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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYMAN GOOD, Plaintiff, v. MILLENNIUM SPORT TECHNOLOGIES, INC. and MATTHEW MASUDA, Defendants.	Index no. COMPLAINT

Plaintiff Lyman Good ("Plaintiff") brings this action against defendants Millennium Sport Technologies, Inc. and Matthew Masuda ("Defendants") upon personal knowledge as to allegations concerning Plaintiff and as to all other matters, upon information and belief based on the investigation of counsel.

I. PRELIMINARY STATEMENT

1. This is an action for damages, injunctive, and related legal and equitable relief under New York statutory and common law against Defendants for adulterating a pre-workout supplement with an anabolic steroid and misbranding the product as a "dietary supplements" to defraud consumers.

2. Defendants manufacture, label, and sell products that they purport to be dietary supplements. One such product is Cordygen-VO2 ULTRA, which is labeled as a dietary supplement and specifically, a pre-workout supplement.

3. Defendants represent to the public that its products are safe and "formulated and manufactured without the use of any banned substances."

4. These representations are false and misleading because Cordygen-VO2 ULTRA contains 1-androstenedione ("1-andro"), which is not disclosed on the label and is prohibited for use by certain mixed martial arts ("MMA") athletes.

5. 1-andro is a synthetic, androgenic-anabolic steroid that can cause muscle growth and severe, potentially lethal, medical conditions. It is a "drug" under the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq.*, a "controlled substance" under Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, and a "banned substance" from certain U.S. sports since 2006. Under the FDCA, "dietary supplements containing andro[] are adulterated."

6. Plaintiff, a mixed martial arts fighter in the Ultimate Fighting Championship ("UFC"), reasonably believed that Cordygen-VO2 ULTRA was appropriate for any athlete (many of whom, including Plaintiff, are forbidden from using anabolic steroids), and that Cordygen-VO2 ULTRA was a "dietary supplement," which, by law, must not contain any drug or controlled substance, like 1-andro.

7. Plaintiff purchased Cordygen-VO2 ULTRA that contained 1-andro.

8. Plaintiff discovered the adulteration of Cordygen-VO2 ULTRA soon after he was suspended on October 24, 2016 for testing positive for 1-andro and its metabolite. Plaintiff's suspension prompted him – knowing he never used anabolic steroids – to submit an unopened Cordygen-VO2 ULTRA bottle to LGC Science, Inc. for testing. LGC detected 1-andro in

Cordygen-VO2 ULTRA.

II. PARTIES

9. Plaintiff Lyman Good ("Plaintiff") is an individual and resident of New York County. Plaintiff is a 32-year-old mixed martial arts ("MMA") athlete who has been competing professionally since 2005, and has been under contract with the UFC since July 2015. He has enjoyed tremendous success through his training, diet, and overall dedication to MMA, all while working full-time, teaching martial arts to children and adults.

10. Defendant Millennium Sport Technologies, Inc. is a corporation with its principal place of business in the state of Washington. Defendant manufactures, labels, packages, markets, and sells products as dietary supplements, such as Cordygen-VO2 ULTRA, both wholesale and retail, to distributors, retailers, and consumers throughout the United States.

11. Defendant Matthew Masuda is an individual, Washington resident, and founder, President, and CEO of Defendant Millennium Sport Technologies, Inc.

III. JURISIDCTION AND VENUE

12. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(a).

13. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

14. This Court has personal jurisdiction over Defendants because they systematically and continually conduct business throughout New York.

15. For example and without limitation, Defendants purposefully and voluntarily place Cordygen-VO2 ULTRA into the stream of commerce with the expectation that it will be purchased in this District, and Cordygen-VO2 ULTRA was purchased in this District.

16. Venue is proper in this District under 28 U.S.C. § 1391(b). A substantial part of the sales, statements, and omissions were made to residents of this District. Defendants conduct substantial and/or regular business in this District. Defendants received substantial payments from consumers in this District for Cordygen-VO2 ULTRA.

IV. STATEMENT OF FACTS

A. Background

a. Pharmacology of Anabolic Steroids

17. Androstenedione ("andro") is an androgen, like testosterone. Androgens are "male" sex steroids because they stimulate or control the development and maintenance of male, secondary sex characteristics.

18. Andro is also an anabolic-androgenic steroid ("anabolic steroid"). Anabolic steroids are synthetic androgens and variants of testosterone that induce anabolic or androgenic responses in the body. "Anabolic" refers to muscle building, and "androgenic" refers to male sex characteristics.

