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BY: [Signature]
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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FILED

10 Pro Hac Vice Application to be Filed

11
12 Attorneys for BRIAN CASSERLY

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 CV11-00670 PSG(FMO)

16 BRIAN CASSERLY, on behalf of
17 himself and all others similarly situated,

Case No.

CLASS ACTION COMPLAINT

18 Plaintiff,

DEMAND FOR JURY TRIAL

19 v.
20 POWER BALANCE, LLC; JOSH
21 RODARMEL; TONY RODARMEL,
KEITH KATO, SHAQUILLE O'NEAL
and LAMAR ODOM,

22 Defendants.

I/S
21

L/N

1 Plaintiff, on behalf of himself and all others similarly situated, based on
2 personal knowledge, the investigation of his counsel, and on information and belief,
3 alleges the following against Defendants Power Balance, LLC, Josh Rodarmel,
4 Tony Rodarmel, Keith Kato, Shaquille O'Neal and Lamar Odom:

5 **NATURE OF ACTION**

6 1. Defendants Power Balance, LLC, Josh Rodarmel, Tony Rodarmel and
7 Keith Kato ("Defendants"), manufacture, advertise, promote, market, warrant, and
8 sell what they purport to be "performance technology": wristbands, bracelets and
9 pendants that allegedly "optimiz[e] the body's natural energy flow" through the use
10 of holograms. Defendants represent that merely by wearing Power Balance
11 products, consumers will enjoy better "strength, balance and flexibility."

12 2. In fact, the Power Balance holograms are nothing short of snake oil.
13 Despite Defendants' representations that the hologram will enhance consumers'
14 "strength, balance and flexibility," it is biologically incapable of doing so. Plaintiff
15 and other purchasers paid as much as \$79.95 for Power Balance products with the
16 expectation that they would enjoy greater "strength, balance and flexibility," but
17 they did not.

18 3. Indeed, Power Balance Australia, which sells products containing the
19 same holograms, recently admitted that "[i]n our advertising we stated that Power
20 Balance wristbands improved your strength, balance and flexibility. We admit that
21 there is no credible scientific evidence that supports our claims and therefore we
22 engaged in misleading conduct in breach of s52 of the [Australia] Trade Practices
23 Act 1974."

24 4. Plaintiff bring this action on behalf of a nationwide class of all
25 similarly situated individuals who purchased new Power Balance products for
26 personal use, and not for resale.

1 **FACTUAL ALLEGATIONS**

2 17. Defendant, Power Balance, LLC, was founded in 2007. Power Balance
3 claims it "is wholly committed to creating innovative, quality, and stylish products
4 that our customers are excited to tell their friends about. We believe people of all
5 ages and walks of life should have access to our wearable performance technologies
6 that maximize individual performance and help each of us enjoy life to its fullest."

7 18. Power Balance's products are widely sold and, unfortunately for
8 consumers, very popular. In fact, CNBC recently named Power Balance as the
9 "Sports Product of the Year for 2010," and the Power Balance bracelet was one of
10 Amazon's "Top 5 Best Sellers" during the recent holiday shopping season. Power
11 Balance's sales from 2010 are expected to top \$35 million.

12 19. Power Balance's websites contain numerous representations that its
13 products are capable of improving users' strength, balance and flexibility by
14 working with the body's natural energy field:

- 15 • "We believe people of all ages and walks of life should have access to
16 our wearable performance technologies that maximize individual
17 performance and help each of us enjoy life to its fullest."
18 <http://www.powerbalance.com/about-us>
- 19 • "Power Balance is Performance Technology designed to work with
20 your body's natural energy field. Founded by athletes, Power Balance
21 is a favorite among elite athletes for whom balance, strength and
22 flexibility are important." <http://www.powerbalance.com/powerbalance>
- 23 • "How Does the Hologram Work? Power Balance is based on the idea
24 of optimizing the body's natural energy flow, similar to concepts
25 behind many Eastern philosophies. The hologram in Power Balance is
26 designed to resonate with and respond to the natural energy field of the
27 body." <http://www.powerbalance.com/powerbalance>

