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7 Doc. 361106

8 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.*, TERRY
GODDARD, Attorney General,

11 Plaintiff,

12 v.

13 CENTRAL COAST NUTRACEUTICALS,
14 INC., a foreign corporation, and GRAHAM
GIBSON and JANE DOE GIBSON,
15 husband and wife,

16 Defendants.

Case No.

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

(Unclassified Civil)

Assigned to:

17 For its complaint, Plaintiff, the State of Arizona upon the relation of Terry Goddard,
18 Attorney General (“the State”), alleges as follows:

19 **INTRODUCTION**

20 Central Coast Nutraceuticals, Inc. (“CCN”) advertises and sells various “nutritional
21 products” and a fitness and diet consultation service over the internet. The State alleges that
22 CCN uses deceptive and misleading advertising and sales practices that have resulted in
23 thousands of consumers being charged for products and services that they did not request or
24 agree to pay for. The initial harm to consumers described above is compounded by CCN’s
25 failure to provide consumers with any meaningful customer service so that they can obtain
26 refunds or credits to their accounts, or to cancel future shipments of unwanted products.

1 CCN's deceptive practices violate the Arizona Consumer Fraud Act, Arizona Revised
2 Statutes ("A.R.S.") 44-1521 et seq., pursuant to which the State is requesting appropriate
3 injunctive and other relief, including restitution, civil penalties, costs and attorneys fees.

4 **JURISDICTION AND VENUE**

5 1. This action is brought pursuant to the Arizona Consumer Fraud Act to obtain
6 injunctive relief to prevent the unlawful acts and practices alleged in this Complaint and
7 other relief, including restitution, civil penalties, costs of investigation and attorney's fees.

8 2. This Court has jurisdiction to enter appropriate orders both prior to and
9 following a determination of liability pursuant to the Arizona Consumer Fraud Act.

10 3. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

11 **PARTIES**

12 4. Plaintiff Terry Goddard is the Attorney General of Arizona.

13 5. Defendant Central Coast Nutraceuticals, Inc. is a California corporation with
14 its principal place of business located at 2375 East Camelback Road, 5th Floor, Phoenix,
15 Arizona 85016.

16 6. Defendant Graham Gibson is the President, Chief Executive Officer and
17 Director of Central Coast Nutraceuticals, Inc. and, upon information and belief, resides in
18 Scottsdale, Arizona. Defendant Gibson's actions alleged herein were taken in furtherance of
19 his and Defendant Jane Doe Gibson's marital community. At all times material to this
20 Complaint, Defendant Graham Gibson, acting alone or in concert with others, and with
21 actual and/or constructive knowledge, formulated, directed, controlled, approved, endorsed,
22 ratified or otherwise participated in CCN's acts and practices.

23 7. Jane Doe Gibson is named solely for any interest she may have in her marital
24 community with Defendant Graham Gibson.

25 **FACTUAL BACKGROUND**

26 8. Since at least August 2007, CCN has been operating its business out of

1 Arizona, advertising and selling “nutritional products” and, more recently, a fitness and diet
2 consultation service, through internet marketing.

3 9. CCN advertises “nutritional products” on its own website,
4 www.centralcoastnutra.net, as well as at other internet locations where third party
5 “affiliates” promote CCN’s products and link consumers to CCN’s website.

6 10. CCN features a “\$1.00 risk free trial offer” of its various products in its
7 advertisements.

8 11. The “\$1.00 risk free trial offer” includes a “shipping and handling” charge of
9 \$4.95, for a total trial offer cost of \$5.95.

10 12. In order to obtain a “risk free trial offer” from CCN, consumers must complete
11 an on-line order form on CCN’s website that requires consumers to provide CCN with their
12 name, street and e-mail addresses, telephone number and credit or debit card number with
13 which they want to pay for their \$5.95 “risk free trial offer.”

