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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 ISMAIL IMRAN and ZACH HESS, on behalf of
18 themselves and all others similarly situated

19 Plaintiffs,

20 v.

21 VITAL PHARMACEUTICALS, INC.,
22 d/b/a VPX Sports, a Florida corporation;
23 and JOHN H. OWOC a.k.a. JACK OWOC, an
individual

24 Defendants.

Case No. 3:18-cv-05758- JCS

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Ismail Imran and Zach Hess bring this action on behalf of themselves and all
2 others similarly situated against VITAL PHARMACEUTICALS, INC., d/b/a VPX Sports
3 (“VPX”), a Florida corporation, and JOHN H. OWOC a.k.a. JACK OWOC, an individual.
4 Plaintiffs make the following allegations based upon information and belief, except as to the
5 allegations specifically pertaining to themselves, which are based on personal knowledge.

6 INTRODUCTION

7 1. VPX is an American company that hypes its products as the healthiest energy drink
8 on the market. VPX manufactures, distributes, and sells a variety of products, including its BANG[®]
9 product line. Defendants VPX and Owoc sell BANG[®] products by deceiving the public about the
10 product’s ingredients and the benefits of consumption.

11 2. Defendants tout the presence of so-called “Super Creatine,” Branched Chain Amino
12 Acids (“BCAAs”) and “Ultra” Coenzyme Q₁₀ (or “Ultra COQ10”) in BANG[®] products, claiming that
13 those ingredients, combined with caffeine, provide “Potent Brain and Body Fuel.” Indeed,
14 Defendants pitch BANG[®] as nothing short of a miracle drink that can “reverse mental retardation”
15 and cure Alzheimer’s disease and other forms of dementia. All of that is false.

16 3. The marquee ingredient in BANG[®] products is “Super Creatine,” which Defendants
17 claim is a new compound they invented, and is 20 times more effective at reaching the brain than
18 “regular” creatine. Creatine is a popular dietary supplement believed to have beneficial effects for
19 exercise and building muscle mass. However, BANG[®] products have no creatine at all, or only in
20 trace amounts that are far too low to have any effect on cognition or physical performance. What
21 Defendants call “Super Creatine” is really creatyl L-leucine. However, creatyl L-leucine is not
22 creatine. It does not have the benefits of creatine, it does not break down into creatine when
23 consumed, and BANG[®] products contain only trace amounts of creatyl L-leucine that have no effect
24 on cognition or physical performance. Simply put, “Super Creatine” is a sham.

25 4. Defendants also tout the presence of Branched Chain Amino Acids (“BCAAs”) and
26 “Ultra” Coenzyme Q₁₀ in BANG[®] products. BCAAs and Coenzyme Q₁₀ are associated with
27 improvements in cognition and physical performance, but again, BANG[®] products contain neither of
28

1 those ingredients, or contain them only in trace amounts that are far too low to have any effect on the
2 human body. There is no such thing as “ultra” Coenzyme Q₁₀.

3 5. Lacking the ingredients advertised, the caffeinated version of BANG[®] drinks are
4 really just a shot of caffeine mixed with artificial flavors. But even then, the products fall short
5 because they contain less caffeine than indicated on the labeling.

6 6. Defendant John Owoc, CEO and founder of VPX, holds himself out as VPX’s “Chief
7 Scientific Officer” and primary pitchman, but his qualifications as VPX’s “CSO” are apparently
8 based on his previous stint as a high school science teacher.

9 7. To further deceive consumers and give the false impression of medical and scientific
10 support for BANG[®]’s supposed benefits, VPX holds itself out as a “pharmaceutical” company.
11 Indeed, Defendant Owoc claims that he purposefully designed the company logo to resemble the
12 “Rx” symbol associated with pharmaceutical drugs:



18 As Owoc explained, “This is precisely why the acronym VP(X) actually stands for Vital
19 Pharmaceuticals with the X appearing lower than VP similar to how it appears in RX.”

20 8. Defendants intend to deceive consumers into believing that BANG[®] products contain
21 potent amounts of creatine, BCAAs and Coenzyme Q₁₀. On the VPX website, for example, John
22 Owoc states “one of the reasons I entered into the supplement industry was my disgust for
23 unscrupulous supplement manufacturers who were intentionally mislabeling their supplements and
24 ripping the public off. However, let’s be crystal clear; my broader vision was to create supplements
25 that were super potent and highly effective – supplements so effective that they had the power to
26 positively impact lives and radically improve health in a very short period of time.”
27
28

1 9. VPX claims to “have more university proven double-blind placebo-controlled sports
2 and performance nutrition studies on [its] finished products than all the supplement companies in
3 [its] industries combined,” but no published peer-reviewed study is identified on the VPX website.

