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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

USANA HEALTH SCIENCES, INC.,
a Utah Corporation;

Plaintiff,

v.

BARRY MINKOW, a citizen of California;
FRAUD DISCOVERY INSTITUTE, INC.,
a California Corporation;
JOHN DOES 1-100;

Defendants.

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

Case Number: 2:07CV159

Judge: Tena Campbell

Plaintiff USANA Health Sciences, Inc. (USANA), for its First Amended Complaint against Defendants Barry Minkow, the Fraud Discovery Institute, Inc. (FDI), and John Does 1-100, states as follows:

I. PRELIMINARY STATEMENT

1. After acknowledging taking short positions in USANA's publicly-traded stock, convicted felon and fraudster Barry Minkow has undertaken a public relations campaign against USANA that is full of exaggerations, half-truths, and false, deceptive, or misleading statements regarding USANA's products and business model. While Minkow purports to be motivated by

public service, the actual purpose of Minkow's public relations campaign against USANA is to intentionally and illegally manipulate the market for USANA's publicly-traded stock – specifically, to cause USANA's stock price to drop and stay down so Defendants and their agents (the John Doe Defendants) can line their pockets through short selling USANA's stock; and to provide a cover for illegal naked short selling of USANA's stock by John Doe Defendants. The Defendants, including the covert John Does, have naked short sold USANA's stock to such an unfathomable extent that the number of short sales of USANA stock exceeds the number of shares ever issued by USANA. This manipulation of the market has caused the price per share of USANA stock to drop precipitously, injuring investors and USANA on a daily basis.

II. PARTIES, JURISDICTION, VENUE AND APPLICABLE LAW

2. Plaintiff USANA Health Sciences, Inc., formerly known as USANA, INC. is a Utah corporation, headquartered at 3838 West Parkway Boulevard, Salt Lake City, UT 84120.

3. Defendant Barry Minkow is a citizen of California, residing in southwest San Diego County. He is the founder and a principal of FDI.

4. Defendant Fraud Discovery Institute, Inc. is a California corporation with its principal place of business at 105 West F Street, Suite 304, San Diego, CA 92101.

5. The names of the Defendants listed as John Does 1-100 are presently unknown to USANA. USANA believes that the John Doe defendants are one or more clients, agents, or affiliates of Defendants Minkow and FDI, possibly institutional investors or hedge funds, that have conspired with Minkow and FDI to manipulate the market for USANA's publicly-traded stock in order to gain financially through short sales as set forth in this Complaint. Additional John Doe defendants may be one or more brokerage houses that have permitted or colluded in the market manipulation by enabling naked short selling of USANA's stock. When the identities

and capacities of the John Doe defendants are ascertained, USANA will seek leave of the Court to amend its Complaint accordingly and may, if circumstances so warrant, seek preliminary injunctive relief.

6. Diversity jurisdiction under 28 U.S.C. § 1332(a) is proper because USANA and the currently known Defendants are citizens of different states, and the amount in controversy exceeds \$75,000.

7. Jurisdiction is proper over Defendants, pursuant to Utah Code Ann. § 78-27-24, *et seq.*, because each of these Defendants has transacted business within the State of Utah, contracted to supply services or goods in Utah, and/or caused injury within the State of Utah.

8. As more specifically detailed below, Defendants, directly or through their agents, have directed their activities toward Utah by, *inter alia*, purchasing products from USANA, traveling to Utah to attend and record USANA's sales presentations, and authoring and publishing reports specifically targeting USANA that are calculated to lower USANA's stock price, so as to allow Defendant Minkow to benefit from his short position in USANA's publicly-traded stock.

9. Venue is proper in this Court under 28 U.S.C. § 1391(a)(2), because: Plaintiff USANA is a Utah corporation with its principal place of business in Salt Lake City; a substantial part of the events giving rise to the claims herein occurred in Utah; and a substantial part of the property that is the subject of this action is located in Utah.

