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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

██████████

Plaintiff,

v.

Civil Action No.

IOVATE HEALTH SCIENCES U.S.A., INC.,
IOVATE HEALTH SCIENCES GROUP, INC.,
IOVATE HEALTH SCIENCES RESEARCH, INC.,
IOVATE HEALTH SCIENCES CAPITAL, INC.,
IOVATE COPYRIGHT, LTD.,
IOVATE HC 2005 FORMULATIONS, LTD.,
IOVATE HEALTH SCIENCES INTERNATIONAL, INC.,
MUSCLETECH RESEARCH AND DEVELOPMENT, INC.,
HDM FORMULATIONS LTD,
KERR INVESTMENT HOLDING CORPORATION
BODYBUILDING.COM, LLC
PROSOURCE PERFORMANCE PRODUCTS, INC.
and
GENERAL NUTRITION CENTERS, INC.,

DEMAND FOR JURY TRIAL

Defendants.

COMPLAINT

NATURE OF THE CASE

This action seeks damages suffered by Plaintiff, ██████████ as a direct and proximate result of the wrongful conduct of the Defendants in connection with the design, testing, quality assurance, manufacturing, labeling, warning, packaging, marketing, advertising, promotion, supply, distribution, post-market monitoring and/or surveillance, sale, and recall of its Hydroxycut weight loss products ("Hydroxycut Products").

PARTIES

1. Plaintiff, [REDACTED] is a citizen and resident of [REDACTED], Kentucky.
2. Defendant, Iovate Health Sciences U.S.A., Inc., is a Delaware corporation with headquarters at 3880 Jeffrey Boulevard, Blasdale, NY 14219.
3. Defendant, Iovate Health Sciences Group, Inc., is a Canadian corporation with headquarters at 381 North Service Road West, Oakville, Ontario L6M OH4.
4. Defendant, Iovate Health Sciences Research, Inc., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario L4W 5S2.
5. Defendant, Iovate Health Sciences Capital, Inc., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.
6. Defendant, Iovate Copyright, Ltd., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.
7. Defendant, Iovate Health Sciences Group, Inc., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.
8. Defendant, Iovate Health Sciences International, Inc., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.
9. Defendant, Iovate HC 2005 Formulations, Ltd, is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 552.
10. Defendant, MuscleTech Research and Development, Inc., is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 552.
12. Defendant, HDM Formulations, Ltd, is a Canadian corporation with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2.
13. Kerr Investment Holding Corporation is a Canadian corporation and the parent company of MuscleTech Research and Development, Inc., Iovate Health Sciences, Inc., Iovate Health Sciences

U.S.A., Inc, and HDM Formulations Ltd, with headquarters at 5100 Spectrum Way, Mississauga, Ontario, L4W 552.

14. The Defendants in the above numbered paragraphs 2 through 13 are collectively identified hereinafter as "Product Defendants."

15. Defendant, General Nutrition Centers, Inc. (hereinafter "GNC") is a Delaware corporation with its principal place of business located at 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

16. Defendant, Bodybuilding.com, LLC (hereinafter "Bodybuilding.com") is a Delaware Corporation with its principal place of business at 2026 S. Silverston Way, Meridian, Idaho 83642.

17. Defendant, ProSource Performance Products, Inc. (hereinafter "ProSource") is a New Jersey Corporation with its principal place of business at 2231 Landmark Place, Manasquan, New Jersey 08736.

18. The Defendants in the above numbered paragraphs 15 through 17 are collectively identified hereinafter as "Retail Defendants."

19. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, that the employees of Product Defendants and Retail Defendants, their subsidiaries, affiliates and other related entities, were the agents, servants, and employees of the Product Defendants and Retail Defendants and at all times herein mentioned, each was acting within the purpose of scope of said agency and employment. Whenever reference in this complaint is made to any act or transaction of any defendant, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or other representatives of said Product Defendants and Retail Defendants committed, knew of, performed, authorized, ratified, and/or directed such act or transaction on behalf of said Product Defendants and Retail Defendants, while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 because of the amount in controversy exceeds \$75,000 exclusive of interest and costs. Jurisdiction is based on diversity of citizenship, because Plaintiff is a citizen and resident of Kentucky and none of the defendants have

their headquarters or principal places of business in Kentucky.

21. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391(a)(2) because the defendants regularly solicit and engage in business and other persistent courses of conduct and derive substantial revenues from goods used in the State of Kentucky, Defendants are corporations maintaining sufficient minimum contacts with this judicial district to subject the corporations to personal jurisdiction here.

22. Defendants derive substantial revenue in Kentucky from interstate commerce.

23. Defendants have each done substantial business in each state in the United States, including Kentucky.

24. The acts of the Defendants as set forth below caused the Plaintiff's injuries in this district.

FACTUAL ALLEGATIONS

25. The Product Defendants are in the business of formulating, designing, manufacturing, marketing, and advertising, distributing and selling various dietary supplements including muscle builders and fat burners/thermogenics.

24. Said products are sold at retail stores such as GNC and on websites such as Bodybuilding.com and ProSource.net, throughout the United States.

25. In 2008, at least 9 million packages of Hydroxycut Products were sold in this country.

26. GNC operates retail stores that are engaged among other things in the retail sale of prescription and non-prescription drugs, and general merchandise.

27. GNC also sells merchandise via a proprietary website which may be accessed by consumers nationwide. GNC markets, advertises and sells Hydroxycut Products in its stores and on its website.

