

ENDORSED
FILED

OCT 25 2005

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

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9 (For list of additional Plaintiff's counsel,
10 see attached Exhibit A)

11 Attorneys for Plaintiff

12 SUPERIOR COURT OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SONOMA

14 THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No. 237654
15)
16 Plaintiff,) COMPLAINT FOR
17 vs.) CIVIL PENALTIES
18) AND EQUITABLE RELIEF
19 SUAREZ CORPORATION INDUSTRIES, AN OHIO)
20 CORPORATION, DOING BUSINESS AS BIOTECH)
21 RESEARCH, BENJAMIN SUAREZ, REHAN)
22 JALALI, and DOES ONE THROUGH 40, inclusive,)
23)
24 Defendants.)

25 The People of the State of California, by and through Stephan R. Passalacqua, District
26 Attorney for the County of Sonoma, Gary Lieberstein, District Attorney for the County of
27 Napa, Tony Rackauckas, District Attorney for the County of Orange, David W. Paulson,
28 District Attorney for the County of Solano, and Michael Aguirre, City Attorney for the City
of San Diego, allege on information and belief the following:

JURISDICTION AND VENUE

1. The authority of the District Attorneys to bring this action is derived from that
statutory law of the State of California, specifically Business and Professions Code §§17508,

17203, 17204, 17535, 17206, and 17536, and Health & Safety Code §25249.6 and 25249.7.

2. Defendants advertise for business and sell dietary supplements within Sonoma, Napa, Orange, and Solano Counties, the City of San Diego, and elsewhere in the State of California. The violations of law herein alleged have been carried out within this city, these counties and elsewhere in the State of California.

DEFENDANTS

3. Defendant, Suarez Corporation Industries, is an Ohio Corporation, doing business as Biotech Research, (hereinafter, "SCI"), which at all times herein mentioned, caused and/or engaged in the violations of law hereinafter alleged.

4. Defendant, Benjamin Suarez, is the President and Chief Executive Officer of the SCI, who, at all times herein mentioned, caused and/or engaged in the violations of law hereinafter alleged.

5. Defendant, Rehan Jalali, is the lead developer of *AbGONE*, "a nationally recognized nutritionist and author for Biotech Research", and is an active endorser of *AbGONE*, who, at all times herein mentioned, caused and/or engaged in the violations of law hereinafter alleged.

6. Defendants, DOES 1 through 40, are officers and/or managers of SCI and others whose identity is not yet known who, at all times herein mentioned, caused and/or engaged in the violations of law hereinafter alleged.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious names of DOES 1 through 40, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names of each such defendant when the same has been ascertained. Each fictitiously named Defendant is responsible in some manner for the violations herein alleged.

8. Whenever reference is made in this Complaint to any act of Defendants, such allegation shall be deemed to mean that Defendants, and their employers, agents, and representatives (hereinafter called "Defendants") did or authorized such acts while actively

1 engaged in the management, direction, or control of the affairs of said Defendants and while
2 acting within the scope and course of their duties.

3 9. Whenever reference is made in this Complaint to any act of Defendants, such
4 allegation shall be deemed to mean the act of each Defendant acting individually and jointly.

5 GENERAL ALLEGATIONS

6 10. Defendants, and each of them, have engaged in the business of creating,
7 packaging, promoting, selling, and advertising diet or weight loss products and dietary
8 supplements. Some of these products and supplements are sold under the brand name
9 "BioTech Research".

10 11. One of the dietary supplement products manufactured and marketed by defendants
11 in the State of California under the brand name "BioTech Research" is called *AbGONE*. The
12 label for *AbGONE* indicates that a serving size or dose is two softgels; the directions
13 recommend that the consumer take "two softgels twice daily with meals, preferably one dose
14 with breakfast and another with lunch." Further, the label warns the consumer not to exceed
15 eight softgels (four doses) in a twenty-four hour period.

