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Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JONATHAN KANFER, on behalf of himself, all others similarly situated and the general public,

Plaintiff,

v.

PharmaCare US, Inc., a Delaware Corporation,

Defendant.

Case No: **'15CV120 H JLB**

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

- **CALIFORNIA UNFAIR COMPETITION LAW;**
- **CALIFORNIA FALSE ADVERTISING LAW;**
- **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT;**

DEMAND FOR JURY TRIAL

Plaintiff Jonathan Kanfer, on behalf of himself, all others similarly situated, and the general public, by and through his undersigned counsel, hereby sues Defendant PharmaCare US, Inc. ("Defendant"), and alleges the following upon his own knowledge, or where he lacks personal knowledge, upon information and belief and the investigation of his counsel.

INTRODUCTION

1. Defendant falsely markets an over-the-counter product called "IntenseX" (the "Product") as having beneficial health and aphrodisiac properties to increase "Sexual Power and Performance," despite that none of the ingredients in the Product, individually or in combination, provide such benefits.

2. Plaintiff read, believed, and relied upon Defendant's claims when purchasing the Product during the Class Period defined herein, and was damaged as a result.

3. Plaintiff brings this action challenging Defendant's claims relating to IntenseX on behalf of himself and all others similarly situated under California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act. Additionally, Plaintiff is asserting claims under the Florida Deceptive and Unfair Trade Practices Act.

4. Plaintiff seeks an order compelling PharmaCare US, Inc. to (1) cease marketing IntenseX using the misleading tactics complained of herein, (2) conduct a corrective advertising campaign, (3) restore the amounts by which Defendant has been unjustly enriched, and to (4) destroy all misleading and deceptive materials.

JURISDICTION & VENUE

5. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs and because more than two-thirds of the members of the class reside in states other than the state in which Defendant resides.

6. Defendant manufactures, markets and sells the Product from within California to consumers in every state in the United States. Personal jurisdiction is derived from the

fact that Defendant conducts business within the State of California and within this judicial district.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this District because all marketing and advertising decisions relating to the IntenseX product occurs within the County of San Diego and within this judicial district. Moreover, Defendant resides in this district, is authorized to conduct business in this District, has intentionally availed itself of the laws and markets of this District through the promotion, marketing, distribution, and sale of the Product in this District; and is subject to personal jurisdiction in this District.

PARTIES

8. Plaintiff Jonathan Kanfer is a resident of West Palm Beach, Florida.

9. Defendant PharmaCare US, Inc. is Delaware corporation with its principal place of business located at 101Montgomery Street, Suite 2050, San Francisco California 94104. Defendant is registered to do business in California as entity number C3217079. Defendant PharmaCare US, Inc. is a leading manufacturer, distributor, and marketer of a variety of natural health products and supplements. Defendant markets its products under a variety of brand names, including "Sambucol," "Skin Doctors," and "Real Health Laboratories." The IntenseX product is sold and marketed under Defendant's "Real Health Laboratories" brand. In the "contact us" sections of the PharamaCare US, Inc. website, the Real Health Laboratories website, and the IntenseX website Defendant's contact address is listed as PO Box 122950 San Diego, California 92112-2950. In addition, the contact phone number has a San Diego area code— (858) 997-1156. All marketing and advertising decisions relating to the IntenseX Product occurs within the County of San Diego and within this judicial district.

10. Members of the class reside in California and each of the other 49 states of the United States, with two-thirds or more than two-thirds of the class residing outside the State of California.

FACTUAL ALLEGATIONS

11. Defendant has distributed, marketed, and sold the IntenseX product on a nationwide basis, both online and at retain store locations. IntenseX is available in a bottle of 20 tablets and retails for approximately $9.99.

12. Defendant prominently labels its product under the name "IntenseX" implying that the Product's ingredients will help a user to have intense sex despite that the Product fails to increase sexual power and performance and it not effective as an aphrodisiac.

13. Defendant further claims that the IntenseX product increases "Sexual Power and Performance," and that "IntenseX is designed to intensify your endurance, stamina and sexual performance." The Product's label further states that the "fast acting formula quickly dissolves in the body releasing an energy packed blend of potent herbal extracts" and that

with the Product a user can "Achieve peak performance to maximize the experience when you want it most." Additionally, the label claims that the product is "laboratory quality tested," contains a "proprietary stamina blend," and is "produced using the highest manufacturing standards." These labeling claims are false and misleading for the reasons described herein.

