

Tina Wolfson, SBN 174806  
[twolfson@ahdootwolfson.com](mailto:twolfson@ahdootwolfson.com)  
**AHDOOT & WOLFSON, PC**  
1016 Palm Avenue  
West Hollywood, California 90069  
Tel: 310-474-9111; Fax: 310-474-8585

Nick Suciu III (*Pro Hac Vice* Application  
Forthcoming)  
[nicksuciu@bmslawyers.com](mailto:nicksuciu@bmslawyers.com)  
**BARBAT, MANSOUR & SUCIU PLLC**  
434 West Alexandrine #101  
Detroit, Michigan 48201  
Tel: (313) 303-3472

Jonathan Shub, SBN 237708  
[jshub@seegerweiss.com](mailto:jshub@seegerweiss.com)  
**SEEGER WEISS, LLP**  
1515 Market Street  
Philadelphia, Pennsylvania 19102  
Tel: (215) 564-1300; Fax: (215) 851-8092

Counsel for Plaintiff,  
JULIAN MENA

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

JULIAN MENA, individually and on behalf  
of all others similarly situated,  
  
Plaintiff,

v.

PROSUPPS USA, LLC, a Texas  
corporation,  
  
Defendant.

Case No. **'14CV2748 DMS JLB**  
**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

- 1. Violations of California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.**
- 2. Violations of California False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.**
- 3. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.**
- 4. Unjust Enrichment**
- 5. Breach of Express Warranty**

1 Plaintiff Julian Mena (“Plaintiff”), individually and on behalf of himself and all  
2 others similarly situated, by his undersigned attorneys, upon personal knowledge as to  
3 himself, upon information and belief, and based upon the investigation of his Counsel  
4 as to the remaining allegations, alleges as follows:

### 5 **INTRODUCTION**

6 1. This is a civil class action brought individually by Plaintiff and on behalf  
7 of all persons and entities in the United States and the state of California (“Class  
8 Members”), who purchased the dietary supplement ProSupps PS Whey (the “Products”)  
9 manufactured by Defendant ProSupps USA, LLC (“Defendant”).

10 2. The whey protein industry is a growing and extremely competitive  
11 business environment. The market for protein products “is expected to grow by 62% to  
12 reach US\$7.8 billion in 2018.” *See* [http://www.euromonitor.com/sports-nutrition-in-](http://www.euromonitor.com/sports-nutrition-in-the-us/report)  
13 [the-us/report](http://www.euromonitor.com/sports-nutrition-in-the-us/report) (last visited Nov. 19, 2014).

14 3. However, the price of wholesale whey protein keeps increasing and is  
15 usually purchased for roughly \$15-\$18/kilo, making the profit margins on whey protein  
16 powder products very low.

17 4. Defendant designed, manufactured, warranted, advertised, and sold the  
18 Products throughout the United States, including in the state of California.

19 5. In an effort to reduce protein-manufacturing costs, Defendant adds cheaper  
20 free form amino acids to increase the nitrogen content of the Products’ protein powder.  
21 Nitrogen is the “tag” used by a common protein content test to determine the amount of  
22 protein in a product; but this is neither a direct measure of the actual protein content in a  
23 product nor a measure of the type of nitrogen containing compounds in a product.

24 6. The act of adding non-protein ingredients to fake a higher protein content  
25 through a higher nitrogen content is commonly referred to as “protein-spiking”,  
26 “nitrogen-spiking” or “amino-spiking.” Such “spiking” was at the center of the 2007  
27 pet food scandal, which lead to domestic recalls of pet foods, and the 2008 Chinese  
28

1 milk powder scandal, when melamine, a nitrogen-rich chemical, was added to raw  
2 materials to fake high protein contents.

3 7. As a result of Defendant's practices, the consumer is left with products that  
4 contain less whey protein than Defendant represented.

5 8. This practice has been condemned by the American Herbal Products  
6 Association (AHPA), an organization of dietary supplement manufacturers, which has  
7 issued a standard for manufacturers for measuring the True Protein content of their  
8 products which:

9 a) Defines protein as "a chain of amino acids connected by peptide  
10 bonds" for labeling purposes;

11 b) Requires the use of calculations to include only proteins that are  
12 "chains of amino acids connected by peptide bonds; and

13 c) Requires the exclusion of any "non-protein nitrogen-containing  
14 substances" when counting total protein content.

15 See [www.ahpa.org/Default.aspx?tabid=441](http://www.ahpa.org/Default.aspx?tabid=441) (last visited Nov. 19, 2014).

16 9. General Nutrition Centers ("GNC"), one of the largest distributors in the  
17 United States of whey protein products, has publicly criticized protein spiking, claiming  
18 it to be misleading to consumers. According to GNC, consumers cannot be sure that  
19 they are getting 100 percent protein in their products because companies don't always  
20 show how they figure total grams of protein per serving. See  
21 [www.gnclivewell.com/realprotein](http://www.gnclivewell.com/realprotein) (last visited Nov. 19, 2014).

