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9 Attorneys for People of the State of California

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

12 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
13 BILL LOCKYER, Attorney General,

14 Plaintiffs,

15 v.

16 AST SPORTS SCIENCE, INC., ASN/MAXAM
17 NUTRICEUTICS, AMERICAN RESEARCH LABS,
18 BIOTEST, BODYONICS PINNACLE, LTD.,
19 BRANSON LABORATORIES, INC.,
20 CARMICHAEL WELLNESS PRODUCTS,
21 CHAMPION NUTRITION, CYTODYNE
22 TECHNOLOGIES, DYMATIZE NUTRITION,
23 EUTHENICS INTERNATIONAL, INC., GENERAL
24 NUTRITION CORP., GENETIC EVOLUTIONARY
25 NUTRITION, M.D. LABS AND HUMAN
26 DEVELOPMENT TECHNOLOGIES, MET-RX
27 NUTRITION, INC., MET-RX SUBSTRATE
TECHNOLOGY, MET-RX, USA, MUSCLETECH
RESEARCH & DEVELOPMENT, INC., OPTIMUM
NUTRITION, INC., PEAK NUTRITION, INC.,
PHOENIX LABORATORIES, INC., PRICES
POWER, PHARMALOGIC, SAN CORP., SCI-FIT
CUTTING EDGE NUTRITION, SPORTPHARMA
USA, INC., SPORTS ONE, LLC, SUNFACTORS,
INC., SYNTRAX INNOVATIONS, INC., TJ CLARK
& COMPANY, TWINLABS, ULTIMATE
NUTRITION, UNIVERSAL NUTRITION,
VERMONT NUTRITION, WEIDER
NUTRITIONAL INTERNATIONAL, INC.,

28 Defendants.

Case No.: **323819**

COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF

1
2 Plaintiffs People of the State of California, by and through Bill Lockyer, Attorney General,
3 hereby allege:

4 **I. PRELIMINARY STATEMENT**

5 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure
6 to anabolic steroids, which are a chemical known to the State of California to cause birth defects,
7 or other reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986,
8 Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must
9 provide persons with a "clear and reasonable warning" before exposing individuals to chemicals
10 known to the State to cause cancer or reproductive harm. In this case, exposures to a chemical
11 known to the State to cause reproductive toxicity occur when "nutritional supplements," which
12 contain a particular anabolic steroid called "androstenedione" (hereinafter "Andro Supplements"),
13 are ingested by consumers.

14 **II. PARTIES**

15 2. Plaintiffs are the People of the State of California, by and through Attorney General
16 Bill Lockyer. Health and Safety Code section 25249.7(c) provides that actions to enforce
17 Proposition 65 may be brought by the Attorney General or a District Attorney in the name of the
18 People of the State of California. Business and Professions Code sections 17200 et seq provide
19 that actions to enforce that statute may be brought by the Attorney General in the name of the
20 People of the State of California, or by a District Attorney.

21 3. Defendant AST Sports Science, Inc., is a business entity that manufactures, and/or
22 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
23 supplements containing the anabolic steroid androstenedione within the State of California,
24 without first giving clear and reasonable warning.

25 4. Defendant ASN/Maxam Nutraceuticals is a business entity that manufactures, and/or
26 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
27 supplements containing the anabolic steroid androstenedione within the State of California,
28 without first giving clear and reasonable warning.

1 5. Defendant American Research Labs is a business entity that manufactures, and/or sells,
2 or has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
3 containing the anabolic steroid androstenedione within the State of California, without first giving
4 clear and reasonable warning.

5 6. Defendant BioTest is a business entity that manufactures, and/or sells, or has, at times
6 relevant to this complaint, manufactured and/or sold, nutritional supplements containing the
7 anabolic steroid androstenedione within the State of California, without first giving clear and
8 reasonable warning.

9 7. Defendant Bodyonics Pinnacle, Ltd., is a business entity that manufactures, and/or
10 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
11 supplements containing the anabolic steroid androstenedione within the State of California,
12 without first giving clear and reasonable warning.

13 8. Defendant Bronson Laboratories, Inc., is a business entity that manufactures, and/or
14 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
15 supplements containing the anabolic steroid androstenedione within the State of California,
16 without first giving clear and reasonable warning.

17 9. Defendant Carmichael Wellness Products is a business entity that manufactures, and/or
18 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
19 supplements containing the anabolic steroid androstenedione within the State of California,
20 without first giving clear and reasonable warning.

21 10. Defendant Champion Nutrition is a business entity that manufactures, and/or sells, or
22 has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
23 containing the anabolic steroid androstenedione within the State of California, without first giving
24 clear and reasonable warning.