10. Although Defendants are subject to jurisdiction in Utah, the state with the most significant relationship to the occurrence and the parties is California. Much of the injury to the Plaintiff's professional reputation, business contacts, and future economic advantage occurred in California where the Defendant has campaigned against the Plaintiff. California is also the place

where the injurious conduct occurred. Minkow and FDI produced and released their reports condemning USANA in California. The known Defendants are residents of California. Even though USANA is located in Utah, it conducts business extensively in California and has suffered the most significant injury to its California business. The only relationship the Plaintiff has with the Defendants centers around the damaging reports released in California. Accordingly, California tort law applies to USANA's claims.

III. FACTUAL BACKGROUND

A. Parties

11. USANA is one of America's leading companies in the field of health and nutrition. USANA manufactures high quality nutritional and personal care products that are sold directly to USANA's Preferred Customers and Associates throughout the United States, Canada, Australia, New Zealand, Hong Kong, Japan, Taiwan, South Korea, Singapore, Malaysia, Mexico and the United Kingdom. USANA's products are on the leading edge of providing adequate cell-level nutrition, fiber, and antioxidant protection. USANA has achieved its pre-eminent position through its line of superior and trustworthy products, and its innovative network marketing program.

12. USANA's founder, chairman and CEO, Dr. Myron Wentz, is a world-renowned pioneer in cell-culture technology. USANA's president and manager of day-to-day operations is Dr. Wentz's son, David Wentz.

13. USANA is a publicly traded corporation, represented on the NASDAQ as USNA.

14. Defendant Minkow is a fraudster and convicted felon. Minkow trumpets his past crimes on the website of his business, www.frauddiscovery.net. Minkow's website biography, and report on USANA, which underlies this action, repeatedly acknowledge Minkow's criminal

past, including his conviction for securities fraud, seven-year sentence, and continuing obligation to pay a \$26 million restitution judgment.

15. Defendants Minkow and FDI sell products and services related to the frauds they purportedly investigate. These products and services include a series of “Frauds Gone Wild” DVDs sold on Amazon.com for about \$18 each; two books authored by Minkow sold on Amazon.com; and fraud investigation consulting and education services, such as fraud detection training program and boot camps. FDI describes its for-profit status and how it makes money on its website: www.frauddiscovery.net/privacy.html.

B. Short selling, naked short selling, and illegal market manipulation

16. A short sale of stock is generally a sale of stock that the seller does not currently own. In a typical short sale, a trader first borrows a number of shares (often from a broker-dealer, which maintain portfolios of stocks for this purpose, or one can obtain them on the market) and then sells an equal number of shares. The trader pays a fee to the broker for borrowing the shares that are held in the broker’s portfolio. The idea is for the short seller to sell high and then buy low to cover or close the transaction, betting that the stock’s price will decline over a period of time, and that the amount of the decline will exceed the transactional costs of borrowing stock for the short sale.

17. In any securities transaction in the United States, a seller has three trading days in which to deliver stock shares to a purchaser. *See* 1934 Act, Rule 15(c)6-1, 17 C.F.R. § 240.15c6-1. If the stock is not delivered within three trading days from its sale, it is called a failure to deliver. 1934 Act, Rule 17(a), 17 C.F.R. § 15c6-1. Failure to deliver can occur for innocuous reasons such as when a seller misplaces her original stock certificates. However,

when an investor sells but purposefully fails to deliver stock in order to manipulate the price of that stock, it is called a strategic failure to deliver, or a “naked short sale.”

18. In a naked short sale, an investor merely pretends to short sell stocks into the market. The investor neither owns the shares nor borrows them, but sells a sort of “phantom” share to an unsuspecting purchaser. Some commentators consider naked short selling to constitute a counterfeiting of stock shares, in violation of 18 U.S.C. § 514, a class B felony.

