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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 28 2014

K. McCoy, Exec. Off./Clerk

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14 (For list of additional plaintiff's counsel,
15 see attached Exhibit 1)

16 Attorneys for Plaintiff

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

17 PEOPLE OF THE STATE OF CALIFORNIA,)
18 Plaintiff,)

CASE NO. RG11580407

FINAL JUDGMENT PURSUANT TO
STIPULATION

19 v.

20 SUAREZ CORPORATION INDUSTRIES, and)
21 BENJAMIN D. SUAREZ et. al.,)

22 Defendants.
23

RECEIVED

JAN 27 REC'D

ANGELA YAMBALIA
ALAMEDA COUNTY SUPERIOR COURT

1 Plaintiff, the People of the State of California, appears through its attorneys: Gary Lieberstein,
2 District Attorney of Napa County, by Catherine C. Borsetto, Deputy District Attorney; Nancy E.
3 O'Malley, District Attorney of Alameda County, by Matthew L. Beltramo , Deputy District Attorney;
4 Edward S. Berberian, District Attorney of Marin County, by Andres H. Perez, Deputy District Attorney;
5 Dean Flippo, District Attorney of Monterey County, by John Hubanks, Deputy District Attorney; Tony
6 Rackauckas, District Attorney of Orange County, by Tracy E. Hughes, Deputy District Attorney; Jeffrey
7 F. Rosen, District Attorney of Santa Clara County, by Yen B. Dang, Deputy District Attorney; Bob Lee,
8 District Attorney of Santa Cruz County, by Kelly Walker, Assistant District Attorney; Stephen S.
9 Carlton, District Attorney of Shasta County, by Anand "Lucky" Jesrani, Deputy District Attorney;
10 Donald A. du Bain, District Attorney of Solano County, by Diane M. Taira, Deputy District Attorney;
11 and Jill R. Ravitch, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District
12 Attorney. Defendants, Suarez Corporation Industries, an Ohio corporation ("Defendant SCI"), and
13 Benjamin D. Suarez ("Defendant Suarez"), appear through their attorneys, Greenberg Traurig, LLP, by
14 James M. Mattesich.

15 It appears to the Court that the parties hereto have stipulated and consented to the entry of this
16 Final Judgment without the taking of proof and without this Final Judgment constituting evidence or an
17 admission by the Defendants regarding any issue of fact alleged in the complaint, and with the Defendants
18 denying any wrongdoing and without admitting any liability alleged therein, and with the People having
19 agreed that this Final Judgment shall not be used in any action or proceeding as evidence or an admission
20 by the Defendants of any wrongdoing or liability or of any fact alleged in the complaint, and the Court
21 having considered the matter and the pleadings, and good cause appearing therefore,

22 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

23 **JURISDICTION**

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25 1. This civil enforcement action is brought in the public interest under the laws of the State
26 of California. The Alameda County Superior Court ("Court") has jurisdiction of the subject matter
27 hereof and of the parties hereto.
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1 conduct such study, with statistically significant results as defined by the Federal Trade Commission.

2 B. "NUTRITIONAL SUPPLEMENT" means a food or dietary supplement marketed to consumers
3 by Defendants or any of Defendants' related entities or agents.

4 C. "Defendant SCI" means Suarez Corporation Industries, an Ohio corporation, No. 444896, with
5 its principle place of business at 7800 Whipple Ave., N.W., Canton, Ohio 44767, and all of its fictitious
6 business names, subsidiaries, affiliates, any successor and/or assignee, and any other business entity of
7 which Defendant Suarez is an officer, member, partner or sole proprietor.

8
9 **PERMANENT INJUNCTION**

10 4. The Defendants shall be and are hereby permanently enjoined and restrained, pursuant to *Business*
11 *and Professions Code* §§17203, 17204 and 17535, from doing, directly or indirectly, any of the following
12 within California:

13 A. Violating the provisions of any of the following: *Health & Safety Code* § 111440, by
14 manufacturing, selling, delivering, holding, or offering for sale any drug or device that is misbranded;
15 *Health & Safety Code* § 111445, by misbranding any drug or device; and/or *Health & Safety Code* §
16 111450, by receiving in commerce any drug or device that is misbranded or delivering or proffering for
17 delivery any such food;

18 B. Violating the provisions of any of the following: *Health & Safety Code* § 110760, by
19 manufacturing, selling, delivering, holding, or offering for sale any food that is misbranded; *Health &*
20 *Safety Code* § 110765, by misbranding any food; and/or *Health & Safety Code* § 110770, by receiving in
21 commerce any food that is misbranded or delivering or proffering for delivery any such food;

22 C. Violating the provisions of *Health & Safety Code* § 111550 by selling, delivering or giving
23 away any unapproved new drug or device.

