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8 **Counsel for Plaintiff**

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

11 ANDREW HARRIS, on behalf of
 12 himself and all others similarly
 13 situated,

14 Plaintiff,

15 v.

16 WOODBOLT DISTRIBUTION, LLC,

17 Defendant.

18 Case No: **'19CV2493 JM MDD**

Pleading Type: Class Action

19 **COMPLAINT FOR VIOLATIONS OF:**

20 **BUS. & PROF. CODE §§17200 *et seq.*,**

21 **CIV. CODE §§ 1750 *et seq.*, and**

22 **15 U.S.C. §§ 2301, *et seq.***

23 Demand for Jury Trial

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IX. JURY DEMAND 19

1 Plaintiff Andrew Harris, on behalf of himself, all others similarly situated, and the
2 general public, by and through his undersigned counsel, hereby sues Defendant Woodbolt
3 Distribution, LLC, which does business in California as Nutrabort (“Nutrabort” or
4 “Defendant”), and upon information and belief and investigation of counsel, alleges as
5 follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action under 28 U.S.C. §
8 1332(d)(2) (The Class Action Fairness Act) because the matter in controversy exceeds the
9 sum or value of \$5,000,000 exclusive of interest and costs and because more than two-
10 thirds of the members of the Class defined herein reside in states other than the state of
11 which Defendant resides.

12 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Plaintiff
13 resides in this District; has suffered injuries as a result of Defendant’s acts in this district;
14 many of the acts and transactions giving rise to this action occurred in this District; and
15 because Defendant is authorized to conduct business in this District, and has intentionally
16 availed itself of the laws and markets of this District through the promotion, marketing,
17 distribution, and sale of Cavalier Gentleman’s Product in this District; and is subject to
18 personal jurisdiction in this District.

19 **II. NATURE OF THE ACTION**

20 3. Defendant Nutrabort is a Delaware corporation with its principal place of
21 business in Austin, Texas which sells “Cavalier Gentlemen’s Product” (“Cavalier” or the
22 “Product”), a purported over-the-counter aphrodisiac.

23 4. Defendant claims Cavalier has aphrodisiac properties, suggesting it be taken
24 “daily” and “30 to 45 minutes prior to sexual activity” for “sexual health.”

25 5. However, none of the ingredients in Cavalier, individually or in combination,
26 can provide such benefits. Several of the ingredients the FDA has singled out by name was
27 being unlawfully used in purported herbal aphrodisiacs.
28

1 6. Plaintiff Andrew Harris read, believed, and relied upon Defendant’s unlawful
2 and misleading claims in deciding to purchase Cavalier.

3 7. Plaintiff brings this action challenging Defendant’s claims relating to Cavalier
4 on behalf of himself and all others similarly situated under California’s Unfair Competition
5 Law, and Consumer Legal Remedies Act, and the federal Magnuson Moss Warranty Act.

6 8. Plaintiff seeks order compelling Nutrabort to (1) cease marketing Cavalier
7 using the deceptive and unlawful tactics complained of herein, (2) conduct a corrective
8 advertising campaign, (3) restore the amounts by which Defendant has been unjustly
9 enriched, and to and (4) and destroy all misleading and deceptive material.

10 9. Plaintiff further seeks actual and punitive damages, interest, fees, and costs.

11 **III. PARTIES**

12 10. Defendant Nutrabort is a Delaware corporation with its principal place of
13 business located at 4407 Monterey Oaks Blvd, Ste. 150 Austin, TX 78749.

14 11. Defendant Nutrabort manufactures, distributes, markets, and sells Cavalier.

15 12. Cavalier is sold and marketed throughout California.

16 13. Plaintiff Andrew Harris is a resident of San Diego, California who purchased
17 Cavalier for personal and household consumption.

