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FOR COURT USE ONLY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

ATTORNEY FOR (Name): Plaintiffs
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

JUL 12 2004
ALAN SLATER, Clerk of the Court

CASE NAME: Toni Breedlove, et al v Window Rock Health Lab, et al

BY: MERCY DOMINGUEZ, DEPUTY
CASE NUMBER: 04 CC 00610

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal Rules of Court, rule 181f)

JUDGE: **STEPHEN J. SUNDVOLD**
DEPT: **CX105**

All five (5) items below must be completed (see instructions on page 2).

- 1 Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
<p>Non-PI/PD/WD (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
<p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
<p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental /Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20)
<p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

- 2 This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a <input type="checkbox"/> Large number of separately represented parties | d <input checked="" type="checkbox"/> Large number of witnesses |
| b <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c <input type="checkbox"/> Substantial amount of documentary evidence | f <input type="checkbox"/> Substantial post-judgment judicial supervision |
- 3 Type of remedies sought (check all that apply)
a monetary b nonmonetary; declaratory or injunctive relief c punitive
- 4 Number of causes of action (specify) 7
- 5 This case is is not a class action suit
- Date:

Robyn C. Crowther, Esq.
(TYPE OR PRINT NAME)

Robyn C. Crowther
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family or Welfare and Institutions Code) (Cal Rules of Court, rule 201.8) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule
- If this case is complex under rule 1800 et seq of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

O. K. TO ISSUE SUMMONS

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ORANGE

14 TONI BREEDLOVE, JOHN LOWE, DENA
LUCIANO, ADRIAN POWELL, JUDITH
15 TUGAW, BECKY MARSTON-KLIS, LINDA
STEVENS, NICHELLE BROWN, TAMMY
16 ARNOLD, LORI CANORRO, SCOTT
FARKAS, SHIRL TAYLOR-WILSON, LISA
17 LOMBARDO, META TAYLOR, KRISTI
MILLER, EDWARD WAGENAAR,
18 CHARLES SAPORITO, PAM LARSEN,
MARGARET TRIOLO, NOVIA
19 LaBRANCHE, PAMELA HARBOUR, TODD
SCRIBNER, JUDY GOBLE, BARBARA
20 FOSTER, VICKI McDOWELL, BETTY
COLE, DONNA BURKETT, JANET
21 McCARTY, and SUSAN NYTES, on behalf of
themselves, all others similarly situated, and
22 the general public,

23 Plaintiffs,

24 v.

25 WINDOW ROCK HEALTH
26 LABORATORIES, INC., WINDOW ROCK
ENTERPRISES, INC., INFINITY
27 ADVERTISING, INC., SHAWN TALBOTT,
and GREG CYNAUMON,

28 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 12 2004

ALAN SLATER, Clerk of the Court

BY: MERCY DOMINGUEZ, DEPUTY

Case No.

04 CC 00610

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

**JUDGE STEPHEN J. SUNDVOLD
DEPT. CX105**

CALDWELL,
LESLIE,
NEWCOMBE
& PETTIT

1 Plaintiffs Toni Breedlove, John Lowe, Dena Luciano, Adrian Powell, Judith Tugaw,
2 Becky Marston-Klis, Linda Stevens, Nichelle Brown, Tammy Arnold, Lori Canorro, Scott
3 Farkas, Shirl Taylor-Wilson, Lisa Lombardo, Meta Taylor, Kristi Miller, Edward Wagenaar,
4 Charles Saporito, Pam Larsen, Margaret Iriolo, Novia Labranche, Pamela Harbour, Todd
5 Scribner, Judy Goble, Barbara Foster, Vicki McDowell, Betty Cole, Donna Burkett, Janet
6 McCarty, and Susan Nytes, by their attorneys, Meiselman, Denlea, Packman, Carton & Eberz,
7 P C., and Caldwell Leslie Newcombe & Pettit, as and for their complaint, allege, with personal
8 knowledge as to their own actions, and upon information and belief as to those of others, as
9 follows:

10 **NATURE OF THIS CASE**

11 1. This action seeks redress for a fraudulent, deceptive, and otherwise improper
12 advertising campaign that defendants are engaging in with respect to their alleged dietary
13 supplement CortiSlim. Since the introduction of CortiSlim, a purported weight loss product,
14 defendants have touted the product, through television and Internet advertising, as a
15 scientifically-validated weight loss formula. In fact, defendants' claims are unsupportable and
16 untrue.