16 12. Defendants advertise and market *AbGONE* to the general public on the World
17 Wide Web, on product labels, and through other media in Napa, Orange, Solano and Sonoma
18 Counties, in the City of San Diego, and elsewhere in the State of California.

19 13. In these advertisements, the defendants make unsubstantiated, false and/or
20 misleading claims for these products, including but not limited to the following:

21 (A) New pill targets abdominal fat and water that cause the pot belly, so you can
22 say good-bye to your pot belly. *AbGONE* was developed from concepts in
23 research conducted at the Universities of Yale, Pittsburgh, UCL and California. It
24 took five years to develop the *AbGONE* pill. Research at Yale University found
that abdominal fat was different than in the rest of the body; from this initial
research, we knew we could develop a pill to reduce abdominal fat.

25 (B) It was found that fat in the abdomen is different from fat in the rest of the
26 body, and there are 2 types of abdominal fat, outer fat and intestinal fat. There are
27 basically two different types of fat in the body: the first is outer fat found under the
28 skin surface; the second is intestinal fat which is deep in the abdomen. What
makes abdominal fat different from the rest of the fat in the body also provided

1 researchers with a way to reduce it with a number of natural substances which
2 reduce both types of abdominal fat; they also found a way to reduce excess
3 abdominal water.

4 (C) Rehan Jalali is a nationally recognized nutritionist and author for BioTech
5 Research. He is the lead developer of *AbGONE* and an author who has appeared
6 in Newsweek, Muscle & Fitness, Oxygen Men's Fitness, Muscle Media and many
7 other magazines and scientific journals. He has developed over 100 cutting edge
8 products for the Nutritional Supplement Industry.

9 (D) We found that there were harmful effects of abdominal excess fat and excess
10 retained water. These included the fact that people with a potbelly have a greater
11 tendency to certain health problems. We also found that they had social
12 difficulties and had greater rates of unemployment and divorce.

13 (E) The ingredients in *AbGONE* do not spot reduce ordinary fat. They help reduce
14 ordinary fat uniformly over the entire body. The ingredients in *AbGONE* enable
15 the body to reduce excess water and fat in the abdomen that the body could not
16 reduce before, and they help inhibit the excess collection of abdominal fat in the
17 future. Therefore, the abdomen is reduced in size much better than before.

18 (F) It is possible to reduce the surface fat in the body but still have significant
19 abdominal intestinal fat. That is why, even when people become super thin and
20 have no visible fat on their body, they often still have a potbelly.

21 (G) We found in a number of research studies on laboratory animals, later
22 confirmed in human studies, a substance called Conjugated Linoleic Acid (CLA).
23 Studies of CLA suggest that CLA decreases body fat in three ways: (1) CLA
24 decreases body fat mass by decreasing the amount of fat that is stored after eating;
25 (2) CLA increases the rate of fat breakdown in fat cells; and (3) CLA increases the
26 rate of fat metabolism which decreases the total number of fat cells. Studies have
27 shown that you can reduce abdominal fat within 4 weeks. *AbGONE* contains a
28 good dose of CLA.

(H) CLA interferes with an enzyme called lipoprotein lipase (LPL), which is an
enzyme that helps store fat in the body. So, by inhibiting this fat-storing enzyme,
CLA can help reduce the re-accumulation of fat.

(I) CLA also helps the body use its existing fat for energy, thereby increasing fat
oxidation and energy expenditure.

(J) Copies of all competent and reliable scientific evidence that substantiates the

1 following: The hormone Cortisol has been found in studies at UCLA, Yale and
2 many other universities to directly contribute to the collection of fat in the
3 abdomen. Lower levels of Cortisol have some functional effects; higher levels of
4 Cortisol are harmful. These university studies found that stress directly increases
5 Cortisol levels to the point of being harmful. These stress-induced Cortisol level
6 increases have been linked to increasing abdominal fat. The reason for this is that
7 there are 4 times more Cortisol receptors in abdominal fat than there are in fat in
8 the rest of the body; this is why abdominal fat is much more sensitive to the fat
9 accumulating effects of Cortisol.