18 **IV. FACTUAL ALLEGATIONS**

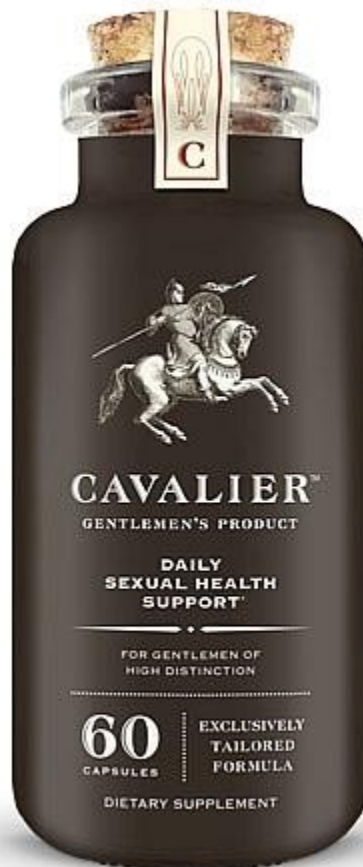
19 14. Nutrabort has distributed, marketed, and sold Cavalier throughout California
20 and the United States, both online and at retail store locations.

21 15. Cavalier is offered for sale in a bottle containing 60 tablets and retails for
22 approximately sixty dollars.

23 16. Defendant prominently labels its product as supporting “Sexual Health” when
24 “30 to 45 minutes prior to sexual activity,” implying that the Product’s ingredients will
25 assist with and improve performance, despite the fact Cavalier is not effective as an
26 aphrodisiac. This instruction mimic the instructions on FDA-approved E.D. drugs:

- 27 a. FDA-approved Cialis’s Proscribing Information states to either take “Once Daily” or
28 “Prior to anticipated sexual activity”

- 1 b. FDA-approved Levitra’s labeling likewise states “Take 1 LEVITRA tablet about 1
2 hour (60 minutes) before sexual activity.”
- 3 c. FDA-approved Staxyn also has Prescribing Information stating it should be taken
4 “approximately 60 minutes before sexual activity.”
- 5 d. FDA-approved Stendra’s labeling states it should be taken “approximately 30 minutes
6 before sexual activity.”
- 7 e. FDA-approved Viagra’s label states it should be taken “approximately 1 hour before
8 sexual activity.”



25 17. Defendant also falsely advertised Cavalier as follows:

26 “A gentleman’s passion and his lust for expression shouldn’t dull with time.
27 Intimacy and sexual vitality add to quality of life and should be upheld at every
28 age. Cavalier’s Daily Sexual Health Support is for the gentleman who wants to

1 enjoy the finer things in life. This supplement contains ingredients in a potent
2 blend to promote sexual health and improved blood flow.”

3 and

4 “This supplement contains ingredients in a potent blend to promote libido,
5 erectile health and blood flow.”

6 and

7 “Velvet Bean Mucuna pruriens is a naturally occurring ingredient included in the
8 Cavalier Sexual Health Blend that has been used traditionally to promote health
9 and well-being, and has been shown to increase libido.”

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11 **A. The Composition of Cavalier**

12 18. Cavalier consists of a blend of small amounts of extracts from herbs, roots,
13 and other organic substances, some of which are purported to have an effect on the human
14 body.

15 19. The figure below shows the ingredients in Cavalier:
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SUGGESTED USE:
TAKE ONE SERVING (3 CAPSULES)
DAILY AND/OR 30 TO 45 MINUTES
PRIOR TO SEXUAL ACTIVITY.

SUPPLEMENT FACTS
Serving Size: 3 Capsules
Servings Per Container: 20


	AMOUNT PER SERVING	%DV
Cavalier™ Sexual Health Blend	1,745 mg	†
Velvet Bean (<i>Mucuna pruriens</i>) seed extract (standardized for L-Dopa), Epimedium (<i>Epimedium sagittatum</i>) aerial parts extract (standardized for Icarin), Maca (<i>Lepidium meyenii</i>) root extract, Muira Puama (<i>Ptychopetalum olacoides</i>) root extract, Maritime Pine (<i>Pinus pinaster</i>) bark extract, Ginkgo (<i>Ginkgo biloba</i>) leaf extract, Yohimbe (<i>Pausinystalia yohimbe</i>) bark extract		

† Daily Value (DV) not established.


OTHER INGREDIENTS:
Capsule (Gelatin, Titanium Dioxide, FD&C Blue #1, FD&C Red #40 and FD&C Yellow #10) Microcrystalline Cellulose, Magnesium Stearate, and Silica

.....

† THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE, OR PREVENT ANY DISEASE.