22 10. Despite the knowledge that "protein-spiking" is misleading to consumers,  
23 Defendant continues to advertise, distribute, label, manufacture, market, and sell the  
24 Products in a misleading and deceptive manner in order to increase its sales and  
25 maximize its profits.

## 26 **PARTIES**

27 11. During the Class period commencing four years before the date of this  
28 filing, class members in California and throughout the United States purchased the

1 Products at numerous brick and mortar and online retail stores. Plaintiff and class  
 2 members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and  
 3 misleading practices set forth in this Complaint.

4 12. Plaintiff Julian Mena is a resident of the City of San Diego, California, and  
 5 purchased the Products from bodybuilding.com for his own use during the four years  
 6 preceding the filing of this complaint.

7 13. Defendant ProSupps USA, LLC is incorporated in Texas, with a principal  
 8 place of business address at 601 Century Parkway, Suite 300, Allen, Texas 75013.

### 9 **JURISDICTION AND VENUE**

10 14. This Court has subject matter jurisdiction over Plaintiff's claims pursuant  
 11 to 28 U.S.C. § 1332(d) because the combined claims of the proposed class members  
 12 exceed \$5,000,000<sup>1</sup> and because Defendant is a citizen of a different state from the  
 13 members of the Classes.

14 15. This Court has personal jurisdiction over Defendant because it regularly  
 15 conducts business in this District.

16 16. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in  
 17 that a substantial part of the events or omissions giving rise to Plaintiff's claims  
 18 occurred in this District; and (2) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to  
 19 personal jurisdiction in this District.

### 20 **FACTUAL ALLEGATIONS**

#### 21 **The Differences Between Whey Protein & Free Form Amino Acids**

22 17. Whey is a complete protein source, which means it contains all the  
 23 essential amino acids the human body needs to build protein-based compounds such as  
 24 muscle tissue, skin, fingernails, hair and enzymes. Daily protein needs depend on one's  
 25

---

26 <sup>1</sup> Defendant's Products are sold through numerous different online and brick/mortar  
 27 retailers, including GNC, Vitamin Shoppe, and Bodybuilding.com. There are likely  
 28 tens of thousands of class members composing the proposed classes with tens of  
 millions of dollars spent on the Products due to the far reaching distribution channels  
 and high consumer demand for whey protein products.

1 size, gender and activity levels, although they likely amount to somewhere between 46  
2 grams and 56 grams. For elite athletes, daily protein requirements are well over 100  
3 grams, a need that is difficult to fulfill with simply ingesting food. Others may also  
4 need to supplement their protein intake for reasons of ill health.

5 18. Whey protein powder is especially rich in branched-chain amino acids --  
6 leucine, isoleucine and valine -- which are metabolized directly within the muscles as  
7 opposed to being processed in the liver first.

8 19. The 2005 dietary reference intake (DRI) guidance from the National  
9 Academy of Sciences clearly defines protein as macromolecules with links of amino  
10 acids, and does not mention free-form amino acids or creatine. Although amino acids  
11 are the building blocks of protein, they do not have the same beneficial effects of whole  
12 protein when they are free-form, and not part of an actual protein partly because of the  
13 way protein is digested and absorbed by the body. Several studies have shown that  
14 protein is absorbed more effectively than free-form amino acids.<sup>2</sup>

15 20. Accordingly, at least one study was conducted to determine whether the  
16 effects of whey protein ingestion on muscle protein accrual are due solely to its  
17 constituent essential amino acid content. The study was a comparison of three trial  
18 groups. The first provided intact whey protein (whey protein powder). The other two  
19 trials provided either the individual essential amino acids (i.e. free-form) or the  
20 individual non-essential amino acids found in whey. The researchers determined that  
21 whey protein ingestion improves skeletal muscle protein accrual through mechanisms  
22 that are beyond those attributed to its essential amino acid content.<sup>3</sup>

23 21. Yet another study found that “the lack of recovery after immobilization-  
24 induced atrophy during ageing is due to an ‘anabolic resistance’ of protein synthesis to  
25

---

26 <sup>2</sup> See, e.g., Di Pasquale MG. Amino Acids and Proteins for the Athlete: The Anabolic  
27 Edge, Second Edition. Boca Raton, FL: CRC Press; 2008:190.

28 <sup>3</sup> Katsanos C, *et al.* Whey protein ingestion in elderly results in greater muscle protein  
accrual than ingestion of its constituent essential amino acid content. Nutr. Res. Oct.  
2008; 28(10):651-658.