25 11. Defendant Cytodyne Technologies is a business entity that manufactures, and/or sells,
26 or has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
27 containing the anabolic steroid androstenedione within the State of California, without first giving
28 clear and reasonable warning.

1 12. Defendant Dymatize Nutrition is a business entity that manufactures, and/or sells, or
2 has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
3 containing the anabolic steroid androstenedione within the State of California, without first giving
4 clear and reasonable warning.

5 13. Defendant Euthenics International, Inc., is a business entity that manufactures, and/or
6 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
7 supplements containing the anabolic steroid androstenedione within the State of California,
8 without first giving clear and reasonable warning.

9 14. Defendant General Nutrition Corp., is a business entity that manufactures, and/or
10 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
11 supplements containing the anabolic steroid androstenedione within the State of California,
12 without first giving clear and reasonable warning.

13 15. Defendant Genetic Evolutionary Nutrition is a business entity that manufactures,
14 and/or sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
15 supplements containing the anabolic steroid androstenedione within the State of California,
16 without first giving clear and reasonable warning.

17 16. Defendant M.D. Labs and Human Development Technologies is a business entity that
18 manufactures, and/or sells, or has, at times relevant to this complaint, manufactured and/or sold,
19 nutritional supplements containing the anabolic steroid androstenedione within the State of
20 California, without first giving clear and reasonable warning.

21 17. Defendant Met-RX Nutrition, Inc., is a business entity that manufactures, and/or sells,
22 or has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
23 containing the anabolic steroid androstenedione within the State of California, without first giving
24 clear and reasonable warning.

25 18. Defendant Met-RX Substrate Technology, is a business entity that manufactures,
26 and/or sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
27 supplements containing the anabolic steroid androstenedione within the State of California,
28 without first giving clear and reasonable warning.

1 19. Defendant Met-RX, USA, is a business entity that manufactures, and/or sells, or has,
2 at times relevant to this complaint, manufactured and/or sold, nutritional supplements containing
3 the anabolic steroid androstenedione within the State of California, without first giving clear and
4 reasonable warning.

5 20. Defendant Muscletech Research & Development, Inc., is a business entity that
6 manufactures, and/or sells, or has, at times relevant to this complaint, manufactured and/or sold,
7 nutritional supplements containing the anabolic steroid androstenedione within the State of
8 California, without first giving clear and reasonable warning.

9 21. Defendant Optimum Nutrition, Inc., is a business entity that manufactures, and/or
10 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
11 supplements containing the anabolic steroid androstenedione within the State of California,
12 without first giving clear and reasonable warning.

13 22. Defendant Peak Nutrition, Inc., is a business entity that manufactures, and/or sells, or
14 has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
15 containing the anabolic steroid androstenedione within the State of California, without first giving
16 clear and reasonable warning.

17 23. Defendant Phoenix Laboratories, Inc., is a business entity that manufactures, and/or
18 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
19 supplements containing the anabolic steroid androstenedione within the State of California,
20 without first giving clear and reasonable warning.

21 24. Defendant Prices Power is a business entity that manufactures, and/or sells, or has, at
22 times relevant to this complaint, manufactured and/or sold, nutritional supplements containing the
23 anabolic steroid androstenedione within the State of California, without first giving clear and
24 reasonable warning.

25 25. Defendant Pharmalogic is a business entity that manufactures, and/or sells, or has, at
26 times relevant to this complaint, manufactured and/or sold, nutritional supplements containing the
27 anabolic steroid androstenedione within the State of California, without first giving clear and
28 reasonable warning.

1 26. Defendant SAN Corp., is a business entity that manufactures, and/or sells, or has, at
2 times relevant to this complaint, manufactured and/or sold, nutritional supplements containing the
3 anabolic steroid androstenedione within the State of California, without first giving clear and
4 reasonable warning.

5 27. Defendant Sci-Fit Cutting Edge Nutrition is a business entity that manufactures,
6 and/or sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
7 supplements containing the anabolic steroid androstenedione within the State of California,
8 without first giving clear and reasonable warning.

9 28. Defendant Sportpharma USA, Inc., is a business entity that manufactures, and/or
10 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
11 supplements containing the anabolic steroid androstenedione within the State of California,
12 without first giving clear and reasonable warning.

13 29. Defendant Sports One, LLC, is a business entity that manufactures, and/or sells, or
14 has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
15 containing the anabolic steroid androstenedione within the State of California, without first giving
16 clear and reasonable warning.

17 30. Defendant Sunfactors, Inc., is a business entity that manufactures, and/or sells, or has,
18 at times relevant to this complaint, manufactured and/or sold, nutritional supplements containing
19 the anabolic steroid androstenedione within the State of California, without first giving clear and
20 reasonable warning.