CAVALIER IS A TRADEMARK OF AND DISTRIBUTED BY:
 **nutrabolt™**
 NUTRABOLT™
 3891 S. TRADITIONS DR.
 BRYAN, TX 77807
 WWW.BECAVALIER.COM

100987



20. Cavalier, by means of its ingredients, claims to support “Sexual Health” and suggests to consumers that it is effective as an aphrodisiac drug product.

21. This, however, is false and misleading because none of the ingredients in Cavalier, individually or in combination, increase male sexual performance or are effective as an aphrodisiac.

22. Some of the ingredients in Cavalier include Velvet Bean seed extract, Epimedium aerial parts extract, Maca root extract, Muira Puama root extract, Maritime Pine bark extract, Ginkgo leaf extract, Yohimbe bark extract, Velvet Bean, Epimedium, Maca, Mui, Muira Puama, and Tribulus Terrestris.

23. None of the ingredients in Cavalier, individually or in combination, however, improve sexual health or performance.

1 24. Further, consuming such random herbs and herbal extracts presents a risk of
2 an allergic or other adverse reaction without any offsetting benefit.

3 **B. Cavalier’s Yohimbe Content Poses Grave and Undisclosed Risks to**
4 **Human Health**

5 25. The Yohimbe extract in Cavalier presents several risks not stated on the
6 Product’s label:

7 26. The National Institute of Health (“NIH”) strongly cautions that sufferers of
8 anxiety and/or depression should not use yohimbe: “Yohimbe might bring out manic-like
9 symptoms in people with bipolar disorder or suicidal tendencies in individuals with
10 depression.”

11 27. The NIH further warns against yohimbe for use by individuals suffering from
12 diabetes, because it may “interfere with insulin and other medications used for diabetes and
13 cause low blood sugar.” Id.

14 28. Like early antidepressant drugs, yohimbe extracts can cause serious and in
15 some cases life-threatening conditions when ingested with any of the many foods containing
16 significant amounts of the monoamine tyramine.

17 29. Both yohimbe and these first generation antidepressants are referred to as
18 Monoamine Oxidase Inhibitors (“MAOIs”).

19 30. MAOIs, by inhibiting monoamine oxidase, are also responsible for the
20 reduction in the breakdown of tyramine, an amino acid in many foods. The retarding of this
21 process by MAOIs leads to a build-up of tyramine in the body, causing high blood pressure
22 and severe hypertension.

23 31. The dangerous combination of MAOIs and tyramine can also result in stroke
24 and cardiac arrhythmia.

25 32. As a result, those prescribed MAOIs are warned to avoid these and other types
26 of tyramine-heavy foods.

27 33. This warning, from the National Institute of Health U.S. Library of Medicine,
28 is typical:

1 You may experience a serious reaction if you eat foods that are high in tyramine
2 during your treatment with phenelzine [an MAOI, brand name: “Nardil”].
3 Tyramine is found in many foods, including meat, poultry, fish, or cheese that
4 has been smoked, aged, improperly stored, or spoiled; certain fruits, vegetables,
5 and beans; alcoholic beverages; and yeast products that have fermented. Your
6 doctor or dietitian will tell you which foods you must avoid completely, and
7 which foods you may eat in small amounts. You should also avoid foods and
8 drinks that contain caffeine during your treatment with phenelzine. Follow these
9 directions carefully. Ask your doctor or dietitian if you have any questions about
10 what you may eat and drink during your treatment.

11 34. Even small amounts of yohimbe may cause a dangerous spike in blood
12 pressure.

13 35. Of significant concern is a study published in 2008, which, in a yearlong
14 surveillance study of dietary supplement-related poison control center calls, found that
15 yohimbe products accounted for almost a fifth of all exposures to dietary supplements that
16 led to negative symptoms, despite being a very small percentage of dietary supplement
17 sales.⁴

18 36. These symptoms include: anxiety, tremulousness, diaphoresis, hypertension,
19 palpitations, headache, chest pain, tachycardia, shortness of breath, stroke, dizziness,
20 agitation, and abnormally dilated pupils.

21 **C. Cavalier is a Misbranded Drug**

22 37. The claims described above—“Sexual Health,” “Take One Serving (3
23 Capsules) Daily and/ or 30 to 40 Minutes Prior to Sexual Activity”; “increase libido;”
24 “promote sexual health and improved blood flow;” and “promote libido, erectile health and
25 blood flow”—both alone and taken together as a whole, show that Cavalier is an
26 unapproved aphrodisiac, as defined by the FDA’s regulation on this topic.