19. When properly executed, short selling is legal because there are a finite number of a company’s shares that can be borrowed, which maintains the integrity of the supply and demand for a stock’s shares in the market. Naked short selling, on the other hand, allows an investor to create as many “phantom” shares as he wishes and sell them into the market in an attempt to drive down stock prices. Naked short selling destabilizes and depresses a company’s share price by removing all supply constraints and flooding the market with shares.

20. Legitimate short selling entails bearing the cost of borrowing stock while waiting for the market price to fully incorporate the negative news about a company. Naked short selling, by contrast, is cost-free because the naked short seller does not actually borrow the stock he sells. Also, the absence of cost constraints enables a naked short seller to continue the practice of selling phantom shares into the market in order to continue driving down the price of a stock.

21. Short selling is subject to detailed SEC regulations. 17 C.F.R. § 242.200-203. Naked short selling, in violation of these regulations, constitutes an illegal manipulation of the stock market, in violation of Rule 10(b)(5) of the 1934 Securities Exchange Act. 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5.

22. Recently, the California Court of Appeals described such a stock manipulation scheme as follows: large investors such as hedge funds take a short position in a company's stock, and then request a stock research and analysis company to issue a negative report on that company – often supplying negative research and participating in the production of the negative report. The Court determined that negative reports issued about public companies were critical to the short seller's efforts to profit from the depressed share price. The California Court of Appeals held that the plaintiff-target company pled cognizable claims based on this illegal securities manipulation under California's Unfair Competition Law (UCL), Cal. Business & Professional Code 17200 *et seq.*; and that the claims were not preempted by federal securities laws.

23. In 2005, the Securities and Exchange Commissions enacted Regulation SHO to address abuses caused by naked short selling. 17 C.F.R. § 242.200-203. Pursuant to Regulation SHO, stock exchanges maintain lists of their companies whose failure-to-deliver sales exceed a reasonable level (greater than 0.5% of the company's outstanding shares) for five consecutive days, called the Regulation SHO Threshold List. 17 C.F.R. § 232.203. While very few companies are listed on the NASDAQ's SHO Threshold List, USANA has been consistently listed since April 20, 2007, indicating that its shares have been subject to sustained naked short selling beginning some time prior to April 20, 2007.

24. Certain websites, such as CNNMoney.com, maintain lists of the short interest in a company's stock. Once a month, the website catches a snapshot of the short interest in a stock and juxtaposes that interest to the number of shares available on the market, termed the "float." On June 12, 2007, there were 8,100,882 shares of USANA stock in float. However, the short interest in USANA was 8,624,437 shares. <http://money.cnn.com/quote/quote.html?symb=>

USANA. Remarkably, based on these numbers, 106.5% of USANA's actively traded stock has been shorted. Obviously, when there are more shares of a stock sold short than actually available in the market, the market price of the stock has incorporated phantom shares never issued by USANA. In addition, this figure presumes that 100% of investors are short selling the stock, as opposed to buying and selling in the regular course of trading. When the short interest exceeds the float, such as the case for USANA, it is a clear warning signal that rampant naked short sales are plaguing the company.

C. Defendants' manipulation of USANA's stock price

25. On or about February 20, 2007, Minkow, on behalf of himself and FDI, and upon information and belief, in concert with the John Doe defendants, prepared and sent a report on USANA to officials at the SEC, FBI and IRS (the Report). The Report is posted on FDI's website at <http://www.frauddiscovery.net/usanareport.html>. A copy of the massive Report, with its numerous addenda, was attached as Exhibit 1 to the original complaint in this action and is incorporated by reference.

26. Minkow acknowledges that the Report was commissioned by a paying client. Exhibit 1, Report, text between footnotes 21 and 22 (the Report does not contain page numbers).

27. Minkow also sent a copy of the Report to the Wall Street Journal on or about February 20, 2007.

28. In his cover letter accompanying the Report, dated February 21, 2007, Minkow implied that the Report was prepared at considerable expense for FDI's client. *Id.*

29. Prior to the publication of the Report, USANA had experienced 16 consecutive quarters of revenue growth and increase in its stock price. Some analysts believed that

USANA's growth could not be sustained, and as a result, USANA was viewed as a potentially lucrative target for short sellers.