1 amino acids during rehabilitation.” The study’s results “highlight a novel approach to  
2 induce muscle mass recovery following atrophy in the elderly by giving soluble milk  
3 protein or high protein diets.”<sup>4</sup>

4 22. Thus, one review study concluded that, “the bound form of an EAA  
5 [essential amino acid] may be more efficiently utilized than when delivered in its free-  
6 form.”<sup>5</sup>

### 7 **Defendant’s Misleading Labeling of Mutant Whey**

8 23. Defendant prominently features “whey protein,” the name of the  
9 ingredient sought by millions of American consumers, in the very name of the  
10 product, “ProSupps PS Whey,” Defendant also represents on the front of the Products’  
11 label that it contains “100% Pure Whey Protein”:

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>4</sup> Magne H, *et al.* Contrarily to whey and high protein diets, dietary free leucine  
27 supplementation cannot reverse the lack of recovery of muscle mass after prolonged  
immobilization during ageing. J. Physiol. Apr 15, 2012; 590(Pt 8): 2035-2049.

28 <sup>5</sup> Terada T, Inui K. Peptide transporters: structure, function, regulation and application  
for drug delivery. Curr Drug Metab. 2004;5:85-94.





24. Defendant represents the Products to contain 24 grams of protein per serving in the Supplement Facts section of the Products' label:

<b>SUPPLEMENT FACTS</b>		
<b>Serving Size: 1 Scoop (34 g)</b>		
<b>Servings per container: About 27</b>		
	<b>Amount per serving</b>	<b>%Daily Value*</b>
<b>Calories</b>	<b>120</b>	
<b>Calories from Fat</b>	<b>20</b>	
<b>Total Fat</b>	<b>2 g</b>	<b>3%</b>
<b>Saturated Fat</b>	<b>1 g</b>	<b>5%</b>
<b>Trans Fat</b>	<b>0 g</b>	<b>**</b>
<b>Cholesterol</b>	<b>52 mg</b>	<b>17%</b>
<b>Sodium</b>	<b>88 mg</b>	<b>4%</b>
<b>Potassium</b>	<b>159 mg</b>	<b>5%</b>
<b>Total Carbohydrate</b>	<b>2 g</b>	<b>&lt;1%</b>
<b>Dietary Fiber</b>	<b>0 g</b>	<b>0%</b>
<b>Sugars</b>	<b>1 g</b>	<b>**</b>
<b>Protein</b>	<b>24 g</b>	<b>48%</b>
<b>Vitamin A</b>		<b>&lt;1%</b>
<b>Vitamin C</b>		<b>0%</b>
<b>Calcium</b>		<b>12%</b>
<b>Iron</b>		<b>0%</b>
<b>*Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.</b>		
<b>**Daily Value not Established</b>		

**Ingredients:** PS 100% Whey Protein Matrix (Whey Protein Concentrate, Whey Protein Isolate), Cocoa, Whey Peptides, Natural & Artificial Flavors, Sodium Chloride, Sucralose, Guar Gum, Xanthan Gum, Sunflower Oil, Maltodextrin, Sodium Caseinate, Monoglycerides, Diglycerides, Dipotassium Phosphate, Soy Lecithin, Sodium Silico Aluminate, Tocopherols.



1       25. However, Defendant's claimed total protein count of 24 grams of  
2 protein per serving is not exclusively derived from whey protein but also includes,  
3 for the purposes of "protein-spiking," several free form amino acids, including L-  
4 Glycine, L-Leucine, L-Valine, L-Isoleucine, L-Glutamine and Taurine.

5       26. Once these "protein spiking" agents are removed from the formula of  
6 analysis, and the "bound" amino acid count is determined, the true content of whey  
7 protein in the Products can be determined.

8       27. After scientific testing of the Products, the actual total content of whey  
9 protein per serving is approximately 17.598 grams (as calculated from the total  
10 bonded amino acids), as opposed to the 24 grams per serving claimed by Defendant  
11 for their "whey protein" product. *See* Exhibit A.

12       28. The representations that the Products contain the 24 grams of whey protein  
13 per serving as disclosed in the "Supplement Facts" on the back of the package are  
14 material and false and/or likely to mislead a reasonable consumer when, in fact, the  
15 Products contain no more than 17.598 grams of whey protein per serving.

16       29. The FDCA prohibits this type of misleading labeling in food:

17       "The labeling of a food which contains two or more ingredients  
18       may be misleading by reason (among other reasons) of the  
19       designation of such food in such labeling by a name which  
20       includes or suggests the name of one or more but not all such  
21       ingredients, even though the names of all such ingredients are  
22       stated elsewhere in the labeling."

23       21 C.F.R. § 101.18(b)

24       30. In violation of 21 C.F.R. § 101.18(b), Defendant misleads consumers by  
25 referencing whey protein, including in the name of the Products, but never disclosing  
26 the limited amount of whey protein that the Products actually deliver or disclosing that  
27 the Products' protein content is only fractionally whey protein.