27 38. Pursuant to 21 C.F.R. § 310.528 any OTC drug product that is labeled,
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⁴ C. Haller et al., *Dietary Supplement Adverse Events: Report of a One-Year Poison Center Surveillance Project*, 4 J. Med. Toxicology 84 (June 2008).

1 represented, or promoted for use as an aphrodisiac, like Cavalier, is regarded as a “new
2 drug” within the meaning of section 201(p) of the FDCA (located at 21 U.S.C. § 355(p)).

3 39. The FDCA requires any new drug to have an application approved by the
4 Food and Drug Administration (“FDA”) before the drug can be marketed to the public, and
5 further that the drug’s label be approved by the FDA prior to marketing or selling the drug
6 to the public. *See, generally, id.*; 21 U.S.C. §§ 355(a), (b) [New Drug Application], (j)
7 [Abbreviated New Drug Application, for generic drugs].

8 40. Cavalier violates Section 505(a) of the FDCA since the adequacy of the
9 labeled directions for its “aphrodisiac” uses has not been approved by the FDA prior to the
10 Product being marketed to the public (*see* 21 U.S.C. § 355(a)).⁵ Accordingly, the Product
11 is misbranded under section 502(f)(1) of the FDCA (located at 21 U.S.C. § 352).

12 41. Further, Cavalier includes *Mucuna pruriens*, *Epimedium sagittatum*,
13 *Lepidium meyenii*, *Ptychopetalum olacoides*, *Pinus pinaster*, *Ginkgo biloba*, and
14 *Pausinystalia yohimbe*, none of which improve sexual health or performance.

15 42. The FDA bars manufacturers from making false, misleading label claims
16 which are unsupported by scientific evidence. *Id.* Thus, based on the evidence currently
17 available, any OTC drug product containing ingredients for use as an aphrodisiac,
18 including Cavalier, cannot be generally recognized as safe and effective, and instead are
19 misbranded new drugs. *See id.*

20 43. Although Defendant labels Cavalier as a “supplement,” its ingredients and
21 labeling mean it is a misbranded, unlawful new aphrodisiac drug.

22 44. Federal regulations prohibit Defendant from making “disease claims” on
23 dietary supplements. *See* 21 C.F.R. § 101.93. Disease claims are generally described as
24 statements which claim to diagnose, mitigate, treat, cure or prevent disease where the
25 statements claim “explicitly or implicitly, that the product . . . Has an effect on the
26

27 _____
28 ⁵ In addition to proving effectiveness, the manufacturer of a new drug must also prove the
drug’s safety, sufficient to meet FDA standards. 21 U.S.C. § 355(d).

1 characteristic signs or symptoms of a specific disease or class of diseases, using scientific
2 or lay terminology.” *Id.* The labeling of Cavalier was designed to and actually does convey
3 that the product treats and prevents erectile dysfunction and diminished libido.

4 45. In addition, Defendant violates 21 U.S.C. § 343(r)(6), which requires, among
5 other things, that all structure function claims be truthful and not misleading, based on
6 competent scientific evidence, and prominently provide a specified disclaimer explaining
7 that the FDA has not evaluated the structure function claim. *See also* Cal. Health & Safety
8 Code § 110670 (incorporating requirements of 21 U.S.C. § 343(r)(6)).

9 46. California Health and Safety Code, Division 104, Part 5, contains the
10 Sherman, Food, Drug, and Cosmetic Law (“Sherman Law”). Cal. Health & Safety Code
11 §§ 109875-111915. The Sherman Law imposes identical requirements to the federal
12 FDCA: “All nonprescription drug regulations and regulations for new drug applications
13 under the FDCA are the regulations of this State.” Cal. Health & Safety Code §§ 110110-
14 110111, 110115. The Sherman Law also defines a “drug” as “any article other than food,
15 that is used or intended to affect the structure or any function of the body of human beings
16 or any other animal.” Cal. Health & Safety Code § 109925(c).

17 47. In effect, the Sherman Law requires that Federal Law is followed, and where
18 it is not, such a violation of Federal law also violates the Sherman Law.