17 2. This suit is brought, pursuant to the California Unfair Competition Law, Business
18 & Professions Code §17200 et seq., the California False Advertising Law, Business &
19 Professions Code §17500 et seq., the California Consumers Legal Remedies Act, Civil Code §
20 1770 et seq., the Song-Beverly Consumer Warranty Act, Civil Code §1791 et seq., the California
21 Uniform Commercial Code, U.C.C. § 2313 et seq., and the common law of this State. The claims
22 are brought by plaintiffs on behalf of a nationwide class of persons consisting of the purchasers
23 and users of CortiSlim, and as representatives (private attorneys general) of the general public. It
24 seeks, inter alia, trebled compensatory damages; disgorgement of defendants' profits; restitution,
25 including but not limited to a refund of the purchase price that each member of the class paid for
26 CortiSlim; punitive damages; injunctive relief; court costs; and attorneys' fees.

1 **JURISDICTION AND VENUE**

2 3. This Court has jurisdiction over this action pursuant to § 410.10 of the California
3 Code of Civil Procedure and §§ 17203, 17204, and 17535 of the California Business and
4 Professional Code.

5 4. Venue is proper in this District pursuant to §§ 395 and 395.5 of the California
6 Code of Civil Procedure and § 1780 (c) of the California Consumer Legal Remedies Act.

7 5. Federal court subject matter jurisdiction over this action does not exist, as no
8 federal question is raised, complete diversity of citizenship between plaintiffs and defendants is
9 lacking, and, under applicable federal law, compensatory damages, punitive damages, attorneys'
10 fees, interest, and costs cannot be aggregated to meet the minimum jurisdictional amount for
11 federal court subject matter jurisdiction.

12 **PARTIES**

13 **PLAINTIFFS**

14 6. Plaintiffs are citizens and residents of no less than 26 different states throughout
15 the country who were deceived into purchasing CortiSlim as a result of defendants' fraudulent,
16 misleading, and false advertising and claims about their product.

17 7. Plaintiff Toni Breedlove is a citizen and resident of the State of California. Ms.
18 Breedlove purchased CortiSlim via a telephone order in or about February 2004. She purchased
19 CortiSlim based and in reliance upon defendants' advertised claims about the product. She took
20 the product for at least a full month, using it as directed, but experienced no curb in appetite nor
21 any weight loss.

22 8. Plaintiff John Lowe is a citizen and resident of the State of the California. Mr.
23 Lowe purchased CortiSlim from defendants' website in or about March, 2004. He purchased
24 CortiSlim based and in reliance upon defendants' advertised claims about the product. He took
25 the product for approximately two months, using it as directed, but found that the product did not
26 work as advertised.

27 9. Plaintiff Dena Luciano is a citizen and resident of the State of the California. Ms.
28 Luciano purchased CortiSlim over the telephone in or about January, 2004. She purchased
CortiSlim based and in reliance upon defendants' advertised claims about the product. She took

1 the product for approximately two months, using it as directed, but found that the product did not
2 work as advertised.

3 10. Plaintiff Adrian Powell is a citizen and resident of the State of the California. Mr
4 Powell purchased CortiSlim from defendants' website in or about May, 2004. He purchased
5 CortiSlim based and in reliance upon defendants' advertised claims about the product. He took
6 the product for approximately a month, using it as directed, but did not lose any weight at all

7 11. Plaintiff Judith Tugaw is a citizen and resident of the State of Arizona. Ms.
8 Tugaw purchased CortiSlim on-line in or about April, 2004. She purchased CortiSlim based and
9 in reliance upon defendants' advertised claims about the product. She took the product for
10 approximately two months, using it as directed, but experienced no weight loss whatsoever.

11 12. Plaintiff Becky Marston-Klis is a citizen and resident of the State of Colorado.
12 Ms. Marston-Klis purchased CortiSlim in or about September, 2003 from a number given during
13 a television advertisement. She purchased CortiSlim based and in reliance upon defendants'
14 advertised claims about the product. She took the product for three to four months, using it as
15 directed, and gained, rather than lost, weight.

16 13. Plaintiff Linda Stevens is a citizen and resident of the State of Florida. Ms.
17 Stevens purchased CortiSlim from defendant Window Rock in or about May, 2004. She
18 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
19 She took the product for over a month, using it as directed, but did not lose any weight.

20 14. Plaintiff Nichelle Brown is a citizen and resident of the State of Georgia. Ms.
21 Brown purchased CortiSlim from defendants' website in or about January, 2004. She purchased
22 CortiSlim based and in reliance upon defendants' advertised claims about the product. She took
23 the product for approximately five months, using it as directed, but did not experience any weight
24 loss, even though she additionally increased her exercise during this period; in fact, she gained
25 weight

26 15. Plaintiff Tammy Arnold is a citizen and resident of the State of Illinois. Ms.
27 Arnold purchased CortiSlim over the Internet in or about April, 2004. She purchased CortiSlim
28 based and in reliance upon defendants' advertised claims about the product. She took the

1 product for approximately one month, using it as directed, and, despite additionally exercising
2 and dieting during that time, gained rather than lost weight.