21 31. Defendant Syntrax Innovations, Inc., is a business entity that manufactures, and/or
22 sells, or has, at times relevant to this complaint, manufactured and/or sold, nutritional
23 supplements containing the anabolic steroid androstenedione within the State of California,
24 without first giving clear and reasonable warning.

25 32. Defendant TJ Clark & Company is a business entity that manufactures, and/or sells, or
26 has, at times relevant to this complaint, manufactured and/or sold, nutritional supplements
27 containing the anabolic steroid androstenedione within the State of California, without first giving
28 clear and reasonable warning.

1 **B. The Unfair Competition Act**

2 46. California Business and Professions Code section 17200 provides that "unfair
3 competition shall mean and include unlawful, unfair or fraudulent business practice." Section
4 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing
5 to perform an act of unfair competition within this state may be enjoined in any court of
6 competent jurisdiction."

7 47. Unlawful acts under the statute include any act that is unlawful that is conducted as
8 part of business activity, and therefore include violations of Proposition 65.

9 48. Business and Professions Code Section 17206(a) provides that any person violating
10 Section 17200 "shall be liable for a civil penalty not to exceed two thousand five hundred dollars
11 (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the
12 name of the people of the State of California by the Attorney General or by any district attorney."
13 Under section 17205, these penalties are "cumulative to each other and to the remedies or
14 penalties available under all other laws of this state."

15 **V. FACTS**

16 **A. Androstenedione Is An Anabolic Steroid**

17 49. "Anabolic Steroids" were placed in the Governor's list of chemicals known to the
18 State of California to cause reproductive toxicity on April 1, 1990. They are specifically identified
19 under two subcategories: "female reproductive toxicity," which means harm to the female
20 reproductive system, and "male reproductive toxicity," which means harm to the male
21 reproductive system.

22 50. Anabolic Steroids were added to the Proposition 65 list pursuant to Health and Safety
23 Code section 25249.8, which provides, among other things, that a chemical shall be added to the
24 list "if an agency of the state or federal government has formally required it to be labeled or
25 identified as causing cancer or reproductive toxicity."

26 51. Implementing regulations provide that an "agency of the state or federal government"
27 includes "the California State Legislature acting through legislation[.]" (22 Cal. Code Reg. §
28 12902(b)(2).) The same regulations provide that "identified" means "that a required message

1 about the carcinogenicity or reproductive toxicity of the chemical is to be disclosed in any manner
2 to a person[.]” (22 Cal. Code Reg. § 12902(b)(4).) Finally, the same regulation provides that
3 identified “as causing reproductive toxicity” means that the required identification “uses any
4 words or phrases intended to communicate a risk of reproductive harm to men or women or both,
5 or a risk of birth defects or other developmental harm.” (22 CCR § 12902(b)(6)(B).)

6 52. Pursuant to Civil Code section 1812.97, the State of California requires that the
7 following warning concerning anabolic steroids be posted in defined “athletic facilities”:

8 WARNING: Use of steroids to increase strength or growth can cause serious health
9 problems. Steroids can keep teenagers from growing to their full height; they can also
10 cause heart disease, stroke, and damaged liver function. Men and women using steroids
11 may develop fertility problems, personality changes, and acne. Men can also experience
12 premature balding and development of breast tissue. These health hazards are in addition
13 to the civil and criminal penalties for unauthorized sale, use or exchange of anabolic
14 steroids.

15 53. Section 1812.97(d) states that anabolic steroids “include, *but are not limited to*, the
16 following: (1) Dianabol (methandrostenolone). (2) Winstrol (stanozolol). (3) Maxibolin (ethyl
17 estrenol). (4) Durabolin (nandrolone phenpropionate). (5) Deca-Durabolin (nandrolone
18 decanote). (6) Testosterone propionate. (7) Pregnyl (chorionic gonadotropin). (8) Anavar
19 (toxandropirone).” (Emphasis added.)

20 54. The Olympic Movement Anti-Doping Code, governing athletes in the Olympics,
21 includes androstenedione as a banned anabolic steroid. (Appendix A, (I)(C)(1)(b)Prohibited
22 Classes of Substances, Anabolic Agents, Anabolic androgenic steroids.)

23 55. The Bylaws of the National Collegiate Athletic Association include androstenedione
24 as a banned “anabolic agent.” (NCAA Banned-Drug Classes, 2000-01, Bylaw 31.2.3.1 (b).)

25 56. The National Football League also includes androstenedione as a banned anabolic
26 steroid. (NFL Anabolic Steroids and Prohibited Substances Policy, Appendix A.) Indeed, the
27 NFL has specifically advised all players that androstenedione “like many other supplements that
28 contain substances that violated the policy, can be purchased at local health food stores and, when

1 ingested, is not different from taking illegal anabolic steroids or related substances.” (November
2 10, 1998 memorandum from Dr. John Lombardo to all NFL players.)