19 48. The Sherman Law is explicitly authorized by the FDCA because it imposes
20 identical requirements. 21 U.S.C. § 343-1.

21 49. Because Cavalier has not been approved as a new drug, it is an unlawful and
22 misbranded unapproved aphrodisiac drug under 21 C.F.R. § 310.528.

23 50. A reasonable consumer, members of the Class, and Plaintiff would not have
24 purchased Cavalier if they had known that the Product was ineffective, unsafe, and illegal
25 pursuant to California’s Sherman Law and FDA regulations.

26 51. Cavalier is unsafe, ineffective, and illegal, and had a value of \$0.00.

27 **V. ADDITIONAL TOLLING ALLEGATIONS**

28 52. Defendant was aware that Cavalier did not deliver its advertised benefits at all

1 times during the entire Class Period.

2 53. Defendant made these claims knowing that they were false and illegal in order
3 to deceive its customers and increase its sales.

4 54. Defendant had a continuing and affirmative moral and legal obligation to
5 correct its false and illegal aphrodisiac drug claims but intentionally choose to ignore its
6 obligation to do so.

7 55. Class members had no duty and no reason to inquire as to whether claims made
8 on packaged supplement labels like Cavalier were true but were rather entitled to rely on
9 their accuracy. They likewise had no reason to disbelieve a prominent statement on a
10 product label was false. Nor did they have a reason to suspect the aphrodisiac claims were
11 unauthorized. Mr. Harris has no training on the interpretation of the regulations relating to
12 dietary supplements promulgated by the FDA, and reasonably relied on the assumption that
13 Defendants would not manufacture and GNC not sell a product with prominent, false,
14 unauthorized, and unlawful statements about Cavalier. The complexity of the regulations is
15 such that Mr. Harris lacked the means to discover their falsehood and illegality until he
16 discussed the issue with his counsel on October 29, 2019.

17 56. Because of the fraudulent concealment of the fact that Cavalier was a safe and
18 effective aphrodisiac when it was promoted as such, class members are unaware even now
19 of their claims against Defendant.

20 57. Reasonable consumers, including Plaintiff, had no reason to suspect
21 Defendant's unfair competition and violations of federal and state law prohibiting the sale
22 of unapproved aphrodisiac drugs.

23 58. Defendants owed a special duty of honesty toward Plaintiff and all Class
24 Members, akin to a fiduciary duty, which they violated by falsely and unlawfully
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1 manufacturing and selling Cavalier with a false and unlawful claims.

2 59. California's strong public policy against consumer fraud applies with special
3 force where, as here, the fraud concerns a potentially dangerous, unapproved new drug. This
4 fraud and its harms are described in detail herein, and in even more detail in the referenced
5 scientific studies quoted and cited. During the entire class period, Defendant was aware that
6 their acts were oppressive and cruel, causing economic injury, and consciously continued
7 these acts for years while knowing the extent of the harm they were causing. Equity and the
8 public policy of California, embodied in its statutes jointly demand, in such circumstance,
9 that laches and tolling cannot apply in such a way to permit Defendants to continue to enjoy
10 the fruits of their intentional, cruel, fraudulent, oppressive, and unlawful acts.
11

12
13 **VI. RELIANCE AND INJURY**

14 60. Mr. Harris purchased Cavalier from the website of the retailer GNC on May
15 21, 2016.

16 61. When purchasing Cavalier, Mr. Harris and the Class were seeking a product
17 that had the aphrodisiac qualities promised on the Product's label and product website .

18 62. When deciding to purchase Cavalier Plaintiff read and relied on the deceptive
19 and unlawful claims described *supra*.

20 63. Plaintiff would not have purchased the Product absent Nutrabolt's false and
21 misleading claims. Nor would he have purchased Cavalier had he known it is misbranded
22 under California and Federal law.

23 64. For these reasons, Cavalier has no value and should not be consumed.

24 65. Instead of receiving a product that had actual beneficial qualities, the Product
25 Plaintiff and the Class received was one which does not provide the claimed benefits.

26 66. Plaintiff and the Class lost money as a result of Defendant's deceptive claims
27 and practices in that they did not receive what they paid for when purchasing Cavalier.
28

1 67. Plaintiff and the Class altered their position to their detriment and suffered
2 damages in an amount equal to the amount they paid for the Product.

