

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO: 2019-CA-000787-L

**RCBA NUTRACEUTICALS, LLC d/b/a
RONNIE COLEMAN SIGNATURE SERIES,**

Plaintiff,

vs.

WESTERN PACKAGING, INC., a Texas
Corporation, **POLYFIRST PACKAGING,
INC.,** a Wisconsin Corporation, and
PROAMPAC HOLDINGS, INC., a Delaware
Corporation,

Defendants.

THIRD AMENDED COMPLAINT

Plaintiff, RCBA Nutraceuticals, LLC d/b/a Ronnie Coleman Signature Series (“Plaintiff” or “RC”), files this Third Amended Complaint, sues Defendants Western Packaging, Inc. (“Western”), Polyfirst Packaging, Inc. (“Poly”), and ProAmpac Holdings, Inc. (“Pro”) (collectively “Defendants”) and alleges:

I. GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$10,000,000.00.
2. Plaintiff, RCBA Nutraceuticals, LLC, is a Florida limited liability company whose principal place of business is located in Seminole County, Florida.
3. Defendant Western Packaging, Inc. (“Western”) is a Texas corporation doing business in Florida.
4. Defendant Polyfirst Packaging, Inc. (“Poly”) is a Wisconsin corporation doing business in Florida. Defendant ProAmpac Holdings, Inc. (“Pro”) is a Delaware corporation doing business in Florida.
5. Venue is proper in Seminole County, Florida pursuant to Section 47.051, Fla. Stat.

Ronnie Coleman Signature Series

6. RC, which does business as “Ronnie Coleman Signature Series,” is an American success story and a leader in the Protein Supplement marketplace. Plaintiff was founded in 2011 by two close friends, Ronnie Coleman and Brendan Ahern, and within a year it had an agreement with GNC for its over 3,000 stores.

7. Ronnie Coleman is a quite literally a legend in his own time. He is an eight (8) time champion as Mr. Olympian (with greater success in free weight training than all predecessors including Arnold Schwarzenegger). A documentary on Mr. Coleman named “The King”¹ was No. 1 on the Netflix documentary charts.

8. Mr. Coleman is considered one of the greatest body builders of all time, and his company, RC, became one of the leaders in the international marketplace.

9. Leaving its headquarters in South Florida for a better place for its employees and their families, RC made Lake Mary, Seminole County, Florida its new home. Today, it occupies over 32,000 square feet of office warehouse space at 635 Century Point.

10. At all material times, Plaintiff sold Whey XS, Gainer XS, King Mass XL (“Plaintiff’s Products”), among other products. Plaintiff’s Products were sold in, 5 lb., 10 lb., and 15 lb. plastic zipper pouch bags:

¹ Not to be confused with a recent No. 1, “Tiger King” on Netflix.



11. In 2016, RC was purchasing plastic zipper bags from a Chinese manufacturer for its King Mass XL and was not having any issues or problems with defective or broken plastic zipper bags.

12. By the end of 2016, RC had earned a solid reputation as a trusted and premium brand in the protein supplement market. A product called Ronnie Coleman’s “King Mass XL” was RC’s No. 1 selling product as a total weight gainer in the world.

Defendants Western and Poly Conspire to Induce Plaintiff to Enter Into a Contract with Western and Later Pro Joins the Conspiracy

13. In latter 2016 to early 2017, Defendants Western and Poly entered into an agreement to defraud RC. Pro joined into the agreement on or about September 1, 2017. Defendants Western and Poly solicited and/or approached RC and offered to manufacture plastic zipper bags for RC’s popular King Mass XL product. RC was interested, because it wanted to shift the manufacturing of its packaging to the United States, from China, where its bags were being made and to have higher quality bags.

14. At some point in their discussions, Defendant Western, acting on behalf of Poly and itself, asked Plaintiff for its current King Mass XL plastic zipper bag, then manufactured by a company in China. At its request, Plaintiff provided it to Defendant Western and Poly.

15. All material times, Vince Slapa, President of Defendant Western – acting on behalf of Western and Poly -- offered to design, engineer and supply custom packaging bags for Plaintiff’s

Products. At all material times, Defendants Western and Poly knew that Plaintiff was not experiencing product defect problems with the plastic zipper bags being manufactured in China.