3 16. Plaintiff Lori Canorro is a citizen and resident of the State of Indiana. Ms.
4 Canorro purchased CortiSlim from defendants in or about May, 2004. She purchased CortiSlim
5 based and in reliance upon defendants' advertised claims about the product. She took the
6 product for approximately two weeks, using it as directed, but did not lose any weight.

7 17. Plaintiff Scott Farkas is a citizen and resident of the State of Iowa. Mr. Farkas
8 purchased a six-month supply of CortiSlim on-line from defendants in or about March, 2004. He
9 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
10 He took the product for approximately two months, using it as directed, but his appetite was not
11 curbed and he lost no weight during that period.

12 18. Plaintiff Shirl Taylor-Wilson is a citizen and resident of the State of Maryland.
13 Ms. Taylor-Wilson purchased CortiSlim on the Internet in approximately April, 2004. She
14 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
15 She took the product for nearly two months, using it as directed, but did not lose any weight.

16 19. Plaintiff Lisa Lombardo is a citizen and resident of the Commonwealth of
17 Massachusetts. Ms. Lombardo purchased four bottles of CortiSlim on the Internet in
18 approximately April, 2004, paying \$128.50. She purchased CortiSlim based and in reliance upon
19 defendants' advertised claims about the product. She took the product for nearly two months,
20 using it as directed, but did not lose any weight.

21 20. Plaintiff Meta Taylor is a citizen and resident of the State of Michigan. Ms.
22 Taylor purchased CortiSlim from defendants over the telephone in or about January, 2004 after
23 seeing a television advertisement. She purchased CortiSlim based and in reliance upon
24 defendants' advertised claims about the product. She took the product for approximately two
25 months, using it as directed, but gained, rather than lost, weight during that period.

26 21. Plaintiff Kristi Miller is a citizen and resident of the State of Mississippi. Ms.
27 Miller purchased CortiSlim from defendants through a phone order, and received three bottles.
28 She purchased CortiSlim based and in reliance upon defendants' advertised claims about the

1 product. She took the product for approximately two months, using it as directed, but found that
2 the product did not work as advertised.

3 22. Plaintiff Edward Wagenaar is a citizen and resident of the State of Missouri. Mr.
4 Wagenaar purchased CortiSlim over the Internet, purchasing 6 bottles for \$300. He purchased
5 CortiSlim based and in reliance upon defendants' advertised claims about the product. He took
6 the product for approximately 45 days, using it as directed, but experienced no weight loss.

7 23. Plaintiff Charles Saporito is a citizen and resident of the State of New Jersey. Mr.
8 Saporito purchased CortiSlim from defendants' website in or about June, 2004. He purchased
9 CortiSlim based and in reliance upon defendants' advertised claims about the product. He took
10 the product for approximately one month, using it as directed, but did not lose any weight.

11 24. Plaintiff Pam Larsen is a citizen and resident of the State of New Mexico. Ms.
12 Larsen purchased CortiSlim from defendants in or about May, 2004. She purchased CortiSlim
13 based and in reliance upon defendants' advertised claims about the product. She took the
14 product for approximately a week and a half, using it as directed, but did not lose any weight.

15 25. Plaintiff Margaret Triolo is a citizen and resident of the State of New York. Ms.
16 Triolo purchased CortiSlim from defendants' website in or about May, 2004, spending over \$100
17 on the product. She purchased CortiSlim based and in reliance upon defendants' advertised
18 claims about the product. She took the product for approximately one month, using it as
19 directed, but experienced no weight loss or decrease in perceived stress.

20 26. Plaintiff Novia LaBranche is a citizen and resident of the State of North Carolina.
21 Ms. LaBranche purchased CortiSlim over the telephone from defendants in or about January,
22 2004, calling a number in California that defendants supplied in their advertisements. She
23 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
24 She took the product for approximately two months, but lost no weight.

25 27. Plaintiff Pamela Harbour is a citizen and resident of the State of Ohio. Ms.
26 Harbour purchased CortiSlim in or about May, 2004, after seeing it advertised on television. She
27 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
28 She took the product as directed, but did not lose any weight whatsoever.

1 28. Plaintiff Todd Scribner is a citizen and resident of the State of Oklahoma. Mr.
2 Scribner purchased CortiSlim from defendants' "800" number in or about April, 2004, spending
3 over \$200. He purchased CortiSlim based and in reliance upon defendants' advertised claims
4 about the product. He took the product for approximately 60 days, using it as directed, but did
5 not lose any weight during that period.

6 29. Plaintiff Judy Goble is a citizen and resident of the Commonwealth of
7 Pennsylvania. Ms. Goble purchased CortiSlim on the Internet in approximately May, 2004. She
8 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
9 She took the product for approximately one month, but did not experience any weight loss.