19. 1-androstenedione, or 5α-androst-1-ene-3,17-dione ("1-andro"), is one type of andro. 1-andro is synthetic and "exogenous," *i.e.*, not naturally produced in the human body.

20. Anabolic steroids have nonmedical uses, which are illegal, and medical uses, which are legal in the United States if the Federal Drug Administration ("FDA") approves.

21. "Doping" or "steroid abuse," the nonmedical use of anabolic steroids, is typically for athletic performance enhancement or bodybuilding, extremely dangerous, and potentially lethal.

22. Short-term steroid abuse can cause body swelling, an increased risk of tendinitis and tendon rupture, severe acne, infections or diseases via injection (such as HIV or hepatitis), and psychiatric disorders, such as paranoid jealousy, extreme irritability, delusions, impaired judgment, addiction, depression, extreme mood swings, aggression, and violent rage (commonly known as "roid rage").

23. Long-term abuse can cause serious and permanent, health problems, such as: kidney failure; liver damage, toxicity, and tumors; heart enlargement; high blood pressure; increased low-density lipoprotein (LDL) cholesterol ("bad" cholesterol); decreased high-density lipoprotein (HDL) cholesterol ("good" cholesterol); increased risk of stroke and heart attack; and mood disorders.

24. Withdrawal symptoms from steroid use include mood swings, fatigue, restlessness, irritability, loss of appetite, decreased libido, insomnia, and serious (sometimes suicidal) depression.

25. In men, steroid abuse can also cause prostate gland enlargement, increased risk of prostate cancer, shrunken testicles, decreased sperm count, infertility, impotence, breast development, and baldness.

26. In women, steroid abuse can also cause increased facial hair and body hair, male-pattern baldness, infrequent or absent periods, clitoris enlargement, and a deeper voice.

27. In teens, steroid abuse can also cause stunted height and bone growth, infertility, and impotence.

28. These risks multiply when the anabolic steroid is manufactured or handled under unsafe or unsanitary conditions or mislabeled.

29. In response to these risks and growing abuse, Congress passed a series of legislation to strictly regulate the entire supply chain of anabolic steroids as a "controlled substance," "drug," and "prescription drug" in order to promote public health and safety.

b. Andro and the Controlled Substances Act

30. Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970), which consists of the Controlled Substances Act of 1970, 21 U.S.C. § 801 *et seq.*, and provisions regarding imports and exports (collectively, "CSA"), to prohibit various activities in controlled substances.

31. A "controlled substance" is "a drug or other substance, or immediate precursor" in schedule I, II, III, IV, or V, excluding alcohol products and tobacco. *See id.* § 802(6).

32. The CSA assigns each controlled substance to one of the five schedules based on the substance's potential for abuse, accepted medical use, and potential for psychological and physical dependence. *See id.* § 812(a).

33. Schedule III includes controlled substances that (A) have "a potential for abuse less than [those] . . . in schedules I and II," (B) have "a currently accepted medical use in treatment in the United States," and (C) "may lead to moderate or low physical dependence or high psychological dependence." *Id.* § 812(b)(3).

34. The Anabolic Steroids Control Act of 1990, Pub. L. 101-647, Title XIX, § 1901, 104 Stat. 4851 (Nov. 29, 1990), amended the CSA to, among other things, define "anabolic steroid" and add specific anabolic steroids to schedule III. *See* 21 U.S.C. §§ 802(41)(A), 812.

35. The Anabolic Steroid Control Act of 2004, Pub. L. 108-358 118 Stat. 1661, (Oct. 22, 2004) amended the CSA by slightly redefining "anabolic steroid," which is current, *see* 21 U.S.C. § 802(41)(A), and listing more anabolic steroids, such as andro, *see* 802(41)(A)(iv)(I). An "anabolic steroid" is "any drug or hormonal substance, chemically and pharmacologically related to testosterone." 21 U.S.C. § 802(41)(A).

36. The Designer Anabolic Steroid Control Act of 2014, Pub. L. 113-260, 128 Stat. 2929 (Dec. 18, 2014) added more anabolic steroids to schedule III, and prohibits the "[f]alse labeling of anabolic steroids" that would otherwise legally be in commerce under the CSA, 21 U.S.C. § 825(e).

c. The FDCA's Regulation of Andro

37. Andro is a "drug" under the FDCA. *See* 21 U.S.C. § 321(g)(1).

38. The FDCA defines "drug," *id.*, in relevant part, as:

> . . . (B) [A]rticles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man . . . ; and (C) articles (other than food) intended to affect the structure or any function of the body of man . . . ; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

39. Andro is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man. *See* § 321(g)(1). Andro, like other anabolic steroids, "ha[s] approved medical uses, though improving athletic performance is not one of them."