3 68. The senior officers and directors of Defendant allowed Cavalier to be sold
4 with full knowledge or reckless disregard that the challenged claims are fraudulent,
5 unlawful, and misleading.

6 **VII. CLASS ACTION ALLEGATIONS**

7 69. Plaintiff brings this action, pursuant to Fed. R. Civ. P. 23, on behalf of himself
8 and all others similarly situated (the “Class”). The Class is defined as:

9 All persons in the United States (excluding officers, directors, and
10 employees of Defendant) who purchased Cavalier primarily for
11 personal, family, or household use, and not for resale since January 1,
12 2015.

13 70. The members in the proposed Class are so numerous that individual joinder
14 of all members is impracticable, and the disposition of the claims of all Class members in
15 a single action will provide substantial benefits to the parties and Court.

16 71. Questions of law and fact common to Plaintiff and the Class include:

- 17 a) whether Defendant contributed to, committed, and/or is responsible for the
18 conduct alleged herein;
- 19 b) whether Defendant’s conduct constitutes the violations of law alleged herein;
- 20 c) whether Defendant acted willfully, recklessly, negligently, or with gross
21 negligence in the violations of law alleged herein; and
- 22 d) whether Class members are entitled to compensatory, injunctive, and/or other
23 equitable relief.

24 72. Plaintiff’s claims are typical of Class members’ claims in that they are based
25 on the same underlying facts, events, and circumstances relating to Defendant’s conduct.

26 73. Absent Defendant’s deceptive claims, Plaintiff and the Class members would
27 not have purchased Cavalier.

28 74. Plaintiff will fairly and adequately represent and protect the interests of the

1 Class, has no interests incompatible with the interests of the Class, and has retained counsel
2 competent and experienced in class action litigation.

3 75. The Class is sufficiently numerous, as the Class contains thousands of
4 individuals who purchased Cavalier.

5 76. Class treatment is superior to other options for resolution of the controversy
6 because the relief sought for each Class member is small such that, absent representative
7 litigation, it would be infeasible for Class members to redress the wrongs done to them.

8 77. Questions of law and fact common to the Class predominate over any
9 questions affecting only individual Class members.

10 78. Defendant has acted on ground applicable to the Class, thereby making
11 appropriate final injunctive and declaratory relief concerning the Class as a whole.

12 79. Class treatment is appropriate under Fed. R. Civ. P. 23(a) and (b)(3).

13 **VIII. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **Unfair Competition Law, Unlawful Prong**

16 **Cal. Bus. & Prof. Code §§ 17200 et seq.**

17 80. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
18 as if set forth in full herein.

19 81. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent
20 business act or practice.”

21 82. The business practices and omissions of Defendant as alleged herein
22 constitute “unlawful” business acts and practices in that Defendant’s conduct violates the
23 False Advertising Law, the Consumer Legal Remedies Act, and breaches California’s
24 express and implied warranty provisions and Magnuson Moss Warranty Act.

25 83. Defendant’s conduct is further “unlawful” because it violates the FDCA and
26 its implementing regulations in the following ways:

- 1 a) Defendant’s deceptive statements violate 21 U.S.C. § 343(a) and § 352, which
2 deem a food or drug (including nutritional supplements) misbranded when the label
3 contains a statement that is “false or misleading in any particular”;
- 4 b) Defendant’s deceptive statements are *per se* false and misleading because the FDA
5 has ruled there is a lack of adequate data to establish general recognition of the
6 safety and effectiveness of any of the ingredients in Cavalier, or any other
7 ingredient, for OTC use as an aphrodisiac; and labeling claims for aphrodisiacs for
8 OTC use are “either false, misleading, or unsupported by scientific data.” 21 C.F.R.
9 § 310.528(a);
- 10 c) Defendant’s deceptive statements violate 21 C.F.R § 310.528(b), which mandates
11 that any OTC product that is labeled, represented, or promoted for use as an
12 aphrodisiac, like Cavalier, is regarded as a “new drug” within the meaning of 21
13 U.S.C. § 355(p), but Defendant does not have new drug approval for Cavalier or
14 its labeling, as required under the FDCA and its implementing regulations.
15 Accordingly, Defendant’s Product is misbranded under section 502(f)(1) of the
16 FDCA;
- 17 d) Defendant violates 21 C.F.R. § 101.93 because Cavalier’s labeling leads
18 reasonable consumers to believe that the Product can treat or cure maladies
19 including premature ejaculation, erectile dysfunction, and diminished libido;
- 20 e) Defendant’s Product also violates the FDCA because, as an unapproved new drug
21 and aphrodisiac, Cavalier is not generally recognized as safe and effective in the
22 absence of a new drug application as set forth in the FDCA and its implementing
23 regulations. 21 C.F.R. § 310.528(a).