3 57. Androstenedione falls within the medical and scientific definition of an anabolic
4 steroid. According to *Ellenhorn’s Medical Toxicology: Diagnosis and Treatment of Human*
5 *Poisoning*, anabolic steroids are “human or veterinary products of anabolic steroidal hormones
6 and synthetic testosterone-like drugs.” According to the National Institutes of Health National
7 institute on Drug Abuse, the proper name for “anabolic steroids” is “anabolic-androgenic
8 steroids,” and they are defined as chemicals that promote the growth of skeletal muscle (anabolic
9 effects) and the development of male sexual characteristics (androgenic effects), and also have
10 some other effects. Anabolic effects are further defined as “drug-induced growth or thickening of
11 the body’s non-reproductive tract tissues including skeletal muscle, bones, the larynx, and vocal
12 chords and decrease in body fat.” Androstenedione falls within these definitions of anabolic
13 steroids.

14 **B. Androstenedione, Like Other Anabolic Steroids, Harms the Reproductive**
15 **System**

16 58. In males, anabolic steroids, including androstenedione, have been demonstrated to
17 cause adverse effects that include alteration in the prostate, the testes, and the seminal vesicles.

18 59. In females, anabolic steroids have been demonstrated to cause adverse effects that
19 include reduced ovulation and premature delivery.

20 **C. The Exposures to Anabolic Steroids are Knowing and Intentional**

21 60. The above-described exposures are the result of the known and intended use of Andro
22 Supplements.

23 61. Androstenedione is an intentional component of Andro Supplements. The products
24 are made for the specific purpose of increasing exposure to androstenedione.

25 62. Defendants know that the products result in exposure to androstenedione.

26 63. This exposure is intentional because it is the result of the deliberate acts of defendants
27 in designing the nature of the Andro Supplements and their manner of use.

28 64. Plaintiffs are informed and believe, and based on such information and belief allege,

1 that since July 1, 1997, each defendant has manufactured, assembled, and/or sold Andro
2 Supplements in California.

3 65. Plaintiffs are informed and believe, and based on such information and belief allege,
4 that defendants have failed to provide clear and reasonable warnings that the use of the products
5 in question results in exposure to a chemical known to the State of California to cause birth
6 defects or other reproductive harm, and that no such warning was provided to those individuals
7 by any other person.

8 66. Plaintiffs are informed and believe, and based on such information and belief allege,
9 that each defendant employs ten or more persons.

10 **VI. FIRST CAUSE OF ACTION**

11 (Against All Defendants for Violation of Proposition 65)

12 67. Paragraphs 1 through 66 are realleged as if fully set forth herein.

13 68. By committing the acts alleged above, each defendant has, in the course of doing
14 business, knowingly and intentionally exposed individuals to chemicals known to the state of
15 California to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

17 69. Said violations render each defendant liable to plaintiffs for civil penalties not to
18 exceed \$2,500 per day for each violation, as well as other remedies.

19 **VII. SECOND CAUSE OF ACTION**

20 (Against Each Defendant for Unlawful Business Practices

21 Consisting of Violations of Proposition 65)

22 70. Paragraphs 1 through 66 are realleged as if fully set forth herein.

23 71. By committing the acts alleged above, each defendant has engaged in unlawful
24 business practices which constitute unfair competition within the meaning of Business and
25 Professions Code section 17200.

26 72. Said violations render each defendant liable to plaintiffs for civil penalties not to
27 exceed \$2,500 per day for each violation.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray that the Court:

3 1. Pursuant to the First and Second Causes of Action, grant civil penalties
4 according to proof;

5 2. Pursuant to Health and Safety Code section 25249.7 and Business and
6 Professions Code section 17203, enter such temporary restraining orders, preliminary injunctions,
7 permanent injunctions, or other orders prohibiting defendants from exposing persons within the
8 State of California to Listed Chemicals caused by the use of their products without providing
9 clear and reasonable warnings, as plaintiffs shall specify in further application to the court;

10 3. Enter such orders as "may be necessary to restore to any person in interest any
11 money or property, real or personal, which may have been acquired by means of" these unlawful
12 acts, as provided in Business and Professions Code section 17203 and other applicable laws;

13 4. Award plaintiffs their costs of suit;

14 5. Grant such other and further relief as the court deems just and proper.

15 Respectfully submitted,

16 DATED: August 15, 2001

17 BILL LOCKYER, Attorney General
18 of the State of California
19 RICHARD M. FRANK
20 Chief Assistant Attorney General
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25 By: /s/
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27 Deputy Attorney General

28 Attorneys for Plaintiffs People of the State of California