40. According to the Mayo Clinic, andro is used for, among other things: (1) diagnosis and differential diagnosis of hyperandrogenism; (2) diagnosis of congenital adrenal hyperplasia ("CAH"); (3) monitoring CAH treatment; and (4) diagnosis of premature adrenarche.

41. Andro is also a non-food article intended to affect the structure and functions of the human body. *See* § 321(g)(1).

42. Though andro is a "drug," the FDA does not approve andro for use as a drug. No FDA-approved drug contains andro according to "Drugs@FDA," the FDA's comprehensive database of "FDA Approved Drug Products."

43. It is unlawful to introduce or deliver for introduction into interstate commerce an unapproved new drug, such as andro. *See* 21 U.S.C. § 331(d) (citing 21 U.S.C. § 355).

44. Andro is also a "prescription drug" because it is "a drug for human use subject to section 353(b)(1) of this title." 21 U.S.C. § 360eee.

45. Under 21 U.S.C. § 353(b)(1):

> A drug intended for use by man which—
>
> (A) because of its toxicity or other potentiality for harmful effect . . . is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; . . .
>
> shall be dispensed only (i) upon a [] prescription of a practitioner licensed by law to administer such drug . . . . The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

46. The Dietary Supplement Health and Education Act of 1994, Pub. L. 103-147, 108 Stat. 4325 (Oct. 25, 1994) ("DSHEA") amended the FDCA to protect public health, foster proper nutrition, and regulate the dietary supplement industry. *See* § 2 of the DSHEA.

47. A dietary supplement is deemed to be a food under the FDCA unless it qualifies as a drug. *See* 21 U.S.C. § 321(ff)(3)(B).

48. No dietary supplement may contain any drug unless the supplement complies with all laws and regulations for drugs.

49. A "dietary supplement" under 21 U.S.C. § 321(ff)(1) is, in relevant part, a non-

tobacco product "intended to supplement the diet that bears or contains one or more of the following dietary ingredients:

> (A) a vitamin;
> (B) a mineral;
> (C) an herb or other botanical;
> (D) an amino acid;
> (E) a dietary substance for use by man to supplement the diet by increasing the total dietary intake; or
> (F) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in clause (A), (B), (C), (D), or (E)."

50. Andro is not a dietary ingredient. *See* 21 U.S.C. 321(ff)(1).

d. Andro is a Banned Substance under USADA

51. The World Anti-Doping Agency ("WADA") was established in 1999 as an international, independent agency that seeks to ensure doping-free sport participation. WADA develops anti-doping capacities and monitors compliance with the World Anti Doping Code (the "Code"). The Code, effective since January 1, 2004, includes anti-doping policies and rules for sports organizations and among public authorities worldwide.

52. The Code mandates the publication and enforcement of an annual List of Prohibited Substances and Methods ("Prohibited List"). The substances on that list are known as "banned substances." WADA first added andro to the 2006 Prohibited List.

53. In 2001, Congress "recognize[d] the United States Anti-Doping Agency (USADA) as the official anti-doping agency for Olympic, Pan American, and Paralympic sport in the United States." Section 644 of the Treasury and General Government Appropriations Act, 2002, Pub. L. 107-67, 115 Stat. 514 (Nov. 12, 2001). The United States Anti-Doping Agency ("USADA") is a compliant signatory to the Code and therefore, enforces the Prohibited List.

54. On July 1, 2015, the drug-testing policy of the UFC became effective. The UFC

selected USADA as the independent administrator for the policy, which was modeled after the Code and bans andro.

B. Cordygen-VO2 ULTRA is Discovered to Contain Andro

55. Since becoming a professional combat sports athlete in or about October 2005, Plaintiff has been consistently testing for prohibited substances and performance enhancing drugs, including by USADA, as recently as November 5, 2015, and had never been flagged until the test at issue in this matter.