30. Minkow also explicitly acknowledged in his cover letter that he had personally taken short positions on USANA's stock, and intended to make money thereby. *See* 2/21/07 letter, attached as Exhibit 2 to original Complaint and incorporated by reference.

31. Although the Report purports to be an expose of USANA's products and business practices, the Report is premised with a lengthy discussion of short selling, in order to anticipate and defuse any accusation against Minkow that shorting USANA stock is in any way improper. Report, text at fn. 15-17.

32. In fact, upon information and belief, Minkow, FDI and the John Doe Defendants are participants in an orchestrated short-selling campaign that involves illegally manipulating the price of USANA's stock with false, deceptive, and misleading publicity, and/or using the public relations campaign as a cover for their illegal naked short selling.

33. On March 15, 2007, Minkow, on behalf of himself and FDI, published the Report on FDI's website, www.frauddiscovery.net/usana.html. (Minkow has since posted so much more USANA-related material on FDI's website that the link for the initial report is now www.frauddiscovery.net/usanareport.html.)

34. Minkow accompanied his March 15, 2007 publication of the Report with a press release, attached as Exhibit 3 to the original Complaint, and incorporated by reference.

35. USANA stock dropped 15% on March 15, 2007.

36. About seven stock analysts cover USANA, and make buy, hold, or sell recommendations for USANA's stock. While six of the seven analysts generally dismissed the FDI Report and did not change their recommendations for USANA, one analyst, Canaccord

Adams, Inc., dismissed the Report and further raised its rating from “hold” to “buy,” since USANA stock had just dropped by 15% and was now a better bargain. In response, on March 22, 2007, counsel for FDI sent a “litigation hold” letter to Canaccord Adams, Inc. While the letter asks for a litigation hold so Defendants can investigate Canaccord Adams’ brokerage activities for USANA stock, the letter specifically notes that Canaccord had taken the unique step of raising its rating for USANA. Defendants’ threat of involving Canaccord Adams in litigation thus appears to be related to Canaccord Adams’ decision to upgrade its recommendation for USANA from hold to buy – conduct that confounds Defendants’ goal of causing USANA’s stock price to drop.

37. Since publishing the Report, Defendants have embarked on a continuing public relations campaign designed to further lower USANA’s stock price, and keep it down:

a. Defendants have published numerous follow-up reports on the FDI website that repeat and amplify the content of the original Report, and otherwise seek to portray USANA and its principals in a negative light.

b. Defendants have purchased subscriber banner advertisements on the search engine Google, at considerable cost, so that any person typing the key word “USANA” into Google’s search engine will see a prominently displayed advertisement for Defendants urging the person to read the Report, and providing a link to the FDI website and reports on USANA.

c. Defendants have also published numerous YouTube videos at www.youtube.com, that portray USANA in a negative light. The videos are linked to FDI’s website.

38. Upon information and belief, the purpose of the public relations campaign, like the initial Report, is to either manipulate the price of USANA stock so Defendants can make money from their short positions, or provide a cover for Defendants' illegal naked short selling.

39. Immediately prior to the March 15, 2007 release of the Report (the opening salvo of Defendants' public relations campaign), USANA's stock traded at about \$60 per share and the short interest was only 1,746,603 shares.

40. On March 15, 2007, the day the Report was published with the accompanying press release, USANA's stock price dropped about 15% . By April 2007, the very next time the short interest in USANA was recorded by CNNMoney.com, the short interest had increased to 4,862,504 shares, even though the stock had already dropped dramatically and the analysts were not suggesting that investors sell USANA stock.

41. Monthly, since the precipitous increase in short positions between March and April, short interest in USANA has climbed by roughly 2 million shares per month.

42. With the continuing public relations campaign and the flood of phantom shares sold short into the market, USANA's stock has continued to slide to a low of about \$35 per share – a 42% drop in share price.