28. Bodybuilding.com sells merchandise via a proprietary website which may be accessed by consumers nationwide. Bodybuilding.com markets, advertises and sells Hydroxycut Products on its website.

29. ProSource sells merchandise via a proprietary website (ProSource.net) which may be

accessed by consumers nationwide. ProSource markets, advertises and sells Hydroxycut Products on its website.

I. Obesity and Diet Supplements

30. Obesity has become an increasingly important public health problem in the United States. Recent data show that more than 30% of adults are obese and 65% overweight.

31. The use of dietary supplements for weight loss has become increasingly popular, as reflected by the \$55.4 billion spent in United States in 2006 for weightloss and diet control. Based on a study by the National Center for Complimentary and Alternative Medicine (NCCAM), 36% of adults are using some form of complimentary or alternative medicine, which rises to 62% when including megavitamins or prayer.

32. Although dietary and herbal supplements are governed under the DSHEA (Dietary Supplements Health and Education Act) of 1994, they are not presently regulated by the US Food and Drug Administration, and the safety profiles of many are unknown.

II. Hydroxycut

33. Hydroxycut is the brand name of some of America's top-selling weightloss products which are taken by millions of consumers each year.

34. Hydroxycut is a Registered Trademark and is part of the name of many products, examples of which include Hydroxycut, Hydroxycut Hardcore, and Hydroxycut Caffeine Free, Iovate and MuscleTech, a company owned by Iovate, both of which market Hydroxycut Products.

32. Hydroxycut has been marketed by Iovate Health Sciences, Inc. and manufactured by MuscleTech as a weight control, fat-burner, and energy enhancement dietary supplement. Hydroxycut Products bear the Iovate or MuscleTech brand names. In the United States, Hydroxycut Products are distributed by Iovate Health Sciences USA, Inc., of Blasdell, New York.

33. The products contain a variety of individual ingredients as well as numerous proprietary blends such as "Hydroxagen Plus, Hydroxy Tea, HydroxyTea CF, Hydroxycut Proprietary Blend, Max! Liqui-Burn, Max! Weight-Loss Matrix, Hydroxycut Hardcore Proprietary Blend Proxyclyene, Noreidrol

Intensity Focus Blend, Lasidrate Delivery Blend, or Yohimbacore."

III. Reports-of Hydroxycut-Related Injuries

34. In 2002, the Center for Food Safety and Applied Nutrition's (CFSAN) adverse event reporting system, CAERS, began receiving reports of liver-related illnesses in persons who reported consuming the dietary supplement Hydroxycut capsules/caplets for periods ranging from as short as a week to two (2) months. Since the earlier formulation of Hydroxycut contained ephedra, it was generally believed that the reports of liver injury associated with the use of the product were due either to ephedra or a combination of the ingredients found in the product. However, following the removal of ephedra from Hydroxycut capsules/caplets, CFSAN continued to receive reports of liver injury associated with the use of Hydroxycut capsules/caplets. In addition, CFSAN became aware of reports of Hydroxycut associated liver toxicity published in the peer-reviewed literature and received communications from independent hepatologists regarding cases of liver toxicity associated with the use of the Hydroxycut capsules/caplets.

Hydroxycut-associated liver toxicity reports in CAERS.

35. The FDA reports 23 case reports of Hydroxycut-associated liver toxicity have been identified in CAERS for the period 2002 through 2008.

36. For cases in which gender was known, 15 (65%) were female. Ages ranged from 20 years to 51 years (median = 29 years). Sixteen cases (70%) were hospitalized. The majority of cases reported no underlying risk factors for liver disease (e.g., no history of viral hepatitis, no HIV infection, no autoimmune diseases). Although the reports vary in detail, several reports describe work-ups that ruled out infectious, autoimmune, and metabolic causes of liver disease. The severity of illness ranged from asymptomatic elevations in serum bilirubin to acute liver failure (one patient received a liver transplant in 2002, a second patient was reportedly waiting for a liver transplant in 2004) to one death.

Reports of Hydroxycut-associated liver toxicity in the peer-reviewed literature.

37. The FDA indicates that it was aware of four published reports in the peer-reviewed literature that describe liver disease that occurred in six persons following the consumption of Hydroxycut

capsules/caplets.

38. The FDA reports that the aforementioned cases are consistent with the diagnosis of idiosyncratic hepatotoxicity for a number of reasons: the temporal relationship between the consumption of Hydroxycut capsules/caplets and the development of acute liver injury in persons who had no history of known liver disease; the exclusion of other causes of liver disease following extensive work-ups; the resolution of liver injury upon discontinuation of Hydroxycut capsules/caplets; and the development of liver injury is not dose dependent. Also apparent were two distinct patterns of liver injury: cholestatic and necrotic. It is not unusual for a single herbal preparation to produce more than one type of clinicopathologic liver injury.

Discussions with hepatologists.

39. The FDA reported findings from discussions in March and April 2009 with hepatologists Tse-Ling Fong, M.D. of the University of Southern California, and William Lee, M.D. of the University of Texas, Southwestern Medical Center, CFSAN has become aware of these physicians' case series of patients with severe liver disease associated with the use of Hydroxycut capsules/caplets. Two cases from this series, representing additional cases to the ones reported to CFSAN, underwent liver transplantation following acute liver failure.