16. At all material times, Vince Slapa, on behalf of Defendants Western and Poly, said he had “reversed engineered the bag and would create a better bag” for Plaintiff and promised RC a complete “turn key” operation. On behalf of Defendants Western and Poly, Mr. Slapa further represented to RC that Defendant Western would manufacture zipper bags (“Zipper Bags”) that were:

- A. Built at Western’s own facility;
- B. Stronger;
- C. Higher in quality;
- D. Of greater mil strength and thickness;
- E. More durable;
- F. Fully and successfully tested with RC’s product inside the bags before mass manufacture; and/or
- G. Usable and fault free for sale to RC’s customers.

All of the foregoing statements or promises in this paragraph made by Vince Slapa of Western on behalf of Western and Poly, were material and false (“Statements”).

17. Defendants Western and Poly, through Western, also promised shorter lead times and to charge less than the price that was being paid by RC to the Chinese company. At no point did Defendants Western or Poly represent to RC that Western would subcontract away the manufacturing process of the plastic zipper bags to a third party.

18. In 2017, RC introduced two new products: “Whey XS” in a 5 lb. bag and “Gainer XS” in a 10 lb. bag to the marketplace with a solid belief in their financial success. By September 1, 2017, Pro acquired Poly, and Poly became Pro:

Mary Elwood

From: Shipping <Shipping@polyfirst.com>
Sent: Wednesday, October 18, 2017 7:58 AM
To: Mary Elwood; Vince Slapa
Cc: Customer Service
Subject: Western order 504563 - 3226

We have the balance complete and ready to ship – it will only be item 3809- dark chocolate – 6,600 – CS please create a new SR # for me so ship off for that amount.

Mary we can get this moved for \$ 303.18 should I go ahead and schedule for pick up today or would you like to search for a better quote?

2 skids
33 cases
1462#
48 x 40 x 48 pallets
Class 92.5 freight

PolyFirst is now ProAmpac

Shipping
Shipping Department
ProAmpac
2251 Innovation Way
Hartford, WI 53027
p: 262-673-6888 X128
f: 877-880-9190


e: Shipping@polyfirst.com
<http://www.polyfirst.com>

WESTERN000295

Thus, by approximately September 1, 2017, Pro assumed and/or affirmatively undertook all of the duties owed to Plaintiff that were previously owed to Plaintiff by Poly from that date on. From that date on, Pro, instead of Poly, also continued to manufacture the Zipper Bags for Plaintiff.

19. Defendant Western is a merchant in the custom packaging business. Specifically, Defendant Western advertised itself to Plaintiff as providing “packaging total solutions with a combined branding, design, printing, and manufacturing experience of over 100 years.”² Defendant Western stated that its mission was to “aid brand owners to be competitive and successful” by purportedly providing “seamless collaboration, partnership, competitive prices, personal assistance and responsiveness where [each client is] treated as number one.” *Id.*

20. At all material times, Defendant Western, acting on behalf of itself and Poly misadvertised to RC that Western would manufacture plastic zipper bags at its own facility in Texas and that its packaging would be stronger, higher in quality, of greater mil strength and/or thickness and more durable. Defendant Western and Poly also promised shorter lead times and all for the same price that was being paid to the Chinese company.

² See Western Packaging, *Who Are We*, <https://www.westernpkg.com/about-us/>

21. Relying upon and reasonably believing in Defendant Western and Poly's material promises, RC entered into a series of written sale orders with Defendants Western, Poly, and later Pro, through Western ("Contracts") for Defendants to specifically engineer and manufacture over 150,000 custom – plastic packaging zipper – bags or pouches for Plaintiff's Products ("Zipper Bags").

While Plaintiff Reasonably Placed Its Trust in Western, Defendants Continued to Risk it All and Play a "Game of Chance" with Plaintiff's Financial Future

22. Poly was a packaging company located in Hartford, Wisconsin that specialized in printing, customizing roll stock and manufacturing other various types of plastic pouches and bags. In 2016 and 2017 Poly advertised itself to "produce the highest quality plastic film and bags, on time and at a fair price" that offer "reliable durability, longer shelf life, and better barrier."³ As to Plaintiff, all of these claims were false.

23. Secretly and without RC's knowledge or approval, Defendants Western, Poly and Pro conspired to secretly misrepresent to RC their capabilities and to pass on the manufacturing process of the Zipper Bags from Western to Defendants Poly and Pro, and from Defendants Poly and Pro to a third party – without RC's or express approval. On its invoices, Defendant Western initially represented it was shipping finished bags to RC's packager, Nutrablend Foods ("Nutrablend") located in Lancaster, New York. However, Western never had direct possession of the Zipper Bags. In fact, Poly – and later Pro – shipped the Zipper bags directly to Plaintiff's packager, Nutrablend. Further, the Purchase Orders from Poly and later Pro showed the vendor was Pro and the bags were "ship to" "Ronnie Coleman Signature Series" located in Lake Mary.