43. Some of the sudden price drops in USANA's stock have occurred in conjunction with the publication of a USANA report or other elements of the public relations campaign, but took place faster than any possible market reaction, indicating that these price drops are being caused not by any actual market reaction to the public relations campaign, but naked short sales of large blocks of USANA that were timed to coincide with the public relations campaign.

44. Upon information and belief, the Report and public relations campaign thus provide a cover for Defendants' illegal market manipulation activities. That is, Defendants act in

concert so that the release of a new element of the public relations campaign (*e.g.* a new report and press release on the FDI website) is timed to coincide with the drop in USANA's stock price that is in fact caused by Defendants illegal naked short selling – thus creating the appearance that the drop in price is a market reaction to actual negative news about USANA, rather the result of illegal market manipulation by Defendants.

45. Defendants' conduct of disguising their illegal market manipulation as a justified market reaction persuades market investors to view USANA's stock price drop as market-justified, rather than illegally manipulated, and thereby increases the downward pressure on USANA's stock price.

46. USANA has recently discovered that the USANA stock has been listed, by unknown individuals, on the Berlin-Bremen Stock Exchange. USANA has never authorized the listing of its stock on a foreign exchange.

47. Since 2004, the listing of United States publicly traded companies on the Berlin-Bremen Stock Exchange has been associated with a disguise for naked short selling. Listing on a foreign exchange allows a broker to avoid restrictions against naked short selling a company's stock. Absent restrictions, unknown quantities of phantom shares can be sold into a market to overwhelm the supply and depress the market price per share. Therefore, creating a market for a stock on a foreign exchange allows the party that authorized the listing of the stock to illegally manipulate the market of that stock.

48. Upon information and belief, USANA's stock was listed on the Berlin-Bremen Stock Exchange in a further effort to naked short shares of USANA without detection or regulation. USANA's stock price has been depressed due to these manipulative tactics.

D. False, Deceptive or Misleading Statements Regarding USANA Products and Business Model

49. The Report contains numerous false, deceptive and/or misleading statements of fact.

1. False, deceptive or misleading statements about USANA's products

50. In order to support its core contention that USANA has no real retail business because its products are overpriced, the Report purports to have tested USANA's products against comparable retail products in order to compare product quality and potency; and that this testing is necessary to eliminate the contention that USANA charges more for its products because they are better or more potent than comparable retail products. *See* Report, Exhibit 1, text at notes 29-30.

51. The Report makes false, deceptive or misleading assertions regarding USANA's claims that its TenX Antioxidant Bar has ten times the antioxidant capacity of any juice. The Report asserts that the TenX bar is "just over 2 times stronger than 8 ounces of grape juice—nowhere near 10 times stronger," based on the results of a laboratory analysis. Exhibit 1, Report, text at n.29 and in n.30. *See also id.*, text at n.57. The lab analysis cited by Defendants in fact confirms the accuracy of USANA's claim. Defendants misrepresent the antioxidant analysis by comparing antioxidant units per serving, instead of per gram.

52. The Report asserts that USANA misrepresents the amount of N-Acetyl L-Cysteine in its Usana Health Pak 100TM supplement, again based on a lab analysis. The laboratory analysis that Defendants rely upon does not find that the Health Pak 100 supplement has no N-Acetyl L-Cysteine, but only states that the lab could not detect any N-Acetyl L-Cysteine. USANA contacted the lab that performed this testing and was told that the lab was

unable to detect any quantity of N-Acetyl L-Cysteine using its own equipment. The lab reported that it actually spiked a sample of the Health Pak 100 with N-Acetyl L-Cysteine in order to determine the ability of its equipment to detect this compound, and even the spiked sample revealed no detectable amount. Thus, the lab's statement that no N-Acetyl L-Cysteine was detected in its sample is materially different from the Report's assertion that none exists in the sample, and is false, deceptive or misleading.