IV. FDA Writes Iovate on April 30, 2009

40. On April 30, 2009 Stephen F. Sundlot Director Center for Food Safety and Applied Nutrition wrote to Mr. Terry Begley of Iovate Health Sciences, Inc. The letter confirmed that on March 31, 2009, the U.S. Food and Drug Administration (FDA) informed Iovate during a meeting of concerns that the FDA had about liver toxicity associated with the use of multiple versions of the dietary supplement Hydroxycut marketed under the Iovate and MuscleTech brand names. The FDA's concerns were based on adverse events reported to FDA, case reports in the peer-reviewed literature, and in a case series described by hepatologists to FDA. The FDA advised Iovate that it had concluded that the ingestion of the dietary supplement Hydroxycut presents a "severe potentially life- threatening hazard to some users."

41. The FDA reported that it held a telephone conversation on April 29, 2009, between outside counsel for Iovate Health Sciences, Inc., and Mr. Eric Blumberg, Deputy Chief Counsel, Litigation, Office of Chief Counsel, FDA, wherein the FDA explained its conclusions about the safety of Hydroxycut Products and the additional actions that the FDA expected Iovate to take in response to the serious public health hazards presented by the Hydroxycut dietary supplements.

42. The FDA concluded that three lines of evidence derived from multiple disparate sources suggest it is very likely that exposure to Hydroxycut capsules/caplets can cause idiosyncratic hepatotoxicity. First, many of the subjects described in the adverse event reports to CAERS, in the peer-reviewed literature, and in the case series described by hepatologists reported no history of liver disease or risk factors for liver disease (e.g., alcohol consumption, previous viral infection, hereditary factors; etc.) prior to experiencing liver injury following the ingestion of Hydroxycut capsules/caplets. Second, in many subjects, thorough diagnostic evaluations performed in multiple settings ruled out a number of known causes of liver disease, including viral hepatitis, autoimmune diseases, and metabolic/inherited disorders. Third, prompt resolution of liver disease occurred in a number of patients following cessation of Hydroxycut capsules/caplets ingestion. While some adverse event reports involved users who had consumed more than the daily dosage recommended on the products' labeling, if these reports were excluded from consideration, the remaining evidence demonstrates liver related adverse effects following exposure to Hydroxycut capsules/caplets. In addition to Hydroxycut capsules/caplets associated liver-related adverse effects, CFSAN is aware of a number of CAERS reports that describe seizures, rhabdomyolysis, and cardiovascular signs-and symptoms.

43. The FDA, based on the totality of evidence, concluded that the ingestion of the dietary supplement, Hydroxycut, presents a severe and potentially life-threatening hazard to some users.

44. The FDA also disagreed with claims of Iovate that some Hydroxycut Products were safe:

While the firm believes that the lack of reported adverse events associated with the use of the Hydroxycut shot product and the drink mixes is evidence that they are safe, FDA disagrees. The reports of acute liver injury in individuals who have consumed Hydroxycut capsules/caplets represent idiosyncratic reactions, meaning that the injuries have occurred as a result of conditions peculiar to the affected individuals. As such, the

incidence of injuries of this nature is unpredictable and may result from peculiar metabolic interactions between one or more Hydroxycut ingredient and the host's physiologic system. There are no data to indicate that the dose or duration of use of any particular Hydroxycut ingredient, or the gender, or any other identifiable trait of a Hydroxycut user predicts the risk of an adverse event. In light of this, and because the fact that the drink mixes and `shot' products share ingredients with products known to be associated with adverse events, and because it is unknown which ingredient(s) of Hydroxycut are responsible for producing the idiosyncratic reactions, we believe that the reasonable conclusion to be drawn is that these products present the same risks as the Hydroxycut capsules/caplets.

45. Given the seriousness of the hazard presented by Hydroxycut, Iovate Health Sciences, Inc. voluntarily agreed to cease distribution of all existing formulations of Hydroxycut and recall from the marketplace, to the consumer/user level, all existing formulations of Hydroxycut.

V. FDA Hydroxycut Warnings

46. On May 1, 2004, the FDA issued an advisory which-stated, "Although the liver damage appears to be relatively rare, FDA believes consumers should not be exposed to unnecessary risk".

47. The FDA warned consumers (5/1/09) to immediately stop using Hydroxycut Products by Iovate Health Services, Inc. of Oakville, Ontario. Some Hydroxycut Products are associated with a number of serious liver injuries. Iovate agreed to immediately recall Hydroxycut Products from the US market.

48. The FDA issued this "dear doctor" letter that stated as follows:

Dear Health Care Professional Colleague:

We are alerting you about a dietary supplement product that we believe presents a serious public health risk. Hydroxycut Products are distributed by Iovate Health Sciences Inc., Oakville, Ontario Canada and distributed by Iovate Health Sciences U.S.A., Inc. of Blasdell, NY, and have been implicated in several cases of serious liver injury. The Food and Drug Administration (FDA) has received 23 reports of adverse liver effects in users of Hydroxycut Products, ranging from asymptomatic hyperbilirubinemia, jaundice, liver damage, liver transplant, and death. The injuries reported to FDA occurred in persons between 21 and 51 years of age, No other cause for liver disease was identified. In the majority of cases, no preexisting medical condition that would predispose the consumer to liver injury was identified. In some cases, discontinuation of Hydroxycut usage resulted in recovery of liver function. Although the liver damage appears to be relatively rare, FDA believes consumers should not be exposed to unnecessary risk, FDA has also identified several other serious adverse events associated with Hydroxycut, including cases of seizures, rhabdomyolysis, and cardiovascular disorders ranging in severity from palpitations to a heart attack.

