arise in consumer protection litigation.

27 48. **Superiority and Substantial Benefit:** A class action is superior to other
28 methods for the fair and efficient adjudication of this controversy, since individual

1 joinder of all members of the Class is impracticable and no other group method of
2 adjudication of all claims asserted herein is more efficient and manageable for at least
3 the following reasons:

- 4 a. The claims presented in this case predominate over any questions of
5 law or fact, if any exists at all, affecting any individual member of
6 the Class;
- 7 b. Absent a Class, the members of the Class will continue to suffer
8 damage and Defendant's unlawful conduct will continue without
9 remedy while Defendant profits from and enjoys its ill-gotten gains;
- 10 c. Given the size of individual Class members' claims, few, if any,
11 members could afford to or would seek legal redress individually
12 for the wrongs Defendant committed against them, and absent
13 members have no substantial interest in individually controlling the
14 prosecution of individual actions;
- 15 d. When the liability of Defendant has been adjudicated, claims of all
16 members of the Class can be administered efficiently and/or
17 determined uniformly by the Court; and
- 18 e. This action presents no difficulty that would impede its
19 management by the Court as a class action, which is the best
20 available means by which Plaintiff and members of the Class can
21 seek redress for the harm caused to them by Defendant.

22 49. Because Plaintiff seeks relief for all members of the Class, the prosecution
23 of separate actions by individual members would create a risk of inconsistent or
24 varying adjudications with respect to individual members of the Class, which would
25 establish incompatible standards of conduct for Defendant.

26 50. The prerequisites to maintaining a class action for injunctive or equitable
27 relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to
28 act on grounds generally applicable to the Class, thereby making appropriate final

1 injunctive or equitable relief with respect to the Class as a whole.

2 51. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P.
3 23(b)(3) are also met as questions of law or fact common to Class members
4 predominate over any questions affecting only individual members, and a class action
5 is superior to other available methods for fairly and efficiently adjudicating the
6 controversy.

7 52. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are
8 likely to be encountered in the management of this action that would preclude its
9 maintenance as a class action.

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 **Unfair and Unlawful Business Acts and Practices**
13 **(Business and Professions Code § 17200, *et seq.*)**
14 **(for the California Subclass)**

15 53. Plaintiff re-alleges and incorporates by reference the allegations contained
16 in the preceding paragraphs of this complaint, as though fully set forth herein.

17 54. Defendant's conduct constitutes an unfair business act and practice
18 pursuant to California Business & Professions Code §§ 17200, *et seq.* (the "UCL").
19 The UCL provides, in pertinent part: "Unfair competition shall mean and include
20 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
21 misleading advertising"

22 55. Plaintiff brings this claim seeking equitable and injunctive relief to stop
23 Defendant's misconduct, as complained of herein, and to seek restitution of the
24 amounts Defendant acquired through the unfair, unlawful, and fraudulent business
25 practices described herein.

26 56. Defendant's knowing conduct, as alleged herein, constitutes an "unfair"
27 and/or "fraudulent" business practice, as set forth in California Business & Professions
28 Code §§ 17200-17208.

57. Defendant's conduct was and continues to be unfair and fraudulent

1 because, directly or through its agents and employees, Defendant made uniform
2 materially false representations and omissions.

3 58. As described herein, Defendant made Structure/Function Representations,
4 including that the Products: “Support cleansing of organs and tissues”; “Super-Boost
5 your health and ENERGY”; “Help improve digestion”; “Aid the body’s natural
6 detoxification”; and “Promote a healthy immune system”; and “invigorate and nourish
7 both your mind and body.” The Structure/Function Representations do not comply
8 with DSHEA and are false and misleading.

9 59. In addition, Defendant made materially false representations and
10 omissions by failing to include the required Proposition 65 warning on the Products,
11 even though the Products exceed the Proposition 65 allowable lead limits.

12 60. Defendant is aware that the representations and omissions it has made
13 about the Products were and continue to be false and misleading.

14 61. Defendant had an improper motive—to derive financial gain at the
15 expense of accuracy or truthfulness—in its practices related to the labeling and
16 advertising of the Products.

17 62. There were reasonable alternatives available to Defendant to further
18 Defendant’s legitimate business interests, other than the conduct described herein.

19 63. Defendant’s misrepresentations of material facts, as set forth herein, also
20 constitute an “unlawful” practice because they violate California Civil Code §§ 1572,
21 1573, 1709, 1710, 1711, and 1770, as well as the common law.