56. Plaintiff never knowingly used anabolic steroids.

57. On October 14, 2016, at approximately 6:00 a.m., Plaintiff was drug tested, out-of-competition, by USADA under the UFC Anti-Doping Program. Plaintiff's sample was analyzed by the World Anti-Doping Agency ("WADA") laboratory in Los Angeles, California (the "California Laboratory").

58. On October 24, 2017, the California Laboratory reported Plaintiff's sample as adverse for the presence of 1-androstenedione and its metabolite 1-(5α)-androsten-3α-ol-17-one, a "Prohibited Substance" on the WADA Prohibited List since 2016.

59. Prior and up to October 2016, Plaintiff had been consuming Cordygen-VO2 ULTRA.

60. Plaintiff sent an unopened bottle of Cordygen-VO2 ULTRA to LGC Science, Inc. ("LGC").

61. LGC is the only laboratory that Informed-Choice, a certification program for the sports supplements industry, uses to grant its certification.

62. LGC detected 1-andro and ephedrine in Cordygen-VO2 ULTRA.

63. USADA reduced Plaintiff's suspension after learning that Cordygen-VO2 ULTRA contained, but did not disclose, 1-andro as an ingredient.

C. Cordygen-VO2 ULTRA Is "Adulterated" and "Misbranded" Because It Contains Andro

64. Cordygen-VO2 ULTRA was marketed and labeled as a dietary supplement.

65. Cordygen-VO2 ULTRA's label identifies it as a "Dietary Supplement" and "Banned Substance Free."

66. However, contrary to that representation, Cordygen-VO2 ULTRA is not a dietary supplement because it contains andro. *See* 21 U.S.C. § 321(ff).Cordygen-VO2 ULTRA's Supplement Facts label does not disclose andro.

67. Cordygen-VO2 ULTRA is "adulterated" under the FDCA because it contains andro. 21 U.S.C. § 342(f).

68. According to the FDA:

> . . . FDA is aware of no history of use or other evidence of safety establishing that androstenedione will reasonably be expected to be safe as a dietary ingredient. Therefore, we believe that *dietary supplements containing androstenedione are adulterated* regardless of whether the notification requirement has been met.

69. Cordygen-VO2 ULTRA is a drug under 21 U.S.C. § 321(g)(1) because it contains andro, which is a drug and not a dietary ingredient under 21 U.S.C. § 321(ff).

70. Cordygen-VO2 ULTRA is misbranded because it is a drug that is labeled as a dietary supplement, which is "false or misleading." *See* 21 U.S.C. § 343(a).

71. Cordygen-VO2 ULTRA is improperly dispensed without a prescription. *See* 21 U.S.C. § 353(b)(1).

72. Cordygen-VO2 ULTRA is misbranded under 21 U.S.C. § 352(f)(1) because it is a

drug that fails to bear "adequate directions for use." Under 21 C.F.R. § 201.5, "adequate directions for use" means "directions under which the layman can use a drug safely and for the purposes for which it is intended." Prescription drugs can be used safely only at the direction and under the supervision of a licensed practitioner. Therefore, it is impossible to write "adequate directions for use" for prescription drugs.

73. Cordygen-VO2 ULTRA is not an FDA-approved drug, so its labeling is exempt from the requirement that they bear adequate directions for use by a layperson. *See* 21 C.F.R. §§ 201.100(c)(2) and 201.115. Therefore, Cordygen-VO2 ULTRA labeling fails to bear adequate directions for its intended use, so it is misbranded under 21 U.S.C. § 352(t)(1). The introduction or delivery for introduction into interstate commerce of these misbranded products violates 21 U.S.C. § 331(a).

74. Thus, Defendants committed the following violations of 21 U.S.C. § 331:

> (a) The introduction or delivery for introduction into interstate commerce of any food[or] drug . . . that is adulterated or misbranded.
>
> (b) The adulteration or misbranding of any food[or] drug . . . in interstate commerce.
>
> (c) The receipt in interstate commerce of any food[or] drug . . . that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

75. Andro is not a dietary ingredient, so it is banned from dietary supplements.

FIRST CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY

76. Plaintiff repeats and realleges each and every paragraph above as if stated here.

77. Defendants are manufacturers or sellers of Cordygen-VO2 ULTRA.

78. Each purchase of Cordygen-VO2 ULTRA that Plaintiff made constituted a

contract with Defendants. The contract includes the promises and statements of fact that Defendants made or caused to be made on Cordygen-VO2 ULTRA's packaging and through marketing and advertising. The labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and the contract.