24 84. Defendant’s conduct is further “unlawful” because it violates the California
25 Sherman Food, Drug, and Cosmetic Law, see Cal. Health & Safety Code § 109875-111900,
26 which incorporates the provisions of the FDCA. See *id.* §§ 110110-110115.

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1 85. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
2 enjoining Defendant from continuing to conduct business through unlawful, unfair, and
3 fraudulent acts and practices, and to commence a corrective advertising campaign.

4 86. Plaintiff also seeks an order for the disgorgement and restitution of all monies
5 from the sale of the Product, which were acquired through its unlawful acts of unfair
6 competition.

7 **SECOND CAUSE OF ACTION**

8 **Unfair Competition Law, Unfair and Fraudulent Prongs**

9 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

10 87. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
11 as if set forth in full herein.

12 88. California Business and Professions Code § 17200 prohibits any “unlawful,
13 unfair or fraudulent business act or practice.”

14 89. The acts, omissions, misrepresentations, practices, and non-disclosures of
15 Defendant as alleged herein also constitute “unfair” business acts and practices under the
16 UCL in that their conduct is immoral, unethical, unscrupulous, or substantially injurious to
17 consumers, offends public policy by seeking to profit from male vulnerability to false or
18 deceptive virility or aphrodisiac claims, and the utility of their conduct, if any, does not
19 outweigh the gravity of the harm to Defendant’s victims.

20 90. The acts, omissions, misrepresentations, practices, and non-disclosures of
21 Defendant as alleged herein constitute “fraudulent” business acts and practices under the
22 UCL in that Defendant’s claims are false, misleading, and have a tendency to deceive the
23 Class and the general public, as detailed herein.

24 91. Defendant profited from its sales of the fraudulently, falsely, and deceptively
25 advertised Product to unwary consumers.

26 92. In accordance with Cal. Bus. & Prof Code § 17203, Plaintiff seeks an order
27 enjoining Defendant from continuing to conduct business through unfair acts and practices
28 and to commence a corrective advertising campaign.

1 93. Plaintiff also seeks an order for the disgorgement and restitution of all monies
2 from the sale of the Product, which were acquired through acts of unfair and fraudulent
3 competition.

4 **THIRD CAUSE OF ACTION**

5 **Consumer Legal Remedies Act**

6 **Cal. Civ. Code §§ 1750, *et seq.***

7 94. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
8 as if set forth in full herein.

9 95. The CLRA prohibits deceptive practices in connection with the conduct of a
10 business that provides goods, property, or services primarily for personal, family, or
11 household purposes.

12 96. Defendant's false and misleading labeling and other policies, acts, and
13 practices were designed to, and did, induce the purchase and use of Defendant's Product
14 for personal, family, or household purposes by Plaintiff and Class members, and violated
15 and continue to violate the following sections of the CLRA:

- 16 a) § 1770(a)(5): representing that goods have characteristics, uses, or benefits
17 which they do not have;
- 18 b) § 1770(a)(7): representing that goods are of a particular standard, quality, or
19 grade if they are of another;
- 20 c) § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
21 d) § 1770(a)(16): representing the subject of a transaction has been supplied in
22 accordance with a previous representation when it has not.

23 97. Defendant profited from its sale of the falsely, deceptively and unlawfully
24 advertised Product to unwary consumers.

25 98. As a result, Plaintiff and the Class have suffered irreparable harm; and seek
26 restitution and actual damages in the amount of the total retail sales price of the Product
27 sold throughout the Class period to all Class members, punitive damages in an amount
28 sufficient to deter and punish, injunctive relief in the form of modified advertising and a

1 corrective advertising plan, a complete prohibition on Cavalier’s sale, or the sale of any
2 other unlawful unapproved aphrodisiac drug.