24. Beginning in about July 2017, Defendants caused the Zipper Bags to be shipped to Nutrablend and JW Nutritional, LLC, a packager in Texas, where the proprietary supplements

³ See 2016 archived version of Poly's website, <http://web.archive.org/web/20160721033200/http://www.polyfirst.com/capabilities>

were filled into the Zipper Bags. Plaintiff later shipped the finished products to its customers or distributors in various countries. In September 2017, Pro acquired Poly and completely took over the manufacturing of the defective Zipper Bags and the shipment of same to JW and Nutrablend.

25. From April 2018 until present date, Plaintiff has been bombarded or faced with complaints about the Zipper Bags from customers and distributors.⁴

26. The Zipper Bags were discovered to be defective at over twelve (12) of Plaintiff's major distributors around the world. The defective bags were also discovered at the Nutrablend plant. Among other things, the Zipper Bags were commercially and structurally unfit, and the plastic edges or seams burst apart causing Plaintiff's Products to leak and pour out:



The Zipper Bags were a failure. The openings in the Zipper Bags also resulted in destruction of Plaintiff's Products.

In May 2018 Defendants Western, Poly and Pro Admit to the Problems

27. After RC gave notice to serious problems and defects in the Zipper Bags or pouches, Defendant Western admitted in writing in May 2018 that the Zipper Bags were “defective.”

Plaintiff Was and Continues to Be Substantially Damaged

⁴ The Zipper Bags, not the products inside, were the problem.

28. As a result of the tremendous packaging problems caused by Defendants, Plaintiff was substantially damaged. Plaintiff was damaged, because it was forced to or did:

- A. Pull or withdraw Plaintiff's Products from the marketplace;
- B. Find another packaging source for Plaintiff's Products;
- C. Refund customers who had purchased Plaintiff's Products;
- D. Increase its workforce to accommodate customer complaints and demands by customers for credits;
- E. Delay Plaintiff's production of its goods and the sales of its products;
- F. Re-design new casts;
- G. Suffer increased loan costs;
- H. Incur travel costs for its CEO to see customers in different countries in the world in an effort to maintain positive business relationships;
- I. Discount certain products to retain its customer base;
- J. Suffer decreases in sales and lost profits
- K. Suffer brand damage to its excellent name; and/or
- L. Incur loss in value of the company.

COUNT I – NEGLIGENCE AGAINST POLYFIRST AND PROAMPAC

29. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

30. Poly and Pro had a duty to design, manufacture and deliver the Zipper Bags in a manner making them reasonably reliable for their intended use and for other foreseeable probable uses.

31. Poly and Pro breached such duties by designing and manufacturing the Zipper Bags in a defective condition.

32. RC has suffered and will continue to suffer substantial harm as a direct and proximate damages as a result of the abovesaid breach of duties owed by Defendants Poly and Pro.

33. It was foreseeable that the Zipper Bags, if negligently made, were highly likely to cause damage to RC.

WHEREFORE, RC demands judgment for damages against Defendants Poly and Pro together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AGAINST WESTERN

34. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

35. At all relevant times, Western was a merchant with respect to the Zipper Bags.

36. The Zipper Bags were not fit for their ordinary purpose.

37. RC used the Zipper Bags in the intended manner.

38. RC has suffered and will continue to suffer substantial financial damages, as more particularly set forth in paragraph 28, as a direct and proximate result of the above said defects in the Zipper Bags.

39. **bags**WHEREFORE, Plaintiff RC demands judgment for damages against Defendant Western together with prejudgment interests, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT III
FRAUD AGAINST WESTERN

40. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

41. In latter 2016 to early 2017, Defendant Western made the false and fraudulent Statements regarding material facts to RC, as more fully set forth in Paragraph 16.

42. When Defendant Western made the false and fraudulent Statements, Defendant Western did not have a manufacturing plant with the capabilities to produce custom Zipper Bags with such specifications. Further, Defendant Western omitted to tell Plaintiff material facts including, among other things, that Defendant had no experience whatsoever in making the bags Plaintiff needed. Accordingly, Defendant Western knew that such fraudulent Statements made to RC were false at the time they were made.

43. By making the fraudulent Statements to RC, Defendant Western intended to induce RC – and in fact did – to enter into the Contracts with Defendant Western for the manufacturing and sale of the Zipper Bags that would be used to package Plaintiff’s Products which would be sold to end-consumers.