79. Defendants breached express warranties about Cordygen-VO2 ULTRA and its qualities because Defendants' omissions and statements about Cordygen-VO2 ULTRA were false and because Cordygen-VO2 ULTRA does not conform to Defendants' affirmations and promises described in this complaint. Plaintiff would not have purchased Cordygen-VO2 ULTRA had he known the true nature of Cordygen-VO2 ULTRA's ingredients.

80. "Dietary Supplement" is one such promise and statement of fact on the labeling and in the marketing and advertising of Cordygen-VO2 ULTRA. The statement promises and states the fact that, among other things, the product does not contain any drug.

81. "Dietary Supplement" is a false statement of fact and broken promise because Cordygen-VO2 ULTRA contains the drug andro, so Cordygen-VO2 ULTRA is not a dietary supplement.

82. Plaintiff reasonably relied on that stated fact and promise.

83. Plaintiff, when he purchased Cordygen-VO2 ULTRA, performed all conditions precedent to Defendants' liability under this contract.

84. Defendants' breach of that and other express warranties caused Plaintiff irreparable damage, beginning with crushing his dream of competing in Madison Square Garden when he was removed from UFC 205 only weeks before his scheduled bout before his hometown family and fans. Plaintiff has and will lose substantial income in "fight purses," as well as sponsorships (which may have been lucrative given his Puerto Rican/New York City

background).

85. In addition, Plaintiff suffered irreparable damage to his reputation and career, and severe emotional distress.

86. Plaintiff was a role model to children and adult martial artists and students. Since October 24, 2016, Plaintiff's reputation has been damaged, as evidenced, in part, by emails, media attention, and social media content from third-parties.

87. Accordingly, Defendants are liable to Plaintiff for breach of warranty under common law and N.Y. U.C.C. Law § 2-313.

SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

88. Plaintiff repeats and realleges each and every paragraph above as if stated here.

89. The above mentioned contract contains the implied warranty merchantability.

90. Defendants, from whom Plaintiff purchased Cordygen-VO2 ULTRA, are merchants of goods of a kind – dietary supplements.

91. Cordygen-VO2 ULTRA is not merchantable because it is: illegal due to misbranding, adulterated, and a controlled substance and drug in violation of federal laws; dangerous; unfit for its ordinary purpose of improving health with only dietary ingredients; below fair, average quality due to adulteration; inadequately labeled; fails to conform to the promise and affirmation of fact on the label, "dietary supplement."

92. Therefore, Defendants breached the implied warranty of merchantability under common law and N.Y. U.C.C. § 2-314.

93. Defendants are liable to Plaintiff for restitution and consequential damages, as described above.

THIRD CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

94. Plaintiff repeats and realleges each and every paragraph above as if stated here.

95. Defendants had reason to know that the particular purpose of dietary supplements such as Cordygen-VO2 ULTRA is to improve health with only dietary ingredients.

96. Defendants had reason to know that Plaintiff relied on the skill or judgment of Defendants to select or furnish suitable goods.

97. Defendants sold Cordygen-VO2 ULTRA, or caused Cordygen-VO2 ULTRA to be sold – which contained the dangerous and non-dietary ingredient andro – to Plaintiff.

98. Defendants breached the implied warranty of fitness for a particular purpose under common law and N.Y.U.C.C. § 2-315.

99. Accordingly, Defendants are liable to Plaintiff for damages as stated in this complaint.

FOURTH CAUSE OF ACTION
FRAUD

100. Plaintiff repeats and realleges each and every paragraph above as if stated here.

101. Defendants label Cordygen-VO2 ULTRA or cause Cordygen-VO2 ULTRA to be labeled.

102. Defendants represent, or cause to be represented, in a single, consistent, and uniform manner that Cordygen-VO2 ULTRA is a dietary supplement, safe, and unadulterated and contains only dietary ingredients, only ingredients on the label, and no drugs.

103. Those statements are false.

104. Defendants market, advertise, and label Cordygen-VO2 ULTRA using the representations stated in this complaint to target and induce the reliance of Plaintiff.

105. When those representations were made, Defendants knew of the falsity, or recklessly disregarded the truth, of those representations.

106. Plaintiff reasonably relied, in purchasing Cordygen-VO2 ULTRA, upon the false representations of Defendants.

107. The misleading and fraudulent conduct of Defendants was knowing, deliberate, wanton, willful, oppressive, undertaken in conscious disregard of and with reckless indifference to the interests of Plaintiff, entitling Plaintiff to recover punitive damages.

