

# MusclePharm LAWSUIT – Arnold Schwarzenegger Iron Mass Spiked?

written by Mike Roberto | February 2, 2015

## **BREAKING NEWS:**

On Wednesday, January 28th, 2015, a class action complaint was filed against MusclePharm for alleged **deceptive label claims in the Arnold Schwarzenegger Series Iron Mass** weight gainer product.

**Update** – Feb 4, 2015 – We now have Exhibit A, which shows the plaintiff's **lab tests**. They are discussed below.

This comes after a lull in the recent rash of lawsuits regarding the ongoing amino acid protein spiking scandal, and is quite easily the biggest case yet.

This lawsuit was filed in the State of California, and was done so by a *different* set of law firms than the previous class action suits filed above.

You can see the publicly filed documents below, which now *include* the lab tests in question:

## MusclePharm-Iron\_Mass-Complaint-20150128

And the lab test from Exhibit A:

## MusclePharm-Iron\_Mass-Complaint- Exhibit\_A-20150128

### What the complaint filed says

The complaint begins very much like the others, defining what “protein spiking” / “nitrogen spiking” / “amino spiking” is, referencing GNC, raw materials costs, etc.

Then the juicy stuff:

- The complaint alleges that the defendant (MusclePharm) makes a specific false claim regarding the source of protein in the Product (Arnold Schwarzenegger Series Iron Mass) by stating, **“MUSCLE PLASMA PROTEIN TECHNOLOGY: 40g of a potent blend of hydrolyzed beef protein and lactoferrin protein”**, citing the picture below:

# REVOLUTIONARY 5-STAGE MASS DELIVERY SYSTEM

Attacks Every Angle of Muscle Building!

**1. ELITE COMPLEX CARBOHYDRATES MATRIX:**

Quicker recovery & muscle building, giving muscles a skin-splitting look

**2. MUSCLE PLASMA PROTEIN TECHNOLOGY:**

40g of a potent blend of hydrolyzed beef protein and lactoferrin protein

**3. HIGH PERFORMANCE HEALTHY FATS:**

Blend of healthy fats (EFA's), MCT's and saturated fats which are essential for hormone production

**4. PERFORMANCE GROWTH  
& MUSCLE VOLUMIZER:**

Creatine and BCAA nitrates help promote muscular strength, size and endurance

**5. PRO-DIGEST BLEND:**

Special dietary fiber blend, aids with digestion of added protein, carbs and fat you need to

**GET BIG—AND STAY BIG**

One of the label images as shown from the complaint that is allegedly deceptive. The key point is **40G OF A POTENT BLEND OF HYDROLYZED BEEF PROTEIN AND LACTOFERRIN PROTEIN\***, which the alleged lab tests show not to be the case

They also allege that the defendant further misleads consumers with its *Muscle Plasma Protein Mix*” under the Supplement Facts panel, which discloses 40 grams of protein per serving, citing the image shown below:

Supplement Facts		
Serving Size: 95g (2 scoops)		
Servings Per Container: 24 (2.27kg/5lbs)		
	Amount Per Serving	% DV*
<b>Calories</b>	485	
Calories From Fat	190	
<b>Total Fat</b>	21 g	41%
Saturated Fat	1 g	6%
Trans Fat	1 g	
<b>Cholesterol</b>	2 mg	1%
Sodium	240 mg	10%
Potassium	550 mg	27%
<b>Total Carbohydrate</b>	34 g	25%
Dietary Fiber	1 g	4%
Sugars	4 g	
<b>Protein</b>	40 g	72%
<b>Iron Mass Proprietary Blend</b>	71500 mg	**
<b>Elite Complex Carbohydrates Matrix</b> Sweet Potato Powder, Barley Starch.		
<b>Muscle Plasma Protein Matrix</b> Hydrolyzed Beef Protein, Lactoferrin.		
<b>High Performance Healthy Fats Matrix</b> Sunflower Oil Powder, Whipped Cream Powder, MCT Powder (Medium-Chain Triglycerides from Coconut).		
<b>Performance Growth &amp; Muscle Volumizer</b> Creatine Monohydrate, L-Glycine, BCAA Nitrates (Leucine, Iso-Leucine, Valine) (3.1.2 Patent Pending Ratio), D-Ribose.		
<b>Pro-Digest Blend</b> Protease, Lactase, Amylase, Lipase, Inulin, Fructooligosaccharides (FOS).		
*Percent Daily Value (%DV) Based on a 2,000 Calorie Diet **Daily Value (DV) Not Established		
<b>Other Ingredients:</b> Glucose Polymers, Cocoa Powder, Natural and Artificial Flavors, Sea Salt, Acesulfame Potassium, Sucralose.		