14. There are no reliable scientific studies showing that the Product, or any of its ingredients, are effective at increasing Sexual Power and Performance.

The Composition of IntenseX

15. IntenseX consists of a blend of small amounts of extracts from herbs, roots, and other organic substances, some of which are purported to have an effect on the human body.

16. The figure below shows the ingredients in IntenseX:

Supplement Facts

Serving Size: 2 tablets — Servings Per Container: 10

Amount Per Serving		% Daily Value
Calcium (as calcium carbonate)	575 mg	58%
Guarana, 6:1 Extract, containing 88 mg caffeine (*Paullinia cupana*) (seed)	400 mg	†
Muira Puama, 4:1 Extract (*Ptychopetalum olacoides*)(root)	250 mg	†
Catuaba, 4:1 Extract (*Erythroxylum catuaba*)(bark)	250 mg	†
Ginkgo Biloba 24/6% Extract (leaf)	40 mg	†
PROPRIETARY STAMINA BLEND	200 mg	†
Avena Sativa (herb), **Cordyceps** (*Cordyceps sinensis*)		
Ashwaganda (*Withania somnifera*)(root)		
PROPRIETARY ENERGY BLEND	100 mg	†
Tribulus Terrestris 40% Extract (herb), **American Ginseng 5% Extract** (*Panax quinquefolium*)(root), **Korean Ginseng 7% Extract** (*Panax ginseng*)(root)		
PROPRIETARY WARMING BLEND	200 mg	†
Ginger (*Zingiber officinale*) (bark), **Cinnamon** (*Cinnamomum casia*) (bark)		
Nutmeg (*Myristica fragrans*) (seed), **Cayenne** (*Capsicum annuum*) (fruit)		

† Percent Daily Values have not been established. V.1

Other ingredients: Microcrystalline cellulose, stearic acid, croscarmellose sodium, silicon dioxide, magnesium stearate, and clear coating.

Storage: Product should be stored in a cool, dry place, away from direct light and heat.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

17. IntenseX, by means of its ingredients, claims to increase "sexual power & Performance" and suggests to consumers that it is effective as an aphrodisiac drug product.

18. None of the ingredients in IntenseX, individually or in combination, however, increase male strength and performance or are effective as an aphrodisiac.

19. Some of the ingredients in IntenseX include Catuaba, Avena Sativa, Muira Puama, and Tribulus Terrestris. According the NYU Langone Medical Center, "there is as yet no real evidence that [Catuaba, Avena Sativa, Muira Puama, and Tribulus Terrestris] offer any benefits" for increasing sexual performance or desire. *See* http://www.med.nyu.edu/content?ChunkIID=21720 (last visited Jan. 5, 2015). Moreover, the NYU Langone Medical Center has noted that there are no reliable scientific studies (such as double-blind, placebo controlled studies) to establish that Ginkgo Biloba— another ingredient in IntenseX— improves sexual function. In fact, at least two studies have shown that "ginko failed to improve sexual function to any greater extent than placebo." *See id.*

20. While a few unreplicated scientific studies suggest ingredients in the Product may, in necessary amounts, have benefits to sufferers of certain specific conditions, many of the ingredients in the Products appear to have never been studied at all or have not otherwise been shown to have any effect on the human body, much less to increase sexual power and performance.

21. Further, consuming such random herbs and herbal extracts presents a risk of an allergic or other adverse reaction without any offsetting benefit.

IntenseX is a Misbranded Drug

22. The labeling described above, including but not limited to "IntenseX," "Sexual Power & Performance," and "InteseX is designed to intensify your endurance, stamina, and sexual performance" alone and in context with other labeling claims and packaging graphics, evidence the Product's intended use as an aphrodisiac, to arouse or increase sexual desire or energy, or improve sexual performance.

23. Pursuant to Title 21 of the Code of Federal Regulations, Part 310.528 (21 CFR § 310.528) any OTC drug product that is labeled, represented, or promoted for use as an

aphrodisiac, like IntenseX, is regarded as a "new drug" within the meaning of section 201(p) of the FDCA (located at 21 U.S.C. § 355(p)).

