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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**  
13

14 Diandra Johnson, on behalf of herself  
15 and on behalf of those similarly situated,

16 Plaintiff

17 vs.

18 Nx CARE, INC., a Canadian corporation;  
19 Nx LABS, INC., a Canadian corporation;  
20 WELLNX LIFE SCIENCES, INC., a  
21 Canadian corporation; DEREK  
22 WOODGATE, an individual; BRAD  
23 WOODGATE, an individual; and  
24 SCOTT WELCH, an individual,

25 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

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**COMPLAINT**

**PARTIES**

1. Plaintiff and class representative Diandra Johnson is a resident and citizen of Pima County, Arizona.

2. Defendant NxCare, Inc. is an Ontario (Canada) corporation, having its principal place of business in Mississauga, Ontario, Canada.



1 composed of all Arizona residents who purchased either of the NxCare products  
2 (SLIMQUICK and NV) in the State of Arizona since the fall of 2004 when the  
3 Defendants began committing the deceptive trade practices and other acts described  
4 herein. The Plaintiff reserves the right to modify this class definition prior to moving  
5 for class certification.  
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7 10. The class is so numerous that joinder of all members is impractical.

8 11. There are questions of law and fact common to the class, which  
9 common issues predominate over any issues involving only individual class  
10 members. The principal issue is whether any of the claims, statements, or omissions  
11 made on the package or package insert for the SLIMQUICK and NV products  
12 violated the Arizona Consumer Fraud Act and/or the common law. These common  
13 questions of law and fact include, for example:  
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15 a. Whether Defendants NxCare, Inc., NxLabs, Inc., and Wellnx  
16 Life Sciences, Inc. (collectively the “NxCare Defendants”) and  
17 Defendants Derek Woodgate, Brad Woodgate, and Scott Welch  
18 knowingly and willfully made false representations as to the  
19 characteristics, ingredients, uses, and benefits of the  
20 SLIMQUICK and NV products.  
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22 b. Whether the Defendants represented that SLIMQUICK and NV  
23 were of a particular standard, quality, or grade, when they knew  
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1 or should have known that they were of another standard quality  
2 or grade.

3 c. Whether the Defendants knowingly and willfully failed to  
4 disclose material facts in connection with the sale of  
5 SLIMQUICK and NV.  
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7 d. Whether the Defendants made assertions of scientific, clinical or  
8 quantifiable fact in advertisements (the SLIMQUICK and NV  
9 packages and package inserts) which would cause a reasonable  
10 person to believe the assertion to be true, when the Defendants  
11 did not have in their possession at the time of making those  
12 assertions factually objective scientific, clinical, or quantifiable  
13 evidence which substantiated the assertions made.  
14

15 e. Whether the Defendants knowingly made other false  
16 representations.  
17

18 12. The Plaintiff's claims are typical of the class members. All are based  
19 upon the same acts and legal theories.

20 13. The Plaintiff is a member of the class.  
21

22 14. The Plaintiff will fairly and adequately protect the interests of the class.  
23 She has retained counsel experienced in handling actions involving alleged wrongful  
24 acts and practices under statutory and common law, and class actions. Neither the  
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26



1 representative of the results consumers will generally achieve when using the  
2 products.

3 21. SLIMQUICK and/or NV were purchased by the Plaintiff in the State of  
4 Arizona.  
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6 **THE SLIMQUICK CLAIMS**

7 22. The following claims and statements are made on the SLIMQUICK  
8 package or on the package insert (copies of which are attached as Exhibits 1 and 2),  
9 and are therefore made directly to every purchaser of SLIMQUICK:  
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- 11 a. That SLIMQUICK is “The Female Fat Burner.”
- 12 b. That “SLIMQUICK is the world’s first advanced fat burner  
13 designed specifically for women.”
- 14 c. That SLIMQUICK’s “revolutionary formula is scientifically  
15 developed to overcome the physiological and hormonal barriers  
16 women face in losing fat.”
- 17 d. That “SLIMQUICK’s breakthrough formula contains 6  
18 exclusive complexes” which support fat loss.
- 19 e. That “SLIMQUICK’s powerful formula is designed to maximize  
20 rapid fat loss” in conjunction with diet and exercise.
- 21 f. That SLIMQUICK was developed by a “team of scientists [who]  
22 looked at various weight loss pathways in the female body and  
23 discovered a way to optimize each one.”
- 24 g. That SLIMQUICK causes “rapid fat loss.”  
25  
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- 1           h.     That SLIMQUICK’s users will “get slim quick.”
- 2           i.     That SLIMQUICK contains the following “exclusive
- 3                         complexes” which cause various actions in the female body:

<b>COMPLEX NAME</b>	<b>ACTION IN FEMALE BODY</b>
CYCLOVITE™	Vitamin & Mineral Complex: A proprietary blend of the specific vitamins and minerals needed by women to support fat loss.
NUTRATHERM™	Thermogenic Complex: Increases thermogenesis and metabolic rate without “overstimulating.”
ESTROTRIM™	Hormone Balancing Complex: Helps support a proper hormonal profile to optimize weight loss, reduce body fat storage, reduce PMS and control appetite.
CORTIFEM™	Stress Reducing Complex: Helps support the reduction of various stress-related hormones, some of which are responsible for increasing body fat and decreasing muscle tone in women.
AQUAPLEX™	Water Removal Complex: Helps reduce excess water retention and bloating.
XTEND™	Absorption & Time Release Complex: Helps improve absorption of the SLIMQUICK formula as well as delivering a gradual dose of the ingredients so that your metabolism is elevated all day long – without overstimulating.

22           23.    The SLIMQUICK package insert contains a testimonial by one “Kerrie

23                         Lee Brown,” who claims to have lost 35 pounds in 9 weeks through the use of

24                         SLIMQUICK. Ms. Brown states that SLIMQUICK helped her overcome her

25                         skepticism about weight-loss products and she expresses her admiration for “the

26

1 people behind this product [who] were dedicated to helping women achieve their  
2 weight loss goals.”

3  
4 24. Kerrie Lee Brown is, in fact, the wife of Craig Stevenson, the director  
5 of marketing for one or more of the NxCare Defendants – something not disclosed in  
6 the package insert.

7  
8 25. The SLIMQUICK package insert also contains a testimonial by one  
9 “Nadine Erin,” who claims to have lost 34 pounds in 8 weeks through the use of  
10 SLIMQUICK. Ms. Erin states that she too, was skeptical, having failed at all  
11 previous weight-loss efforts, but achieved “extraordinary” results with SLIMQUICK.

12  
13 26. Nadine Erin is, in fact, the current (or former) girlfriend of defendant  
14 Scott Welch – the vice president of marketing for one or more of the NxCare  
15 Defendants.

### 16 **THE NV CLAIMS**

17 27. The following claims and statements are made on the NV package or  
18 on the package insert (copies of which are attached as Exhibits 3 and 4), and are  
19 therefore made directly to every purchaser of NV:

- 20 a. That NV is “the world’s first rapid weight-loss beauty pill.”  
21  
22 b. That “NV has exclusive complexes that will help you lose  
23 weight while also nurturing your hair, skin and nails.”  
24  
25 c. That NV is “the first weight loss formula with beauty-enhancing  
26 properties.”  
d. That NV contains “three elite complexes” –



- 1 i. A “weight loss complex,” which “helps you burn fat and  
2 increases the calories your body uses by increasing your  
3 metabolic rate.”  
4  
5 ii. A “beauty complex,” which makes the user “look  
6 radiant” through “special ingredients that help your skin,  
7 hair and nails look beautiful.”  
8  
9 iii. An “energy complex” which makes the user “feel  
10 dynamic” and “gives you the drive to enjoy life.”

11 **FIRST CAUSE OF ACTION**

12 **(Arizona Consumer Fraud Act, Ariz. Rev. Stat. 44-1522)**

13 28. The Plaintiff realleges the allegations contained in paragraphs 1  
14 through 27, inclusive, as though fully set forth herein.