Hydroxycut Products bear the Iovate or Muscletech Brand name and are multi-ingredient dietary supplements marketed for weight loss, as fat burners, energy enhancers, as low carb diet aids, and to promote water loss. The following products have been recalled by the company:

- Hydroxycut Regular Rapid Release Caplets;
- Hydroxycut Caffeine-Free Rapid Release Caplets;
- Hydroxycut Hardcore Liquid Caplets;
- Hydroxycut Max Liquid Caplets;
- Hydroxycut Regular Drink Packets;
- Hydroxycut Caffeine-Free -Drink Packets;
- Hydroxycut Hardeore_Drink Packets (Ignition Stix);
- Hydroxycut-Max Drink Packets;
- Hydroxycut Liquid Shots;
- Hydroxycut Hardcore RTDs (Ready-to-Drink);
- Hydroxycut Max Aqua Shed;
- Hydroxycut 24;
- Hydroxycut Carb Control; and
- Hydroxycut Natural,

Based on the information available to FDA, we cannot determine exactly which ingredient(s) or proprietary blends in Hydroxycut may be associated with liver injury, or what other factors, such as health condition, length of use, dosage, or use along with other dietary supplements or drugs, may affect the risk of using Hydroxycut.

FDA is warning consumers to immediately stop use of these products. FDA has issued a consumer warning advising of the potential risks associated with the use of these products and advising consumers to consult their health care provider if they are experiencing symptoms possibly associated with this product, particularly nausea, weakness or fatigue, fever, abdominal pain, or any change in skin color.

We urge you to review your cases of hepatitis in order to determine if any may be

related to the use of dietary supplements in these patients. Adverse events associated with the use of dietary supplements should be reported as soon as possible to FDA's MedWatch program by telephone (1-800-332-1088) or Internet (<http://www.fda.gov/medwatch>).

Thank you for your efforts and cooperation in addressing this potentially serious public health issue. For additional information, see <http://www.efsa.fda.gov>.

49. On May 1, 2009, the FDA warned consumers to stop using Hydroxycut Products, as the dietary supplements were felt to be linked to one death, and 23 reports of serious health problems ranging from jaundice and elevated liver enzymes, an indicator of potential liver injury, to liver damage requiring liver transplant. Other health problems reported include seizures, cardiovascular disorders, and rhabdomyolysis.

50. Liver injury was reported by patients at the doses of Hydroxycut recommended on the bottle. Symptoms of serious liver disease include jaundice (yellowing of the skin or whites of the eyes), and brown urine. Non-specific symptoms of liver disease can include nausea, vomiting, light colored stools, excessive fatigue, weakness, stomach or abdominal pain, itching and loss of appetite.

51. The packaging of the Hydroxycut Products promotes their use to "increase energy," "burn calories and "control appetite" and boasts that they are made with "clinically proven ingredients." In addition, the packaging claims that "Hydroxycut® Works Fast!" The packaging further states as follows:

"Hydroxycut® is America's #1 selling weight-loss supplement. Hydroxycut really does work — fast! Utilizing sophisticated Rapid-Release Caplets, Hydroxycut is doctor formulated+ with clinically proven ingredients top help you lose up to 4.5 times the weight than diet and exercise alone. Now with an improved HydroxyTea® blend, there's even more reason to love Hydroxycut®."

52. The packaging also states: "[d]on't take chances — you deserve the best! Put your trust in the power of Hydroxycut® and discover for yourself why millions of men and women all across America have used Hydroxycut. For fast weights loss, make Hydroxycut® your #1 choice today!"

53. The Hydroxycut Products packaging makes much of Hydroxycut being "doctor formulated" and approved. In this regard, the side of the Hydroxycut Products packaging boasts that the Hydroxycut Products are "Backed by Science" and includes a picture of Dr. John Marshall, D.O.,

"Resident Physician" and his statement that "Hydroxycut® is a product that has ingredients proven to work. I've recommended it to a number of men and women and have used it myself with fantastic results." The packaging also credits Dr. Marvin Heuer, FAAFP, Iovate's Chief Scientific Officer, with formulating the Hydroxycut Products.

54. The FDA's reasoning for the May 2009 activity and warnings over Hydroxycut Products can be found in a Health Hazard Evaluation Board document entitled "The Problem: Liver toxicity following consumption of dietary supplements, Hydroxycut". Their conclusion was, "Three lines of evidence derived from multiple disparate sources suggest it is very likely that exposure to Hydroxycut can cause idiosyncratic hepatotoxicity" The report was authored by Linda Katz, M.D., interim chief medical officer of FDA's Center for Food Safety and Applied Nutrition.