4 10. VPX further represents, “All of our raw materials are received into the warehouse,
5 quarantined, and then tested for efficacy in our own state of the art laboratories to ensure that we
6 only provide the end-consumer with the best product possible. Raw materials are sampled and taken
7 to the quality control lab for analysis. Our analysis of each ingredient is conducted by tests on several
8 levels; first through our high-performance liquid chromatography (HPLC) units that confirm the
9 identity and purity levels of the ingredient; and second, the physical characteristics of the compound
10 are verified through our infrared spectroscopy (IR) machine. Once the test results meet our set
11 release specifications and the supplier’s certificate of analysis, the ingredient is released and can be
12 utilized within manufacturing. Maintaining this high level of testing ensures that every VPX product
13 is manufactured to its intended design and that we continually produce products that meet and exceed
14 our customers’ expectations.”

15 11. VPX has a long history of unlawful practices that have sparked a string of lawsuits,
16 investigations by the National Advertising Division (“NAD”), and warnings by the U.S. Food and
17 Drug Administration (“FDA”). Between 2008 and 2012 NAD repeatedly took issue with VPX’s
18 unsubstantiated performance claims about its supplement products. In 2015, the FDA sent VPX a
19 warning letter for selling dietary supplements that were adulterated with a potentially unsafe
20 ingredient, DMBA, which has not been approved for use as a dietary ingredient.

21 12. Plaintiffs and members of the classes described below paid a premium for
22 Defendants’ Products over comparable products that were not promoted with the misrepresentations
23 at issue here.

24 13. Defendants’ representations concerning BANG[®] energy drinks are unfair, unlawful,
25 and fraudulent, and have the tendency or capacity to deceive or confuse reasonable consumers. As
26 such, Defendants’ practices violate California’s Consumer Legal Remedies Act, Cal. Civ. Code
27 § 1750 *et seq.* (“CLRA”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*
28

1 *seq.* (“UCL”), and California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*
2 (“FAL”). Plaintiffs also bring claims for fraud, unjust enrichment and breach of express warranty.

3 **JURISDICTION AND VENUE**

4 14. This Court has personal jurisdiction over Defendants. Defendants purposefully avail
5 themselves of the California consumer market and distribute BANG® products to hundreds of
6 locations within this County and thousands of retail locations throughout California, where BANG®
7 products are purchased by thousands of consumers every day.

8 15. This Court has original subject-matter jurisdiction over this proposed class action
9 pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act
10 (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action in
11 which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a
12 citizen of a State different from any defendant, and the matter in controversy exceeds the sum of
13 \$5,000,000.00, exclusive of interest and costs. Plaintiffs allege that the total claims of individual
14 members of the proposed Class (as defined herein) are well in excess of \$5,000,000.00 in the
15 aggregate, exclusive of interest and costs.

16 16. Venue is proper in this District under 28 U.S.C. § 1391(a). Plaintiff’s purchases of
17 BANG® products, substantial acts in furtherance of the alleged improper conduct, including the
18 dissemination of false and misleading information regarding the nature, quality, and/or ingredients of
19 the products, occurred within this District and the Defendants conduct business in this District.

20 **PARTIES**

21 17. Plaintiff Ismail Imran is a citizen of California, residing in Elk Grove, California.
22 From 2017 to 2018, Plaintiff made several purchases of BANG® products from various stores in and
23 near San Francisco and Sacramento County, California. Prior to purchasing BANG® products,
24 Mr. Imran saw and read the product packaging, and relied on the representation and warranty that the
25 product would provide health and wellness benefits. Prior to purchasing, Mr. Imran also saw, read
26 and relied on each of the following statements:

- 27 a. “SUPER CREATINE,” “ULTRA COQ10” and “BCAA AMINOS”
28

1 b. “POTENT BRAIN AND BODY ROCKING FUEL.”

2 c. “Power up with BANG®’s potent brain & body-rocking fuel: Creatine, Caffeine,
3 CoQ10 & BCAAs (Branched Chain Amino Acids).”