1           31. Moreover, Defendant makes a further deceptive claim on the actual front  
2 label of the Products: “100% Pure Whey Protein.”

3           32. A reasonable consumer looking at the name of the Products and the  
4 “100% Pure Whey Protein” claim is misled into thinking that the grams of protein per  
5 serving claimed by Defendant is derived exclusively from whey.

6           33. This false and misleading product name, the false and misleading claim  
7 “100% Pure Whey Protein,” and the Supplement Facts section, taken together, misled  
8 Plaintiff and reasonable consumers into believing that the protein content of the  
9 Products is derived solely from whey protein.

10           34. Nowhere on the Products’ label does it state, or even imply, that the protein  
11 content contains any, let alone substantial, amounts of free form and non-protein amino  
12 acids.

13           35. Plaintiff and Class Members were in fact misled by Defendant’s  
14 representations regarding the true nature of the protein content and value.

15           36. The difference between the products promised and the Products sold is  
16 significant. The amount of actual protein provided, and the measure of protein per  
17 serving, has real impact on the benefits provided to consumers by the Products, and the  
18 actual value of the Products.

19                           **Taurine as an Undeclared Ingredient**

20           37. Based on the laboratory results, the spiking compound Taurine is contained  
21 in the Products at a level of 2 grams per serving. *See* Exhibit A.

22           38. The FDA promulgated regulations for compliance with the FDCA and  
23 DSHEA at 21 C.F.R. 101, *et seq.*

24           39. These regulations require all ingredients to be listed on the label of dietary  
25 supplements sold to the public. *See* 21 C.F.R. 101.4.

26           40. Defendant failed to disclose the ingredient Taurine in the labeling of their  
27 Products, making them misbranded.  
28

41. Defendant's false and misleading claims contained herein are in violation of 21 C.F.R. § 101.18(b), making the Products misbranded.

42. Defendant's deceptive statements violate 21 U.S.C. § 343(a)(1), which deems food (including nutritional supplements) misbranded when the label contains a statement that is "false or misleading in any particular."

43. California prohibits the misbranding of food in a way that parallels the FDCA through the "Sherman Law", Cal. Health & Saf. Code § 109875, *et seq.* The Sherman Law provides that food is misbranded "if its labeling is false or misleading in any particular." *Id.*

44. The Sherman Law explicitly incorporates by reference "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the FDCA," as the food labeling regulations of California Cal. Health & Saf. Code, § 110100, subd. (a).

45. Further, as explained above, Defendant's claims are misleading to consumers in violation of 21 U.S.C. § 343, which states, "A food shall be deemed to be misbranded . . . [i]f its labeling is false or misleading in any particular."

46. The introduction of misbranded food into interstate commerce is prohibited under the FDCA and all state parallel statutes cited in this Class Action Complaint.

47. Plaintiff and Class Members would not have purchased the Products, or would have not paid as much for the Products had they known the truth about the mislabeled and falsely advertised Products.

### **CLASS ACTION ALLEGATIONS**

48. Plaintiff brings this action individually and as representatives of all those similarly situated pursuant to Rule 23 of the Fed. R. Civ. P. on behalf of the class and subclass ("the Classes"). The Classes are defined as follows:

**National Class:** All persons in the United States who purchased the Products at any time during the four years before the date of filing of this Complaint to the present.

1           **California Subclass:** All persons in the State of California  
2           who purchased the Products at any time during the four years  
3           before the date of filing of this Complaint to the present.

4           49. Excluded from the Classes are Defendant, any entity in which Defendant  
5           has a controlling interest or which has a controlling interest in Defendant, and  
6           Defendant's legal representatives, assignees, and successors. Also excluded are the  
7           judge to whom this case is assigned, any member of the judge's immediate family, and  
8           the courtroom staff.

9           50. The Class members are so numerous that joinder of all members is  
10          impracticable. On information and belief, the Classes have more than 10,000 members.  
11          Moreover, the disposition of the claims of the Classes in a single action will provide  
12          substantial benefits to all parties and the Court.

13          51. There are numerous questions of law and fact common to Plaintiff and  
14          members of the Classes. These common questions of law and fact include, but are not  
15          limited to, the following:

- 16               a. The true nature of the protein content in the Products;
  - 17               b. Whether the marketing, advertising, packaging, labeling, and other  
18               promotional materials for the Products are deceptive;
  - 19               c. Whether Defendant's actions violate California's Unfair  
20               Competition Law, Business and Professions Code § 17200, *et seq.*;
  - 21               d. Whether Defendant's actions violate California's False Advertising  
22               Law, Business and Professions Code § 17500, *et seq.*;
  - 23               e. Whether Defendant's actions violate California's Consumers  
24               Legal Remedies Act, Civil Code § 1750, *et seq.*;
  - 25               f. Whether Defendant was unjustly enriched at the expense of the  
26               Plaintiff and Class Members; and
  - 27               g. Whether Defendant breached an express warranty to Plaintiff.
- 28

1           52. Plaintiff's claims are typical of the claims of the Classes. Plaintiff's  
2 claims, like the claims of the Classes, arise out of the same common course of conduct  
3 by Defendant and are based on the same legal and remedial theories.