10 30. Plaintiff Judy Goble is a citizen and resident of the Commonwealth of
11 Pennsylvania. Ms. Goble purchased CortiSlim on the Internet in approximately May, 2004. She
12 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
13 She took the product for approximately one month, but did not experience any weight loss.

14 31. Plaintiff Vicki McDowell is a citizen and resident of the State of Texas. Ms.
15 McDowell purchased CortiSlim in or about January, 2004. She purchased CortiSlim based and
16 in reliance upon defendants' advertised claims about the product. She took the product for
17 approximately three months, using it as directed, but lost no weight during that period.

18 32. Plaintiff Betty Cole is a citizen and resident of the State of Utah. Ms. Cole
19 purchased CortiSlim in or about December, 2003. She purchased CortiSlim based and in
20 reliance upon defendants' advertised claims about the product. She took the product for
21 approximately four months, using it as directed, but lost no weight.

22 33. Plaintiff Donna Burkett is a citizen and resident of the State of Vermont. Ms.
23 Burkett purchased four bottles of CortiSlim from defendants' website in or about November,
24 2003. She purchased CortiSlim based and in reliance upon defendants' advertised claims about
25 the product. She took the product for approximately four months, using it as directed, but
26 experienced no weight loss during this period.

27 34. Plaintiff Janet McCarty is a citizen and resident of the State of Washington. Ms.
28 McCarty purchased CortiSlim on-line in or about May, 2004. She purchased CortiSlim based

1 and in reliance upon defendants' advertised claims about the product. She took the product for
2 approximately two-three weeks, using it as directed, but experienced no weight loss.

3 35. Plaintiff Susan Nytes is a citizen and resident of the State of Wisconsin. Ms.
4 Nytes purchased CortiSlim from defendants' "800" number in or about May, 2004. She
5 purchased CortiSlim based and in reliance upon defendants' advertised claims about the product.
6 She took the product for approximately two weeks, using it as directed, but did not lose any
7 weight.

8 **DEFENDANTS**

9 36. Defendant Window Rock Health Laboratories, Inc. is a corporation organized
10 under the laws of the State of California, with an address at P O. Box 8729, Brea, California
11 92822.

12 37. Defendant Window Rock Enterprises, Inc. is a corporation organized under the
13 laws of the State of California, with an address at P O. Box 8729, Brea, California 92822.
14 (Defendants Window Rock Health Laboratories, Inc. and Window Rock Enterprises, Inc. are
15 hereinafter referred to collectively as "Window Rock.")

16 38. Defendant Infinity Advertising, Inc. ("Infinity") is a corporation organized under
17 the laws of the Nevada, having its principal place of business at 8170 Woodsboro Avenue,
18 Anaheim, California 92807.

19 39. Defendant Shawn Talbott is a citizen and resident of the State of Utah and is the
20 chief executive officer and principal shareholder of Window Rock. Talbott has been at all times
21 personally involved in the marketing, advertising, promotion, distribution, and sale of CortiSlim
22 and all material decisions regarding such marketing, advertising, promotion, distribution, and
23 sale. Talbott's intentional tortious acts and personal participation in the wrongful conduct
24 underlying this action deprive him of any protection he might otherwise have for his personal
25 liability under the corporate shield doctrine or otherwise.

26 40. Moreover, in connection with the manufacture, marketing, advertising, promotion,
27 distribution, and sale of CortiSlim, Talbott has exercised complete dominion and control over
28 Window Rock, such that Window Rock is his alter ego, a sham, facade, and mere instrumentality

1 for his personal benefit, and has disregarded and abused the corporate form and structure of the
2 company.

3 41. Furthermore, Talbott has purposely misused the corporate form of Window Rock
4 to commit an intentional fraud upon the public, and in an effort to defeat the ends of justice and
5 otherwise evade the law, including with respect to the marketing, advertisement, promotion,
6 distribution, and sale of CortiSlim.

7 42. Defendant Greg Cynaumon is a citizen and resident of the State of California with
8 an address at 8170 Woodsboro Avenue, Anaheim, California 92807. Cynaumon has been at all
9 times personally involved in the marketing, advertising, promotion, distribution, and sale of
10 CortiSlim and in material decisions regarding such marketing, advertising, promotion,
11 distribution, and sale. Cynaumon's intentional tortious acts and personal participation in the
12 wrongful conduct underlying this action deprive him of any protection he might otherwise have
13 for his personal liability under the corporate shield doctrine or otherwise.

14 43. Moreover, in connection with the marketing, advertising, promotion, distribution,
15 and sale of CortiSlim, Cynaumon has exercised complete dominion and control over Infinity,
16 such that Infinity is his alter ego, a sham, facade, and mere instrumentality for his personal
17 benefit, and has disregarded and abused the corporate form and structure of the company

18 44. Furthermore, Cynaumon has purposely misused the corporate form of Infinity to
19 commit an intentional fraud upon the public, and in an effort to defeat the ends of justice and
20 otherwise evade the law, including with respect to the marketing, advertisement, promotion,
21 distribution, and sale of CortiSlim.