VI. Hydroxycut Products are Recalled.

55. Iovate initiated a voluntary recall when it became aware that the FDA's assessment of 23 reports about consumers having experienced liver-related problems, as well as a small number of published case reports, was different from Iovate's analysis. As of May 1, 2009 the list of products that were voluntarily recalled by Iovate included:

HYDROXYCUT RAPID RELEASE REGULAR CAPLETS 631656893649 Hydroxycut
140ct Cap US
531656833621 Hydroxycut 60 ONC US
631656600988 Hydroxycut.300ct Caplets US
631656890129 Hydroxycut 36ct Cap US "with CARDS" 631656282245 Hydroxycut
160ct Cap US *Discontinued" 631656873214 Hydroxycut 58ct Cap US
631656813418 Hydroxycut 70ct Cap US
631656808612 Hydroxycut 70ct Caps US *Discontinued" 631656806117 Hydroxycut
100 cap US *Discontinued" 631656818642 Hydroxycut 140ct Cap US *Discontinued"
631656882414 Hydroxycut 80ct Caps US *Discontinued* 631656843262 Hydroxycut
210ct Cap US
631656828665 Hydroxycut 210 cap US *Discontinued" 631656600582 Hydroxycut 60ct + 1
Hydroxycut Sachet WB US 631656600476 Hydroxycut 72ct + Hydroxycut Sachet WB US
631656600483 Hydroxycut 100ct Caplets US
631655600506 Hydroxycut 150ct Caplets US
631656601251 Hydroxycut 170 Caplets US
631656600452 Hydroxycut 30ct Caplets US

HYDROXYCUT HARDCORE LIQUID CAPSULES 531656600650 Hydroxycut
Hardcore 120ct US 531656600834 Hydroxycut Hardcore 210ct US 631656001778
Hydroxycut Hardcore 30ct US 631656601435 Hydroxycut Hardcore 252ct US
631656601848 Hydroxycut Hardcore 30ct US Trial - Bodybuilding.com 631656601 749 Hydroxycut
Hardcore 120ct US NEW 631656601 763 Hydroxycut Hardcore 252ct US 631656601756
Hydroxycut Hardcore 210ct US NEW

HYDROXYCUT CAFFEINE-FREE CAPLETS 631658801224 Hydroxycut Caffeine
Free 140ct Cap US 631656821246 Hydroxycut Caffeine Free 330ct Cap US
631656801 217 Hydroxycut Caffeine Free 100ct Cap US 631656801231 Hydroxycut
Caffeine Free 58ct Cap US 631656699122 Hydroxycut Caffeine Free 36ct Cap US
6316566005-44 Hydroxycut Caffeine Free 60ct US 631856600551 Hydroxycut
Caffeine Free 72ct US 831656600568 Hydroxycut Caffeine Free 100ct US

HYDROXYCUT MAX CAPLETS

631656601466 Hydroxycut Max 120ct Bonus + 1 Hyd Max Sachet WB US 631656601633 Hydroxycut
Max 210ct Bonus + 1 Hyd Max Sachet WB US

HYDROXYCLIT REGULAR DRINK PACKET

631656860191 Hydroxycut Weight Loss Drink Mix 21pk Sachet-Wild Berry US 631656660313
Hydroxycut Weight Loss Drink Mix 2lpk Sachet - Country Lemonade US

HYDROXYCIJT HARDCORE DRINK PACKET (IGNITION STIX)

631656701326 Hydroxycut Hardcore Drink Mix 2,7g Sachet - Blue Raspberry US 631656701319
Hydroxycut Hardcore Drink Mix 2.69 Sachet - Fruit Punch US 631656760115
Hydroxycut.Hardcore DrinkMix4Opkx2g Sachet- FruitPunch US 631655760125 Hydroxycut
Hardcore Drink Mix 4Opk x 2g Sachet - Blue Raspberry US

HYDROXYCUT CAFFEINE-FREE DRINK PACKET

631658760095 Hydroxycut Caffeine Free Drink Mix 21 pk x 3.6g Sachet - Raspberry lee US

HYDROXYCUT MAX DRINK PACKET

631556850375 Hydroxycut Max Drink Mix 40plc x 2,4g Sachet - Wild Berry US
631656860382 Hydroxycut Max Drink Mix 40pkx2.7g Sachet-Lemonade US

HYDROXYCUT LIQUID SHOT

631556800159 Hydroxycut Weight Loss Single Shot 2oz -Wild Berry US
631656860207 Hydroxycut Weight Loss Shot2 x2oz Pk-Wild Berry US 631656860498
Hydroxycut Instant Weight Loss Shot 12 x 2oz - Wild Berry US

HYDROXYCUT MAX AQUA SHED

631656601855 Hydroxycut MaxAqua Shed 60ct Capsules US

HYDROXYCUT HARDCORE RTD

631656850436 Hydroxycut Hardcore 4 x8oi RTD - GrapelInfusion US 531655860399
Hydroxycut Hardcore 4 x 8oz RTD -Triple Wild Berry US 631656860665 Hydroxycut
Hardcore 12-pack RTD - Grape Infusion US 631655850467 Hydroxycut Hardcore 3 x
4-pack RTD-- _Grape Infusion US 631656860443 Hydroxycut Hardcore 3 x 4-pack
RTD - Triple Wild Berry US 631656860443 Hydroxycut Hardcore 3x4-pack RTD-
Triple Wild Berry US 631656560568 Hydroxycut Hardcore 12-pack RTD -Triple Wild
Berry US

HYDROXYCUT 247

631656600933 Hydrozycut24 (96 caps/ blister pack) US

HYPROXYCUT CARE CONTROL

631656800038 Hydroxycut Carb Control 58ct Cap US
631656800029 Hydroxycut Carb Control 100ct Cap US
631666800012 Hydroxycut Carb Control 140ct Cap US

HYDROXYCUT NATURAL

631656600889 Hydroxycut Natural 100ct US

56. On May 7, 2009 the scope of the Hydroxycut recall was widened. Additional products all involve additional packages and sizes of products previously referenced. The TJPC numbers added to the May 1, 2009 list are as follows:

631656800265 Hydroxycut Hardcore 8 fl. oz. Grape Explosion 631656800210
Hydroxycut Hardcore 8 fl. oz. Triple Wildberry 631656001501 Hydroxycut
280ct-3 Pak Kit *Discontinued* 631656001563 Hydroxycut 280ct-6 Pak Kit
Discontinued 631656000658 Hydroxycut 100ct-6 month supply (7 bottles+ 4
free) Kit 631656600896 Hydroxycut 2x60ct Club Pack US Kit
631656000672 Hydroxycut 100ct-1 month supply (1 bottle+1 free) Kit *Discontinued*
631656874693 Hydroxycut 58 cap 12-pack Target US Kit *Discontinued* 631656000665
Hydroxycut 100ct-3 month supply (4 bottles+2 free) Kit *Discontinued* 631656002362
Hydroxycut Sachet Twin Pack US Kit 631656860498 Hydroxycut Instant Weight Loss Shot 12
x 2oz - Wild berry US Kit 631656660623 Hydroxycut Hardcore Shredded Stack Kit 20ct
631656500585 Hydroxycut 60 Rapid Release Caplets

57. Product Defendants and Retail Defendants, negligently formulated, designed, manufactured, marketed, advertised, promoted, distributed and/or sold Hydroxycut Products that can potentially cause serious health problems including, but not limited to, jaundice and liver failure.

58. Product Defendants failed to properly research the ingredients used in the Hydroxycut Products to ensure that they were safe for consumption and did not cause adverse health effects.

59. As a result of the acts and practices detailed herein and Plaintiff's reasonable belief in the quality and safety of Hydroxycut Products, and the consequent reasonable belief that Hydroxycut Products would not have adverse health effects, Plaintiff was misled into purchasing the unsafe Hydroxycut Products. Hydroxycut Products did not provide the attributes and benefits Plaintiff reasonably expected to receive, sought and thought he was receiving. As a result, Plaintiff bought Hydroxycut Products at Retail Defendants, which were not safe for consumption, that he would not have purchased had Product Defendants and Retail Defendants disclosed the material facts detailed herein, which were in their exclusive possession and that they were obligated to disclose or should reasonably have disclosed.

60. Product Defendants and Retail Defendants failed to warn purchasers of the unreasonably dangerous characteristics associated with Hydroxycut Products, including the fact that it may cause serious liver problems and other health problems. Product Defendants failed to institute an earlier recall of Hydroxycut.

61. Based on the above material facts and statements, Product Defendants and Retail Defendants owed a legal duty to Plaintiff to formulate, design, manufacture, market, advertise, distribute

and sell Hydroxycut Products that were safe for human consumption or not sell such products.

62. Product Defendants and Retail Defendants breached their duty, which directly and proximately caused or resulted in Plaintiff suffering injury in fact, a loss of money or property, the personal expenditure of time and resources and/or other forms of injury and/or damage.

63. In addition, based on the duties owed to Plaintiff by Product Defendants and Retail Defendants not to expose consumers to potentially harmful products, Plaintiff is entitled to the reasonable value of the cost of medically monitoring his condition, as the need for medical monitoring is a reasonable consequence of suffering liver-related and gallbladder-related injuries due to the consumption of Hydroxycut Products and is thus necessitated as a direct result of use, and is reasonable considering 1) the significance and extent of the consumption of Hydroxycut Products; 2) the relative increase in the chance of onset of liver and gallbladder problems as a result of using Hydroxycut Products, when compared to the chances of liver and gallbladder problems absent such use; 3) the seriousness of the conditions for which the Plaintiff is at risk; and 4) the clinical value of early detection.

64. Product Defendants and Retail Defendants, in the exercise of reasonable care, knew or should have known that Hydroxycut Products potentially cause liver and gallbladder problems and other health problems including, but not limited to, jaundice and liver failure. Plaintiff might have reasonably been expected by Product Defendants and Retail Defendants to purchase and ingest Hydroxycut Products and be adversely affected by their defective condition.

64. As Hydroxycut reports of side effects, including, but not limited to, liver and gallbladder damage, came to light and Retail Defendants knew or should have known that Hydroxycut Products were not safe to sell to the public and Plaintiff.

VII. Plaintiff's Experience

65. Prior to May 2009, Plaintiff, [REDACTED] purchased Hydroxycut Products and did so because he had been exposed to the promotion, advertising and marketing of Hydroxycut Products as set forth in detail herein, Entrusting Product Defendants and Retail Defendants, he relied on the reputations of the Product Defendants and Retail Defendants in purchasing Hydroxycut Products, and was misled

into thinking that Hydroxycut Products were healthy and safe for use, which was false and misleading since the Hydroxycut Products caused liver and gallbladder problems and other health problems. As a result of the Product Defendants' and Retail Defendants' deceptive marketing scheme and a reliance on the purported trustworthiness and safety of Hydroxycut Products, he was misled in the purchasing and spending money on Hydroxycut Products, In exchange for his money, Plaintiff received something other than what was represented. As a result he was injured.

66. Plaintiff, [REDACTED] ingested Hydroxycut Products for a period of time from 2005 to 2009.

67. On or about May of 2009, Plaintiff was diagnosed with gall stones, inflammation of the gall bladder, elevated liver enzymes, and jaundice. He was told that he needed his gallbladder removed.