14 13. CCN packs its “risk free trial offer” internet order forms with banners and
15 other content, including two pre-checked boxes, each next to a description of Hoodiaburst
16 and Hoodiawater, products that are an up sell from the product the consumer purchases in
17 the “risk free trial offer.”

18 14. Consumers who requested and paid for one of CCN’s “risk free trial offers”
19 later discovered that CCN charged their credit or debit card an additional amount of \$39.90
20 for Hoodiaburst and Hoodiawater, without the consumers’ knowledge or consent.

21 15. Consumers typically learned of the charges for the unordered Hoodiaburst and
22 Hoodiawater only upon review of their credit or debit card accounts where the unauthorized
23 charges appeared.

24 16. CCN charges consumers who request and pay for a “risk free trial offer” an
25 additional amount of \$39.90 for Hoodiaburst and Hoodiawater unless they uncheck the
26 boxes that CCN includes on their order forms as pre-checked up sells.

1 17. Consumers who requested and paid for a “risk free trial offer” of one of CCN’s
2 products later discovered that they had been enrolled in a fitness and diet consultation
3 service called Fit Factory that they did not choose to enroll in, and that obligated them to pay
4 \$29.95 a month after an undefined 30 day trial period unless they took affirmative action to
5 cancel their membership in Fit Factory.

6 18. Consumers who requested and paid for a “risk free trial offer” of one of CCN’s
7 products discovered only after paying for the trial offer that they had been enrolled in a
8 “Lifestyle” program to receive the product on a continuing monthly basis for which their
9 credit or debit card would be charged an amount far in excess of the trial offer price, and that
10 required them to take affirmative steps to avoid such charges.

11 19. Consumers typically learned of the additional charges for the subsequent
12 shipments of the product they ordered in the “risk fee trial offer” only upon review of their
13 credit or debit card accounts, where the unauthorized charges appeared.

14 20. CCN states in its promotional materials that its “customer care representatives
15 can resolve any billing issues,” yet CCN obstructs consumers’ efforts to have unauthorized
16 charges removed from or credited to their accounts by failing to answer telephone calls made
17 to their office, with many consumers routinely put on “hold” for an hour or more, often only
18 to be disconnected. Additionally, CCN fails to respond to consumers’ e-mails regarding
19 unauthorized charges or cancellations, when consumers’ ability to obtain a refund depends
20 on their timely notification to CCN.

21 21. CCN misrepresents its trial offers as “risk free” when, in fact, consumers face
22 numerous obstacles to avoid being billed significantly more than the \$5.95 trial price from
23 the moment they order the trial product, including:

24 a. CCN requires that consumers return the unused trial product to CCN
25 within a short trial period to avoid being charged substantially more than \$5.95 for the
26 trial offer;

1 b. In some cases, consumers do not receive the products they order in a
2 trial offer until the period within which they can obtain a refund has expired, and their
3 credit or debit card has been charged an additional amount for not returning the
4 unused trial product within the requisite period;

5 c. CCN requires consumers to obtain a Return Merchandise Authorization
6 number from it (frequently difficult to do, given CCN's failure to answer their
7 telephone or respond to e-mails) and pay for additional return shipping and handling
8 before they can return a product within the short trial period and avoid being charged
9 significantly more than the trial offer price;

10 d. In some cases, CCN charges consumers for additional orders of the
11 product that the consumer ordered in a "risk free trial" offer, before their trial period
12 has even expired;

13 e. CCN posts conflicting and confusing information in its promotional
14 materials regarding how many days a product's "risk free" trial period lasts and the
15 period of time in which a consumer can obtain a refund if they are charged for a
16 product.

17 22. CCN fails to adequately disclose all material terms and conditions that apply
18 when a consumer purchases one of its products in a "risk free trial offer," by, among other
19 things, burying terms and conditions in fine print, failing to define the length of "risk free
20 trial" periods or stating different lengths of time for such periods, employing varying trigger
21 dates for trial periods and refund or cancellation deadlines.