22 **OPERATIVE FACTS**

23 45. In or about 2003, defendants began marketing, advertising, promoting,
24 distributing, and selling a new dietary supplement said to promote weight loss, which they call
25 CortiSlim. In defendants' advertising, CortiSlim is claimed to have been invented by defendant
26 Talbott, to be the result of 15 years of research by Talbott concerning the human stress hormone
27 Cortisol, and to be highly effective in regulating the body's production of Cortisol, which,
28 according to CortiSlim's marketing, is a "fat-storing hormone "

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1 46. Defendants' marketing, which on the label of the product and elsewhere refers to
2 CortiSlim as a "cortisol control weight loss formula," lacks any specific description of how
3 CortiSlim's ingredients purportedly act to regulate Cortisol production, reduce stress, or promote
4 weight loss, but those advertisements nevertheless insist that CortiSlim's "unique proprietary
5 blend" is not only effective for these purposes, but "sets the standard" by which other Cortisol-
6 control and weight-loss products should be measured.

7 47. Defendants' marketing is further deceptive and misleading in that it fails to inform
8 consumers of the precise composition of ingredients contained in CortiSlim. Rather, defendants
9 hide behind the claim that the product contains "3 proprietary blends -- "Cortiplex," "Leptiplex,"
10 and "Insutrol" -- and, while defendants indicate what ingredients constitute each of these
11 "proprietary blends," nowhere are consumers advised as to the amounts or percentages of most of
12 these ingredients.

13 48. Defendants' marketing, advertising, promotion, and sale of CortiSlim places
14 particular emphasis on Talbott's alleged credentials as a leading expert on Cortisol and Cortisol's
15 relationship to weight control. Talbott's picture appears prominently in CortiSlim's Internet
16 advertising, and Talbott is the featured promoter of CortiSlim along with Cynaumon in
17 CortiSlim's televised infomercials. Talbott enjoys no genuine stature as an expert on Cortisol or
18 weight loss. However, pursuant to a marketing scheme hatched in collaboration with Cynaumon,
19 CortiSlim is promoted as an effective weight loss product based upon the falsely-portrayed
20 reputation of Talbott as an expert in Cortisol control and a pioneer in developing a dietary
21 supplement product to assist in controlling Cortisol.

22 49. In the marketing, advertising, promotion, distribution, and sale of CortiSlim,
23 defendants have been making numerous unsubstantiated, false, deceptive, and misleading claims
24 with respect to the supposed efficacy of CortiSlim as a weight loss formula.

25 50. Because defendants market and sell CortiSlim as a "dietary supplement," rather
26 than a "drug," CortiSlim is not tested for safety or efficacy, nor approved by, the Food and Drug
27 Administration ("FDA"). Similarly, the labeling, marketing, advertising, promotion, and sale of
28 CortiSlim, and the claims made by defendants about CortiSlim, are not scrutinized by the FDA.

1 51. CortiSlim's nationally-distributed and frequently-broadcast television infomercial,
2 which appears on major national cable networks as well as local cable access channels in major
3 television markets, is a contrived television talk show program called "*Breakthroughs*"
4 purporting to feature "Dr." Greg Cynaumon and Jonnel Goddard as talk-show co-hosts, and
5 Talbott as an invited "guest" on the "program." Cynaumon's presentation in the infomercial
6 falsely implies that he is a physician, a misrepresentation that is calculated to lend credence to his
7 personal testimonial that he lost 30 pounds -- as a purported result of using CortiSlim.

8 52. The CortiSlim infomercial on Cynaumon's "*Breakthroughs*" creates the
9 deliberately misleading impression that Dr. Talbott has been invited as a guest on the "program"
10 based upon the merit of his work and his product. In fact, "*Breakthroughs*" is nothing more than
11 a marketing scheme devised by Cynaumon to profit from an infomercial disguised as a bona fide
12 television talk show. Talbott, by contracting with Cynaumon's company and participating in the
13 infomercial, engaged as a participant in Cynaumon's deceptive marketing scheme.

14 53. Cynaumon repeatedly refers to Talbott as "Dr. Talbott," implying that Talbott is a
15 physician, which he is not, and reinforces this misleading impression by stating "*I want to*
16 *introduce you to the doctor,*" and that "*Dr. Talbott and I got together and he put me on*
17 *CortiSlim,*" falsely implying that Cynaumon had been a patient of Talbott and that Talbott
18 prescribed CortiSlim.