53. The Report claims that USANA's Health Pak 100 product overstates the amount of grape seed extract in the supplement as 45 mgs per serving, whereas the lab analysis found only 13.3 mgs per serving. Report, text at n. 33. The lab, however, did not test for grape seed extract, but rather tested for and reported the amount of one of the effective components of grape seed extract: proanthcyanidins. The Report's substitution of proanthcyanidins for grape seed extract is false, deceptive and misleading.

2. False, deceptive or misleading statements about USANA's business model

54. The Report states that in February 2000 USANA adopted a broad re-pricing initiative, reducing the average price of its products by 24%; and that these lower prices undermined USANA's business so that USANA "reverted back to the higher prices." *Id.*, text at n. 119. The Report uses this alleged reversion to high prices to support its central contention that USANA's products are overpriced and must remain overpriced, and therefore USANA's business model is necessarily a pyramid scheme rather than a supportable retail sales business. The Report cites no authority for its contention that USANA's prices reverted back to their pre-February 2000 level, because this contention is false. USANA has maintained the February 2000 price cut, and has only raised its products' prices marginally since then as a result of formulation changes justifying the price increase.

55. The Report asserts several times that USANA has engaged in a stock buy-back program to keep its stock price high so its insiders could profit by selling their USANA stock; and that insiders only sell but do not buy USANA stock. *See* Report, text at n. 177 (“This all occurs while insiders sell to the tune of \$95 million, without buying even one share in their personal accounts since 2003.”) (emphasis in original); text at page before n. 180 (“**Either** the company initiated a \$140 million stock repurchase program while not one director or officer of the company personally bought one share of stock”) (emphasis in original). However, USANA’s public SEC filings (with which the Report demonstrates an intimate familiarity) show that USANA’s officers have purchased thousands of shares of USANA stock for their retirement accounts since 2003. The assertion that USANA’s officers sell but do not buy USANA stock is false, deceptive and misleading.

56. The Report also contains numerous false, deceptive or misleading statements regarding USANA’s business model, that are intended to drive USANA’s stock price down. These statements include:

- “virtually all the purchasers of [USANA’s] products are business incentivized distributors”, Exhibit 1, Report, text at n. 50;
- “almost no retail market for Usana’s products appears to exist”, *Id.*, text at n. 67;
- “Usana has been sustaining annual revenue by expanding into new recruiting territories and has no sustainable sales force or customer base other than the distributors who have hopes of building businesses.” *Id.*, text at n. 81;
- “[W]ith no stable retail clients and huge attrition and collapse rates, the only way for Usana to grow is to find new territories until they too become saturated. It just appears to give the investors, the analysts, and the distributors half the story.” *Id.* text at n. 94;
- At USANA “No systems are put in place, however, to monitor retail sales or enforce the requirements.” *Id.*, text at n. 116;
- “Usana has no method for monitoring this blanket requirement of retail sales and no systematic program of enforcing the rule. Without such methods or programs and

considering all other factors that incline the business toward endless chain recruiting, the policy statements are worth nothing.” *Id.*, text at n. 132.

57. The 42% drop in USANA’s stock price between the initial publication of the Report and the low was caused by either the mix of false, deceptive and misleading information contained in the Report and public relations campaign that was intended to cause USANA’s stock to drop, or by Defendants’ illegal naked short selling of USANA stock timed to coincide with specific events in the public relations campaign, or both.

58. All of the above statements in the Report are false, deceptive or misleading, and were made with the intent to drive down USANA’s stock price.

E. Defendants’ actions have exposed USANA to third-party lawsuits

59. Due to the drop in USANA’s share price caused by Defendants’ public relations campaign and/or illegal market manipulation, numerous securities class action lawsuits have been filed or may be filed against USANA by law firms such as Dreier LLP, Goldman Scarlato & Karon, Brower Piven, PC, Brodsky & Smith LLC, Schatz Nobel Izard, P.C.; Bruce Murphy PC; and Milberg Weiss & Bershad LLP.

