

Peter B. Fredman (Cal. Bar No. 189097)
LAW OFFICE OF PETER FREDMAN PC
125 University Avenue, Suite 102
Berkeley, CA 94710
Telephone: (510) 868-2626
Facsimile: (510) 868-2627
peter@peterfredmanlaw.com

Attorney for Plaintiff,
JOSHUA BARNETT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

JOSHUA BARNETT,

Plaintiff,
v.

BIOKOR, LLC d/b/a GENKOR, a California
company; N101, INC., a California company;
MARC WILCOX, an individual; ALEX
LASBROAS, an individual; and DOES 1-100,
inclusive,

Defendants.

Case No:

COMPLAINT FOR DAMAGES FOR
(1) STRICT PRODUCTS LIABILITY
(2) NEGLIGENCE
(3) BREACH OF IMPLIED WARRANTY
(4) BREACH OF EXPRESS WARRANTY

I. INTRODUCTION

1. Plaintiff Josh Barnett is a professional mixed martial arts (“MMA”) athlete who is and was at all relevant times under contract as an Ultimate Fighting Championship (“UFC”) fighter. As such, he was subject to the UFC Anti-Doping Policy (“ADP”), which includes random testing for illegal performance enhancing substances.

2. Barnett brings this lawsuit because he was the victim of a contaminated dietary supplement manufactured and/or packaged by defendants under the brand name “Genkor” and marketed and distributed by defendants through their “Nutrition 101” retail outlets.

3. Specifically, the supplement in question, Tributestin 750 by Genkor (“Tributestin”), was contaminated with Ostarine, a substance in the class of anabolic agents on the World Anti-Doping Agency (“WADA”) prohibited list, which was adopted by the UFC ADP.

4. According to its ingredients label, the Tributestin should have contained nothing but Tribulus terrestris (“Tribulus”), a natural and legal plant which athletes are permitted to use as a dietary supplement, as Barnett sought to do in this case.

5. As a result of the contamination, Barnett was subject to disciplinary action by the United States Anti-Doping Agency (“USADA”), which administers the UFC ADP, after it detected Ostarine in his urine in connection with routine testing of a sample collected December 9, 2016.

6. Although USADA eventually conceded that Barnett’s adverse Ostarine test resulted from his inadvertent and unknowing use of contaminated Tributestin, Barnett suffered and continues to suffer substantial damages as a result of the incident, including, but not limited to, lost UFC fight purses, attorney fees and expenses arising from his defense of the USADA charges, reputational harm, lost promotional opportunities, and emotional distress. In addition, Barnett suffered physical harm and emotional distress due to being poisoned with Ostarine, a dangerous chemical that is not approved for human consumption under any circumstances.

II. PARTIES

7. Plaintiff Joshua Barnett is an individual residing in Los Angeles County, California.

8. Defendant Biokor LLC (“Biokor”) is a California limited liability company located at 2448 Riverside Drive, Los Angeles, California, 90039.

1 9. Defendant N101, Inc. (“N101”) is a California corporation located at 6252 Romaine
2 Street, Los Angeles, 90038.

3 10. Defendant Marc Wilcox is a natural person doing business in Los Angeles County.

4 11. Defendant Alex Lasbroas is a natural person doing business in Los Angeles County.

5 12. On information and believe, Defendants Wilcox and Lasbroas, in addition to being
6 managers and owners of Biokor and N1010, are personally responsible for the manufacture, packaging,
7 distribution, marketing, promotion, and/or sale of the contaminated Tributestin to Barnett and the public
8 at large.

9 13. Plaintiff is not aware of the true names of the defendants sued herein as DOES 1-100,
10 inclusive, and therefore sues them by such fictitious names. On information and belief, Plaintiff alleges
11 that each of these fictitiously named defendants is liable for the claims alleged in this complaint.

12 14. Plaintiff further alleges on information and belief that at all times relevant hereto each of
13 the defendants and each of defendants’ representatives, including each DOE, was the agent, principle,
14 servant, master, employee, employer, joint-venturer, partner, successor-in-interest, and/or co-conspirator
15 of each other defendant and was at all said times acting in the full course and scope of said agency,
16 service, employment, joint venture, concert of action, partnership, successorship, or conspiracy, and that
17 each defendant committed the acts, caused or directed others to commit the acts, or permitted others to
18 commit the acts alleged in this complaint.