19 54. Advancing the manipulative and deceptive "talk show" contrivance, the
20 "*Breakthroughs*" infomercial for CortiSlim purports to present a spontaneous "call-in" by a
21 "viewer" of the "program," reporting upon her alleged weight loss success with CortiSlim. In
22 fact, this call-in is a pre-arranged, scripted, and rehearsed element of the infomercial, feigning
23 spontaneity to mislead the viewing public.

24 55. *Breakthroughs TV* is a deceptive marketing scheme invented by defendant
25 Cynaumon and promoted through defendant Infinity, which solicits product marketers like
26 Talbott to submit their products to Cynaumon for strategic marketing advice. A bottle of
27 CortiSlim is prominently pictured on the Infinity webpage of Cynaumon's website. The
28 *Breakthroughs TV* page of Cynaumon's website bears a picture of Cynaumon and Jonnel
Goddard with the caption "*Dr. Greg and co-host Jonnel Goddard from Breakthroughs television*

1 *program,”* and states: *“Breakthroughs, hosted by best-selling author, radio personality and*
2 *therapist Dr. Greg Cynaumon was created to introduce amazing people whose products,*
3 *discoveries, and inventions are literally changing lives.”* These statements are false and
4 misleading, as *Breakthroughs* is an advertising scheme disguised as a talk show.

5 56. Talbott’s partnership with Cynaumon in *Breakthroughs* is a central feature of the
6 CortiSlim marketing scheme. Talbott and Cynaumon have saturated the television marketplace
7 with hundreds of exposures of the *CortiSlim/Breakthroughs* infomercial on national cable
8 networks and local cable channels reaching tens of millions of American households.

9 57. The Breakthroughs scam is completed by Talbott’s false and misleading
10 statements about Cortisol and CortiSlim:

11 *“Cortisol is what makes us fat.”* In fact, there is no scientific evidence that Cortisol, as
12 opposed to improper diet, lack of exercise, and inherent genetic and/or metabolic conditions *“is*
13 *what makes people fat”*. In fact, high levels of Cortisol have been associated, inter alia, with
14 high-intensity physical exercise, and are thus found in very fit and athletic individuals. Further,
15 in making this statement, Talbott deliberately manipulates the fact that high-levels of emotional
16 stress and anxiety have been associated, by some researchers, with increased desire to consume
17 sugars and carbohydrates, and also with the body’s production of Cortisol. But in fact there has
18 been no scientific validation of a causal relationship between Cortisol production and weight
19 gain, or Cortisol reduction and weight loss.

20 CortiSlim is *“the first weight loss product that actually addresses Cortisol control. . .”*
21 In fact, there is no scientific validation that CortiSlim has any impact on the body’s production of
22 Cortisol. Further, there are a number of other dietary supplement products in the market that
23 purport to have the same Cortisol-regulating effects as CortiSlim.

24 CortiSlim *“addresses the key areas of metabolism that drive you down the road towards*
25 *gaining weight [by] increasing the number of calories that your body burns in a particular day.”*
26 In fact, there is no scientific validation that CortiSlim alters metabolism to increase the rate of
27 caloric consumption and thereby produce weight loss.

28 58. Similar false and misleading statements appear in Talbott’s internet advertising
for CortiSlim on the “official” CortiSlim website operated by Window Rock. Among the other

1 audaciously false assertions on the website are that CortiSlim is “a scientifically validated
2 combination of vitamins, minerals and herbs to help maximize your weight loss success,” and
3 that CortiSlim “sets the standard for effective cortisol control and weight loss results.”

4 59. Defendants’ billboard advertising, such as advertising on bus shelters in major
5 cities such as New York, features an enlarged picture of a bottle of Cortisol so that the viewer
6 can see that the label of the product claims, falsely, that CortiSlim is a “Cortisol Control Weight
7 Loss Formula ”

8 60. Defendants are further engaging in deceptive acts and practices through their
9 “automatic shipping” policy, under which they frequently continue to ship customers additional
10 bottles of CortiSlim -- and to charge them for such shipments using the customers’ previously
11 provided credit card information -- even after customers have cancelled their orders.

12 CLASS ACTION ALLEGATIONS

13 61. Plaintiffs -- who themselves reside in and are citizens of 26 separate states
14 throughout the country -- bring this action on their own behalf and additionally, pursuant to § 382
15 of the Civil Procedure Code and §1781 of the California Consumer Legal Remedies Act, on
16 behalf of a nationwide class of all persons who have purchased or used CortiSlim since its entry
17 into the market (the “Class”). Plaintiffs expressly disclaims any intent to seek any recovery in
18 this action for personal injuries that they or any Class member may have suffered.

19 62. Excluded from the Class are defendants, any parent, subsidiary, or affiliate of any
20 of the defendants; any entity in which any of the defendants has or had a controlling interest, or
21 which any of the defendants otherwise controls or controlled; and any officer, director, employee,
22 legal representative, predecessor, successor, or assign of any of the defendants.