68. The full extent of the damage to Plaintiff's liver is not yet known and he continues to seek medical treatment for same.

COUNT I

PRODUCT LIABILITY ACTION

69. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

70. The Product Defendants designed, formulated, manufactured, promoted, marketed, and advertised, packaged, labeled, and distributed Hydroxycut Products to consumers.

71. The use of Hydroxycut Products at doses recommended can cause serious liver and gallbladder problems including, but not limited to, jaundice and liver failure.

74. The subject matter Hydroxycut was not reasonably safe at the time it left the Product Defendants.

75. That according to generally accepted production practices at the time said Hydroxycut left the control of the Product Defendants, a practical and technically feasible alternative production practice was available that would have prevented the harm including, but not limited to, not supplying it to the general public in a context that it was given and/or changing the formula so as not to create risk of injury.

76. The subject matter Hydroxycut Products were not altered from the date of manufacture to

the date of use.

77. The subject matter Hydroxycut Products were not misused by the Plaintiff.

78. As a direct and proximate result of the Product Defendants' defective condition of the Hydroxycut Products, Plaintiff [REDACTED] has sustained serious injuries as noted herein.

79. As a direct and proximate result of the Product Defendants' defective condition of the Hydroxycut Products and the sale and distribution by Retail Defendants, Plaintiff [REDACTED] has sustained loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress.

80. As a direct and proximate result of the Product Defendants' defective condition of the Hydroxycut Products and the sale and distribution by Retail Defendants, Plaintiff [REDACTED] will sustain in the future loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress because the nature of his injuries are permanent.

COUNT II

PRODUCT LIABILITY ACTION - WARNING

81. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set-forth herein.

82. The Product Defendants and Retail Defendants designed, formulated manufactured, promoted, marketed, and advertised, packaged, labeled, and distributed Hydroxycut Products to consumers. The use of Hydroxycut Products at doses recommended potentially causes serious liver problems including, but not limited to, jaundice and liver failure.

83. Plaintiff, [REDACTED] was not a sophisticated user of this Product and did not understand its chemistry, but rather relied upon false statements made by the Product Defendants and Retail Defendants as to the safety of the Product.

84. Liver damage is not an inherent characteristic that is necessary in the formulation of diet drugs.

85. Plaintiff, [REDACTED] did not recognize the inherent danger in the use of the

subject Hydroxycut Products for he was a person with ordinary knowledge in the community.

86. The Product Defendants and Retail Defendants failed to warn of the dangers of liver damage when using the aforesaid Hydroxycut Products.

87. As a direct and proximate result of the Product Defendants' and Retail Defendants' failure to adequately warn, Plaintiff, [REDACTED] sustained serious injuries as noted herein.

88. As a direct and proximate result of the Product Defendants' and Retail Defendants' failure to adequately warn, Plaintiff [REDACTED] has sustained loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress.

89. As a direct and proximate result of the Product Defendants' and Retail Defendants' failure to adequately warn, Plaintiff [REDACTED] will sustain in the future loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress because the nature of his injuries are permanent.

COUNT III

BREACH OF EXPRESSED WARRANTY

90. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

91. The Product Defendants designed, formulated, manufactured, promoted, marketed, and advertised, packaged, labeled, and distributed Hydroxycut Products to consumers.

92. The Product Defendants and Retail Defendants sold the subject matter Hydroxycut Products.

93. The use of Hydroxycut Products at doses recommended potentially causes serious liver problems including, but not limited to, jaundice and liver failure.

94. The Product Defendants and Retail Defendants supplied a Hydroxycut Products which failed to conform to its expressed warranty of being safe to-use.

95. As a direct and proximate result of the Product Defendants' and Retail Defendants' breach of expressed warranty, Plaintiff [REDACTED] has sustained serious injuries as noted herein.

96. As a direct and proximate result of the Product Defendants' and Retail Defendants' breach of expressed warranty, Plaintiff [REDACTED] has sustained loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress.

97. As a direct and proximate result of the Product Defendants' and Retail Defendants' breach of expressed warranty, Plaintiff [REDACTED] will sustain in the future loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress because the nature of his injuries are permanent.

COUNT IV

NEGLIGENCE

98. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

99. The Product Defendants designed, formulated, manufactured, promoted, marketed, and advertised, packaged, labeled, and distributed Hydroxycut Products to consumers.

100. The use of Hydroxycut Products at doses recommended potentially causes serious liver problems including, but not limited to, jaundice and liver failure.

101. Product Defendants and Retail Defendants have a duty to exercise reasonable care in the formulation, design, manufacturing, promotion, marketing, advertising, packaging, labeling, distribution and sale of Hydroxycut Products, including a duty to ensure that Hydroxycut Products are safe for use and a duty to warn that Hydroxycut Products may cause serious liver problems and other health problems, including, but not limited to, jaundice and liver failure.

106. As set forth in detail above, Product Defendants and Retail Defendants failed to exercise reasonable care in the formulation, design, manufacturing, promotion, marketing, advertising, packaging, labeling, distribution and sale of Hydroxycut Products by failing to ensure that Hydroxycut Products were safe for use.