15 29. The Defendants violated the Arizona Consumer Fraud Act, Ariz. Rev.  
16 Stat. 44-1522, in the following respects:  
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- 18 a. The Defendants knowingly and willfully made false  
19 representations as to the characteristics, ingredients, uses, and  
20 benefits of SLIMQUICK and NV in connection with the sale  
21 and advertisement of these products.  
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23 b. The Defendants represented that SLIMQUICK and NV are of a  
24 particular standard, quality, or grade, when the Defendants knew  
25 or should have known that they are of another standard, quality  
26 or grade.

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- c. The Defendants knowingly and willfully failed to disclose material facts in connection with the sale of SLIMQUICK and NV.
- d. The Defendants made assertions of scientific, clinical or quantifiable fact in advertisements (the packages and package inserts) which would cause a reasonable person to believe the assertions to be true, when the Defendants did not have in their possession at the time of making those assertions, factually objective scientific, clinical or quantifiable evidence which substantiated the assertion.
- e. They knowingly and willfully made other false representations.

30. The acts committed and statements made by the Defendants violate the Arizona Consumer Fraud Act, at a minimum, in that the Defendants:

- a. Falsely represented that SLIMQUICK and NV contained specific ingredients at particular levels when the products did not contain ingredients in the quantities advertised, and in some cases entirely lacked advertised active and essential ingredients.
- b. Falsely claimed on the SLIMQUICK and NV packages and bottles that use of the product would result in weight loss and that such weight loss would be rapid.

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- c. Falsely claimed on the SLIMQUICK package and bottle that use of the product would result in fat loss and that such fat loss would be rapid.
- d. Falsely represented in the SLIMQUICK package insert that use of the product would result in weight loss in a matter of days.
- e. Falsely claimed in the SLIMQUICK package insert that “SLIMQUICK is the world’s first advanced fat burner designed specifically for women.”
- f. Utilized the two female endorsers of SLIMQUICK (Ms. Brown and Ms. Erin) who are falsely represented as being independent women who had failed in previous weight loss efforts and were “skeptical” of SLIMQUICK, but were able to achieve remarkable results through its use and therefore recommend it to others. In fact, both Ms. Brown (by marriage) and Ms. Erin (by relationship) were interested parties who stood to profit directly and substantially from their statements. Under these circumstances, the statements of the two female endorsers themselves are false.
- g. Failed to clearly indicate that the weight loss claimed by Ms. Brown and Ms. Erin (35 and 34 pounds in 9 and 8 weeks respectively) may not be typical.

1 h. Falsely claimed in the NV package insert that the product  
2 increases metabolic rate, helps suppress appetite, and fights  
3 cravings.

4 i. Failed to include a disclaimer in the NV package insert that the  
5 testimonial results may not be typical.  
6

7 31. The members of the plaintiff class relied upon the Defendants' false  
8 promises and misrepresentations in connection with the sale and advertising of  
9 SLIMQUICK and NV.  
10

11 32. The members of the plaintiff class have accordingly suffered  
12 consequent and proximate injury by these violations and are entitled to recovery as  
13 follows:

14 a. Damages in excess of \$10,000, including, without limitation, the  
15 refund of the entirety of the products' purchase price; and

16 b. Disgorgement of all profits made by the NxCare Defendants as a  
17 result of the deceptive trade practices.  
18

19 c. In their entirety, the damages and relief sought exceed the sum  
20 or value of \$5,000,000 – exclusive of interest and costs.  
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22 **SECOND CAUSE OF ACTION**

23 **(Individual Defendants)**

24 33. The Plaintiff realleges the allegations contained in paragraphs 1-32, as  
25 though fully set forth herein.  
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1 **FOURTH CAUSE OF ACTION**

2 **(Manufacturing Defect)**

3 38. The Plaintiff realleges the allegations contained in paragraphs 1-37 as  
4 though fully set forth herein.

5 39. The Defendants, and each of them, manufactures and/or markets  
6 SLIMQUICK and NV claiming weight loss and beauty enhancement benefits.