The supplement facts section, as shown in the class action complaint's PDF

They then claim that the the total protein count of 40 grams per serving is *not* just hydrolyzed beef protein and lactoferrin protein, but also includes *“the non-amino acid, non-protein compound creatine monohydrate and the free-form amino acids, l-glycine, leucine, iso-leucine and valine.”*

- Then the big blow:

The lawsuit alleges that there are **19.4 grams of bounded protein.**

They reference Exhibit A, ~~which we unfortunately do not have.~~

## Exhibit A Lab Results

- A 95g serving size (2 scoops worth) was sampled, which is the serving size on the label.
- **19.4039g of bound amino acids** were found. *(This is what would come from the actual beef protein and perhaps the lactoferrin. It may also count the nitrate-bounded BCAAs, but we need to confirm that.)*

Recall that the label above states **40G OF A POTENT BLEND OF HYDROLYZED BEEF PROTEIN AND LACTOFERRIN PROTEIN** and if this lab test is 100% valid, that label claim is simply false – by over 2x.

- **266mg free-form leucine** was found.

This is actually unexpected, since the leucine is supposed to be bonded to nitrate per the label (it is listed as “BCAA nitrates”), so we would think that we’d only find more “bound” leucine. We will see if we can confirm this.

- There was **no free-form valine** found. This is listed as *BRL*, which stands for “*Below Reporting Limit*”.

This is to be expected, since it is part of the “BCAA Nitrates”, and we’d expect it to be “bound”, not free form.

- There was **no free form isoleucine** found within reporting limits.

Again, this could be expected due to the nitrate bond. We will have to confirm how nitrate bonds affect these tests.

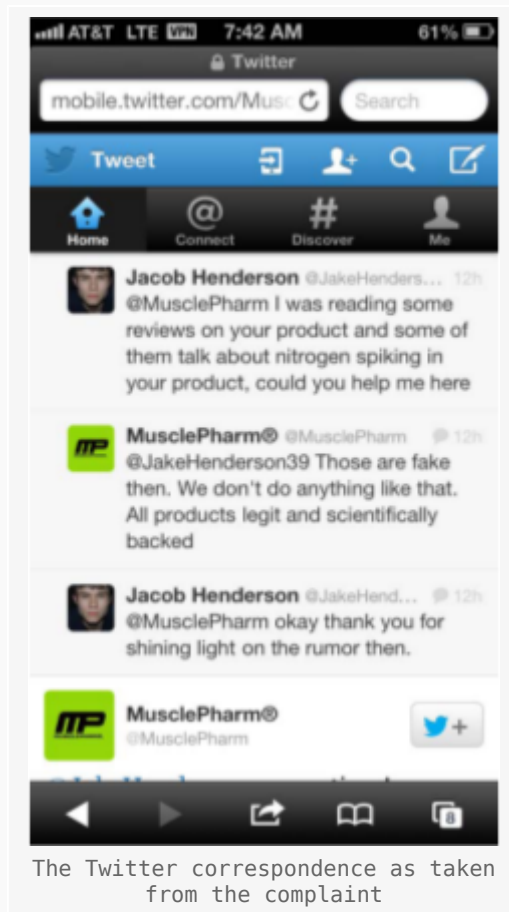
- **6.110g free-form glycine** was found. This is on the label.

- The lab was performed by **ChromaDex**, the most reputable name in the testing business.

- **We don’t have the full story here.**

There is no data on creatine, nor is there data on total nitrogen content. This is important, and is discussed below.