44. RC, who is not a manufacturer of plastic zipper bags, reasonably and justifiably relied on Defendant Western’s fraudulent Statements and as a result entered into the Contracts with Western.

45. As a result of reasonably and justifiably relying on Western’s fraudulent and/or omitted material Statements, Plaintiff entered into the Contracts with Western. Plaintiff RC suffered and continue to suffer substantial damages as more fully set forth in Paragraph 28, which are incorporated by reference.

46. Western’s grossly reckless and/or intentional conduct entitles Plaintiff to punitive and/or exemplary damages in addition to the actual damages alleged above.

WHEREFORE, RC demands judgment against Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate. Plaintiff further seeks punitive damages pursuant against Defendant for its grossly negligent and/or intentional conduct.

COUNT IV
NEGLIGENT MISREPRESENTATION AGAINST WESTERN

47. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

48. In latter 2016 to early 2017, Defendant Western made the Statements to RC which negligently misrepresented material facts, as more fully set forth in Paragraph 16.

49. When Defendant Western made such negligent and careless misrepresentations of material fact, Defendant Western did not have a manufacturing plant with the capabilities to

produce custom Zipper Bags with such specifications. Accordingly, Defendant Western knew or should have known that such negligent representations made to RC were false at the time they were made.

50. By making the negligent misrepresentations to RC, Defendant Western intended to induce RC – and in fact did – to enter into the Contracts with Defendant Western for the manufacturing and sale of the Zipper Bags that would be used to package Plaintiff’s Products which would be sold to end-consumers.

51. RC, who is not a manufacturer of plastic zipper bags, reasonably and justifiably relied on Defendant Western’s negligent and careless misrepresentations and as a result suffered and continues to suffer substantial damages as more fully set forth in Paragraph 28.

WHEREFORE, RC demands judgment against Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT V
DECEPTIVE & UNFAIR TRADE PRACTICES ACT AGAINST WESTERN

52. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

53. This is an action for damages for violation of the Florida Deceptive and Unfair Trade Practices Act (§§ 501.201 to 501.213, Fla. Stat.) against Defendant Western.

54. RC entered into the Contracts with Defendant Western for the manufacturing and sale of the Zipper Bags that would be used to package Plaintiff’s Products which would be sold Plaintiff’s distributors or customers.

55. RC entered into the Contracts based Defendant Western’s Statements to RC as more fully set forth in Paragraph 16. RC also entered into the Contracts relying on Western’s advertising as more fully set forth in Paragraph 20.

56. Such understanding was therefore a part of the basis of the bargain between RC and Defendant Western.

57. RC has never been engaged in the business of manufacturing plastic zipper bags.

58. The sale of the Zipper Bags by Defendant Western to RC was a “consumer transaction” within the scope of the Florida Deceptive and Unfair Trade Practices Act, §§ 501.201 to 501.213 of the Florida Statutes.

59. In engaging in the above conduct, Defendant Western committed unfair, false and/or deceptive acts or practices in connection with the sale of the Zipper Bags.

60. As a result of Defendant Western’s unfair and deceptive conduct, RC has and continues to suffer damages which were proximately caused by Defendant Western’s violation of the Florida Deceptive and Unfair Trade Practices Act.

WHEREFORE, RC demands judgment against Defendant Western, together with attorney’s fees and costs, pursuant to § 501.211(2) of the Florida Statutes, prejudgment interest, and any other relief as the Court may deem just and appropriate.

COUNT VI
UCC EXPRESS WARRANTY AGAINST DEFENDANT WESTERN

61. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

62. RC entered into a contract with Defendant Western for the purchase of the Zipper Bags that would be used to package Plaintiff’s Products which would be sold to end-consumers.

63. RC entered into the Contracts relying on Defendant Western’s Statements and/or express warranties as more fully set forth in Paragraph 16.

64. Such representations were therefore a part of the basis of the bargain between RC and Defendant Western.

65. RC has never been engaged in the business of manufacturing plastic zipper bags.

66. The Zipper Bags delivered by Defendant Western did not, however, conform to the express Statements and/or warranties made by Western, in that they were structurally unfit; the plastic edges came apart and burst causing Plaintiff's Products to leak.

67. After receipt of the Zipper Bags, RC discovered the breach of express warranties and immediately gave notice to Defendant Western of the breach.

68. As a direct consequence of Defendant Western's breaches of warranties, RC has suffered and continues to suffer substantial damages as set forth in paragraph 28.