7 40. The Defendants, and each of them, knew that SLIMQUICK and NV  
8 would be purchased and used by members of the public without inspection for  
9 defects.  
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11 41. SLIMQUICK and NV contain manufacturing defects that depart from  
12 their intended design.  
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14 42. The manufacturing defects existed when SLIMQUICK and NV left the  
15 Defendants' possession and control.

16 43. The manufacturing defects of SLIMQUICK and NV came about as a  
17 result of the Defendants' intentional acts or failure to use ordinary care.  
18

19 44. The Plaintiff purchased and used SLIMQUICK and/or NV in a manner  
20 intended by the Defendants.

21 45. The Plaintiff did not did not obtain the intended result because of the  
22 manufacturing defects.  
23

24 46. As the result of the acts alleged, the members of the plaintiff class have  
25 been damaged in excess of \$10,000. In their entirety, the damages and relief sought  
26 exceed the sum or value of \$5,000,000 – exclusive of interest and costs.

1 **FIFTH CAUSE OF ACTION**

2 **(Design Defect)**

3 47. The Plaintiff realleges the allegations contained in paragraphs 1-46 as  
4 though fully set forth herein.

5 48. The Defendants claimed on package inserts and labels that  
6 SLIMQUICK and NV included specific ingredients that, when taken as directed,  
7 would result in weight loss or enhanced beauty.  
8

9 49. SLIMQUICK and NV do not contain all of the specified ingredients but  
10 do include ingredients not listed or otherwise disclosed to the Plaintiffs.  
11

12 50. The addition of the undisclosed ingredients causes SLIMQUICK and  
13 NV to be unsafe for its intended use.

14 51. The Plaintiff's purchase and use of SLIMQUICK and/or NV did not  
15 result in weight loss or enhanced beauty.  
16

17 52. SLIMQUICK and NV failed to perform in the manner reasonably to be  
18 expected in light of its nature and intended function.

19 53. The design defects of SLIMQUICK and NV came about as a result of  
20 the Defendants' intentional acts or failure to use ordinary care.  
21

22 54. SLIMQUICK and NV's design defects could have been reduced or  
23 avoided by the adoption of a reasonable alternative design by the Defendants.

24 55. As the result of the acts alleged, the members of the plaintiff class have  
25 been damaged in excess of \$10,000. In their entirety, the damages and relief sought  
26 exceed the sum or value of \$5,000,000 – exclusive of interest and costs.





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- a. That this Court certify this action as a class action pursuant to Federal Rule of Civil Procedure 23, appoint the Plaintiff as class representatives and undersigned counsel as counsel for the class;
- b. That the plaintiff class recover damages under the First Cause of Action against the NxCare Defendants in excess of \$10,000;
- c. That the plaintiff class recover all profits made by the NxCare Defendants from the sale of SLIMQUICK and NV in Arizona;
- d. That the plaintiff class recover damages under its Second Cause of Action against Defendants Derek Woodgate, Brad Woodgate and Scott Welch, jointly and severally in excess of \$10,000;
- e. That the plaintiff class recover all profits distributed to Defendants Derek Woodgate, Brad Woodgate and Scott Welch which were derived from or are attributable to the sale of SLIMQUICK and NV in the State of Arizona;
- f. That the plaintiff class recover damages against all the Defendants, under its Third, Fourth, and Fifth Causes of Action in excess of \$10,000, and punitive damages;
- g. That pending the trial of this action, the Court issue a preliminary injunction prohibiting the Defendants from making the above-detailed false statements in connection with the sale of SLIMQUICK and NV products in the State of Arizona, and

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prohibiting the further sale of SLIMQUICK and NV products containing these false statements;

- h. That following the trial of this matter, the Court issue an injunction permanently enjoining the Defendants from making the above-detailed false statements in connection with the sale of SLIMQUICK or NV in the State of Arizona, and prohibiting the further sale of SLIMQUICK and NV products containing these false statements; and
- i. For such other and further relief deemed proper.

DATED this 9<sup>th</sup> day of February, 2007.

BODE & COLLINS, P.L.C.  
By /s/ H. Christian Bode  
H. Christian Bode  
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FILED Electronically on this 9th day of February, 2007

By /s/ E. Stoutenburgh