4           53. Plaintiff will fairly and adequately protect the interests of the Classes.  
5 Plaintiff has retained competent and capable attorneys with significant experience in  
6 complex and class action litigation, including consumer class actions. Plaintiff and  
7 their counsel are committed to prosecuting this action vigorously on behalf of the  
8 Classes and have the financial resources to do so. Neither Plaintiff nor their counsel has  
9 interests that are contrary to or that conflict with those of the proposed Classes.

10          54. Defendant has engaged in a common course of conduct toward Plaintiff  
11 and members of the Classes. The common issues arising from this conduct that affect  
12 Plaintiffs and members of the Classes predominate over any individual issues.  
13 Adjudication of these common issues in a single action has important and desirable  
14 advantages of judicial economy.

15          55. A class action is the superior method for the fair and efficient adjudication  
16 of this controversy. Class-wide relief is necessary to compel Defendant to keep such  
17 adulterated and misbranded products out of the market and to compensate those who  
18 have mislead into purchase of the Products. The interests of individual members of the  
19 Classes in individually controlling the prosecution of separate claims against Defendant  
20 are small because the damages in an individual action are small. Management of these  
21 claims is likely to present significantly fewer difficulties than are presented in many  
22 class claims because Defendant acted or failed to act on grounds generally applicable to  
23 the Classes. Class treatment is superior to multiple individual suits or piecemeal  
24 litigation because it conserves judicial resources, promotes consistency and efficiency  
25 of adjudication, provides a forum for small claimants, and deters illegal activities. There  
26 will be no significant difficulty in the management of this case as a class action.

56. Defendant has acted on grounds generally applicable to the Classes, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class appropriate on a class wide basis.

### **FIRST CAUSE OF ACTION**

#### **Violation of the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et. seq.* (On Behalf of the California Subclass)**

57. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

58. Plaintiff and each member of the Class is a “Consumer” as that term is defined by Cal. Civ. Code § 1761(d).

59. The Products are a “Good” as that term is defined by Cal. Civ. Code § 1761(a).

60. Defendant is a “Person” as defined by Cal. Civ. Code § 1761(c).

61. The transaction(s) involved here are “Transaction(s)” as defined by Cal. Civ. Code § 1761(e).

62. Plaintiff and members of the Class are Consumers who purchased the Products for personal use within the applicable statute of limitations period.

63. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury-in-fact and has lost money or property as a result of Defendant’s actions as set forth here.

64. Plaintiff and Class members purchased the Products in reliance on Defendant’s labeling and marketing claims.

65. Defendant’s practices constitute violations of Cal. Civ. Code § 1770 in at least the following respects:

(a) in violation of Section 1770(a)(2), Defendant misrepresented the source of the Products’ protein as whey, when, in fact, they are “spiked” with free form amino acids;

(b) in violation of Section 1770(a)(5), Defendant represented that the



1 Products have characteristics and benefits (whey protein per serving) that they do not  
2 have (because they contain less whey protein per serving than indicated);

3 (c) in violation of Section 1770(a)(7), Defendant represented that the  
4 Products are of a particular standard, quality, or grade (whey protein per serving), when  
5 they are of another (containing less whey protein per serving than indicated);

6 (d) in violation of Section 1770(a)(9), Defendant has advertised the  
7 Products as containing a certain amount of whey protein per serving with the intent not  
8 to sell them as advertised (containing less whey protein per serving than indicated); and

9 (e) in violation of Section 1770(a)(16), Defendant has represented that  
10 the Products were supplied in accordance with previous representations (amount of  
11 whey protein per serving), when in fact they were not (because they contain less whey  
12 protein per serving than indicated).

13 66. Defendant knew or should have known that their representations of fact are  
14 material and likely to mislead consumers.

15 67. Defendant's practices, acts, and course of conduct in marketing and selling  
16 the Products are likely to mislead a reasonable consumer to his or her detriment. Like  
17 Plaintiff, members of the Class would not have purchased the Products had they known  
18 the true amount of whey protein in the Products.

19 68. Plaintiff and members of the Class have been directly and proximately  
20 damaged by Defendants' actions.

21 69. In conjunction with filing this Complaint, Plaintiff's Counsel mailed to  
22 Defendant, by certified mail, return receipt requested, the written notice required by  
23 Civil Code §1782(a). Should Defendant fail to respond within thirty days, Plaintiff will  
24 amend to seek damages under the Consumers Legal Remedies Act.