60. USANA has been served with three securities class action lawsuits to date: *Guerin Senter v. USANA Health Sciences, Inc., Myron W. Wentz, David A. Wentz, and Gilbert A. Fuller*, 2:07CV214; *Ashok Kapur v. USANA Health Sciences, Inc., Myron W. Wentz, David A. Wentz, and Gilbert A. Fuller*, 2:07CV177; and *Edward Shaw v. USANA Health Sciences, Inc., Myron W. Wentz, David A. Wentz, and Gilbert A. Fuller*, 2:07CV280.

61. Due to the Defendants’ allegations that USANA is a fraudulent pyramid scheme with an unsustainable business model, USANA has been served with the following distributor class action: *Jeannette Johnson and Christopher Crane v. USANA Health Sciences, Inc., Denis*

E. Waitley, Christine Wood, Ladd McNamara, Deborah Waitley-McNamara, Myron W. Wentz, David A. Wentz, and Gilbert A. Fuller, and Does 1-50, Case No. 53808.

62. USANA believes that it may face more class action lawsuits stemming from Defendants' illegal market manipulation.

63. USANA has begun incurring attorneys fees and costs to defend these class action lawsuits, and anticipates that it will continue to do so as these lawsuits develop.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of California Business & Professions Code §§ 17200 *et seq.* and 17500 *et seq.* – against all Defendants

64. USANA incorporates all prior paragraphs as though fully set forth herein.

65. Defendants' illegal stock market manipulation constitutes unlawful business acts or practices, in violation of California Business & Professions Code §§ 17200, *et seq.* and 17500 *et seq.*

66. Defendants' manipulation of USANA's stock price as described herein constitutes unlawful conduct under Rule 10(b)(5) of the 1934 Securities and Exchange Act and related federal securities laws and regulations. 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5.

67. USANA has been injured by Defendants' violations of California Business & Professions Code §§ 17200, *et seq.* and 17500 *et seq.*, and Defendants have been unjustly enriched at USANA's expense.

68. USANA believes that Defendants Minkow, FDI and John Does 1 through 100, agreed and conspired to engage in these unlawful business acts and practices, and/or aided, abetted, encouraged, ratified, and/or accepted the benefits of these acts.

69. USANA is entitled to preliminary and permanent injunctive relief restraining Defendants, individually and collectively, from committing further unlawful business acts and practices, and for restitution from Defendants in an amount to be proven at trial, plus such other relief as may be available pursuant to the California Business and Professions Code.

SECOND CLAIM FOR RELIEF

Violation of California Corporations Code §§ 25400 *et seq.* – against all Defendants

70. USANA incorporates all prior paragraphs as though fully set forth.

71. Defendants at all relevant times were purchasers and/or sellers of USANA common stock.

72. Defendants violated California Corporations Code Sections 25400(a) and (b) *et seq.*, and Defendants' violations were committed either directly or indirectly within California.

73. Defendants intentionally sold substantial short positions against the common stock of USANA or engaged in similar transactions that would benefit from a decline in USANA's stock prices. Defendants were aware of and indifferent to the fact that selling substantial shares of USANA stock into the market would create phantom shares in the market, mislead USANA shareholders, and depress the market price of USANA shares.

74. Defendants worked together to effect repeated and substantial short positions in USANA stock to depress the price, create the false appearance of active trading in USANA stock, and to induce the sale of USANA stock by others.

75. As a proximate result of Defendants' acts and omissions occurring in California, as alleged herein, USANA's stock price was manipulated and depressed and Plaintiff was injured by the manipulation.

76. Pursuant to the California Corporations Code, Section 25500, Plaintiff is entitled to, and should be awarded, damages against Defendants for unlawful manipulation of USANA stock prices.

THIRD CLAIM FOR RELIEF

Intentional Interference With Economic Advantage – against all Defendants

77. USANA incorporates all prior paragraphs as though fully set forth.

78. USANA has valuable prospective economic relationships and business opportunities with its suppliers, bankers, customers, lenders, investors, distributors, and prospective investors and distributors, from which USANA derived economic gain and from which USANA had a reasonable expectation of deriving future economic gain.