10 (K) Abdominal fat responds to circulating Cortisol levels by further increasing in
11 size, and these large central fat deposits in the abdomen can contribute to problems
12 and promote other risk factors like high cholesterol levels.

13 (L) According to research at the University of California at San Francisco, higher
14 levels of Cortisol and stress can actually increase appetite, especially cravings for
15 sweet foods. So it's a cascading effect causing people to get fatter and fatter.

16 (M) Therefore, it is imperative to stop high levels of Cortisol in its tracks if you
17 want to reduce abdominal fat. The simplest way to control Cortisol levels is to
18 eliminate stress in your life. The alternative is to use nutraceuticals that studies
19 indicate reduce Cortisol levels. We also put these all natural nutraceuticals in
20 *AbGONE*.

21 (N) There are certain vitamins and minerals that have been shown to reduce
22 Cortisol levels in high stress situations. But you cannot just take a multiple
23 vitamin to reduce Cortisol because there's a lot of other things that you need to
24 have in order for them to work. One of these critical nutrients that you need is
25 phosphatidylserine (PS). Several studies at the University of Naples in Italy and at
26 Cal State University in the U.S. indicate that PS can lower Cortisol levels. PS has
27 another good side effect in that it is also a brain power booster. The stopping of
28 excessive Cortisol is also important for your psychological condition - it may help
improve mood and reduce anxiety.

(O). These synergistic nutrients in *AbGONE* helps reduce abdominal fat as
aforementioned. Fat in the abdomen also has more Cortisol receptors than does fat
in the rest of the body – so lowering Cortisol levels can help reduce fat in the
abdomen.

(P) Copies of all competent and reliable scientific evidence that substantiates the
following: Eating too much sugars also affect abdominal fat which is also
addressed in the *AbGONE* ingredients. *AbGONE* contains a highly absorbable
form of chromium, a trace mineral shown to have powerful benefits in regulating

1 blood sugar levels. Chromium works by helping the body store less sugars as fat.

2 (Q). There are other benefits to the *AbGONE* ingredients. Not only do they
3 gradually help reduce abdominal fat, but they have antioxidant effects, they
4 support healthy blood sugar levels, they have neurological boosting effects, they
5 preserve lean body mass, and support optimal water balance.

6 (R) A lot of excess pounds that people carry is excess water which is not needed
7 by the body and can be harmful. *AbGONE* also contains an exotic herb,
8 Dandelion Root, that studies have shown can help decrease excess water in the
9 body. This can really help reduce and show a firm abdomen because large
10 amounts of excess water is in the abdomen. Men can show the "six pack" and
11 women can get that smooth, firm, flat abdomen.

12 (S) Therefore, *AbGONE* has triple action ingredients that help support abdominal
13 fat loss and a healthy body. The fact is, you need all three of these components
14 working to properly reduce abdominal fat, reduce the overall size of the abdomen,
15 and maximize the appearance of the abdomen. These three mechanisms of action
16 are:

- 17 • The *AbGONE* ingredients increase the rate of fat metabolism, which
18 reduces both surface and intestine abdominal fat and helps inhibit future
19 formation of these abdominal fats;
- 20 • The *AbGONE* ingredients help lower harmful high Cortisol levels which
21 have been linked to increasing both surface and intestinal abdominal fat
22 and causing binge eating. Therefore, they help reduce both surface and
23 intestinal abdominal fat.
- 24 • *AbGONE's* ingredients help support optimal body water balance. Excess
25 body water can increase the size of the abdomen and hide your abdominal
26 muscles as well as other muscles and make you look puffy and flabby.

27 (T) The only side effects of the ingredients you should see in *AbGONE* are better
28 appearance, better mental function, and better health.

(U) *AbGONE* pills come in a 30-day supply bottle. University studies show
people can reduce their abdominal fat in 30 days.

(V) *AbGONE* will not be in stores for an extended period of time until we can get
enough *AbGONE* ingredients, which are costly and time consuming to produce, in
high quantity for store inventories.