25 70. Defendant has engaged in, and continues to engage in, business practices  
26 in violation of the Consumers Legal Remedies Act, Civ. Code §1750, et seq. by  
27 continuing to make false and misleading representations on their labeling of the  
28 Products.

1        71. These business practices are misleading and/or likely to mislead consumers  
2 and should be enjoined.

3                                    **SECOND CAUSE OF ACTION**

4        **Violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.***

5                                    **(On Behalf of the California Subclass)**

6        72. Plaintiff incorporates all preceding factual allegations as if fully set forth  
7 herein.

8        73. Plaintiff and the Class have standing to pursue a cause of action for false  
9 advertising under Cal. Bus. & Prof. Code §17500, *et seq.*, because Plaintiff and  
10 members of the Class have suffered an injury-in-fact and lost money as a result of  
11 Defendant's actions as set forth herein.

12        74. Defendant labeled, advertised, marketed, and otherwise disseminated  
13 misleading information to the public through the product labels.

14        75. Defendant continues to disseminate such statements.

15        76. Defendant's statements are misleading.

16        77. Defendant knows that these statements are misleading, or could have  
17 discovered their misleading nature with the exercise of reasonable care.

18        78. Plaintiff and Class members relied on Defendant's marketing and labeling.

19        79. Defendant's actions violate Cal. Bus. & Prof. Code § 17500, *et seq.*

20        80. As a direct and proximate result of Defendant's actions, as set forth herein,  
21 Defendant has received ill-gotten gains and/or profits, including but not limited to  
22 money from Plaintiff and Class members who paid for the Products. Therefore,  
23 Defendant has been unjustly enriched.

24        81. Plaintiff and Class members seek injunctive relief, restitution, and  
25 disgorgement of Defendant's ill-gotten gains as provided for by Cal. Bus. & Prof. Code  
26 § 17535.

27        82. Plaintiff and Class members seek injunctive relief to compel Defendant  
28 from continuing to engage in these wrongful practices in the future. No other adequate

1 remedy at law exists. If an injunction is not ordered, Plaintiff and Class members will  
2 suffer irreparable harm and/or injury.

### 3 **THIRD CAUSE OF ACTION**

#### 4 **Violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.***

#### 5 **(On Behalf of the California Subclass Members)**

6 83. Plaintiff incorporates all preceding factual allegations as if fully set forth  
7 herein.

8 84. Plaintiff and the Class have standing to pursue a cause of action for false  
9 advertising under Cal. Bus. & Prof. Code § 17200, *et seq.*, because Plaintiff and  
10 members of the Class have suffered an injury-in-fact and lost money as a result of  
11 Defendant's actions as set forth herein.

12 85. Defendant's actions as described herein constitute unfair competition  
13 within the meaning of Cal. Bus. & Prof. Code § 17200, in that Defendant has engaged  
14 in deceptive business practices by falsely advertising the content of whey protein in the  
15 Products.

16 86. Defendant's actions as described herein constitute unfair competition  
17 within the meaning of Cal. Bus. & Prof. Code § 17200, in that Defendant has engaged  
18 in unlawful, unfair and deceptive business practices by deceiving consumers and  
19 violating California's Sherman Food Drug & Cosmetic Act and California's Consumer  
20 Legal Remedies Act.

21 87. Defendant's actions as described herein constitute unfair competition  
22 within the meaning of Cal. Bus. & Prof. Code § 17200, on the additional grounds that  
23 Defendant has failed to properly label the Products in accordance with 21 C.F.R. § 101,  
24 *et seq.*

25 88. Defendant's actions also constitute unfair competition within the meaning  
26 of Cal. Bus. & Prof. Code § 17200, in that Defendant has made unfair, deceptive, untrue  
27 or misleading statements in advertising mediums, including the labels, in violation of  
28 Cal. Bus. & Prof. Code § 17500.

1 89. Defendant's actions have caused economic injury to Plaintiff and Class  
2 members. Plaintiff and Class members would not have purchased the Products had they  
3 known the true nature of the whey protein content.

4 90. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and Class members  
5 seek an injunction enjoining Defendant from continuing to market, advertise, and sell  
6 the Products without complying with federal and state law and to prevent Defendant  
7 from continuing to engage in unfair competition or any other act prohibited by law.

8 91. Plaintiff and Class members also seek an order that requires Defendant to  
9 make full restitution and disgorgement of their ill-gotten gains of all money wrongfully  
10 obtained from Plaintiff and Class members as permitted by Cal. Bus. & Prof. Code §  
11 17203.

#### 12 **FOURTH CAUSE OF ACTION**

##### 13 **Unjust Enrichment**

##### 14 **(On Behalf of the National Class and the California Subclass)**

15 108. Plaintiff incorporates all preceding factual allegations as if fully set forth  
16 herein.

17 109. Plaintiff and Class Members conferred benefits on Defendant by  
18 purchasing the Products.