23 63. This action is brought as a class action for the following reasons:

- 24 a. The Class consists of thousands of persons, and is therefore so numerous
25 that joinder of all members, whether otherwise required or permitted, is
26 impracticable. The Class consists of thousands of persons, and is therefore
27 so numerous that joinder of all members, whether otherwise required or
28 permitted, is impracticable.

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- b. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:
 - i. whether defendants' labeling, advertising, marketing, promotion, and sale of CortiSlim is false, fraudulent, deceptive, misleading, and unsubstantiated;
 - ii. whether defendants' actions constitute violations of the California Unfair Competition Law, the California False Advertising Law, the Consumer Legal Remedies Act, and the Song-Beverly Consumer Warranty Act;
 - iii. whether defendants are defrauding the general public through their actions;
 - iv. whether defendants are being unjustly enriched at the expense of consumers in connection with the marketing, advertising, promotion, distribution, and sale of CortiSlim;
 - v. whether defendants have breached warranties made to the consuming public about CortiSlim;
 - vi. whether members of the Class have sustained damages and, if so, the proper measure thereof;
 - vii. whether defendants should be enjoined from the continued mis-labeling, marketing, advertising, promotion, distribution, and sale of CortiSlim;
- c. The claims asserted by plaintiffs are typical of the claims of the members of the Class.
- d. Plaintiffs will fairly and adequately protect the interests of the Class, and plaintiffs have retained attorneys experienced in class and complex litigation, including related litigation involving dietary supplements.
- e. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

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- i. Absent a class action, Class members as a practical matter will be unable to obtain redress, defendants' violations of their legal obligations will continue without remedy, additional consumers and purchasers will be harmed, and defendants will continue to retain their ill-gotten gains.
- ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions.
- iii. When the liability of defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class;
- iv. A class action will permit an orderly and expeditious administration of the Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions;
- v. The lawsuit presents no difficulties that would impede its management by the Court as a class action.
- f. Defendants have acted on grounds generally applicable to the Class members, making class-wide monetary and injunctive relief appropriate.
- g. The prosecution of separate actions by individual members of the Class would create a risk of incompatible standards of conduct for defendants and of inconsistent or varying adjudications for all parties

64. As defendants' marketing of CortiSlim, and a substantial portion of defendants' sales of CortiSlim, have their origin in California, defendants' violations of California state statutes are applicable to all members of the Class, including those residing outside California, and the plaintiffs are entitled to have defendants enjoined nationwide from engaging in deceptive and unconscionable conduct in the future.

FIRST CLAIM

(Violation of Unfair Competition Law)

65. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1-64 above as if fully set forth herein

1 any statement, concerning that . . . personal property. . . or
2 concerning any circumstance or matter of fact connected with the
3 proposed . . . disposition thereof, which is untrue or misleading, and
4 which is known, or by the exercise of reasonable care should be
5 known, to be untrue or misleading. . . .

6 73. Section 17508(a) of the Business and Professions Code provides that:
7 it shall be unlawful for any person doing business in California and
8 advertising to consumers in California to make any false or
9 misleading advertising claim, including claims that (1) purport to
10 be based on factual, objective, or clinical evidence, that (2)
11 compare the product's effectiveness or safety to that of other
12 brands or products, or that (3) purport to be based on any fact.

13 74. Defendants' misrepresentations and false, deceptive, and misleading statements
14 with respect to CortiSlim, as described above, constitute violations of Sections 17500 and 17508
15 of the Business & Professions Code.

16 75. By reason of defendants' violations as described above, plaintiffs and the other
17 members of the Class are entitled, pursuant to §17535 of the Business & Professions Code, to
18 restitution of amounts spent by plaintiffs and members of the Class for the purchase of
19 CortiSlim; disgorgement of defendants' unlawful profits; injunctive relief to enjoin defendants'
20 unlawful acts, practices, and methods; such other equitable relief as the Court may deem just and
21 proper; court costs; and attorneys' fees.

22 THIRD CLAIM

23 (Violation of Consumers Legal Remedies Act)

24 76 Plaintiffs repeat and reallege the allegations contained in Paragraphs 1-75 above
25 as if fully set forth herein.

26 77. The Consumers Legal Remedies Act, in § 1770(a) of the California Civil Code,
27 provides:

28 The following unfair methods of competition and unfair or
deceptive acts or practices undertaken by any person in a

1 transaction intended to result or which results in the sale or lease of
2 goods or services to any consumer are unlawful: . . . (5)
3 Representing that goods or services have . . . characteristics,
4 ingredients, uses [or] benefits . . . which they do not have or that a
5 person has a . . . status, affiliation, or connection which he or she
6 does not have.

7 78. Defendants' methods, acts, and practices, and false, misleading, and unfair
8 statements, in connection with the marketing, advertising, promotion, distribution and sale of
9 CortiSlim, are unlawful under § 1770 of the California Civil Code.