- 1 • “We’re helping people excel with a revolutionary technology that’s
2 changing the way people live, work and play.”
3 <http://www.powerbalance.com/who-we-are>
- 4 • “Power Balance is committed to bringing our wearable performance
5 technology to everyone so each individual can maximize their potential
6 and live life to its fullest.” <http://www.powerbalance.com/who-we-are>
- 7 • “Power Balance is based on the idea of optimizing the body’s natural
8 energy flow, similar to concepts behind many Eastern philosophies.
9 The hologram in Power Balance is designed to respond to the natural
10 energy field of the body. The Mylar material at the core of Power
11 Balance has been treated with energy waves at specific frequencies.
12 The resulting Mylar is believed to resonate and work with your body’s
13 natural energy flow to help enable you to perform at the best of your
14 ability.” <http://www.powerbalance.com/faqs>
- 15 • “Power Balance®, after years of research and development, has
16 produced a system to safely restore and optimize the electro-magnetic
17 balance within the human body... IMMEDIATELY. POWER
18 BALANCE’S Mylar Holographic Disk (the same substance used to
19 keep static electricity from damaging electrical components) has been
20 imbedded with an electrical frequency that restores your body’s
21 electrical balance, promoting a free exchange of positive and negative
22 ions and align your body’s energy pathways. The high density Disk
23 acts much like a switch, resonating within your system and tuning on
24 your energy field while it clears the pathways so the electro-chemical
25 exchange functions like the well-tuned generator it was designed to be.
26 When the static Power Balance Hologram comes in contact with your
27 body’s energy field, it begins to resonate in accordance with each
28 individual’s biological, creating a harmonic loop that optimizes your

1 energy field and maintains maximum energy flow while clearing the
2 pathways so the electro-chemical exchange functions like the well-
3 tuned generator it was meant to be.”

4 <http://www.balanceband.com/technology>

- 5 • “Results Are Almost Immediate... & Truly Phenomenal. Unlike many
6 other ionic electro-magnetic devices, the Power Balance Holographic
7 Disks begin to work almost instantly, restoring optimal electro-
8 magnetic balance and promoting free flowing energy pathways... NO
9 PROMISES, JUST RESULTS.”

10 <http://www.balanceband.com/technology>

- 11 • “The benefits are clear: faster synaptic response (brain function),
12 enhanced muscle response (in both fast and slow twitch tissues),
13 increased stamina (better oxygen uptake and recovery), more flexibility
14 (faster recovery) and vastly improved gravitational balance.”

15 <http://www.balanceband.com/technology>

16 20. Power Balance co-inventor Josh Rodarmel has also participated in
17 numerous widely disseminated media interviews in which he touts the performance
18 enhancing capabilities of Power Balance products:

- 19 • Josh Rodarmel stated in an interview with the Daily Mail in August,
20 2010: “Everything in nature has a set frequency. The body has a
21 frequency and things which cause negativity to the human body -- like
22 mobile phones and radio waves -- break down its natural healing
23 frequency.”

- 24 • In a February 26, 2010 interview with Slam, Josh Rodarmel stated that
25 “[w]e put frequencies in the holograms that react positively with your
26 body’s energy field. The same way that wireless internet or cell phones
27 or radio waves or different things like that—everything has a frequency
28 and everything reacts with other frequencies. The frequencies I just

1 mentioned react negatively with your body, but there are also
2 frequencies that react positively with your body. We figured out how to
3 put those in the hologram so when it comes into contact with your body,
4 it gives you that added balance, strength, flexibility. We can
5 demonstrate that through the different muscle tests.”

6 21. Power Balance also uses television commercials to tout the
7 performance enhancing characteristics of its products using kinesiology tests. In
8 these widely disseminated commercials, volunteers stand on one leg with arms
9 stretched out at the sides. A second person, the tester, then tries to push down on
10 one of the volunteers’ arms, often causing them to topple over. The test is repeated
11 with the volunteer wearing a Power Balance band, in which it seems as if the
12 subject’s arm strength and balance has improved and it becomes much harder for
13 them to be pushed over.