24. The FDCA requires any new drug to have an application approved by the Food and Drug Administration ("FDA") before the drug can be marketed to the public, and further that the drug's label be approved by the FDA prior to marketing or selling the drug to the public. *See, generally, id.*; 21 U.S.C. §§ 355(a), (b) [New Drug Application], (j) [Abbreviated New Drug Application, for generic drugs].

25. Defendant's Product violates Section 505(a) of the FDCA since the adequacy of the labeled directions for its "aphrodisiac" uses has not been approved by the FDA prior to the Products being marketed to the public (*see* 21 U.S.C. § 355(a)).[1] Accordingly, the Product is misbranded under section 502(f)(1) of the FDCA (located at 21 U.S.C. § 352).

26. Further, IntenseX includes the ingredients: Muira Puma and Catuaba. However, none of these are safe and effective for OTC use as an aphrodisiac. 21 C.F.R. § 310.528. The FDA bars these false, misleading, and unsupported by scientific data label claims. *Id.* Thus, based on the evidence currently available, any OTC drug product containing ingredients for use as an aphrodisiac, including IntenseX, cannot be generally recognized as safe and effective, and instead are misbranded new drugs. *See id.*

27. Although Defendant labels its IntenseX product as a dietary supplement, the Product is really a misbranded aphrodisiac drug product. Specifically, federal regulations prohibit Defendant from making "disease claims" on dietary supplements. *See* 21 C.F.R. § 101.93. Disease claims are generally described as statements which claim to diagnose, mitigate, treat, cure or prevent disease where the statements claim "explicitly or implicitly, that the product…Has an effect on the characteristic signs or symptoms of a specific disease or class of diseases, using scientific or lay terminology." *Id.* The labeling of IntenseX leads

[1] In addition to proving effectiveness, the manufacturer of a new drug must also prove the drug's safety, sufficient to meet FDA standards. 21 U.S.C. § 355(d).

reasonably prudent consumers into believing that the product can treat or cure impotence or erectile dysfunction, which are diseases recognized by the FDA.

28. California Health and Safety Code, Division 104, Part 5, contains the Sherman, Food, Drug, and Cosmetic Law ("Sherman Law," located at Cal. Heath & Safety Code §§ 109875-111915). The Sherman Law imposes identical requirements to the federal FDCA: "All nonprescription drug regulations and regulations for new drug applications under the FDCA are the regulations of this State." Cal. Health & Safety Code §§ 110110-110111, 110115. The Sherman Law also defines a "drug" as "any article other than food, that is used or intended to affect the structure or any function of the body of human beings or any other animal." Cal. Health & Safety Code § 109925(c).

29. The Sherman Law is explicitly authorized by the FDCA. 21 U.S.C. § 343-1.

30. Plaintiff and members of the Class would not have purchased IntenseX if it were known to them that the Product is misbranded pursuant to FDA regulations.

RELIANCE AND INJURY

31. Plaintiff purchased the IntenseX Product on at least four occasions from a Publix Market store near his home in West Palm Beach, Florida for approximately $9.99. Plaintiff first purchased the Product in or around October of 2013 and continued to purchase the Product until approximately January of 2014.

32. When purchasing IntenseX, Mr. Kanfer and the class were seeking a product that had the qualities described on the Product's label, namely, a high quality and effective doctor endorsed aphrodisiac that enhanced male performance.

33. When deciding to purchase IntenseX, Plaintiff read and relied on the following deceptive claims contained on the packaging of IntenseX. These statements were made by Defendant directly on the packaging of IntenseX at the time Plaintiff purchased IntenseX:

a. the Product's name, "IntenseX"

b. "Sexual Power and Performance."

c. "IntenseX is designed to intensify your endurance, stamina, and sexual performance"

d. "This fast acting formula quickly dissolves in the body releasing an energy packed blend of potent herbal extracts"

e. "Achieve peak performance to maximize the experience when you want it most"

f. "Laboratory Quality Tested"

g. "Proprietary Stamina Blend"

h. "Produced using the highest manufacturing standards"

34. Based on these representations, Plaintiff believed IntenseX had powerful aphrodisiac qualities and would improve his sexual power and performance.

35. Plaintiff believed IntenseX had the qualities he sought based on these deceptive labeling claims, but the Product was actually unsatisfactory to Plaintiff for the reasons described herein, *i.e.*, the Product did not deliver the purported benefits, there is no evidence the ingredients in IntenseX could provide the claimed benefits, and the ingredients may actually impose an unreasonable risk of danger.