1 (W) The recommended dosage for *AbGONE* is 2 capsules twice a day, preferably
2 with meals, but some studies have shown better or more rapid results with 6 to 8
3 capsules a day, but we recommend that you break up the dosage throughout the
4 day. Do not take more than 8 capsules per 24 hour period. We do recommend that
5 you take the *AbGONE* with a meal, that you take one dosage with breakfast and
6 one dosage with lunch, and drink at least 10-12 ounces of water with each dose.

7 (X) *AbGONE* is manufactured by an OTC and FDA approved laboratory in
8 California.

9 (Y) We are not aware of any drug interactions with *AbGONE*. We believe our
10 product to be safe and effective, but we do recommend that you consult your
11 physician before taking any type of dietary supplement. This is especially
12 important if you are taking any medications or have any medical conditions.

13 (Z) We hope *AbGONE* will affect your appetite. The ingredients in *AbGONE* can
14 help reduce cravings for sugar and carbohydrates. *AbGONE* should help curb
15 your appetite, and cravings may come back once you stop taking the product.

16 (AA) Cortisol levels have been clearly linked to increasing abdominal obesity and
17 causing binge eating, not to mention increasing stress.

18 (BB) *AbGONE* supports optimal body water balance. This reduction in excess
19 water weight can really help "bring" the abs out! This product also inhibits an
20 enzyme called lipoprotein lipase which is responsible for storing fat.

21 (CC) The ingredients in *AbGONE* are designed to target the abdomen. *AbGONE*
22 can promote lean body mass and by having more lean body mass, you can increase
23 calories used at rest thereby increasing energy expenditure and metabolism.

24 (DD) Cortisol is a hormone that can be found in several areas of the body.
25 However, *AbGONE* does not have a negative affect on those areas and can
26 actually help reduce the damaging effects of cortisol in those other areas as well.

27 (EE) From the research on the ingredients in *AbGONE*, we have not seen any side
28 effects. In order to minimize the risk of stomach upset that can sometimes occur
with dietary supplements, we recommend that you take *AbGONE* with food
preferably in the MIDDLE of your meal.

(FF) Even though there are a lot of factors that contribute to how quickly the
product will work for you, such as exercise levels and food intake, most people
can see results in as little as 4 to 6 weeks.

(GG) *AbGONE* is intended to be used by healthy adults over the age of 18 since
most of the research conducted on the ingredients has been done on individuals

1 over 18.

2 (HH) BioTech Research has been researching ingredients and the science of
3 abdominal fat for 7 years. The ingredients in *AbGONE* have been studied for
4 many years in both men and women showing positive results in terms of reducing
5 abdominal fat.

6 (II) Though *AbGONE* can affect men differently than women, one thing is certain,
7 a majority of both men and women tend to store fat in the abdominal region.

8 (JJ) *AbGONE* contains a propriety blend of ingredients that work together to
9 create a synergistic effect. CLA is one of the main ingredients in this product.

10 14. Analyses of *AbGONE* reveal lead levels of over 0.5 micrograms per dose. The
11 *AbGONE* label instructs the user to take one dose twice daily with meals, with a warning not
12 to exceed four doses in a twenty-four hour period. The intake of one or more doses per day
13 would expose the user to well over 0.5 micrograms of lead per day.

14 15. None of the advertisements or labels for the product *AbGONE* contain a clear and
15 reasonable warning, as required by Health & Safety Code §25249.6, regarding the lead
16 content of these products.

17 **FIRST CAUSE OF ACTION**
18 **(Business and Professions Code section 17500)**

19 16. Plaintiff realleges and incorporates by reference Paragraphs 1 through 15 of this
20 Complaint as though fully set forth herein.

21 17. Defendants, with the intent to dispose of property or to perform services, or to
22 induce members of the public to enter into obligations relating thereto, made or disseminated
23 or caused to be made or disseminated before the public in this state statements concerning
24 such property, services or obligations which were untrue or misleading and which defendants
25 knew or reasonably should have known were untrue or misleading, in violation of Business
26 & Professions Code §17500. Such statements included but are not limited to all of the claims
27 set forth in Paragraph 13, above.