24 D. Violating the provisions of *Civil Code* § 1770(a)(5), by using deceptive representations or
25 representing that goods or services have sponsorship, approval, characteristics, ingredients, uses or
26 benefits which they do not have;

27 E. Advertising that any NUTRITIONAL SUPPLEMENT has any effect in any of the
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1 conditions, disorders or diseases listed in *Health and Safety Code* §110403, including but not limited to
2 colon or bowel disorders.

3 F. Violating the provisions of *Business & Professions Code* §17533.6, by soliciting
4 information, the purchase of or payment for a product or service, or the contribution of funds or
5 membership fees, by means of a mailing, electronic message, or Internet Website that contains a seal,
6 insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or
7 construed as implying any state or local government connection, approval, or endorsement, unless the
8 requirements of this section have been met.

9 5. Defendants shall be and are hereby permanently enjoined and restrained, pursuant to *Business and*
10 *Professions Code* §§ 17203, 17204 and 17535, from doing, directly or indirectly, any of the following
11 within California:

12 A. Making and/or disseminating any claims or representations about the nature, attributes,
13 effects, efficacy, benefits, results or safety of any NUTRITIONAL SUPPLEMENT, unless, at the time of
14 making and/or disseminating such claim or representation, it is true, not misleading, and Defendants
15 already have in their possession and rely upon SCIENTIFIC SUBSTANTIATION that substantiates such
16 claim or representation.

17 B. Making and/or disseminating any claim or representation, either directly or indirectly, that
18 any NUTRITIONAL SUPPLEMENT: (1) causes, assists, promotes or contributes to weight loss and/or
19 fat loss; (2) causes, assists, promotes or contributes to weight loss and/or fat loss at any particular rate or
20 speed, within any time period, and/or with or without changes in diet or exercise; (3) enables users to lose
21 weight or fat, or any specific amount of weight or fat; (4) has any effect on metabolism, food intake, or
22 body fat, and/or provides any weight loss, fat loss, weight regulation, weight control or weight
23 maintenance benefit; (5) causes, assists, promotes or contributes to a reduction, control of or suppression
24 of appetite; (6) causes, assists, promotes or contributes to an increase in metabolism and/or fat burning;
25 and/or (7) causes, assists, promotes or contributes to an inhibition of lipogenesis; unless, at the time of
26 the making and/or dissemination of such claim or representation, it is true, not misleading, and
27 Defendants already have in their possession and rely upon SCIENTIFIC SUBSTANTIATION that
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1 substantiates such claim or representation.

2 C. Misrepresenting the status of whether or not any drug or device has been approved or
3 cleared by the United States Food & Drug Administration.

4 D. Making and/or disseminating any claim or representation, either directly or indirectly, that
5 misrepresents the existence, contents, validity, results, conclusions, or interpretations of any test, study or
6 research.

7 E. Making and/or disseminating any claim or representation in the form of a testimonial in
8 violation of any of the provisions of 16 C.F.R. §255.2(a); 16 C.F.R. §255.0(b); and/or 16 C.F.R.
9 §255.1(A), (B) and/or (C).

10 6. Any amended statute or regulation, successor statute or regulation or renumbered statute or
11 regulation will have the same force and effect as the statutes and regulations cited in this Final Judgment.

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13 **SETTLEMENT AMOUNT**

14 7. Defendants shall pay the sum of One Million Seven Hundred Ninety-Six Thousand, One Hundred
15 Fourteen Dollars and Fifty Cents (\$1,796,114.50) pursuant to the subparagraphs A-C below and pursuant
16 to *Business and Professions Code* sections 17203, 17206, and 17536, as follows:

17 A. Seven Hundred Ninety-Six Thousand, One Hundred Fourteen Dollars and Fifty Cents
18 (\$796,114.50) shall be deemed a credit to be applied to the total restitution portion of
19 this settlement for refunds to California consumers already processed by Defendant
20 SCI for the relevant products, as more specifically described in the complaint.