36. IntenseX costs more than similar products without misleading labeling, and would have cost less absent the false and misleading statements.

37. Plaintiff paid more for IntenseX, and would only have been willing to pay less or unwilling to purchase the Product at all, absent the false and misleading labeling complained of herein. Plaintiff would not have purchased IntenseX absent these claims and advertisements.

38. For these reasons, IntenseX was worth less than what Plaintiff and the class paid for it.

39. Instead of receiving a product that had actual and substantiated healthful or other beneficial qualities, the Product Plaintiff and the class received was one which does not provide the claimed benefits.

40. Plaintiff and the class lost money as a result of Defendant's deceptive claims and practices in that they did not receive what he paid for when purchasing IntenseX.

41. Plaintiff and the class altered their position to his detriment and suffered damages in an amount equal to the amount they paid for the Product.

42. The senior officers and directors of Defendant allowed IntenseX to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

CLASS ACTION ALLEGATIONS

43. Pursuant to Rule 23, plaintiff seeks to represent a Class comprised of all persons in the United States (excluding officers, directors, and employees of Defendant) who purchased IntenseX primarily for personal, family, or household use, and not for resale within the four years prior to the filing of the current Complaint.

44. The members in the proposed class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court.

45. Questions of law and fact common to plaintiff and the class include:

A. whether Defendant contributed to, committed, and/or is responsible for the conduct alleged herein;

B. Whether Defendant's conduct constitutes the violations of law alleged herein;

C. Whether Defendant acted willfully, recklessly, negligently, or with gross negligence in the violations of law alleged herein; and

D. Whether Class members are entitled to compensatory, injunctive, and other equitable relief;

46. Plaintiff's claims are typical of class members' claims in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

47. Absent Defendant's deceptive claims, Plaintiff and the Class members would not have purchased IntenseX.

48. Plaintiff will fairly and adequate represent and protect the interests of the class, has no interests incompatible with the interests of the class, and has retained counsel competent and experienced in class action litigation.

49. The class is sufficiently numerous, as the class contain at least hundreds of thousands of members who purchased IntenseX across the United States.

50. Class treatment is superior to other options for resolution of the controversy because the relief sought for each class member is small such that, absent representative litigation, it would be infeasible for class members to redress the wrongs done to them.

51. Questions of law and fact common to the class predominate over any questions affecting only individual class members.

52. Defendant has acted on ground applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

53. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law, Unlawful Prong

Cal. Bus. & Prof. Code § 17200 *et seq.*

54. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

55. California Business and Professional Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

56. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute "unlawful" business acts and practices in that Defendant's conduct violates the False Advertising Law, the Consumer Legal Remedies Act, and the Magnuson Moss Warranty Act.

57. Defendant's conduct is further "unlawful" because it violates the FDCA and its implementing regulations in the following ways:

a. Defendant's deceptive statements violate 21 U.S.C. §§ 343(a) and 352, which deem a food or drug (including nutritional supplements) misbranded when the label contains a statement that is "false or misleading in any particular";

b. Defendant's deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which mandates "substances" in dietary supplements consumed must contribute and retain "nutritive value," as defined under 21 C.F.R. § 101.14(a)(2)(3) when consumed at levels necessary to justify a claim;

c. Defendant's deceptive statements are *per se* false and misleading because the FDA has ruled there is a lack of adequate data to establish general recognition of the safety and effectiveness of any of the ingredients in IntenseX, or any other ingredient, for OTC use as an aphrodisiac; and labeling claims for aphrodisiacs for OTC use are "either false, misleading, or unsupported by scientific data." 21 C.F.R. § 310.528(a);

d. Defendant's deceptive statements violate 21 C.F.R § 310.528(b), which mandates that any OTC product that is labeled, represented, or promoted for use as an aphrodisiac, like IntenseX, is regarded as a "new drug" within the meaning of 21 U.S.C. § 355(p), but Defendants do not have new drug approval for IntenseX or its labeling, as required under the FDCA and its implementing regulations. Accordingly, Defendant's Product is misbranded under section 502(f)(1) of the FDCA;

e. Defendant's Product violates 21 C.F.R. § 101.93 because the Product's leads reasonable consumers to believe that the Product can treat or cure diseases such as impotence or erectile dysfunction.

f. Defendant's Product also violates the FDCA because, as an unapproved new drug and aphrodisiac, IntenseX cannot be generally recognized as safe and

effective in the absence of a new drug application as set forth in the FDCA and its implementing regulations. 21 C.F.R. § 310.528(a);

58. Defendant's conduct is further "unlawful" because it violates the California Sherman Food, Drug, and Cosmetic Law, *see* Cal. Health & Safety Code § 109875-111900, which incorporates the provisions of the FDCA. *See id.* §§ 110110-110115.