- The complaint also brings Twitter into the fold, citing this Twitter screenshot shown below:



At the time of posting, the Tweet is still live. You can see it below:

*@JakeHenderson39 Those are fake then. We don't do anything like that. All products legit and scientifically backed*  
– *MusclePharm (@MusclePharm) June 13, 2014*

- This was filed by different lawyers than previous suits. The plaintiff, Tucker Durnford, is represented by Ram, Olson, Cereghino & Kopczynski LLP in California, as well as Terrell Marshall Daudt & Willie PLLC in Washington State.

## Disclaimers

As always, we need to remind you that **these are nothing but allegations.**

We are missing the following CRUCIAL pieces of information:

1. ~~Exhibit A~~, which would show the exact data, what lab it was tested at, and at

what date

2. A **chain of custody** has NEVER been shown in ANY of the alleged complaints. We have never once seen proof that the products were not potentially tampered with from the point of manufacturing to the testing lab.

Until there is due process, nobody is guilty.

## MusclePharm has “responded” by posting all protein tests at the MPSSI

**Update:** April 17, 2015: MusclePharm is now posting their “3rd party” protein tests to the MPSSI (MusclePharm Sports Science Institute), and these tests include Iron Whey and Iron Mass – one test from each batch.

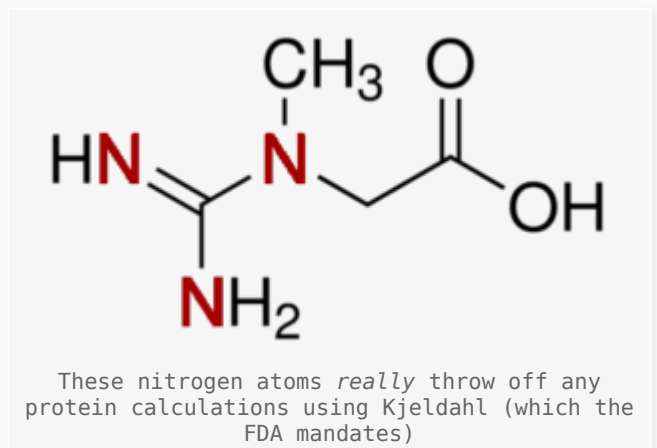
You can read the post discussed above. Anyone can now go to the site, enter the batch/lot numbers, and see how the protein performed from their exact batch.

## Some discussion, now that we have Exhibit A

*This section added in the Feb 4, 2015 update*

### This very well could be a “legal” product

Looking at the incomplete data provided to us in Exhibit A, *if* this is a valid lab test with a perfect chain of custody, **MusclePharm *might not have done anything technically “illegal”*** per the FDA guidelines.



After all, glycine *is* on the label, and per current guidelines, it *does* get counted as a protein. Meanwhile, according to Kjeldahl testing, the creatine and the BCAA nitrates would show up as “extra protein”.

So on a purely technical technical technical basis, you might actually have “40g” of “nitrogen based stuff” in here, which sadly qualifies as protein if reading the FDA’s guidelines to the letter of the law. This is all discussed

in our original amino acid spiking article.

## **But is this grounds for suit?**

The question is, *Is this misleading and deceptive?*

That is what the lawsuit is accusing. One **major** point is that the label states,

*40G OF A POTENT BLEND OF HYDROLYZED BEEF PROTEIN AND LACTOFERRIN PROTEIN\**

This could be the main factor that pushes this suit forward.

Meanwhile, in our other article, we've shown that creatine, with its three nitrogen atoms, can really throw off Kjeldahl tests. In addition, adding Nitrate to the BCAAs further complicates matters due to nitrogen being a primary component of Nitrate (formula  $\text{NO}_3$ ).

Since we haven't heard a single update on the other class action complaints, we really don't know if the courts / judges believe this is misleading / deceptive enough to go to trial or award settlement.

We'll keep this and our other pages updated as we know more.