108. The intentional misrepresentations made and active concealment by caused Plaintiff economic losses, emotional distress and potential physical harm.

109. Plaintiff's reliance on the representations of Defendants was a substantial factor in causing harm to Plaintiff.

FIFTH CAUSE OF ACTION
VIOLATIONS OF NEW YORK STATUTORY DECEPTIVE ACTS AND PRACTICES, N.Y. Gen. Bus. L. § 349

110. Plaintiff repeats and realleges each and every paragraph above as if stated here.

111. New York General Business Law ("GBL") § 349(a) provides, "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

112. The deceptive acts and practices of Defendants were directed at consumers within the meaning of § 349.

113. Dietary supplements are typical consumer goods.

114. Cordygen-VO2 ULTRA sales are private transactions that harm the public because they are fraudulent and because they contain a harmful ingredient, as discussed in this complaint.

115. Defendants' acts and practices are materially misleading within the meaning of § 349.

116. Defendants' acts and practices are likely to mislead a reasonable consumer acting reasonably under the circumstances.

117. Defendants labeled Cordygen-VO2 ULTRA, or caused Cordygen-VO2 ULTRA to be labeled, as a "Dietary Supplement."

118. Every Cordygen-VO2 ULTRA label displayed online and on the bottle and packaging stated, "Dietary Supplement."

119. Cordygen-VO2 ULTRA is not a dietary supplement because it contains the drug, andro.

120. The act and practice of labeling Cordygen-VO2 ULTRA, or causing Cordygen-VO2 ULTRA to be labeled, as a dietary supplement was likely to mislead a reasonable consumer acting reasonably under the circumstances to believe that Cordygen-VO2 ULTRA did not contain a drug.

121. Reasonable consumers acting reasonably would not buy a dietary supplement that they knew contained a drug.

122. Reasonable consumers acting reasonably would not buy a dietary supplement that they knew contained a controlled substance.

123. Reasonable consumers acting reasonably would not buy a dietary supplement that they knew contained a dangerous substance.

124. Plaintiff is and was a reasonable consumer.

125. The acts and practices of Defendants caused Plaintiff to purchase Cordygen-VO2 ULTRA.

126. The acts and practices of Defendants caused injury to Plaintiff within the meaning of § 349.

127. Defendants are liable to Plaintiff for reasonable attorney's fees and the greater of actual damages or $50.00 in statutory damages.

128. Defendants are liable for treble damages to Plaintiff because it willfully or knowingly violated GBL § 349.

SIXTH CAUSE OF ACTION
VIOLATIONS OF NEW YORK STATUTORY FALSE ADVERTISING, N.Y. Gen. Bus. L. § 350

129. Plaintiff repeats and realleges each and every paragraph above as if stated here.

130. The elements to prove a violation of § 350 are the same as those for § 349 except that § 350 pertains to "false advertising" specifically, rather than any deceptive act.

131. False advertising includes "labeling." GBL § 350-a.

132. The allegations in this complaint that prove violations of GBL § 349 also prove violations of § 350.

133. Therefore, Defendants are liable to Plaintiff for reasonable attorney's fees and the greater of actual damages or $500.00 in statutory damages.

134. The same allegations in this complaint that prove Defendants' intent or knowledge to violate GBL § 349 also prove intent or knowledge to violation GBL § 350.

135. Therefore, Defendants are liable to Plaintiff for treble damages and reasonable

attorney's fees as under § 350.

SEVENTH CAUSE OF ACTION
ASSAULT and BATTERY

136. Plaintiff repeats and realleges each and every paragraph above as if stated here.

137. By Defendants' actions described above, Defendants intended to inflict personal injury on Plaintiff without his consent.

138. By Defendants' actions described above, Defendants did in fact injure Plaintiff.

139. Accordingly, Defendants are liable to Plaintiff for damages as stated in this complaint.

EIGHTH CAUSE OF ACTION
RECKLESS/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

140. Plaintiff repeats and realleges each and every paragraph above as if stated here.

141. By Defendants' actions described above, Defendants intentionally engaged in extreme and outrageous conduct.

142. Defendants disregarded the substantial probability of causing severe emotional distress to purchasers of Cordygen-VO2 ULTRA, including Plaintiff.