14 22. Power Balance also uses celebrity and athlete endorsements to
15 advertise and sell its products. For example, Defendant Shaquille O’Neal is, on
16 information and belief based on press reports, a paid endorser for Power Balance
17 products, and he lends his personal reputation to the sale and advertisement of those
18 products. On the Power Balance website, Defendant O’Neal is quoted as saying: “I
19 don’t really do a lot of testimonials, but this really works! I came across Power
20 Balance when someone did the test on me. That night, while playing for the
21 Phoenix Suns, there were about three of my teammates with the product on and we
22 won that game by 57 points! I kept feeling something when I wore the bracelet, so I
23 kept wearing it. When I took it off I went back to normal. I’ve been wearing the
24 bracelet ever since. I want to do everything to get the slightest advantage;
25 wristbands, necklaces, t-shirts, band-aids, everything and anything we can get our
26 hands on. I’m here to tell you it works!”

27 23. Defendant O’Neal is also the prominent star in widely disseminated
28 video touting Power Balance products. In this video, Defendant O’Neal testifies

1 with regard to Power Balance products that "This Works." He also describes
2 himself as "A Power Balance general." In the video, Defendant O'Neal represents
3 that he has been the subject of the kinesiology tests described above, and he verifies
4 the accuracy of the tests. Defendant O'Neal also tells consumers that Power
5 Balance products will increase "your endurance, your flexibility and your strength."
6 Defendant O'Neal also states that "I am here to tell you that it works. It works."
7 Defendant O'Neal made these statements and representations to further the sales of,
8 and to advertise, Power Balance products.

9 24. Defendant Lamar Odom is, on information and belief based on press
10 reports, a paid endorser for Power Balance products, and he lends his personal
11 reputation to the sale and advertisement of those products. On the Power Balance
12 website, Defendant Odom is quoted as saying: "Playing at a championship level
13 requires you to perform at your peak day in and day out. The Power Balance silicon
14 wristband helps me keep that balance. The product is the next level." Defendant
15 Odom made this statement and representation to further the sales of, and to
16 advertise, Power Balance products.

17 25. Consumers are likely to believe that Defendants O'Neal's and Odom's
18 statements concerning Power Balance products reflect the opinion, beliefs, findings
19 and experiences of Defendants O'Neal and Odom rather than Power Balance's.

20 26. However, on information and belief, Defendants O'Neal and Odom
21 knew or should have known that Power Balance products are incapable of
22 enhancing performance or increasing endurance, flexibility or strength, and that
23 there is no scientific or other reasonable basis for claiming that they do so.

24 27. These various representations concerning the efficacy of Power
25 Balance products are part of a national, multi-media advertisement campaign that
26 uniformly represents that Power Balance products are capable of improving
27 consumers' performance.

28

1 28. In fact, there is no support, other than incidental anecdotal evidence, for
2 Defendants' claims concerning the efficacy of Power Balance products.

3 29. Power Balance recently admitted that it had no scientific or objective
4 basis to assert that its products are capable of delivering the performance Power
5 Balance promises. In response to the recent admissions by Power Balance
6 Australia, Power Balance's website now belatedly states that "[a] preliminary study,
7 conducted by an independent third-party, was recently commissioned to determine
8 the different performance variables of the product and the findings have determined
9 that wearing the product does in fact provide a 'statistically significant' result on the
10 wearer's performance. We are committed to further evaluating the performance
11 parameters of wearing the product so that we can continue to provide products that
12 enhance the wearer's lifestyle." (emphasis added)

13 <http://www.powerbalance.com/statement> This statement implicitly admits that
14 Defendants had not undertaken any prior studies or obtained any scientific or other
15 reasonable basis for claiming that Power Balance products are capable of enhancing
16 performance and that their use would result in greater strength, balance and
17 flexibility.

18 30. There is no question that the Power Balance products are not capable of
19 performing as advertised and that there is no scientific or medical basis for claiming
20 that they are so capable. Dr. Victor Thompson, a sports psychologist based in
21 London, stated that "I'm not aware of any research that supports the technology
22 behind these bands." Similarly, Australian Medical Association vice-president
23 Steve Hambleton stated that the bands were "biologically implausible."