*/end Feb 4 update*

## **First formal complaint, not the first accusation**

This is the first formal accusation of misleading / deceptive claims against MusclePharm, who have been "accused" on Twitter and in various discussion forums quite a bit.

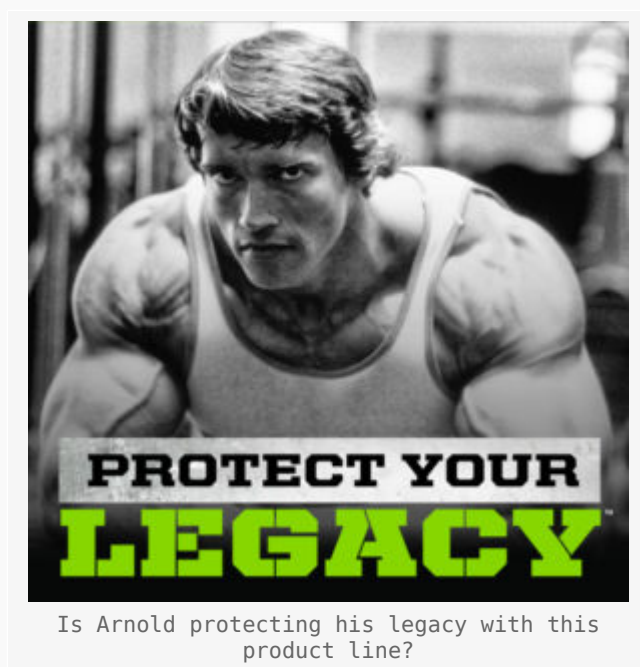
In fact, the accusations were so loud and persistent to the point that MusclePharm released some lab tests for Arnold Schwarzenegger Series Iron Whey lab tests, although we speculated that there were more questions than answers.

The fact that MusclePharm is now posting certificate of authenticities – with detailed amino information – to the MPSSI, as discussed above, may truly help alleviate consumer fears for any batches of protein that are listed on their site.

## **What is Arnold's Role?**

When researching Arnold Schwarzenegger's actual involvement with MusclePharm, we found the following pieces of information:

- When Arnold signed on with MusclePharm, they awarded him the following:
  - Royalty payments based upon a percentage of net sales of his licensed products (subject to certain minimum amounts)
  - **780,000 shares of MusclePharm's restricted common stock.** Arnold could not sell more than 50% of it for at least six months.[1]
- The agreement is initially three years, beginning on July 26, 2013. So the Arnold Schwarzenegger Series lives until at least July 25, 2016, barring either party terminates the agreement.[1,2]
  - The agreement may be terminated by either party with a 30-day notice. There would likely be stiff penalties for the side choosing to terminate.



This means that *if* Arnold never sold or gained *any* MSLP stock (and that's a big "if"), at the time of publishing this article, he would own  $\$8.02[3] * 780,000 =$  **\$6,255,600** worth of MusclePharm.

Since MusclePharm has 13.11 million shares outstanding, that *would* amount to him owning 5.95% of the company – one of the most major shareholders. Again, that's a big if – he could easily have bought or sold more shares.

At the time of the original agreement, however, that number was higher – he originally had an 8.8% stake in the company, which was worth \$7.2 million at the time.[2]

Due to the fact that Arnold is not listed on Yahoo's "Key Holders" page[4], he may no longer have such a stake, as the major shareholder with the *least* number of shares owns 222,678 shares at time of writing.



This is to provide some perspective as to Arnold's *potential* stake in the corporation.

We'll keep this post up to date and try to get our hands on Exhibit A for you, as it is publicly available information.

***Update, May 2016: Hi-Tech Pharmaceuticals has jumped in on the act, and are now suing both Brad Pyatt and MusclePharm over unfair competition.***

## **References**

1. *Form 8-K – MusclePharm Corporation – July 26, 2013; SEC.gov; 2013*
2. *Morrell, A; Sports Supplement Company Backed By Arnold Schwarzenegger Facing SEC Investigation; Forbes Magazine; October 17, 2013*
3. *MSLP Summary; Yahoo Finance; 2015*
4. *MSLP Major Holders; Yahoo Finance; 2015*