3 99. Pursuant to California Civil Code § 1782, on November 1, 2019, Plaintiff
4 notified Defendant in writing by certified mail of the particular violations of § 1770 of the
5 Act as to the Product and demanded that Defendant rectify the problems associated with
6 the actions detailed above and give notice to all affected consumers of its intent to so act.
7 Nutrabolt received Plaintiff’s written notice on November 4, 2019.

8 100. Defendant’s wrongful business practices regarding the Product constituted,
9 and constitute, a continuing course of conduct in violation of the CLRA since Defendant
10 is still representing that the Product has characteristics, uses, benefits, and abilities which
11 are false and misleading, and have injured Plaintiff and the Class.

12 101. As Defendant failed to implement remedial measures, Plaintiff and the Class
13 seek injunctive relief under Civil Code § 1782(d), enjoining the above described wrongful
14 conduct by Defendant, as well as, actual and punitive damages for their CLRA claims.

15 **FOURTH CAUSE OF ACTION**

16 **Violation of the Magnuson-Moss Warranty Act**

17 **15 U.S.C. §§ 2301, *et seq.* (“MMWA”)**

18 102. Plaintiff repeats, re-alleges, and incorporates the allegations contained in the
19 paragraphs elsewhere in this Complaint, as if fully set forth herein.

20 103. Plaintiff brings this cause of action individually and on behalf of the
21 members of the Class against Defendant.

22 104. Plaintiff and the Class assert all state law warranty claims arising under the
23 laws of the State of California, as allowed under section 2310(d) of the MMWA.

24 105. Defendant’s Product is a consumer product as defined in 15 U.S.C. §
25 2301(1), which costs more than \$5.00.

26 106. Plaintiff and Class members are consumers as defined in 15 U.S.C. §
27 2301(3).

28

1 107. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4),
2 (5). In connection with the sale of the Product, Defendant issued written warranties as
3 defined in 15 U.S.C. § 2301(6)(A), by making representations regarding the Product's
4 efficacy.

5 108. In fact, the Product does not conform to the Express Warranties because the
6 Express Warranties are false and/or deceptive, whereby Defendant breached the Express
7 Warranties made to Plaintiff and the Class.

8 109. Plaintiff and Class members were injured as a direct and proximate result of
9 Defendant's breach because they would not have purchased the Product absent the
10 Express Warranties, which formed part of the basis of the bargain.

11 110. By reason of Defendant's breach of warranties, Defendant violated the
12 statutory rights due to Plaintiff and Class members pursuant to the Magnuson-Moss
13 Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging Plaintiff and Class members.

14 111. Plaintiff and the Class seek damages, equitable relief, and attorney's fees and
15 costs pursuant to 15 U.S.C. §§ 2310(d)(1), (2).

16 **IX. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the
18 general public, prays for judgment against Defendant as follows:

- 19 A. An order confirming that this class action is properly maintainable as a nationwide
20 class action as defined above, appointing Plaintiff Andrew Harris and his
21 undersigned counsel to represent the Class, and requiring Defendant to bear the
22 cost of class notice;
- 23 B. An Order compelling Defendant to destroy all misleading and deceptive
24 advertising materials, labels, and unapproved new drugs;
- 25 C. An Order requiring Defendant to restore all funds acquired by means of any act or
26 practice declared by this Court to be an unlawful, unfair, or fraudulent business act
27 or practice, untrue or misleading advertising, plus pre-and post-judgment interest
28 thereon;

- 1 D. An award of pre-judgment and post-judgment interest;
- 2 E. An award of attorney fees and costs;
- 3 F. Actual and punitive damages of at least \$5 million;
- 4 G. Such other and further relief as this Court may deem just, equitable or proper.

5
6 **X. JURY DEMAND**

7 Plaintiff hereby demands a trial by jury for his claim for damages and punitive
8 damages, and consents to a bench trial for his claims in equity.

9
10 DATED: December 30, 2019

Respectfully Submitted,

11 /s/ Gregory S. Weston
12 **THE WESTON FIRM**
13 GREGORY S. WESTON
14 1405 Morena Blvd., Suite 201
15 San Diego, CA 92110
16 Telephone: (619) 798-2006
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Counsel for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nutrabolt's Cavalier Gentlemen's Product Is Ineffective, Class Action Lawsuit Claims](#)