28 18. Defendants are subject to civil penalties, pursuant to Business & Professions

Code §17536, and to injunctive relief, pursuant to Business & Professions Code §17535.

SECOND CAUSE OF ACTION
(Health and Safety Code section 25249.6)

19. Plaintiff realleges and incorporates by reference Paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. The defendants are all employers of ten (10) or more persons.

21. Beginning at an exact date that is unknown to plaintiff, but within one year prior to the filing of this complaint, defendants have, in the course of doing business, knowingly and intentionally exposed individuals in the State of California to a chemical known to the state to cause cancer or reproductive toxicity without having first given a clear and reasonable warning to such individuals, as required by Health & Safety Code §25249.6.

22. Defendants are subject to civil penalties and to injunctive relief, pursuant to Health & Safety Code §25249.7.

THIRD CAUSE OF ACTION
(Business and Professions Code section 17200)

23. Plaintiff realleges and incorporates by reference Paragraphs 1 through 22 of this Complaint as though fully set forth herein.

25. Beginning at an exact date that is unknown to plaintiff, but within four years prior to the filing of this complaint, defendants, and each of them, engaged in a course of conduct constituting acts of unfair competition, as defined by Business & Professions Code §17200, including but not limited to the following:

- (A) All of the activity described in paragraphs 10 through 21, above;
- (B) Violating Business & Professions Code §110760, by manufacturing, selling, delivering, holding, or offering for sale any food that is misbranded;
- (C) Violating Business & Professions Code §110765, by misbranding any food; and,
- (D) Violating Business & Professions Code §110770, by delivering or

1 proffering for delivery any food that is misbranded.

2 25. Defendants are subject to civil penalties, pursuant to Business & Professions
3 Code §17206, and to injunctive relief, pursuant to Business & Professions Code §§17203 and
4 17204.

5 **WHEREFORE**, Plaintiff prays as follows:

6 1. For a preliminary and permanent injunction, pursuant to Business & Professions
7 Code §§17203, 17204, and 17535, restraining and enjoining defendants, from making,
8 disseminating, or causing to be made or disseminated any advertisement of this product
9 which contains unsubstantiated claims and/or false or misleading claims as set forth above, or
10 engaging in or performing, directly or indirectly, any acts of unfair competition as set forth
11 above, or violating any provisions of Proposition 65.

12 2. That Defendants and each of them be ordered to pay a civil penalty of \$2,500.00
13 for each act of unfair competition, pursuant to Business and Professions Code §17206, in an
14 amount of not less than \$500,000.

15 3. That Defendants and each of them be ordered to pay a civil penalty of \$2,500.00
16 for each false or misleading statement, pursuant to Business and Professions Code §17536, in
17 an amount of not less than \$500,000.

18 4. That Defendants and each of them be ordered to pay a civil penalty of \$2,500.00
19 for each day they violated Health & Safety Code §25249.6, pursuant to Health & Safety
20 Code §25249.7, in an amount of not less than \$500,000.

21 5. That defendants be ordered to make full restitution to all victims of Defendants'
22 acts of unfair competition, in a minimum amount of \$1,000,000.

23 6. That Plaintiff recover its costs of suit herein.

24 7. That Plaintiff be given such other and further relief as the nature of this case may
25 require and this Court deems proper to fully and successfully dissipate the effects of the
26 unlawful and unfair acts complained of in this complaint.

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Dated: 10/25/05

STEPHAN R. PASSALACQUA
Sonoma County District Attorney

By: Matthew T. Cheever
Matthew T. Cheever
Deputy District Attorney

NOTICE: This complaint is deemed verified pursuant to CCP §446.
NOTICE: Pursuant to *People v. Beltz Travel Services, Inc.* (N.D. Cal. 1974) 379 F.Supp 948, this action cannot be removed to Federal Court.

Exhibit A

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