79. Defendants are aware of these relationships.

80. Defendants have wrongfully and intentionally acted to interfere with and destroy or harm USANA's existing and prospective business relationships, and continue to do so.

81. Defendants' wrongful acts have interfered with and disrupted Plaintiff's relationships and prospective relationships.

82. Defendants' acts are intended to interfere with and disrupt these relationships, and are a substantial factor causing USANA's harm through loss of prospective economic advantage.

83. USANA has been damaged by the improper acts of Defendants in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

Securities Fraud 10b-5 For Injunctive Relief – against all Defendants

84. USANA incorporates all prior paragraphs as though fully set forth.

85. An exception to the *Blue Chip Stamps* purchaser-seller rule is widely recognized in cases seeking injunctive relief. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 95 S.Ct. 1917 (1975). Non-purchasers/non-sellers have standing to bring Rule 10b-5 actions for injunctive relief in the Tenth Circuit. *Vincent v. Moench*, 473 F.2d 430 (10th Cir. 1973).

86. USANA, as the target company, believes it is in the best position to bring a Rule 10b-5 claim for injunctive relief to stop the Defendants from further manipulating USANA stock. USANA has a duty to its shareholders to stop the threat from outsiders to the value of USANA stock held by a diverse group of small investors.

87. Remedies at law are inadequate to address fully the continuing manipulation of USANA stock that is occurring at the hands of the Defendants.

88. Defendants took significant short positions in USANA stock, creating a wealth of phantom shares in the market, depressing the stock price of USANA. Defendants then agreed with and supported one another in releasing materially false or misleading statements about USANA to the public.

89. Defendants made the material misstatements or omissions in connection with the sale and/or purchase of USANA stock, as they would benefit from depressing the USANA stock prices prior to covering their short positions.

90. By manipulating the price of USANA stock, as set forth herein, the Defendants acted with scienter and caused the Plaintiff's loss of worth and reputational damage. Plaintiff has suffered damages directly and proximately caused by Defendants scheme to unlawfully manipulate the USANA stock price.

FIFTH CLAIM FOR RELIEF

Tortious Exposure To Litigation With Third Parties – against all Defendants

91. USANA incorporates all prior paragraphs as though fully set forth.

92. The Defendants' intentional and tortious conduct has required USANA to act in the protection of his interests by defending legal actions filed by third parties, including but not limited the three securities class actions and one distributor class action discussed above.

93. The filing of these actions was the natural, probable and foreseeable consequence of Defendants' intentional and tortious conduct.

94. USANA is entitled to recover compensation for the reasonably necessary loss of time, attorney fees, costs and other expenditures thereby suffered or incurred.

V. DEMAND

WHEREFORE, Plaintiff USANA demands judgment against Defendants Minkow, FDI, Inc., and John Does 1-100 as follows:

- For preliminary and permanent injunctive relief restraining Defendants, individually and collectively, from committing further unlawful business acts and practices;
- For restitution from Defendants in an amount to be proven at trial, plus such other relief as may be available pursuant to the California Business and Professions Code;
- For damages, including actual, compensatory, general, special, punitive, exemplary, and/or statutory damages as may be appropriate and as alleged herein, together with all applicable pre-judgment and post-judgment interest thereon;
- For recovery of reasonable attorneys' fees and costs incurred in connection with all legal actions that USANA must defend as a result of Defendants' intentional and tortious conduct;
- For recovery of reasonable attorneys' fees and costs incurred in connection with this action;
- For such other and further relief as may be available at law or equity, and that the Court deems appropriate.

JURY DEMAND

USANA demands a jury trial on all issues and claims so triable.

DATED this 12th day of July 2007.

/s/ Michael T. Hoppe
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ATTORNEYS FOR USANA

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2007, a copy of the foregoing pleading has been served electronically via ECF or U.S. Mail on the following:

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