22 23. The Office of the Arizona Attorney General and the Better Business Bureau of
23 Central, Northern and Western Arizona (BBB) have cumulatively received thousands of
24 consumer complaints regarding the advertising and billing practices of CCN since at least
25 August 2007, with the number of complaints accelerating by the week.

26 24. CCN and Graham Gibson have been aware of the number and nature of

1 consumer complaints received by the Arizona Attorney General and the BBB since at least
2 August 2007, but have nonetheless continued to use the deceptive practices alleged herein.
3 There is a substantial likelihood that CCN will continue to engage in the deceptive acts and
4 practices described herein absent a court-ordered injunction.

5 **CLAIM FOR RELIEF**

6 ***Violations of the Arizona Consumer Fraud Act***

7 ***A.R.S. § 44-1521 et seq.***

8 Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
9 herein.

10 25. CCN engages in the use of deception, deceptive acts or practices, fraud, false
11 pretense, false promise, misrepresentation, or concealment, suppression or omission of any
12 material fact with intent that others rely upon such concealment, suppression or omission, in
13 connection with its advertisement, sale or delivery of its products and services, or those of
14 third parties on whose behalf it acts. Such acts and practices include:

15 26. Packing its online order forms for a \$5.95 “risk free trial order” with pre-
16 checked, up sell items that it charges consumers for unless they de-select the products;

17 27. Enrolling consumers into Fit Factory without their knowledge or consent,
18 requiring them to take affirmative action to cancel their memberships in order to avoid
19 having their credit and debit cards charged a monthly fee of \$29.95;

20 28. Failing to adequately disclose to consumers paying for a “risk free trial”
21 product that they will receive recurring, monthly shipments of the product and be charged
22 for those shipments unless they take affirmative action to cancel the order;

23 29. Failing to provide consumers with the means to obtain refunds for
24 unauthorized charges or to cancel future shipments of unwanted merchandise;

25 30. Misrepresenting that its trial offers are “risk free,” when consumers face
26 multiple obstacles that they must overcome in order to avoid being charged more than the

1 \$5.95 trial offer price;

2 31. Failing to adequately disclose all material terms and conditions of its “risk free
3 trial offers.”

4 32. At all times relevant to this Complaint, Defendants CCN and Graham Gibson
5 acted willfully, in violation of A.R.S. § 44-1531.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff respectfully requests that the Court:

8 1. Enter an injunction against Defendants prohibiting them from engaging in the
9 unlawful acts and practices alleged in this Complaint and from doing any acts in furtherance
10 of such acts and practices, pursuant to A.R.S. § 44-1528;

11 2. Order Defendants to restore to all persons any money and property acquired by
12 any unlawful means or practice alleged in the Complaint, as deemed appropriate by the
13 Court pursuant to A.R.S. § 44-1528;

14 3. Order Defendants to pay to the State of Arizona a civil penalty of no more than
15 \$10,000 for each willful violation of the Consumer Fraud Act, pursuant to A.R.S. § 44-1531;

16 4. Order Defendants to pay the State of Arizona its costs of investigation and
17 prosecution of this matter, including reasonable attorneys’ fees, pursuant to A.R.S. § 44-
18 1534, and;

19 5. Such other and further relief as the Court deems just and proper.

20 RESPECTFULLY SUBMITTED this ____ day of December, 2008.

21 TERRY GODDARD
22 Attorney General

23
24 By: _____

25 Cherie L. Howe
26 Assistant Attorney General
Attorneys for Plaintiff

1 **VERIFICATION**

2 The undersigned hereby certifies that he is an investigator with the Arizona Attorney
3 General's Office and that in that capacity, he is authorized to make this affidavit on behalf of
4 the State; that he has read the foregoing Complaint and knows the contents thereof; that the
5 facts alleged therein are true to the best of his knowledge, information and belief, based upon
6 review of the documents and information available to the Arizona Attorney General's
7 Office.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed this _____ day of December, 2008.

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12 _____
13 Francisco Arvizu
14 Special Agent
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