WHEREFORE, RC demands judgment against Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT VII
UCC IMPLIED WARRANTY OF
FITNESS FOR PARTICULAR PURPOSE AGAINST WESTERN

69. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

70. RC entered into the Contracts with Defendant Western for the purchase of the Zipper Bags that would be used to package Plaintiff's Products which would be sold to end-consumers.

71. At the time of entering into the contract for the sale of the Zipper Bags, Defendant Western was informed and knew, or had reason to know, that RC was purchasing the custom Zipper Bags as packaging that would house Plaintiff's Products, which would be sold to distributors or consumers.

72. RC relied on Western's skill, judgment, and Statements in manufacturing and furnishing the Zipper Bags pursuant to the Contracts.

73. The Zipper Bags sold and delivered to RC were not fit for their intended or particular purposes.

74. After receipt of the Zipper Bags, RC discovered the breach of warranty and immediately gave notice to Defendant Western.

75. As a direct consequence of Western's breach, RC has suffered substantial damages as set forth in paragraph 28.

WHEREFORE, RC demands judgment against Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT VIII
COMMON LAW BREACH OF
WARRANTY FOR THE SALE OF GOODS AGAINST WESTERN

76. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

77. RC entered into the Contracts with Defendant Western for the purchase of the Zipper Bags that would be used to package Plaintiff's Products which would be sold to end-consumers.

78. At the time of entering into the contract for the sale of the Zipper Bags, Defendant Western was informed and knew that RC was purchasing the Zipper Bags as packaging that would house Plaintiff's Products which would be sold to end-consumers.

79. RC entered into the contract entirely based on the Statements made by Western and its prior purchase of similar Zipper Bags from Defendant Western which had been satisfactorily produced and delivered. Thus, RC understood and believed that Defendant Western would deliver Zipper Bags that would conform with those previously purchased.

80. Such understanding was therefore a part of the basis of the bargain between RC and Western. As such, it constituted an express warranty by Defendant Western that the Zipper Bags delivered under the contract would conform to the prior suitable Zipper Bags sold and delivered by Defendant Western to RC and to the Statements made by Western.

81. After receipt of the Zipper Bags, RC discovered that the Zipper Bags were structurally unfit; the plastic edges came apart causing Plaintiff's Products to leak and immediately gave notice to Defendant Western.

82. As a direct consequence of Defendant Western's breach, RC suffered and continues to suffer substantial damages as set forth in paragraph 28.

WHEREFORE, RC demands judgment Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT IX
BREACH OF CONTRACT AGAINST WESTERN

83. RC re-alleges and incorporates by reference as though fully set forth herein each of the allegations of paragraphs 1 through 28, as fully set forth above.

84. RC entered into a series of contracts or purchase orders with Defendant Western for the purchase of the custom-made Zipper Bags specifically manufactured for RC that would be used to package Plaintiff's Products which would be sold to consumers. Copies of the Contracts are attached as Composite Exhibit "1" ("Contracts") and are incorporated by reference.

85. As consideration for the contract, RC paid Western to procure the Zipper Bags.

86. Defendant Western shipped and delivered Zipper Bags that were defective and not suitable for their intended use. Specifically, the Zipper Bags were, among other things, structurally unfit; the plastic edges came apart causing Plaintiff's Products to leak.

87. By shipping defective Zipper Bags, Defendant Western breached their obligations under the contract with RC.

88. As a result of the tremendous packaging problems caused by Defendants Western, Plaintiff was substantially damaged. Plaintiff was damaged, because it was forced to or did:

- A. Pull or withdraw Plaintiff's Products from the marketplace;
- B. Find another packaging source for Plaintiff's Products;
- C. Refund customers who had purchased Plaintiff's Products;

- D. Increase its workforce to accommodate customer complaints and demands by customers for credits;
- E. Delay Plaintiff's production of its goods and the sales of its products;
- F. Re-design new casts;
- G. Suffer increased loan costs;
- H. Incur travel costs for its CEO to see customers in different countries in the world in an effort to maintain positive business relationships;
- I. Discount certain products to retain its customer base;
- J. Suffer decreases in sales and lost profits
- K. Suffer brand damage to its excellent name; and/or
- L. Incur loss in value of the company.

89. As a direct consequence of Defendant Western's breach, RC suffered and continues to suffer substantial damages. RC's reputation in the competitive marketplace has been negatively impacted. RC has suffered lost sales, lost profits, lost company value, and lost customers. Defendants further caused an erosion in trust with RC's distributors and customers. Plaintiff further suffered increased costs and expenses.