22 64. Defendant’s conduct in making the representations and omissions
23 described herein constitutes a knowing failure to adopt policies in accordance with
24 and/or adherence to applicable laws, as set forth herein, all of which are binding upon
25 and burdensome to its competitors. This conduct engenders an unfair competitive
26 advantage for Defendant, thereby constituting an unfair business practice under
27 California Business & Professions Code §§ 17200-17208.

28 65. In addition, Defendant’s conduct was, and continues to be, unfair, in that

1 its injury to countless purchasers of the Products is substantial, and is not outweighed
2 by any countervailing benefits to consumers or to competitors.

3 66. Moreover, Plaintiff and members of the California Subclass could not
4 have reasonably avoided such injury. Defendant's uniform, material representations
5 and omissions regarding the Products were likely to deceive, and Defendant knew or
6 should have known that its representations and omissions were untrue and misleading.
7 Plaintiff purchased the Products in reliance on the Representations made by Defendant,
8 as alleged herein, and without knowledge of Defendant's material misrepresentations
9 and omissions.

10 67. Plaintiff and members of the California Subclass have been directly and
11 proximately injured by Defendant's conduct in ways including, but not limited to, the
12 monies paid to Defendant for the Products, interest lost on those monies, and
13 consumers' unwitting support of a business enterprise that promotes deception and
14 undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

15 68. As a result of the business acts and practices described above, Plaintiff
16 and members of the California Subclass, pursuant to § 17203, are entitled to an Order
17 enjoining such future wrongful conduct on the part of Defendant and such other Orders
18 and judgments that may be necessary to disgorge Defendant's ill-gotten gains and to
19 restore to any person in interest any money paid for the Products as a result of the
20 wrongful conduct of Defendant.

21 69. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass are
22 further entitled to pre-judgment interest as a direct and proximate result of Defendant's
23 unfair and fraudulent business conduct. The amount on which interest is to be
24 calculated is a sum certain and capable of calculation, and Plaintiff and the California
25 Subclass are entitled to interest in an amount according to proof.

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1 **SECOND CAUSE OF ACTION**
2 **Deceptive Advertising Practices**
3 **(California Business & Professions Code §§ 17500, *et seq.*)**
4 **(for the California Subclass)**

5 70. Plaintiff re-alleges and incorporates by reference the allegations contained
6 in the preceding paragraphs of this complaint, as though fully set forth herein.

7 71. California Business & Professions Code § 17500 prohibits “unfair,
8 deceptive, untrue or misleading advertising”

9 72. Defendant violated § 17500 when it represented, through its false and
10 misleading Representations and omissions, that Defendant’s Products possessed
11 characteristics and value that they did not actually have. Among other things,
12 Defendant made Structure/Function Representations and omissions, which do not
13 comply with the DSHEA requirements, as described herein. In addition, Defendant
14 failed to include the required Proposition 65 warning and to disclose that the Products
15 exceeded the allowable lead limits.

16 73. Defendant’s deceptive practices were specifically designed to induce
17 reasonable consumers like Plaintiff to purchase the Products. Defendant’s uniform,
18 material misrepresentations and omissions regarding the Products were likely to
19 deceive, and Defendant knew or should have known that its uniform
20 misrepresentations and omissions were untrue and/or misleading. Plaintiff purchased
21 the Products in reliance on the Representations made by Defendant, as alleged herein.

22 74. Plaintiff and members of the California Subclass have been directly and
23 proximately injured by Defendant’s conduct in ways including, but not limited to, the
24 monies paid to Defendant for the Products, interest lost on those monies, and
25 consumers’ unwitting support of a business enterprise that promotes deception and
26 undue greed to the detriment of consumers, such as Plaintiff and Subclass members.

27 75. The above acts of Defendant were and are likely to deceive reasonable
28 consumers in violation of § 17500.

76. In making the statements and omissions alleged herein, Defendant knew

1 or should have known that the statements and representations were untrue or
2 misleading, and acted in violation of § 17500.

3 77. Defendant continues to engage in unlawful, unfair and deceptive practices
4 in violation of §17500.

5 78. As a direct and proximate result of Defendant’s unlawful conduct in
6 violation of § 17500, Plaintiff and members of the California Subclass, pursuant to §
7 17535, are entitled to an Order of this Court enjoining such future wrongful conduct on
8 the part of Defendant, and requiring Defendant to disclose the true nature of its
9 misrepresentations and omissions.

10 79. Plaintiff and members of the California Subclass also request an Order
11 requiring Defendant to disgorge its ill-gotten gains and/or award full restitution of all
12 monies wrongfully acquired by Defendant by means of such acts of false advertising,
13 plus interests and attorneys’ fees.