4 18. Mr. Imran was deceived by the above misrepresentations into believing that BANG®
5 products contained a potent form of creatine and Coenzyme Q₁₀, and that the products had sufficient
6 amounts of creatine, BCAAs, and Coenzyme Q₁₀ to provide mental and physical benefits.

7 19. Mr. Imran purchased BANG® Products at a substantial price premium, and would not
8 have bought the Products had he known that the labeling and marketing he relied on was false,
9 misleading, deceptive and unfair.

10 20. Mr. Imran would purchase BANG® Products in the future if they contained sufficient
11 quantities of creatine, BCAAs and Coenzyme Q₁₀ to provide the benefits associated with those
12 ingredients. Mr. Imran regularly visits places where Defendants’ products are sold. However, he has
13 no way to be certain that Defendants’ ingredient representations are true when he sees the products
14 on the store shelves.

15 21. Plaintiff Zach Hess is a citizen of New York, residing in Brooklyn, New York. Mr.
16 Hess purchased Defendants’ Products from various stores in New York over the course of 2018.
17 Prior to purchasing BANG® Products, Mr. Hess saw and read the product packaging, and relied on
18 the representation and warranty that the product would provide health and wellness benefits. Prior to
19 purchasing, Mr. Hess also saw, read and relied on each of the following statements:

20 a. “SUPER CREATINE,” “ULTRA COQ10” and “BCAA AMINOS”

21 b. “POTENT BRAIN AND BODY ROCKING FUEL.”

22 c. “Power up with BANG®’s potent brain & body-rocking fuel: Creatine, Caffeine,
23 CoQ10 & BCAAs (Branched Chain Amino Acids).”

24 22. Mr. Hess was deceived by the above misrepresentations into believing that BANG®
25 products contained a potent form of creatine and Coenzyme Q₁₀, and that the products had sufficient
26 amounts of creatine, BCAAs, and Coenzyme Q₁₀ to provide mental and physical benefits.

1 28. Defendants also manufacture, distribute, advertise and sell caffeine-free versions of
2 BANG[®] energy drinks which for all relevant purposes are identical, apart from the flavors, which
3 include: Sour Heads; Cotton Candy; Black Cherry Vanilla; Purple Guava Pear; Cherry Blade
4 Lemonade (collectively the “Products”).

5 29. **Ingredients at issue:** The challenged ingredients at issue in this action are creatine
6 (or “Super Creatine”), Branched Chain Amino Acids (“BCAAs”), and Coenzyme Q₁₀ (or “Ultra
7 COQ10”).

8 30. **Creatine and “Super Creatine.”** Creatine is a popular dietary supplement associated
9 with the metabolism of skeletal muscle and improving physical performance in high-intensity
10 anaerobic repetitive work, such as weight lifting. Athletes often take creatine supplements to
11 improve performance, while non-athletes often take creatine supplements to improve physical
12 appearance. Creatine also is associated with improved brain performance. There is no such thing as
13 “Super Creatine.” That is a term Defendants put on BANG[®] labeling because it has the tendency or
14 capacity to deceive or confuse reasonable consumers into believing that BANG[®] products contain a
15 potent form of creatine.

16 31. **Branched Chain Amino Acids (“BCAAs”).** BCAAs fill several metabolic and
17 physiological roles, and may have a role in protein synthesis, synthesis of neurotransmitters, and
18 production of energy. BCAAs are popular among body builders as they help maintain muscle mass
19 while on a calorie-deficit diet.

20 32. **Coenzyme Q₁₀ and “Ultra COQ10.”** Coenzyme Q₁₀ is an antioxidant involved in
21 energy production, and there is research associating Coenzyme Q₁₀ with improvements in physical
22 performance, ameliorating migraines, and providing benefits to people in the early stages of
23 Parkinson’s disease. There is no such thing as “Ultra COQ10.” That is a term Defendants put on
24 BANG[®] labeling because it has the tendency or capacity to deceive or confuse reasonable consumers
25 into believing that BANG[®] products contain a potent form of Coenzyme Q₁₀.

26 33. **Relevant time period:** all of the misrepresentations at issue here were consistently
27 made at all times during the last four years, at least.
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1 34. **Misrepresentations at issue:** Defendants made uniform misrepresentations about
2 BANG® products that Plaintiffs and all class members were exposed to.