WHEREFORE, RC demands judgment against Defendant Western, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT X
UCC EXPRESS WARRANTY
FOR SALE OF GOODS AGAINST POLYFIRST AND PROAMPAC

90. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

91. Poly and Pro entered into an agreement whereby it agreed to design, engineer, and manufacture the Zipper Bags that would be used to package Plaintiff's Products which would be sold to Plaintiff's distributors and consumers.

92. In the course of RC's purchase of the Zipper Bags, Poly made contacts with RC through their agent, Western, such that Poly extended express warranties to RC that the Zipper Bags would be free of defects in design and/or workmanship and/or would be merchantable and/or

fit for the particular purpose for which they were manufactured and sold and RC reasonably relied upon such warranty. Such understanding was therefore a part of the basis of the bargain for RC's purchase of the Zipper Bags. On approximately September 1, 2017, Pro undertook and assumed all duties and liabilities of Poly, because Poly "became Pro."

93. The Zipper Bags manufactured by Poly and/or Pro did not, however, conform to the express warranties made in that they were structurally unfit; the plastic edges and or seams burst or came apart causing Plaintiff's Products to leak and pour out, among other defects. Such defects rendered the Zipper Bags unfit for their intended purpose and thus not merchantable.

94. After receipt of the Zipper Bags, RC discovered the breach of warranty and immediately gave notice to Western and through Western's representative, to Poly and Pro, of the breach.

95. As a direct consequence of Poly and Pro's breach, RC has suffered substantial damages as more fully set forth in paragraph 28.

WHEREFORE, RC demands judgment against Defendants Poly and Pro, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT XI
UCC IMPLIED WARRANTY OF
FITNESS FOR PARTICULAR PURPOSE AGAINST POLYFIRST AND PROAMPAC

96. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

97. Poly and Pro entered into an agreement whereby they agreed to design, engineer, and manufacture the Zipper Bags that would be used to package Plaintiff's Products which would be sold to Plaintiff's distributors and consumers.

98. At the time of entering into the contract for the sale of the Zipper Bags, Poly made contacts with RC through their agent, Western, such that Poly was informed by Western and knew

that RC was purchasing the custom Zipper Bags as packaging that would hold or contain Plaintiff's Products which would be sold to consumers.

99. RC relied on Western's and thus Poly, and later Pro's skill and judgment in furnishing the Zipper Bags pursuant to Western's representations.

100. The Zipper Bags sold and delivered to RC were not fit for their intended purpose, in that they were structurally unfit; the plastic edges came apart causing Plaintiff's Products to leak, among other defects.

101. After receipt of the Zipper Bags, RC discovered the breach of warranty and immediately gave notice to Western and Poly and Pro through Western's representatives.

102. As a direct consequence of Poly and Pro's breach, RC has suffered substantial damages as more fully set forth in paragraph 28.

WHEREFORE, RC demands judgment against Defendants Poly and Pro together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT XII
UCC IMPLIED WARRANTY
OF MERCHANTABILITY AGAINST POLYFIRST AND PROAMPAC

103. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

104. Poly and Pro entered into an agreement whereby they agreed to design, engineer, and manufacture the Zipper Bags that would be used to package Plaintiff's Products which would be sold to Plaintiff's distributors and consumers.

105. Poly and Pro sold and delivered the Zipper Bags and Poly and Pro were paid for same.

106. The contract of sale for the Zipper Bags contained an implied warranty that Poly and Pro would manufacture Zipper Bags that were of a merchantable quality.

107. However, the Zipper Bags were not of merchantable quality in that they were structurally unfit; the plastic edges came apart causing Plaintiff's Products to leak, among other defects.

108. After receipt of the Zipper Bags, RC discovered the breach of warranty and immediately gave notice to Western of the breach. Western through its representatives gave notice to Poly and Pro of the breach.

109. As a direct consequence of Poly and Pro's breach, RC has substantial damages as more fully set forth in paragraph 28 and was forced to retain counsel to bring this action.

WHEREFORE, RC demands judgment against Defendants Poly and Pro together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT XIII
BREACH OF CONTRACT AS
THIRD-PARTY BENEFICIARY AGAINST POLYFIRST AND PROAMPAC

110. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

111. Defendant Western entered into a contract with Defendant Poly and Pro for the manufacturing of bags that would be used to package Plaintiff's Products, which would be sold by Western to RC. Such contract specifically provides that Poly and Pro would manufacture the Zipper Bags with Plaintiff's logo and design and then be responsible for shipping such custom-made bags directly to Plaintiff's suppliers and/or agents.