14 **THIRD CAUSE OF ACTION**
15 **Consumer Legal Remedies Act**
16 **(Cal. Civ. Code § 1750, *et seq.*)**
17 **(for the California Subclass)**

18 80. Plaintiff re-alleges and incorporates by reference the allegations contained
19 in the preceding paragraphs of this complaint, as though fully set forth herein.

20 81. Plaintiff brings this action pursuant to California’s Consumer Legal
21 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

22 82. The CLRA provides that “unfair methods of competition and unfair or
23 deceptive acts or practices undertaken by any person in a transaction intended to result
24 or which results in the sale or lease of goods or services to any consumer are
25 unlawful.”

26 83. The Products are “goods,” as defined by the CLRA in California Civil
27 Code §1761(a).

28 84. Defendant is a “person,” as defined by the CLRA in California Civil Code
§1761(c).

1 85. Plaintiff and members of the California Subclass are “consumers,” as
2 defined by the CLRA in California Civil Code §1761(d).

3 86. Purchase of the Products by Plaintiff and members of the California
4 Subclass are “transactions,” as defined by the CLRA in California Civil Code
5 §1761(e).

6 87. Defendant violated Section 1770(a)(5) by representing that the Products
7 have “characteristics, . . . uses [or] benefits . . . which [they] do not have” in that the
8 Products are falsely and misleadingly labeled and represented, as described herein.

9 88. Similarly, Defendant violated section 1770(a)(7) by representing that the
10 Products “are of a particular standard, quality, or grade . . . if they are of another” by
11 making material misrepresentations and omissions, making the Structure/Function
12 Representations, and omitting the required Proposition 65 warning.

13 89. In addition, Defendant violated section 1770(a)(9) by advertising the
14 Products “with intent not to sell them as advertised” in that the Products are
15 misrepresented because they contain material misrepresentations and omissions.

16 90. Defendant’s uniform, material, misrepresentations and omissions
17 regarding the Products were likely to deceive, and Defendant knew or should have
18 known that its misrepresentations and omissions were untrue and misleading.

19 91. Plaintiff and members of the California Subclass could not have
20 reasonably avoided such injury. Plaintiff and members of the California Subclass were
21 unaware of the existence of facts that Defendant suppressed and failed to disclose; and,
22 Plaintiff and members of the California Subclass would not have purchased the
23 Products and/or would have purchased them on different terms had they known the
24 truth.

25 92. Plaintiff and members of the California Subclass have been directly and
26 proximately injured by Defendant’s conduct. Such injury includes, but is not limited
27 to, the purchase price of the Products and/or the price of the Products at the prices at
28 which they were offered.

1 93. Given that Defendant's conduct violated § 1770(a)(5), Plaintiff and
2 members of the California Subclass are entitled to seek and seek injunctive relief to put
3 an end to Defendant's violations of the CLRA.

4 94. Moreover, Defendant's conduct is malicious, fraudulent, and wanton in
5 that Defendant intentionally misled and withheld material information from consumers
6 to increase the sale of the Products.

7 95. Pursuant to California Civil Code § 1782(a), Plaintiff on his own behalf,
8 and on behalf of members of the California Subclass, notified Defendant of the alleged
9 violations of the Consumer Legal Remedies Act related to the fact that the Products
10 contain lead.¹ Despite giving Defendant far more than 30-days from the date of the
11 notification letter to provide appropriate relief for violations of the CLRA, Defendant
12 has failed to provide any such relief. As such, Plaintiff also seeks compensatory,
13 monetary and punitive damages for Plaintiff's claims that the Products contain lead, in
14 addition to equitable and injunctive relief, and requests that this Court enter such
15 Orders or judgments as may be necessary to restore to any person in interest any
16 money which may have been acquired by means of such unfair business practices, and
17 for such other relief as is provided in California Civil Code § 1780 and in the Prayer
18 for Relief.

19 96. Plaintiff further requests that the Court enjoin Defendant from continuing
20 to employ the unlawful methods, acts, and practices alleged herein pursuant to §
21 1780(a)(2).

22 ///
23

24
25 ¹ Plaintiff is sending another CLRA letter to Defendant concerning the
26 structure/function Representations alleged herein. For now, Plaintiff only seeks
27 monetary damages under the CLRA pursuant to Plaintiff's claims related to lead and
28 seeks injunctive relief for the claims structure/function Representations. Plaintiff will
amend his Complaint to also seek monetary relief for the Structure/Function claims
after the 30-day notification period has run.