3 35. The words “SUPER CREATINE,” “ULTRA COQ10” and “BCAA AMINOS” appear
4 circling around the top lip of each can, in bold and capitalized letters.

5 36. The front and back label of every one of the BANG® Products states that the products
6 contain “POTENT BRAIN AND BODY ROCKING FUEL.”

7 37. The back label of every one of the BANG® Products state “Power up with BANG®’s
8 potent brain & body-rocking fuel: Creatine, Caffeine, CoQ10 & BCAAs (Branched Chain Amino
9 Acids).”

10 38. All of the misrepresentations identified in Paragraphs 35-37, when viewed in the
11 context of the labeling as a whole and the product at issue, have the tendency or capacity to deceive
12 or confuse reasonable consumers into believing that BANG® products contain potent forms of
13 creatine and Coenzyme Q10. The products do not contain potent forms of creatine and CoenzyQ10.

14 39. All of the misrepresentations identified in Paragraphs 35-37, when viewed in the
15 context of the labeling as a whole and the product at issue, have the tendency or capacity to deceive
16 or confuse reasonable consumers into believing that BANG® products contain sufficient creatine,
17 BCAAs, and Coenzyme Q10 to “fuel” physical and mental activities. In reality, the products do not
18 contain those ingredients, or they contain them only in trace amounts that are too small to provide
19 any effect on cognition or physical performance.

20 40. Examples of the product labeling are shown below:

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BCAA AMINOS

bang
POTENT BRAIN AND BODY FUEL

BY THE MAKERS OF THE LEGENDARY
REDLINE® ENERGY PRODUCTS

Make no Mistake – BANG® is not your stereotypical high sugar, life-sucking soda masquerading as an energy drink! High sugar drinks spike blood sugar producing metabolic mayhem causing you to crash harder than a test dummy into a brick wall. Power up with BANG's potent brain & body-rocking fuel: Creatine, Caffeine, CoQ10 & BCAAs (Branched Chain Amino Acids).

Life is an Xtreme Sport and BANG® is the Xtreme Energy source to Live Life Xtreme!

Not Intended for individuals under the
AGE OF 18

Made in USA from Domestic and Imported Ingredients

0g TOTAL CARBS PER CAN
0 SUGARS PER CAN
0 CALORIES PER CAN
0 ARTIFICIAL COLORS

CAUTIONS: Do not use this product if you are pregnant or nursing. Do not consume this product if you are taking any prescription drug and/or have any medical condition. The user of this product assumes all liability if this product is used in a manner not consistent with label guidelines.

This product contains caffeine and should not be used with any other caffeine containing products. This product is intended for use by healthy individuals only.

[†]At the time of manufacturing, some vitamins are likely to degrade.

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To report a serious adverse event or obtain product information, contact
1500 North Park Drive, Weston, FL 33326, USA • (754) 641-6270
VPXSPORTS.COM

ULTRA COQ10

CONTAINS NO FRUIT JUICE

Nutrition Facts
Serving Size 1 Can (16 fl oz [473 mL])
Amount Per Serving

Calories 0	Calories from Fat 0	% Daily Value*
Total Fat 0 g		0%
Saturated Fat 0 g		0%
Trans Fat 0 g		
Cholesterol 0 mg		0%
Sodium 40 mg		2%
Potassium 85 mg		2%
Total Carbohydrate 0 g		0%
Dietary Fiber 0 g		0%
Sugars 0 g		
Protein 0 g		
Vitamin C 50% [†]	Niacin 25% [†]	
Vitamin B6 25% [†]	Vitamin B12 25% [†]	
Magnesium 2% [†]		

*Percent Daily Values are based on a 2,000 calorie diet. Not a significant source of vitamin A, calcium and iron.

Stable Aqueous Amide-Protected Bisectric Creatine Species - U.S. Patent No. 8,445,666

INGREDIENTS: Carbonated water, citric acid anhydrous, natural and artificial flavors, caffeine anhydrous, sodium benzoate (preserves freshness), potassium citrate monohydrate, sucralose, L-Leucine, potassium phosphate dibasic, vitamin C (ascorbic acid), calcium chloride, acesulfame potassium, potassium sorbate (preserves freshness), calcium diiodate EDTA, magnesium chloride, SUPER CREATINE® (creatyl-L-Leucine [Creatine bonded to L-Leucine]), L-tyrosine, L-Valine, vitamin B3 (niacinamide), CoQ10 (coenzyme Q10), vitamin B6 (pyridoxine hydrochloride), and vitamin B12 (methylcobalamin).