112. Accordingly, at the time of entering into such contract, it was the clear intent and purpose of Defendants Western, Poly, and Pro to confer a direct and substantial benefit on Plaintiff. Such contract is not in Plaintiff's possession but is believed to be in possession of the Defendants.

113. Poly and Pro breached the contract by delivering Zipper Bags to Plaintiff and/or Plaintiff's packagers and/or agents that were defective and structurally unfit; the plastic edges broke or burst apart causing Plaintiff's Products to leak or pour out.

114. As a direct and proximate result of Poly and Pro's breach of the contract, RC has suffered and continue to suffer substantial damages as more fully set forth in Paragraph 28, which are incorporated by reference.

WHEREFORE, RC demands judgment for incidental, compensatory, and consequential damages against Defendants Poly and Pro, together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate.

COUNT XIV
CIVIL CONSPIRACY
AGAINST WESTERN, POLYFIRST AND PROAMPAC

115. RC re-alleges and incorporates by reference the allegations of paragraphs 1 through 28, as fully set forth above.

116. In latter 2016 to early 2017, Defendants Western and Poly entered into a fraudulent scheme and agreement to mislead and rip-off the Plaintiff. On about September 1, 2017, when Pro took over Poly, Pro itself affirmatively entered into the same fraudulent scheme and conspiracy to mislead and rip-off the Plaintiff.

117. Defendants Western and Poly, and later Pro, conspired and agreed to act in a manner that would induce RC to enter into an agreement and/or to continue an agreement with Western for the manufacturing of custom bags or pouches by having Western make multiple false and fraudulent Statements to RC.

118. Acting on behalf of itself and Defendant Poly, Defendant Western made the false and fraudulent Statements regarding material facts to RC, as more fully set forth in Paragraph 16. Defendants Western and Poly, and later Pro, also omitted to state material facts to Plaintiff when in all good conscience they should not have. Defendant Western engaged in this wrongful conduct

for reasons of its own financial greed. Defendant Poly engaged in this wrongful conduct for reasons of its own financial greed and to gain a foothold into the new market of manufacturing custom bags or pouches. Defendant Pro entered into, engaged and continued this wrongful conduct for reasons of financial greed and to get a foothold into the new market of manufacturing custom bags or pouches.

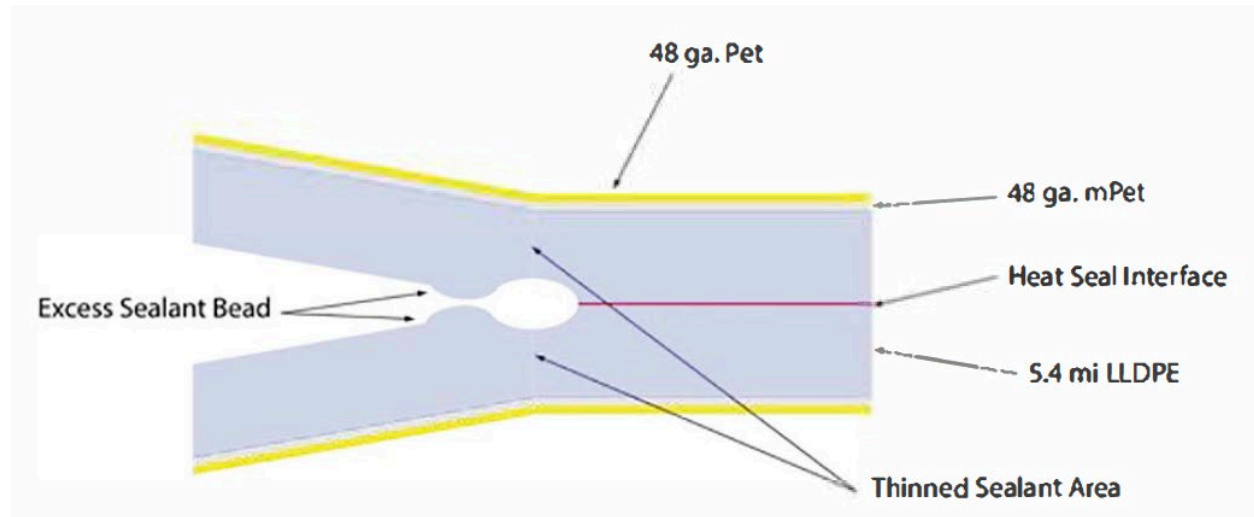
119. RC, who is not in the business of making custom bags or pouches for its products, reasonably and justifiably relied on the express fraudulent and/or omitted material Statements from Defendants Western and Poly, and later Pro.