FOURTH CAUSE OF ACTION
Breach of Express Warranty
(for the Nationwide Class and California Subclass)

1
2
3 97. Plaintiff re-alleges and incorporate by reference the allegations contained
4 in the preceding paragraphs of this Complaint, as though fully set forth herein.

5 98. By advertising and selling the Products at issue, Defendant made promises
6 and affirmations of fact on the Products' packaging, and through its marketing and
7 advertising, as described herein. This labeling and advertising constitutes express
8 warranties and became part of the basis of the bargain between Plaintiff and members
9 of the Class, and Defendant.

10 99. Defendant purports, through its advertising and labeling, to create express
11 warranties that the Products comport with the Product Representations, including the
12 Structure/Function Representations.

13 100. Despite Defendant's express warranties about the nature of the Products,
14 the Products do not comply with the Representations, do not meet the DSHEA
15 standards for the Structure/Function Representations, and exceed the allowable lead
16 limits, but do not contain the required Proposition 65 warning. Thus, the Products
17 were not what Defendant represented them to be.

18 101. Accordingly, Defendant breached express warranties about the Products
19 and their qualities because the Products do not conform to Defendant's affirmations
20 and promises.

21 102. Plaintiff and members of the Classes purchased the Products and
22 reasonably relied on the express warranties made by Defendant.

23 103. As a direct and proximate result of Defendant's breach of express
24 warranty, Plaintiff and members of the Class were harmed in the amount of the
25 purchase price they paid for the Products. Further, Plaintiff and members of the Class
26 have suffered and continue to suffer economic losses and other general and specific
27 damages including, but not limited to, the amounts paid for the Products, and any
28 interest that would have accrued on those monies, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
QUASI-CONTRACT
(for the Nationwide Class and California Subclass)

1
2
3 104. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs
4 as if fully set forth herein.

5 105. By purchasing the Products, Plaintiff and members of the Class conferred
6 a benefit on Defendant in the form of the purchase price of the Products.

7 106. Defendant had knowledge of such benefits.

8 107. Defendant appreciated the benefit because, were consumers not to
9 purchase the Products, Defendant would not generate revenue from the sales of the
10 Products.

11 108. Defendant's acceptance and retention of the benefit is inequitable and
12 unjust because the benefit was obtained by Defendant's fraudulent and misleading
13 representations and omissions.

14 109. Equity cannot in good conscience permit Defendant to be economically
15 enriched for such actions at the expense of Plaintiff and members of the Class, and
16 therefore restitution and/or disgorgement of such economic enrichment is required

PRAYER

17
18 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
19 situated, pray for judgment against Defendant as follows:

20 A. For an order certifying the Nationwide Class and the California Subclass
21 under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff as
22 representative of the nationwide Class and respective Subclass; and naming Plaintiff's
23 attorneys as Class Counsel to represent the Class and Subclass;

24 B. For an order declaring that Defendant's conduct violates the statutes and
25 laws referenced herein.

26 C. For an order awarding, as appropriate, compensatory and monetary
27 damages, restitution or disgorgement to Plaintiff and the Class for all causes of action;
28

1 D. For an order requiring Defendant to immediately cease and desist from
2 selling its misbranded Products in violation of law; enjoining Defendant from
3 continuing to label, market, advertise, distribute, and sell the Products in the unlawful
4 manner described herein; and ordering Defendant to engage in corrective action;

5 E. For an order awarding attorneys' fees and costs;

6 F. For an order awarding punitive damages;

7 G. For an order awarding pre-and post-judgment interest; and

8 H. For such other and further relief as the Court deems just and proper.

9
10
11 DATED: May17, 2018

KAMBERLAW, LLP

12 By: /s/ Naomi B. Spector
13 Naomi B. Spector, Esq.
14 Christopher D. Moon, Esq.

15 *Attorneys for Plaintiff and the putative Classes*

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

CORY BRANNON, individually, and on behalf of others similarly situated,

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

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

Naomi B. Spector, Esq. and Christopher D. Moon, Esq., KamberLaw LLP, 9404 Genesee Avenue, Suite 340, La Jolla, California 92037, Phone: 310.400.1053

DEFENDANTS

BARLEAN'S

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

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

Attorneys (If Known)

'18CV0981 BEN WVG

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 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABES CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

28 U.S.C. 1332

Brief description of cause: Consumer Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds \$5M in aggregate CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

May 17, 2018 s/ Naomi B. Spector

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Barlean's Greens Supplement Powders Contain Nine Times Allowable Limit of Lead](#)