19 110. Defendant has been unjustly enriched in retaining the revenues derived  
20 from Plaintiff and Class Members' purchase of the Products. Retention of those monies  
21 under these circumstances is unjust and inequitable because Defendant's labeling of the  
22 Products was misleading to consumers, which caused injuries to Plaintiff and Class  
23 Members because they would have not purchased the Products, or would not have paid  
24 as much for them, had they known the true facts.

25 111. Because Defendant's retention of the non-gratuitous benefits conferred on  
26 them by Plaintiff and Class Members is unjust and inequitable, Defendant must pay  
27 restitution to Plaintiff and the Class Members for their unjust enrichment, as ordered by  
28 the Court.

**FIFTH CAUSE OF ACTION**

**Breach of Express Warranty**

**(On Behalf of the National Class and the California Subclass)**

112. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

113. Plaintiff and each member of the Class formed a contract with Defendant at the time Plaintiff and the other Class members purchased the Products. The terms of the contract include the promises and affirmations of fact made by Defendant on the Products' packaging, as described above. These promises constitute express warranties and became part of the basis of bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendant.

114. Defendant purports through its advertising, labeling, marketing and packaging to create an express warranty that the Product contained "100% Pure Whey Protein."

115. Plaintiff and the Class performed all conditions precedent to Defendant's liability under this contract when they purchased the Products.

116. Defendant breached express warranties about the Product and its qualities because Defendant's statements about the Product were false and the Product does not conform to Defendant's affirmations and promises described above. Plaintiff and the Class Members would not have purchased the Products had they known the true nature of the Products' ingredients and what the Products did and did not contain.

117. As a result of Defendant's breach of warranty, Plaintiff and Class Members have been damaged in the amount of the purchase price of the Products and any consequential damages resulting from the purchases.

**PRAYER FOR RELIEF**

Plaintiff requests for the following relief:

- A. Certification of the proposed National Class;
- B. Certification of the proposed California Subclass;

- 1 D. Appointment of Plaintiff as class representative;
- 2 E. Appointment of the undersigned counsel as counsel for the Classes;
- 3 F. A declaration that Defendant's actions complained of herein violate the
- 4 state of California consumer protection statutes;
- 5 G. A declaration that Defendant was unjustly enriched;
- 6 H. A declaration that Defendant breached an express warranty to Plaintiff and
- 7 the Class;
- 8 I. An order that enjoins Defendant from engaging in the unlawful conduct set
- 9 forth herein;
- 10 J. An order that compels Defendant to conduct corrective advertising;
- 11 K. An award to Plaintiff and the Classes of attorneys' fees and costs, as
- 12 allowed by law and/or equity;
- 13 L. Leave to amend this Complaint to conform to the evidence presented at
- 14 trial; and
- 15 M. Orders granting such other and further relief as the Court deems necessary,
- 16 just, and proper.

17 **JURY DEMAND**

18 Plaintiff demands a trial by jury for all issues so triable.

19

20 Dated: November 19, 2014

Respectfully submitted,  
**AHDOOT & WOLFSON, PC**

21  
22 

23 Tina Wolfson  
24 1016 Palm Avenue  
25 West Hollywood, CA 90069  
26 Tel: (310) 474-9111  
27 Fax: (310) 474-8585  
28 Email: twolfson@ahdootwolfson.com



Nick Suciu III (*Pro Hac Vice* Application  
Forthcoming)

**BARBAT, MANSOUR & SUCIU PLLC**

434 West Alexandrine #101

Detroit, MI 48201

Tel: (313) 303-3472

Email: nicksuciu@bmslawyers.com

Jonathan Shub

**SEEGER WEISS, LLP**

1515 Market Street

Philadelphia, PA 19102

Tel: (215) 564-1300

Email: jshub@seegerweiss.com

Counsel for Plaintiff,

Julian Mena

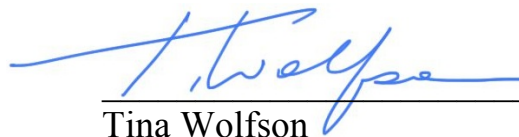
**AFFIDAVIT OF TINA WOLFSON**

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Julian Mena ("Plaintiff") in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant ProSupps USA, LLC ("Defendant") do business within the County of San Diego and Plaintiff purchased Defendant's products within the County of San Diego, as alleged in the Class Action Complaint.

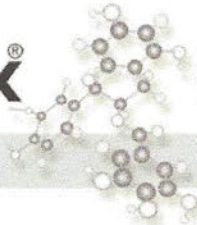
I declare under penalty of perjury under the laws of the United States and the State of California this 19th day of November, 2014 in West Hollywood, California that the foregoing is true and correct.