19 15. Plaintiff further alleges on information and belief that each individual defendant is
20 directly and personally liable for the acts of each other defendant notwithstanding any intervening
21 corporate structures because each was the alter-ego of the other and all acted as a single enterprise with
22 respect to these matters or received pecuniary benefits described herein through fraudulent transfers. In
23 the interest of justice, and to prevent abuse of the corporate privilege, judgment must enter against each
24 and all of them with respect to the matters alleged herein.

25 **III. JURISDICTION AND VENUE**

26 16. This Court has jurisdiction over all causes of action asserted herein pursuant to the
27 California Constitution, Article VI, § 10.

17. Venue is proper in this Court because the incident occurred and defendants' principal places of business are located within the jurisdictional region of this Court.

IV. FACTS

18. Defendants operate online and retail nutritional supplement stores in the Los Angeles area where they sell various products, including their own Genko branded products, including Tributestin.

19. According to defendants' website, "N101 Nutrition, Health & Sport provides a vast selection of vitamins, herbs, sports nutrition, health supplements, and natural beauty/skincare products. We cater to athletes, weekend warriors, health nuts and anyone who is interested in leading a healthy lifestyle." www.n101.com/about-us.

20. As a professional athlete, Plaintiff consumes dietary supplements as part of his diet and fitness routine.

21. As a UFC fighter, pursuant to the UFC ADP, Barnett was subject to random and pre-competition testing conducted by USADA for detection of the presence of prohibited performance enhancing substances in his blood or urine.

22. In the Fall of 2016 Plaintiff purchased Tributestin from defendants at their retail location at 6252 Romaine St., Los Angeles, CA 90038.

23. Tributestin's ingredient's label, a copy of which is attached and incorporated as **Exhibit A**, indicated that it contained only Tribulus, a popular supplement for strength and muscle growth, said to promote testosterone production, among other positive health benefits.

24. Thereafter, Plaintiff began using the Tributestin as a source of Tribulus.

25. On December 9, 2016, Barnett gave USADA a urine sample, which tested positive for the presence of a prohibited performance enhancing substance, Ostarine.

26. Barnett had never intentionally consumed Ostarine, and so informed USADA. The parties proceeded to investigate whether Barnett had been the victim of contamination.

27. Barnett provided USADA a list of dietary supplements he had been using.

28. USADA chose some of them for testing at Barnett's expense.

29. Barnett supplied samples of the chosen products in open containers, which he had saved.

30. Barnett's Tributestin sample tested positive for Ostarine.

31. Thereafter, USADA independently purchased a sealed container of Tributestin, which also tested positive for Ostarine. Thus, Ostarine was detected in multiple packages of Tributestin.

32. As the result of the adverse test result, Barnett was suspended from competition and subjected to disciplinary action by UFC and USADA that (a) publicly accused him of intentionally ingesting Ostarine as a performance enhancing substance and (b) prevented him from participating in UFC events, including, for example, a fight that would have paid him a \$275,000 purse in September of 2017. The disciplinary action culminated in an arbitration ruling on March 23, 2018 that found that Barnett had not intentionally ingested any prohibited substances. *See* <https://ufc.usada.org/wp-content/uploads/MGSS-AWARD-Josh-Barnett.pdf>.

FIRST CAUSE OF ACTION

Strict Products Liability

Against All Defendants

33. The preceding paragraphs are incorporated by reference.

34. The Tributestin was defective at the time of its manufacture, packaging, production, sale, and distribution into commerce because it contained Ostarine, an illegal and dangerous substance.

35. Defendants failed to warn consumers that the Tributestin contained or might contain Ostarine or any other illegal or dangerous substance. To the contrary, defendants affirmatively represented on the product's label that it contained only Tribulus.

36. Defendants knew that the Tributestin would be purchased and used without inspection for such defects.

37. Barnett was using the Tributestin in the manner that defendants intended.

38. As a direct and proximate result of the product defect, Plaintiff has been unable to engage in his professional activities. He has lost, and continues to lose, income. He has also suffered and continues to suffer reputational harm and emotional distress. Under the "tort of another" doctrine, he is also entitled to his attorney fees, costs, and expenses incurred in connection with the USADA/UFC investigation and defending himself from the USADA/UFC prosecution.

WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

1 **SECOND CAUSE OF ACTION**

2 **Negligence**

3 **Against All Defendants**

4 39. The preceding paragraphs are incorporated by reference.

5 40. Defendants owed Plaintiff a non-delegable duty of care (a) not to allow their
6 Tributestin product to be contaminated with Ostarine, (b) not to sell Plaintiff or anyone any product
7 that was contaminated with Ostarine, and (c) to disclose all ingredients truthfully on the Tributestin
8 label. Had defendants disclosed that the Tributestin was or might be contaminated with Ostarine or
9 any prohibited substance, then Plaintiff would not have ingested it.

10 41. Defendants breached that duty of care.

11 42. The doctrine of *res ipsa loquitor* applies because the harm alleged would not ordinarily
12 have occurred without negligence, recklessness, or intent; the object that caused the harm was under the
13 defendants' control; and that there is no other plausible explanation for the existence of Ostarine in the
14 Tributestin.

15 43. As a direct and proximate result of the breach of duty, Plaintiff has been unable to
16 engage in his professional activities. He has lost, and continues to lose, income. He has also suffered and
17 continues to suffer reputational harm and emotional distress. Under the "tort of another" doctrine, he is
18 also entitled to his attorney fees, costs, and expenses he incurred in connection with the USADA/UFC
19 investigation and defending himself from the USADA/UFC prosecution.

20 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

21 **THIRD CAUSE OF ACTION**

22 **Breach of Implied Warranty**

23 **Against All Defendants**

24 44. The preceding paragraphs are incorporated by reference.

25 45. Defendants impliedly warranted to Plaintiff and the general public that the Tributestin
26 was of merchantable quality and safe and fit for the use for which it was intended (i.e. a source of
27 Tribulus).
28

46. Plaintiff reasonably relied on the implied warranty in purchasing and using Tributestin as a source of Tribulus.

47. The Tributestin was not safe for its intended use and not of merchantable quality, as warranted.

48. As a direct and proximate result of the breach of implied warranty, Plaintiff has been unable to engage in his professional activities. He has lost, and continues to lose, income. He has also suffered and continues to suffer reputational harm and emotional distress. Under the “tort of another” doctrine, he is also entitled to his attorney fees, costs, and expenses he incurred in connection with the USADA/UFC investigation and defending himself from the USADA/UFC prosecution.

WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

FOURTH CAUSE OF ACTION

Breach of Express Warranty

Against All Defendants

49. The preceding paragraphs are incorporated by reference.

50. Defendants expressly warranted to Plaintiff and the general public that the Tributes contained only Tribulus.

51. Plaintiff reasonably relied on the express warranty in purchasing and using Tributestin as a source of Tribulus.

52. Defendants breached the express warranty because the Tributestin contained Ostarine.

53. As a direct and proximate result of the breach of implied warranty, Plaintiff has been unable to engage in his professional activities. He has lost, and continues to lose, income. He has also suffered and continues to suffer reputational harm and emotional distress. Under the “tort of another” doctrine, he is also entitled to his attorney fees, costs, and expenses he incurred in connection with the USADA/UFC investigation and defending himself from the USADA/UFC prosecution.

WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

DEMAND FOR JURY TRIAL

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

///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief and judgment as follows:

- 3 A. For compensatory damages in an amount to be determined at trial.
4 B. For general damages in an amount to be determined at trial.
5 C. For prejudgment interest as allowed by the laws of the State of California.
6 D. For the costs of suit.
7 E. For such other and further relief as the Court deems just and proper.

8
9
10 DATE: April 9, 2018

Respectfully Submitted,

11 LAW OFFICE OF PETER FREDMAN PC

12
13 By: 

14 PETER FREDMAN
15 Attorneys for Plaintiff
16 JOSHUA BARNETT
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A




Search by Supplement

The search feature works by exact text match. Type any three or five letter section of the product name that does not include hyphens

Brand Name:

Manufacturer: genkor

Search

Supplement	Brand Name	Company	Could Contain	Notes/Comments
	Tributestin 750	Genkor	Anabolic agents	Testing of a sample purchased Apr see USADA's FAQ on Illegal Dietar



Supplement Facts	
Serving Size: 1 Capsule	
Servings Per Container: 100	
Amount Per Serving	
Tribulus Terrestris	750 mg*
*Daily Value not established.	