24 31. Moreover, the kinesiology tests performed in Power Balance's
25 commercials appear to be mere stage trickery. On information and belief, these tests
26 are faked simply by subtly changing the direction in which pressure is applied to the
27 subject's body. When the tester pushes down and, imperceptibly to the viewer,
28 slightly away from the subject's body, the subject loses his balance. After the

1 subject is given the Power Balance bracelet, the tester again pushed down, but this
2 time, again outside the perception of the viewer, slightly toward the body. The
3 subject is then able to withstand the pressure without falling over; however, this is
4 not because of the Power Balance bracelet, but instead because of the slight
5 difference in lateral pressure.

6 32. That these kinesiology tests are nothing more than sleight of hand was
7 further demonstrated when the Australian Skeptics, a non-profit organization based
8 in Australia which investigates pseudoscientific claims using scientific
9 methodologies, challenged the Australian distributor of Power Balance bands, Tom
10 O'Dowd, to use his kinesiology tests to pick out which one of six people had the
11 Power Balance band hidden in their pocket. He failed the test.

12 CLASS ACTION ALLEGATIONS

13 33. Plaintiff brings this suit as a class action pursuant to Rule 23 of the
14 Federal Rules of Civil Procedure, on behalf of himself and all other similarly
15 situated persons. The Class is defined as follows: **All persons in the United States
16 and its territories who purchased a new Power Balance product for personal
17 use and not for resale after January 1, 2007.**

18 34. Excluded from the class are Defendants, Power Balance's subsidiaries
19 and affiliates, as well as Power Balance's executives, board members, legal counsel,
20 and Defendants' immediate families. Also excluded are all governmental entities
21 and any judicial officers assigned to hear any aspect of this case.

22 35. Plaintiff reserves the right to amend or modify the Class definition with
23 greater specificity or further division into subclasses or limitation to particular
24 issues.

25 36. Numerosity. The proposed Class is sufficiently numerous, as
26 Defendants have sold millions of Power Balance products to consumers. The
27 members of the Class are so numerous and dispersed throughout the United States
28 that joinder of all members is impracticable.

1 37. Common Questions of Fact and Law. Common questions of fact and
2 law exist as to all members of the Class and predominate over any questions
3 affecting solely individual members of the Class, pursuant to Federal Rule of Civil
4 Procedure 23(b)(3). Questions of fact and law that predominate over any individual
5 issues include:

- 6 a. Whether Defendants advertised Power Balance products as being
7 capable of enhancing the performance or users' strength, balance
8 or flexibility;
- 9 b. Whether Defendants failed to disclose to users that they had no
10 scientific or credible basis to represent that Power Balance
11 products are capable of enhancing the performance or users'
12 strength, balance or flexibility when they are not;
- 13 c. Whether Defendants' conduct violated the Consumers Legal
14 Remedies Act, California Civil Code sections 1750, *et seq.*
15 ("CLRA");
- 16 d. Whether Defendants' conduct violated California's Unfair
17 Competition Laws, California Business and Professions Code
18 sections 17200, *et seq.* ("UCL");
- 19 e. Whether Plaintiff and the members of the Class sustained
20 damage and ascertainable loss as a result of Defendants' conduct
21 as alleged herein;
- 22 f. The amount of relief to which the Class is entitled; and
- 23 g. The amount of attorneys' fees, prejudgment interest, and costs of
24 suit to which the Class is entitled.

25 38. Typicality. Plaintiff's claims are typical of the claims of Class
26 members because Plaintiff and the Class sustained damages arising out of the
27 Defendants' wrongful conduct as detailed herein. Specifically, Plaintiff and Class

1 members' claims arise from their purchase of a product that was incapable of
2 performing as advertised.

3 39. Adequacy. Plaintiff will fairly and adequately protect the interests of
4 the Class and have retained counsel competent and experienced in class action
5 lawsuits. Plaintiff has no interests antagonistic to or in conflict with those of Class
6 members and therefore will be adequate as a representative for the Class.