107. Specifically, Product Defendants and Retail Defendants were negligent in the formulation,

design, manufacture, promotion, marketing, advertising, packaging, labeling, distribution and/or sale of Hydroxycut Products in that they, among other things:

- a. Failed to use reasonable care in formulating, designing and manufacturing Hydroxycut Products so as to ensure that they were safe for use and did not cause adverse health effects including liver problems and other health problems;
- b. Failed to conduct adequate safety testing of Hydroxycut Products and the ingredients used to make Hydroxycut Products;
- c. Failed to accompany Hydroxycut Products with proper warnings regarding the possible adverse health effects associated with its use including, but not limited to, jaundice and liver failure;
- d. Failed to take proper action to ensure the safety of Plaintiff when reports of injuries and death were received;
- e. Failed to use reasonable care that the Hydroxycut ingredients were pure and safe for normal use;
- f. Were careless and negligent in the manufacturing process of Hydroxycut Products; and
- g. Were careless and negligent in the sale and distribution of Hydroxycut Products.

108. At the time of supply of Hydroxycut, the Product Defendants and Retail Defendants had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause injury that is the basis of this action, and the Product Defendants and Retail Defendants willfully disregarded that knowledge in the supply of Hydroxycut Products.

109. Despite the fact that Product Defendants and Retail Defendants knew or should have known that its Hydroxycut Products could cause serious adverse health effects, it continued to market and sell them to consumers, including Plaintiff, despite the reasonable possibility that Hydroxycut Products caused liver problems and other health problems including, but not limited to, jaundice and liver failure. They failed to institute an earlier recall.

110. Product Defendants and Retail Defendants knew or should have known that Plaintiff would foreseeably be put at risk of liver problems and other health problems as a result of Product Defendants' and Retail Defendants' failure to give warning of the adverse health effects associated with use of Hydroxycut Products.

111. As a direct and proximate result of the Product Product Defendants' and Retail Defendants' negligence, Plaintiff [REDACTED] has sustained serious injuries as noted herein.

112. As a direct and proximate result of the Product Defendants' and Retail Defendants' negligence, Plaintiff [REDACTED] has sustained loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, mental anxiety, trauma and emotional distress.

113. As a direct and proximate result of the Product Defendants' and Retail Defendants' negligence, Plaintiff [REDACTED] will sustain in the future loss of earning capacity, loss of services, incurred medical expenses, pain, suffering, loss of enjoyment of life, and mental and emotional distress because the nature of his injuries are permanent.

COUNT V

GROSS NEGLIGENCE

114. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

115. That prior to the date of incident, Product Defendants and Retail Defendants had knowledge that said Hydroxycut Products were defective and there was a substantial likelihood that the defects would cause of action injury to others such as, but not limited, Plaintiff and failed to notify others.

116. That prior to the date of incident Product Defendants and Retail Defendants willfully disregarded knowledge 'of defective conditions within the aforesaid Hydroxycut Products.

117. That Product Defendants' and Retail Defendants' misconduct as alleged herein, was a proximate cause of the injuries and damages sustained by Plaintiff.

COUNT VI

RECKLESSNESS

118. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

119. That prior to the date of incident, Product Defendants and Retail Defendants had knowledge that said Hydroxycut Products were defective and there was a substantial likelihood that the defect would cause of action injury such as, but not limited that, which is the basis of this action herein involved.

120. Product Defendants and Retail Defendants willfully disregarded that knowledge.

121. Product Defendants' and Retail Defendants' misconduct, as herein alleged, was a proximate cause of the injuries and damages sustained by Plaintiff.

COUNT VII

BREACH OF IMPLIED WARRANTY

122. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

123. That Product Defendants and Retail Defendants impliedly warranted that said Hydroxycut Products were free of defect and reasonable safe for its reasonably foreseeable use.

124. Product Defendants and Retail Defendants breach its implied warranty in that said Hydroxycut Products were defective and not reasonably fit for its reasonably foreseeable use.

125. Product Defendants and Retail Defendants breached it implied warranty in the following particulars, including but not limited to:

- a. Aforesaid Hydroxycut was defectively, manufactured and assembled;
- b. Aforesaid Hydroxycut was not properly labeled;
- c. Aforesaid Hydroxycut was not properly tested for safety. to reduce the risk of injury;
- d. Aforesaid Hydroxycut was not supplied with adequate warnings and instructions, nor was such warnings and instructions supplemented up to the time of incident.

126. That the defective conditions of said Hydroxycut Products were a proximate cause of

Plaintiff' injuries and damages as alleged.

COUNT VIII

FRAUD AND MISREPRESENTATION

127. Plaintiff repeats and re-alleges all preceding paragraphs as if more fully set forth herein.

128. Product Defendants' and Retail Defendants' representation that said Hydroxycut Products were safe for its reasonably foreseeable uses amounted to fraud and misrepresentation.

129. As a proximate result of said fraud and misrepresentation, Plaintiff sustained injuries and damages as alleged.

WHEREFORE, Plaintiff prays for judgment against Product Defendants and Retail Defendants jointly and severally, as follows:

- a. Adjudge and decree that Product Defendants and Retail Defendants have engaged in the conduct alleged herein;
- b. Award Plaintiff judgment and all damages as allowed under the law;
- c. Award Plaintiff pre and post judgment interest as allowed by law;
- d. Award counsel for Plaintiff reasonable attorneys' fees, experts' fees and costs and expenses as allowed by law;
- e. Exemplary or Punitive damages to punish Defendants and to deter others from such conduct; and
- f. Granting such other and further relief that this Court may deem just and proper.

Dated: April 20, 2010

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL COUNTS.

Respectfully submitted,
BAHE COOK CANTLEY & JONES PLC

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