21 B. The parties having so stipulated, the Court hereby finds that it is impractical and
22 impossible to identify or to provide direct restitution to consumers who purchased
23 SCI products, as more specifically described in the complaint; and the Court
24 further finds that other forms of direct restitution are too impractical, costly, and
25 would far exceed any benefit to individual consumers. Thus, Defendant shall pay
26 restitution under the doctrine of *cy pres* pursuant to *Business and Professions*
27 *Code* sections 17203 and 17535 in the sum of Fifty Thousand Dollars
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1 (\$50,000.00). This *cy pres* restitution shall be paid to the California Consumer
2 Protection Trust Fund, previously created by the Judgment and Permanent Injunction,
3 filed on September 21, 1989, in the case of *People v. ITT Consumer Financial*
4 *Corporation* (Alameda County Superior Court case number 656038-0) for the
5 purpose of enhancing the investigation, prosecution, and enforcement of consumer
6 protection actions, brought pursuant to the unfair competition statutes of the State of
7 California. The Payment shall be in the form of a cashier's check made payable to
8 the California Consumer Protection Trust Fund and shall be delivered to the Napa
9 County District Attorney's Office, within 10 days of entry of this Final Judgment.

10 C. The remaining Nine Hundred and Fifty Thousand Dollars (\$950,000.00) shall be
11 allocated as Civil Penalties and shall be paid within 10 days of entry of this Final
12 Judgment. The Payment shall be in the form of a cashier's check made payable to the
13 Napa County District Attorney's Office and shall be delivered to the Napa County
14 District Attorney's Office, within 10 days of entry of this Final Judgment. The Napa
15 County District Attorney's Office shall distribute this payment to the prosecuting
16 offices in this action pursuant to agreement with these offices.

17 18 COMPLIANCE

19 8. For the purpose of securing compliance with the terms of this Final Judgment, Defendants are
20 hereby ordered and mandated to do all of the following:

21 A. Maintain and make available to any representative of the People for inspection and
22 copying, within fifteen (15) days of any written request to do so:

23 1. A file that contains SCIENTIFIC SUBSTANTIATION for the types of claims
24 described in this Final Judgment, made and/or disseminated for any of the Defendants' NUTRITIONAL
25 SUPPLEMENTS sold and marketed within California. For each such item of SCIENTIFIC
26 SUBSTANTIATION, the date of its inclusion in the file shall be noted, and such item of SCIENTIFIC
27 SUBSTANTIATION shall be maintained for at least five (5) years from the date of its inclusion in this
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1 file.

2 2. A file that contains all tests, reports, studies, surveys, demonstrations,
3 information or other evidence in the Defendants' possession or control that contradict, qualify or call into
4 question any claim or representation made and/or disseminated for any of the Defendants'
5 NUTRITIONAL SUPPLEMENTS sold and marketed within California , or that contradict, qualify or
6 call into question the basis upon which the Defendants relied for such claim or representation, including
7 but not limited to complaints from consumers and complaints or inquiries from governmental
8 organizations. For each such item, the date of its inclusion in the file shall be noted, and such item shall
9 be maintained for at least five (5) years from the date of its inclusion in this file.

10 B. Within fifteen (15) days of the date of the filing of this Final Judgment, Defendant Suarez
11 shall provide representatives of the People with a list identifying the names and contact information of
12 SCI's current principals, officers, directors and managers, affiliates, subsidiaries, and all personnel,
13 agents and representatives having sales, advertising or policy responsibility with respect to the marketing
14 and sale of NUTRITIONAL SUPPLEMENTS within California;.

15 C. Within thirty (30) days of the date of the filing of this Final Judgment, a copy of this Final
16 Judgment shall be given to each of SCI's current principals, officers, directors and managers, affiliates,
17 subsidiaries and to all personnel, agents and representatives having sales, advertising or policy
18 responsibility with respect to the marketing and sale of NUTRITIONAL SUPPLEMENTS within
19 California.

20 D. For a period of five years from the date of the filing of this Final Judgment, Defendants
21 SCI shall provide a copy of this Final Judgment to each of its future principals, officers, directors and
22 managers, future affiliates, future subsidiaries, and to all future personnel, agents and representatives
23 having sales, advertising or policy responsibility with respect to the marketing and sale of
24 NUTRITIONAL SUPPLEMENTS within California within ten (10) days after the person commences his
25 or her responsibilities.
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JURISDICTION RETAINED

9. Jurisdiction is retained for the purposes of enabling any party to this Final Judgment to apply to the Court at any time for such order or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment, for the modification or termination of any of the injunctive provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations there under.

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EFFECT AND ENTRY

10. This Final Judgment shall take effect immediately upon entry hereof.

DATED: Jan. 28, 2014

By 
Judge of the Superior Court
Wynne Carvill