7 40. Superiority. A class action is superior to other available methods for
8 the fair and efficient adjudication of this controversy since joinder of all the
9 members of the Class is impracticable. Furthermore, the adjudication of this
10 controversy through a class action will avoid the potentially inconsistent and
11 conflicting adjudications of the claims asserted herein. There will be no difficulty in
12 the management of this action as a class action.

13
14 **CAUSES OF ACTION**

15 **COUNT I**

16 **Violation of the California Consumer Legal Remedies Act**

17 41. Plaintiff incorporates by reference and realleges all paragraphs
18 previously alleged herein.

19 42. Defendants are each a "person," as defined by Cal. Civil Code §
20 1761(c).

21 43. Plaintiff and the Class Members are "consumers," within the meaning
22 of Cal. Civil Code § 1761(d).

23 44. Power Balance products are "good[s]," within the meaning of Cal.
24 Civil Code § 1761(a).

25 45. Plaintiff's purchase of Power Balance products constituted a
26 "transaction," as that term is defined in Cal. Civil Code § 1761(e).

27 46. Defendants' acts and omissions, as alleged herein, violated the
28 California Consumer Legal Remedies Act ("CLRA") and Cal. Civ. Code §

1 1770(a)(5)'s proscription against representing that goods have uses, characteristics,
2 or benefits they do not actually have; and Cal. Civ. Code § 1770(a)(7)'s
3 proscription against representing that goods are of a particular standard, quality, or
4 grade when they are of another.

5 47. Since the 2007 introduction of Power Balance products by Defendants,
6 they advertised, promoted, marketed, warranted, and sold such products with the
7 representation that they are capable of enhancing performance and increasing
8 strength, balance and flexibility when they are not.

9 48. Further, Defendants failed to adequately disclose, at the time of
10 purchase, that they had no scientific or other credible basis to represent that Power
11 Balance products are capable of enhancing performance and increasing strength,
12 balance and flexibility.

13 49. The facts that Defendant failed to disclose, concealed, and/or
14 misrepresented are material in that reasonable consumers would consider them
15 important in deciding whether or not to purchase Power Balance products. Had
16 Plaintiff and the Class known that Defendants had no scientific or other reasonable
17 basis to claim that Power Balance products are capable of enhancing performance
18 and increasing strength, balance and flexibility, they would not have purchased
19 those products.

20 50. In failing to disclose this information, Defendants have knowingly and
21 intentionally concealed material facts and breached their duty not to do so.

22 51. Defendants' concealment and deceptive practices, in violation of the
23 CLRA, were designed to and did induce Plaintiff and the Class to purchase Power
24 Balance products.

25 52. Defendants performed the acts herein alleged in connection with the
26 design, marketing, advertising, warranty, and/or sale of Power Balance products
27 with a knowledge and intent to defraud and deceive Plaintiff and the Class.

28

1 53. Plaintiff, on behalf of himself and all other similarly situated, demands
2 judgment against Defendants under the CLRA for injunctive relief enjoining
3 Defendants from continuing to engage, use, or employ any act, including
4 advertisements or other representations, prohibited by California Civil Code § 1770
5 et seq.

6 **COUNT II**

7 **Violation of Cal. Bus. & Prof. Code §§ 17500, et seq. (False Advertising)**

8 54. Plaintiff incorporates by reference and realleges all paragraphs
9 previously alleged herein.

10 55. Defendants have engaged in false advertising as they disseminated false
11 and/or misleading statements regarding the Power Balance products.

12 56. Defendants knew or should have known by exercising reasonable care
13 that their representations were false and/or misleading. Beginning in 2007 and
14 continuing to date, Defendants engaged in false advertising in violation of Cal. Bus.
15 & Prof. Code §§ 17500, *et seq.*, by misrepresenting in their advertising, marketing,
16 and other communications disseminated to Plaintiff, the Class, and the consuming
17 public that Power Balance products were capable of enhancing performance and
18 increasing strength, balance and flexibility when they are not.