120. All the while Defendants Western and Poly participated in the scheme of making false, fraudulent and misleading Statements to Plaintiff, they secretly knew they did not have a manufacturing plant or personnel with the requisite capability, skill, experience and/or prior success to make defect-free custom bags or pouches for the Plaintiff. Defendants Western and Poly deliberately concealed their sheer lack of experience and skill, all the while Poly knew that the heaviest powder bag it had manufactured up until November 2016 was a mere 1.6 pound powder bag for a different customer. Worse yet, Defendants Poly and Pro knew that the underlying contracts had powder weight requirements of 5, 10 and 15 lb. bags.

121. Defendant Poly specifically knew on November 16, 2016, that the it was already having serious problems with a 4 lb. pouch – not even powder -- for a different customer and that it had “leaks & blowouts” with that customer’s product. Poly admitted in writing on November 16, 2016, that it was “playing a game of chance in terms of success/failure” with the pouches to be made for Plaintiff, and this meant it acted intentionally, recklessly and with callous regard for the bests interests of Plaintiff.

122. Defendant Poly knew that there was a high or substantial likelihood that the bags would, in fact, fail because by July 13, 2017, it knew and confirmed in writing internally at Poly

that is had a “Protein Powder Pouch Bursting issue.” Poly knew in depth that “the burst failure is located in the heat-seal area:”



The redlined area was expressly described in writing to executives at Poly as a “weak spot.”

123. On July 13, 2017, the exact same date Defendants Poly and Pro were fully aware of the massive, serious production problems, Defendant Poly knowingly shipped the first round of defective bags to Plaintiff’s packager and/or agent Nutrablend in Lancaster, New York. Defendant Poly also knowingly shipped goods to Plaintiff’s packager and/or agent with a notation in writing that the bags had “Bad Lam.” or a bad laminate problem.

124. By concealing and not disclosing all of these material facts, Defendant Poly and Western induced the Plaintiff to enter into an agreement for them to make Plaintiff’s Zipper Bags or pouches. Defendants Western and Poly, and later Pro, intentionally, with gross negligence and/or recklessly gambled with Plaintiff’s entire company, its annual revenues of over \$15 million, and the livelihoods of over 15 employees. As a result of the foregoing, Defendants almost completely destroyed Plaintiff’s business.

125. At all material times, Defendants conspired and acted fraudulently, recklessly, intentionally and maliciously in their own selfish self-interests and with complete derogation of the well-being and rights of the Plaintiff. As a direct and proximate result of Defendants conduct, RC has substantial damages as more fully set forth in paragraph 28.

WHEREFORE, RC demands judgment against Defendants Western, Poly and Pro together with prejudgment interest, taxable costs, and any other relief as the Court may deem just and appropriate. Plaintiff expressly reserves the right to seek punitive damages against all three Defendants as a result of this serious civil conspiracy.

DEMAND FOR JURY TRIAL

RC demands a trial by jury on all issues so triable.

Respectfully Submitted,

CLAYTON TRIAL LAWYERS, PLLC
Attorneys for Plaintiff RCBA Nutraceuticals, LLC
401 East Las Olas Boulevard, Suite 130-725
Fort Lauderdale, Florida 33301
Phone: (954) 712-2300

By: /s/ William R. Clayton

WILLIAM R. CLAYTON
Florida Bar No. 485977
claytonw@ctlawyers.com
rosr@ctlawyers.com
MIGUEL ARISTIZABAL
Florida Bar No. 124925
aristizabalm@ctlawyers.com
camachoj@ctlawyers.com
service@ctlawyers.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on January 11, 2021, the foregoing document was electronically filed with the Clerk of Court via the Florida E-Filing Portal, which shall cause a copy to be served via electronic filing to:

Megan Costa DeVault, Esquire
Sara A. Brubaker, Esquire
AKERMAN LLP
Attorneys for Defendant
Polyfirst Packaging, Inc. and ProAmpac
Holdings, Inc.
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
megan.devault@akerman.com
jann.austin@akerman.com
sara.brubaker@akerman.com
kari.alhasnawi@akerman.com

Adam C. Herman, Esquire
MARSHALL DENNEHEY
Attorney for Defendant, Western Packaging, Inc.
315 E. Robinson Street, Suite 550
Orlando, Florida 32801
acherman@mdwcg.com
SCStirling@mdwcg.com

/s/ William R. Clayton

WILLIAM R. CLAYTON

COMPOSITE EXHIBIT “1”