10 79 Simultaneously with the commencement of this action, Plaintiffs are sending to
11 Defendants the notice required by § 1782 of the California Civil Code (the "Notice"), demanding
12 that defendants immediately cease and desist from their unlawful conduct and provide for full
13 refunds to all purchasers of CortiSlim.

14 80. Whereas § 1782 permits an action under the Consumer Legal Remedies Act to be
15 brought for injunctive relief without service of the Notice, plaintiffs presently bring this claim for
16 such relief, and therefore seek preliminary and permanent injunctive relief restraining and
17 enjoining defendants' unlawful methods, acts, and practices. In addition, plaintiffs seek their
18 court costs and attorneys' fees.

19 81. Upon the expiration of 30 days from defendants' receipt of the Notice, plaintiffs
20 shall file and serve an Amended Complaint seeking the additional relief afforded by § 1780 of
21 the California Civil Code, including actual damages of not less than \$1,000, restitution of all
22 amounts expended for or in connection with the purchase of CortiSlim by plaintiffs and the other
23 members of the Class, punitive damages, and such other and further relief as the Court deems
24 just and proper.

25 **FOURTH CLAIM**

26 **(Fraud)**

27 82. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1-81 above
28 as if fully set forth herein.

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1 being of plaintiffs and the other members of the Class. Defendants are therefore additionally
2 liable for punitive damages, in an amount to be determined at trial.

3 **SIXTH CLAIM**

4 **(Breach of Warranty)**

5 91. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1-90 above
6 as if fully set forth herein.

7 92. Defendants have breached express warranties in the advertising for CortiSlim,
8 including but not limited to warranties that it is “scientifically-validated”

9 93. Through their actions, defendants similarly breached the implied warranties of
10 merchantability and fitness that are imposed upon them under California law, including by the
11 Song-Beverly Consumer Warranty Act, Civil Code §1791 *et seq.*, and the California Uniform
12 Commercial Code, U.C.C. §§ 2314-15, by reason of the lack of efficacy of CortiSlim for its
13 ostensible purpose of promoting weight loss.

14 94. Defendants made such express and implied warranties knowing the purpose for
15 which CortiSlim was to be used, and advocating its use for such purpose.

16 95. Defendants made such express and implied warranties as part of their marketing
17 campaign; in advertisements on television and the Internet, and in other media, and on the label
18 of the product.

19 96. CortiSlim does not conform to the express and implied warranties made by
20 defendants and does not conform to defendants’ promises, descriptions, or affirmations of fact.
21 CortiSlim therefore was not adequately sold, promoted, or fit for the ordinary purposes for which
22 it was used

23 97. Plaintiffs and the other members of the Class purchased CortiSlim based upon and
24 in reliance upon such false warranties.

25 98. As a consequence of the foregoing, defendants are jointly and severally liable to
26 plaintiffs and the other members of the Class for the damages incurred as a result of defendants’
27 actions, including but not necessarily limited to the purchase price of the CortiSlim that they
28 purchased, the amount of such damages to be determined at trial.

1 enjoining defendants' unlawful methods, acts, and practices, and awarding plaintiffs their court
2 costs and attorneys' fees.

3 5. On plaintiffs' Fourth Claim, awarding against defendants, jointly and severally,
4 the damages that plaintiffs and the other members of the Class suffered as a result of defendants'
5 actions, the amount of such damages to be determined at trial, plus punitive damages in an
6 amount to be determined at trial.

7 6. On plaintiffs' Fifth Claim, awarding against defendants, jointly and severally, the
8 damages that plaintiffs and the other members of the Class suffered as a result of defendants'
9 actions, the amount of such damages to be determined at trial, plus punitive damages in an
10 amount to be determined at trial.

11 7. On plaintiffs' Sixth Claim, awarding against defendants, jointly and severally, the
12 damages that plaintiffs and the other members of the Class suffered as a result of defendants'
13 actions, the amount of such damages to be determined at trial, plus punitive damages in an
14 amount to be determined at trial.

15 8. On plaintiffs' Seventh Claim, (a) preliminarily and permanently enjoining
16 defendants from continuing to market, advertise, promote, distribute, or sell CortiSlim through
17 use of any representations concerning the efficacy of the product and (b) ordering defendants
18 immediately to take all steps necessary to effectuate a recall of all lots or bottles of CortiSlim that
19 they have distributed or sold.

20 9. Ordering defendants to disgorge all profits earned in connection with the sale of
21 CortiSlim.

22 10. Awarding plaintiffs interest, costs, and attorneys' fees

23 11. Awarding plaintiffs such other and further relief as this Court deems just and
24 proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims in this action.

DATED: July 12, 2004

Respectfully submitted,
MEISELMAN, DENLEA, PACKMAN, CARTON
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