Warning: Too much caffeine may cause nervousness, irritability, sleeplessness, and occasionally, rapid heartbeat. Not recommended for use by individuals under 18 years of age. One serving of BANG® provides 300mg of caffeine which is more than two cups of coffee.

TEST BY DATE ON BOTTOM

41. The misrepresentations described above also appear on Defendants’ website (where consumers can purchase BANG® products) and on Amazon.com.

42. Consumers lack the meaningful ability to test or independently ascertain or verify a product’s claims, especially at the point of sale. Consumers would not know the true nature of the ingredients (or lack thereof) merely by reading the ingredients label.

43. Moreover, the reasonable consumer is not expected or required to scour the ingredients list on the back of the Products in order to confirm or debunk Defendants’ prominent claims, representations, and warranties that BANG® products contain enough creatine, BCAAs, and Coenzyme Q₁₀ to fuel physical and mental activities.

1 c. whether Defendants have been unjustly enriched as a result of the unlawful,
2 fraudulent, and unfair conduct alleged in this Complaint such that it would be inequitable for
3 Defendants to retain the benefits conferred upon them by Plaintiffs and the classes;

4 d. whether Defendants breached express warranties to Plaintiffs and the
5 classes;

6 e. whether Plaintiffs and the classes have sustained damages with respect to
7 the common-law claims asserted, and if so, the proper measure of their damages.

8 49. Plaintiffs' claims are typical of those of other class members because Plaintiffs, like
9 all members of the classes, purchased Defendants' Products bearing the representations and
10 Plaintiffs sustained damages from Defendants' wrongful conduct.

11 50. Plaintiffs will fairly and adequately protect the interests of the classes and have
12 retained counsel that is experienced in litigating complex class actions. Plaintiffs have no interests
13 which conflict with those of the classes.

14 51. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy.

16 52. The prerequisites to maintaining a class action for equitable relief are met as
17 Defendants have acted or refused to act on grounds generally applicable to the classes, thereby
18 making appropriate equitable relief with respect to the classes as a whole.

19 53. The prosecution of separate actions by members of the classes would create a risk of
20 establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. For
21 example, one court might enjoin Defendants from performing the challenged acts, whereas another
22 might not. Additionally, individual actions could be dispositive of the interests of the classes even
23 where certain Class members are not parties to such actions.

24 **COUNT I**

25 **Violation Of California's Consumers Legal Remedies Act ("CLRA"),**
26 **California Civil Code §§ 1750, *et seq.***

27 54. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 herein; (b) they paid a price premium compared to products without the misrepresentations alleged
2 herein; and (c) the Products did not have the characteristics, uses or benefits promised.

3 90. On behalf of himself and other members of the New York Subclass, Plaintiff Hess
4 seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or five
5 hundred dollars per violation, whichever is greater, three times actual damages and reasonable
6 attorneys' fees.

7 **COUNT VI**

8 **Breach of Express Warranty**

9 91. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
10 paragraphs of this complaint.

11 92. Plaintiffs bring this claim individually and on behalf of the proposed Class,
12 California Subclass and New York Subclass against Defendants.

13 93. Defendants, as the manufacturer, marketer, distributor, and/or seller, expressly
14 warranted that BANG[®] products contain a potent form of creatine and Coenzyme Q₁₀, and that the
15 products had sufficient amounts of creatine, BCAAs, and Coenzyme Q₁₀ to provide mental and
16 physical benefits.

17 94. Defendants' express warranties, and their affirmations of fact and promises made to
18 Plaintiffs and class members regarding the Products became part of the basis of the bargain
19 between Defendants and Plaintiffs and the Classes, thereby creating an express warranty that the
20 Products would conform to those affirmations of fact, representations, promises, and descriptions.

21 95. The Products do not conform to the express warranty because the representations
22 are false or misleading.

23 96. As a direct and proximate cause of Defendants' breach of express warranty,
24 Plaintiffs and class members have been injured and harmed because: (a) they would not have
25 purchased the Products on the same terms if they knew the truth about the Products; (b) they paid a
26 substantial price premium based on Defendants' express warranties; and (c) the Products do not
27 have the characteristics, uses, or benefits as promised.
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