143. As a direct result of Defendants' conduct, Plaintiff suffered extreme emotional distress.

144. Accordingly, Defendants are liable to Plaintiff for damages as stated in this complaint.

NINTH CAUSE OF ACTION
STRICT LIABILITY IN TORT FOR PRODUCTS LIABILITY

145. Plaintiff repeats and realleges each and every paragraph above as if stated here.

146. Defendants manufactured Cordygen-VO2 ULTRA.

147. Defendants placed a defective product (Cordygen-VO2 ULTRA) in the stream of commerce.

148. Cordygen-VO2 ULTRA was defective when it left Defendants' hands, and the defect was a substantial factor in causing Plaintiff's injuries.

149. Plaintiff was an intended consumer of Cordygen-VO2 ULTRA.

150. Plaintiff used Cordygen-VO2 ULTRA in the manner in which it was intended to be used.

151. Plaintiff did not, and reasonably could not, discover the defect or perceive the danger of Cordygen-VO2 ULTRA.

152. Plaintiff did not, and reasonably could not, have averted the injury or damages that were caused by Defendants' defective product.

153. The Cordygen-VO2 ULTRA used by Plaintiff was taken directly from a sealed Cordygen-VO2 ULTRA bottle and Plaintiff never altered the product in any way.

154. Upon information and belief, Cordygen-VO2 ULTRA was not subject to any recall.

155. As a result of andro entering Plaintiff's body through Cordygen-VO2 ULTRA without his consent, Plaintiff suffered injuries, including severe pain and anguish and damage to income and reputation in an amount to be determined by a jury.

TENTH CAUSE OF ACTION
NEGLIGENCE THEORY OF PRODUCTS LIABILITY

156. Plaintiff repeats and realleges each and every paragraph above as if stated here.

157. Plaintiff is an average consumer and therefore a foreseeable plaintiff in this case.

158. Plaintiff used Cordygen-VO2 ULTRA in the manner in which it was intended to be used.

159. A reasonable manufacturer would have discovered that Cordygen-VO2 ULTRA was defective.

160. Defendants had a duty not to place the defective product in the stream of commerce.

161. Defendants failed in their duty to their customers and Plaintiff.

162. As a result of Defendants' failure, Plaintiff put a dangerous and unwanted substance, andro, into his body without his consent.

163. As a result of andro entering Plaintiff's body without his consent, Plaintiff suffered injuries, including severe pain and anguish and damage to income and reputation in an amount to be determined by a jury.

ELEVENTH CAUSE OF ACTION
GENERAL NEGLIGENCE

164. Plaintiff repeats and realleges each and every paragraph above as if stated here.

165. Defendants owed a duty to Plaintiff and the public to ensure that Cordygen-VO2 ULTRA was appropriate for use as a "dietary supplement" which, by law, must not contain any drug or controlled substance, like andro.

166. Defendants breached that duty by permitting andro to be present in Cordygen-

VO2 ULTRA, causing the injuries and damages to Plaintiff.

167. As a proximate result of Defendants' negligence and carelessness, Plaintiff was severely injured, and suffered severe pain and anguish and damage to income and reputation in an amount to be determined by a jury.

PRAYER FOR RELIEF

Plaintiff requests that this Court enter a judgment against Defendants and in favor of Plaintiff and award the following relief:

A. an order awarding compensatory damages to Plaintiff in an amount to be proven at trial, and in excess of the jurisdictional minimum of this Court;

B. an order awarding damages for future earning capacity;

C. an order awarding damages for lost capacity in living;

D. an order awarding punitive damages to Plaintiff in an amount to be proven at trial;

E. an injunction compelling Defendants to take all reasonable, necessary, and appropriate actions to identify, locate, and warn all purchasers of Cordygen-VO2 ULTRA with andro the measures that one should take to mitigate digestion of the adulterated Cordygen-VO2 ULTRA;

F. an injunction compelling Defendants to notify members of the general public of the inherent threat of andro and take any other corrective action that the Courts deems just and proper in order to repair and remedy the existing and unlawful advertising and marketing;

G. an injunction forbidding Defendants from continuing to violate the federal and state statutes cited above;

H. an order awarding pre-judgment and post-judgment interest as provided for by law or allowed in equity;

I. an order awarding Plaintiff his attorney's fees and costs; and

J. such other and further relief as the Court may deem necessary and appropriate.

JURY DEMAND

Plaintiff demands a jury trial for all triable issues.

Dated: Garden City, New York
October 18, 2017

DAVID M. FISH, PC

by David Fish

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