

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROBERT GOMEZ and MARK MAURER, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

PURE NOOTROPICS, LLC,

Defendant.

Case No. 1:21-cv-03366

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Robert Gomez and Mark Maurer (“Plaintiffs”), by and through their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge, against Defendant Pure Nootropics, LLC (“Defendant”).

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of purchasers of Defendant’s products: Pure Nootropics Aniracetam, Pure Nootropics Oxiracetam, and Pure Nootropics Phenylpiracetam, (collectively, the “Products”), in the United States.

2. In general, “[o]ver-the-counter dietary supplements ... marketed to improve memory and focus have become increasingly popular in the United States (US) with hundreds of millions in sales per year.”¹ Supplements that allegedly improve brain functioning are referred to as “nootropics.”

¹ Pieter A. Cohen, et al., *Five Unapproved Drugs Found in Cognitive Enhancement Supplements*, Neurology Clinical Practice (Sept. 23, 2020).

3. Defendant is a manufacturer and supplier of several nootropics under its own label, Pure Nootropics, as referenced in Paragraph 1.

4. Defendant represents that the Products have meaningful effects on consumers' memory, learning, focus, energy, and overall mood.

5. Unfortunately for consumers, Defendant's claims and representations about the Products are false and unsupported by scientific evidence. The United States Food & Drug Administration ("FDA") has explicitly stated² to Defendant that analogs³ of the Products are not recognized as safe and effective for the uses and claims made by Defendant.

6. Further, analogs of Defendant's Products were classified by the FDA as "drugs,"⁴ which require FDA approval prior to the introduction and sale of said drugs into interstate commerce.

7. Defendant has not procured FDA approval prior to selling the Products, despite admonition by the FDA. Accordingly, the Products are "adulterated" and thus illegal to sell.

8. In addition, the Federal Trade Commission ("FTC") also admonished the Defendant, for making claims about its products which "may not be substantiated by competent and reliable scientific evidence."⁵

9. Plaintiffs are purchasers of Pure Nootropics who assert claims on behalf of themselves and similarly situated purchasers of Pure Nootropics for violations of the consumer

² William A Correll, Jr., Mary Engle, *Warning Letter*, U.S. Food & Drug Admin., U.S. Federal Trade Comm'n (Feb. 05, 2019) <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/pure-nootropics-llc-565425-02052019>.

³ Pieter A. Cohen, et al., *Five Unapproved Drugs Found in Cognitive Enhancement Supplements*.

⁴ William A Correll, Jr., Mary Engle, *Warning Letter*, U.S. Food & Drug Admin., U.S. Federal Trade Comm'n (Feb. 05, 2019) <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/pure-nootropics-llc-565425-02052019>.

⁵ *Id.*

protection laws of New York, unjust enrichment, and breach of implied warranty of merchantability.

10. Plaintiffs assert two forms of economic injury on behalf of themselves and the putative Class: (i) that they would not have purchased the Products, or would have paid significantly less for them, had they known that the Products did not have the advertised effects on their memory, learning, focus, energy, and mood; and (ii) that the Products were worthless because they were “adulterated” and thus illegal to sell.

PARTIES

11. Plaintiff Robert Gomez is a resident of Hempstead, New York who has an intent to remain there, and is therefore a domiciliary of New York. Plaintiff Gomez purchased approximately one bottle of Pure Nootropics Phenylpiracetam. Plaintiff Gomez purchased the bottle in-person at a CVS Pharmacy store. Plaintiff Gomez purchased said bottle due to a desire to improve cognitive function. In purchasing Pure Nootropics Phenylpiracetam, Plaintiff Gomez relied on Defendant’s representations that Pure Nootropics Phenylpiracetam enhances “mental performance & brain support” as well as is a “great boost of mental energy.” Had Plaintiff Gomez known that the Pure Nootropics Phenylpiracetam did not produce the advertised effects, Plaintiff Gomez would not have purchased Pure Nootropics Phenylpiracetam, or would have paid substantially less for the bottle. Further, had Plaintiff Gomez known that Pure Nootropics Phenylpiracetam contained unapproved ingredients and was thus adulterated and illegal to sell, Plaintiff Gomez would not have purchased the bottle of Pure Nootropics Phenylpiracetam at all. After using the Pure Nootropics Phenylpiracetam, Plaintiff Gomez felt no positive effects, specifically no improved “mental performance & brain support” and no “great boost of mental energy.”

12. Plaintiff Mark Maurer is a resident of Rensselaer, New York who has an intent to remain there, and is therefore a domiciliary of New York. Plaintiff Maurer purchased approximately four bottles each of Pure Nootropics Aniracetam, Pure Nootropics Oxiracetam, and Pure Nootropics Phenylpiracetam, over a period of approximately four months. Plaintiff Maurer purchased the bottles each time in-person at a GNC store. Plaintiff Maurer purchased said bottles due to a desire to improve his fitness and recurring health issues. In purchasing the Products, Plaintiff Maurer relied on Defendant's representations that Pure Nootropics Aniracetam "improves memory formation," "improve(s) mental energy," and enhances "mood," while Pure Nootropics Oxiracetam enhances "memory and learning," "energy," and "mood," and Pure Nootropics Phenylpiracetam enhances "mental performance & brain support" and is a "great boost of mental energy." Had Plaintiff Maurer known that the Products did not produce their advertised effects, Plaintiff Maurer would not have purchased the Products, or would have paid substantially less for them. Further, had Plaintiff Maurer known that the Products contained unapproved ingredients and were thus adulterated and illegal to sell, Plaintiff Maurer would not have purchased the Products at all.

13. Defendant Pure Nootropics, LLC is a New Mexico limited liability company with its principal place of business in Albuquerque, New Mexico. Defendant markets, sells, and distributes the Products throughout the United States, including in the State of New York.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100

members of the putative class, and Plaintiffs, as well as most members of the proposed class, are citizens of states different than Defendant.

15. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business within New York, such that Defendant has significant, continuous, and pervasive contacts with the State of New York.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant transacts significant business within this District and because Plaintiffs purchased and used Pure Nootropics Aniracetam, Pure Nootropics Oxiracetam, and Pure Nootropics Phenylpiracetam in this District.

FACTUAL ALLEGATIONS

I. The Products' Advertising Is Misleading

17. Nootropics are drugs or supplements that are claimed to improve cognitive function, including memory, focus, and other aspects of cognition in healthy individuals.

18. American consumers are spending more and more on nootropics each year. There is an increase in the number of individuals using nootropics for nonmedicinal purposes, such as improving performance at school or work.

19. Defendant advertises, markets, sells, and distributes its own line of nootropics, Pure Nootropics, throughout New York and the United States.

20. The Products can be purchased online at Defendant's website: www.purenootropics.net. The Products can also be purchased at major retailers such as GNC and CVS Pharmacy.

21. Pure Nootropics are available in two forms: powder and capsule. The powder is sold in measurements of grams, while the capsules are sold in measurements of milligrams.

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