19 57. Beginning in or about 2007 and continuing to date, Defendants engaged
20 in false advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*, by omitting,
21 failing to disclose, and/or concealing the material fact that they had no scientific or
22 other reasonable basis for claiming that Power Balance products were capable of
23 enhancing performance and increasing strength, balance and flexibility.

24 58. By disseminating and publishing these statements in connection with
25 the sale of its goods, Defendants have engaged in and continue to engage in false
26 advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

27 59. As a direct and proximate result of Defendants' conduct, as set forth
28 herein, Defendants have received ill-gotten gains and/or profits, including, but not

1 limited to money. Therefore, Defendants have been unjustly enriched. Pursuant to
2 Cal. Bus. & Prof. Code § 17535, Plaintiff and members of the Class request
3 restitution and restitutionary engorgement for all sums obtained in violation of Cal.
4 Bus. & Prof. Code §§ 17500, *et seq.*

5 **COUNT III**

6 **Violation of Cal. Bus. & Prof. Code §§ 17200, et seq. (Unfair Competition)**

7 60. Plaintiff incorporates by reference and realleges all paragraphs
8 previously alleged herein.

9 61. Cal. Bus. & Prof. Code § 17200 prohibits acts of “unfair competition.”
10 As used in this section, “unfair competition” encompasses three distinct types of
11 misconduct: (a) “any unlawful . . . business act or practice;” (b) “any . . . unfair or
12 fraudulent business act or practice;” and (c) “any . . . unfair, deceptive, untrue or
13 misleading advertising.”

14 62. Defendants knew or should have known by exercising reasonable care
15 that their representations were false and/or misleading. Beginning in 2007 and
16 continuing to date, Defendants engaged in practices which violate Cal. Bus. & Prof.
17 Code §§ 17200, *et seq.*, by misrepresenting in their advertising, marketing, and other
18 communications disseminated to Plaintiff, the Class, and the consuming public that
19 Power Balance products are capable of enhancing performance and increasing
20 strength, balance and flexibility.

21 63. Beginning in 2007 and continuing to date, Defendants engaged in false
22 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by
23 misrepresenting in their advertising, marketing, and other communications
24 disseminated to Plaintiff, the Class, and the consuming public that Power Balance
25 products were capable of enhancing performance and increasing strength, balance
26 and flexibility when they are not.

27 64. Defendants disseminated unfair, deceptive, untrue, and/or misleading
28 advertising in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code §§

1 17200, *et seq.*, when they misrepresented, failed to disclose, and/or concealed the
2 true defective nature of Power Balance products in their advertising, marketing, and
3 other broadly disseminated representations.

4 65. Defendants' above-described conduct constitutes "unfair" business
5 practices within the meaning of the Unfair Competition Law insofar as Defendants'
6 business practices alleged herein are immoral, unethical, oppressive, unscrupulous,
7 and/or substantially injurious to consumers.

8 66. Defendants' above-described conduct constitutes "fraudulent" business
9 practices within the meaning of the Unfair Competition Law insofar as Defendants'
10 business practices alleged herein are likely to deceive members of the public.

11 67. These above-described unfair and fraudulent business practices and
12 false and misleading advertising by Defendants present an ongoing threat to Plaintiff
13 and the Class. Plaintiff is informed and believes and thereon alleges that Defendants
14 have systematically perpetrated deceptive and unfair practices upon members of the
15 public and has intentionally deceived Plaintiff and the Class.

16 68. In addition, the use of media to promote the sale of Power Balance
17 products through false and deceptive representations constitutes unfair competition
18 and unfair, deceptive, untrue, or misleading advertising within the meaning of the
19 Unfair Competition Law.

20 69. As a direct and proximate result of Defendants' violation of the Unfair
21 Competition Law, Plaintiff and the Class Members have suffered harm in that they
22 would not have purchased Power Balance products if Plaintiff and the Class had
23 known that Power Balance products are incapable enhancing performance and
24 increasing strength, balance and flexibility and that Defendants had no scientific or
25 other reasonable basis for claiming that their products were capable of delivering
26 these results.