  
Tina Wolfson

# **EXHIBIT A**



10005 Muirlands Blvd., Suite G | Irvine, CA 92618  
 Phone: (949) 419-0288 | Fax: (949) 419-0294  
 www.chromadex.com



## Process Report

Customer:	Barbat, Mansour & Suciu PLLC	Report Number:	CDXA-PR-163-00
Address (City, State):	Detroit, MI	Project Number:	ORD68576
Purchase Order:	N/A	Date Received:	29 Sep 14
Date of Report:	27-Oct-14	Test Location:	Boulder, CO
Assay:	Analysis of ProSupps PS Whey Sample from Barbat, Mansour & Suciu PLLC		
Part Number:	PRJ-CONSOL-RPT; CDA-00100666-ATR; CDA-00100140-ARS; CDA- 00100197-ATR		

<b>Prepared By:</b>	<u>Sylesh Venkataraman, Ph.D</u> Sr. Director, Laboratory	<u>27-Oct-14</u> Date
<b>Reviewed By:</b>	<u>Aron Erickson</u> Director, Lab Operations	<u>27-Oct-14</u> Date
<b>Approved By:</b>	<u>Sarah Garthe</u> Quality Assurance	<u>27-Oct-14</u> Date

Digitally signed by Sarah Garthe  
 DN: cn=Sarah Garthe, o=ChromaDex  
 Analytics, ou=Quality Assurance,  
 email=SarahG@chromadex.com, c=US  
 Date: 2014.10.27 14:19:39 -06'00'

*Signed original on file at CDXA*

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein, this product analysis is for the benefit of our client only, may not be relied upon by any other party without our prior written consent, relates solely to the sample(s) provided to us by our client and therefore cannot be applied to any other material or sample. Unless otherwise noted, samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

## **SUMMARY**

- **ABSTRACT**

The Sample was received from Barbat, Mansour & Suciu PLLC for a multitude of analyses.

1) ProSupps PS Whey (Lot# VER-001; ChromaDex sample# CDXA-14-5981)

- **INTRODUCTION**

The sample from Barbat, Mansour & Suciu PLLC was analyzed for Free and Total amino acid content and Taurine content.

- **DISCUSSION**

A summary of the results are included below in Table 1. Table 2 lists the individual amino acids from the total and free amino acids analyses.

**Table 1; CDXA-14-5981**

<b>Analysis</b>	<b>CDXA-14-5981 (mg/serving 34g)</b>
Total Amino acids	24368
Total Free Amino acids	7340
Total Bound Amino acids	17598
Taurine	2004

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein, this product analysis is for the benefit of our client only, may not be relied upon by any other party without our prior written consent, relates solely to the sample(s) provided to us by our client and therefore cannot be applied to any other material or sample. Unless otherwise noted, samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.

**Table 2 –CDXA-14-5981**

Analyte	Units	Total Amino Acids	Free Amino Acids	Bound Amino acids
Aspartic acid	mg/serving	1820	ND	1820
Glutamic acid	mg/serving	2910	ND	2910
Serine	mg/serving	874	ND	874
Histidine	mg/serving	285	ND	285
Glycine	mg/serving	7110	6770	340
Threonine	mg/serving	1320	ND	1320
Arginine	mg/serving	507	ND	507
Alanine	mg/serving	928	ND	928
Tyrosine	mg/serving	551	ND	551
Cystine	mg/serving	428	ND	428
Valine	mg/serving	993	ND	993
Methionine	mg/serving	367	ND	367
Phenylalanine	mg/serving	585	ND	585
Isoleucine	mg/serving	1130	ND	1130
Leucine	mg/serving	1810	BRL	1810
Lysine	mg/serving	1670	ND	1670
Proline	mg/serving	1080	ND	1080
Asparagine	mg/serving		ND	
Glutamine	mg/serving		ND	
Tryptophan	mg/serving		570	
Hydroxyproline	mg/serving		ND	
<b>Total</b>	mg/serving	24368	7340	17598
Serving Size = 34 g				

## REFERENCES

- 1) CDXA-ATR-6697-00; Amino acids Base Panel of 21 by HPLC
- 2) CDXA-ATR-6692-00; Taurine by HPLC
- 3) Sub 12 Report# 1094533-0 Total Amino acids by Profile by HPLC

## REVISION HISTORY

<u>Revision Number</u>	<u>Document/Changes</u>
------------------------	-------------------------

00	New report
----	------------

This product analysis is subject to our "Standard Terms and Conditions for the Purchase and Sale of ChromaDex Products and or Services," a copy of which has been provided to our client and is incorporated herein by this reference. As more specifically set forth therein, this product analysis is for the benefit of our client only, may not be relied upon by any other party without our prior written consent, relates solely to the sample(s) provided to us by our client and therefore cannot be applied to any other material or sample. Unless otherwise noted, samples were received in acceptable condition and analyzed as received. This document may not be printed in part without the explicit permission of ChromaDex.