59. Defendant profited from its sales of the falsely, deceptively, or unlawfully advertised Product to unwary consumers.

60. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

SECOND CAUSE OF ACTION

Violations of the Unfair Competition Law, Unfair and Fraudulent Prongs

Cal. Bus. & Prof. Code § 17200 *et seq.*

61. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

62. California Business and Professional Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

63. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein also constitute "unfair" business acts and practices under the UCL in that Defendant's conduct is immoral, unscrupulous, and offends public policy by seeking to profit from male vulnerability to false or deceptive virility or aphrodisiac claims. Further, the gravity of Defendant's conduct outweighs any conceivable benefit of such conduct.

64. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute "fraudulent" business acts and practices under the UCL in that Defendant's claims are false, misleading, and have a tendency to deceive the Class and the general public, as detailed herein.

65. Defendant profited from its sales of the fraudulently, falsely and deceptively advertised Product to unwary consumers.

66. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

67. Plaintiff further seeks an order for the disgorgement and restitution of all profit earned from the sale of the Defendant's Product, which were acquired through acts of unlawful, unfair, and/or fraudulent competition by Defendant.

THIRD CAUSE OF ACTION

Violations of the False Advertising Law,

Cal. Bus. & Prof. Code § 17500 *et seq.*

68. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

69. In violation of California Business and Professional Code § 17500 *et seq*., the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use of IntenseX.

70. Defendant knew and reasonably should have known that the labels on Defendant's Product were untrue and/or misleading.

71. Defendant profited from its sales of the falsely and deceptively advertised Product to unwary consumers.

72. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendants were unjustly enriched.

FOURTH CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code § 1750, *et seq.*

73. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

74. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

75. Defendant's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of Defendant's Product for personal, family, or household purposes by Plaintiff and class members, and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

76. Defendant profited from its sales of the falsely, deceptively and unlawfully advertised Product to unwary consumers.

77. As a result, Plaintiff and the Class have suffered irreparable harm; and seek actual damages in the amount of the total retail sales price of all Products sold throughout the class period to all class members, punitive damages in an amount sufficient to deter and punish, injunctive relief in the form of modified advertising and a corrective advertising plan, and restitution.

78. Defendant's wrongful business practices regarding the Product constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendant is still representing that the Product has characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class.

79. Plaintiff and the class seek equitable relief for their CLRA claims.

PRAYER FOR RELIEF

98. Wherefore, Plaintiff, on behalf of himself, all others similarly situated and the general public, prays for judgment against Defendant as to each and every cause of action, and the following remedies:

A. An Order declaring this action to be a proper class action and appointing undersigned counsel as class counsel;

B. An Order requiring Defendant to bear the cost of class notice;

C. An Order compelling Defendant to conduct a corrective advertising campaign;

D. An Order requiring Defendant to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

E. An Order compelling Defendant to destroy all misleading and deceptive advertising materials and Product labels;

F. An Order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, plus pre-and post-judgment interest thereon;

G. Any other and further relief that Court deems necessary, just, or proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 19, 2015

/s/ Ronald A. Marron

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Attorney for Plaintiff and the Proposed Class

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

15CV120 H JLB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Jonathan Kanfer, on behalf of himself, all others similarly situated and the general public

(b) County of Residence of First Listed Plaintiff Palm Beach County, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Law Offices of Ronald A. Marron
651 Arroyo Drive, San Diego, CA 92103
(619) 696-9006

DEFENDANTS

PharmaCare US, Inc., a Delaware Corporation

County of Residence of First Listed Defendant San Diego County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	☒ 4
Citizen of Another State	☒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Class Action Fairness Act, 28 U.S.C. Sec. 1332(d)(2).

Brief description of cause:
Violations of Consumer Protection Statutes.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD
/s/ Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.