27 70. As a direct and proximate result of Defendants' violation of the Unfair
28 Competition Law, Plaintiff and the Class Members have suffered harm in that they

1 purchased Power Balance products that are incapable of enhancing performance and
2 increasing strength, balance and flexibility.

3 71. As a direct and proximate result of Defendants' violation of Cal. Bus.
4 & Prof. Code §§ 17200, *et seq.*, Defendants have been unjustly enriched at the
5 expense of Plaintiff and the Class and should be required to make restitution to
6 Plaintiff and the Class Members or make restitutionary disgorgement of its ill-gotten
7 profits pursuant to Cal. Bus. & Prof. Code § 17203.

8 **COUNT IV**

9 **Unjust Enrichment**

10 72. Plaintiff incorporates by reference and realleges all paragraphs
11 previously alleged herein.

12 73. Plaintiff and the Class have conferred benefits on Defendant by paying
13 value for Power Balance products. Defendants knowingly and willingly accepted
14 monetary benefits from Plaintiff and the Class, but Defendants did not honor their
15 obligations by providing a product capable of enhancing performance and increasing
16 strength, balance and flexibility.

17 74. Under the circumstances described herein, it is inequitable for
18 Defendants to retain the full monetary benefit at the expenses of Plaintiff and the
19 Class.

20 75. By engaging in the conduct described above, Defendants have been
21 unjustly enriched at the expense of Plaintiff and the Class and are required, in equity
22 and good conscience, to compensate Plaintiff and the Class for harm suffered as a
23 result of its actions.

24 76. As a direct and proximate result of Defendants' unjust enrichment,
25 Plaintiff and the Class have suffered injury and are entitled to reimbursement,
26 restitution, and disgorgement by Defendants of the benefit conferred by Plaintiff and
27 the Class.

28

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of himself and all others similarly situated, request that the
3 Court enter judgment against Defendants, as follows:

4 1. An order certifying the proposed Class, designating Plaintiff as the
5 named representatives of the Class, and designating the undersigned as Class
6 Counsel;

7 2. An award to Plaintiff and the Class of compensatory, consequential,
8 punitive and statutory damages, including interest thereon, in an amount to be
9 proven at trial;

10 3. An order requiring the restitution and restitutionary disgorgement to the
11 Class of all profits unlawfully obtained by Defendants;

12 4. An award of attorneys' fees and costs, as allowed by law;

13 5. An award of pre-judgment and post-judgment interest, as provided by
14 law;

15 6. For leave to amend the Complaint to conform to the evidence produced
16 at trial; and

17 7. Such other or further relief as may be appropriate under the
18 circumstances.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of himself and all others similarly situated, demand a trial
21 by jury of any and all issues in this action so triable.

22 DATED: January 21, 2011

Respectfully submitted,

23 CALDWELL LESLIE & PROCTOR, PC
24 ROBYN C. CROWTHER

25
26 By Robyn C. Crowther
27 ROBYN C. CROWTHER
28 Attorneys for BRIAN CASSERLY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
Brian Casserly, on behalf of himself and all others similarly situated,

DEFENDANTS
Power Balance, LLC, Josh Rodarmel, Tony Rodarmel, Keith Kato, Shaquille O'Neal and Lamar Odom.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Robyn C. Crowther
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Los Angeles, CA 90017
T: (213) 629-9040
F: (213) 629-9022

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)
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. 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 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ in excess of \$5,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
I. Violation of the California Consumer Legal Remedies Act; II. Violation of Cal. Bus. & Prof. Code §§ 17500, et seq. (False Advertising); III. Violation of Cal. Bus. & Prof. Code §§ 17200, et seq. (Unfair Competition); and IV. Unjust Enrichment.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Action	TORTS PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 525 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
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CV11-00670

FOR OFFICE USE ONLY: Case Number: _____
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): 8:10 CV 01726-AG (RNB)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District *	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PROPER)

Robyn C. Crowther
Robyn C. Crowther

Date January 20, 2011

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))