

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NUTRIMOST DOCTORS, LLC,

Plaintiff,

v.

Civil Action No.: 2:16-cv-00479-MRH

**The Honorable Mark R. Hornak**

*Electronically filed.*

ZANE STERLING, D.C.; IDAHO FAT LOSS TWIN FALLS, LLC; IDAHO FAT LOSS IDAHO FALLS, LLC; IDAHO FAT LOSS, INC.; STERLING CLINICS, LLC; JOEL FEEMAN, D.C; COMPLETE HEALTH & WELLNESS, LLC; CUSTOMIZED HEALTH & WELLNESS, LLC; DOCTORS HEALTH & WELLNESS, LLC; NEW LIFE CHIROPRACTIC CENTER, INC., P.C.; NEW LIFE HEALTH & WELLNESS SOUTHWEST, LLC; JASON OLAFSSON, D.C.; CUSTOM FAT LOSS, INC.; CUSTOM CHIROPRACTIC AND WELLNESS, INC.,

Defendants.

**AMENDED COMPLAINT**

AND NOW, comes the PLAINTIFF, NUTRIMOST DOCTORS, LLC (“Nutrimost”), by and through its undersigned counsel, and files this Amended Complaint against the herein named Defendants, and in support thereof avers as follows:

**I. PRELIMINARY STATEMENT**

1. This Complaint is filed for breach of contract, as well as under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (“RICO”), and the other related state law claims set forth herein, to enjoin the wholesale misappropriation of the Plaintiff’s property weight loss system; to stop the fraudulent sale of the Plaintiff’s products and a counterfeit copy of its services to the general public, and to recover contractual, statutory and

general damages, reasonable attorney's fees and costs by reason of the Defendants' breach of contract, violations of RICO, and other remedies available under applicable law through concurrent jurisdiction.

2. This action arises from an illicit enterprise and scheme originated by the Defendant franchisees and their co-conspirators, including, but not limited to, their agents and employees, to fraudulently contaminate one or more bottles of a proprietary Nutrimost supplement to include banned substances, obtain lab reports purportedly evidencing the existence of banned substances in the Nutrimost supplement as originally supplied by Nutrimost, and, thereafter, invoke the lab report for the fraudulently contaminated Nutrimost supplement as a pretextual basis for voiding their franchise agreements, in order to free them to compete with Nutrimost, in violation of the very franchise agreements which Defendants unilaterally and unlawfully rendered void, while misappropriating Nutrimost's proprietary weight loss system for use in their unlawful competing enterprise.

3. Notwithstanding their erroneous and self-serving claim that the franchise agreements are void as against public policy, the Defendant franchisees, upon information and belief, continue to use elements of Nutrimost's proprietary Weight Loss Program in violation of their respective Franchise Agreements.

4. Moreover, as detailed herein, Defendants' activities, enterprise and unlawful scheme gives rise to claims under RICO and multiple state and/or common law claims, including fraud, conspiracy, breach of contract, and injunctive relief, among others as described herein.

5. Nutrimost also seeks a judicial declaration with respect to Defendants that their material breaches of contract, which go to the core of their franchise relationship with Nutrimost,

entitle Nutrimost to forthwith terminate such parties' franchise agreement without providing such parties a right to "cure" their blatant dishonesty.

## II. JURISDICTION AND VENUE

6. The Court has further subject matter jurisdiction over the claims set forth in this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) on the basis of federal question jurisdiction.

7. This Court has original subject matter jurisdiction pursuant to the civil remedies under RICO, 18 U.S.C. 1961, *et. seq.*

8. In addition, this Court has subject matter jurisdiction over this action on the basis of diversity of citizenship under 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests and costs.

9. This Court also has jurisdiction over Plaintiff's request for a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

10. This Court also has supplemental jurisdiction over Plaintiff's other claims pursuant to 28 U.S.C. § 1367 because they are so related to the claims in this action within this Court's original subject matter jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution.

11. In short, this Court has jurisdiction over the claims set forth in this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction) 28 U.S.C. §1332 (diversity jurisdiction), 18 U.S.C. § 1964(c) (RICO), and under principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

12. The amount in controversy on each of the counts set forth herein exceeds \$75,000, exclusive of interest and costs.

13. Personal jurisdiction over Defendants Feeman, Sterling and Olafsson, as well as the various corporate entity Defendants controlled by them, is also based on their contacts with Pennsylvania.

14. As alleged herein, there are written Franchise Agreements entered into by Defendants Sterling, Feeman and Olafsson and their controlled entities (Exhibits "A" through "U," attached hereto), which were executed following negotiations, via telephone and/or email, with Nutrimost's office in Pennsylvania.

15. Defendant Sterling traveled to Western Pennsylvania, to attend and participate in training in the use of the Nutrimost Weight Loss Program on at least the following dates: August 22-23, 2014. On these dates, Sterling was representing himself and his controlled entities, as identified herein.

16. Defendant Feeman traveled to Western Pennsylvania, to attend and participate in training in the use of the Nutrimost Weight Loss Program on at least the following dates: July 27, 2013; October 25-26, 2013; March 1, 2014; October 24, 2014; January 10, 2015; and August 21, 2015.

17. Defendant Feeman and his controlled entities also sent a representative to Western Pennsylvania, to attend and participate in training in the use of the Nutrimost Weight Loss Program on at least the following dates: October 26, 2013; March 1, 2014; October 25, 2014; January 10, 2015; March 7, 2015; August 21, 2015; and October 23-24, 2015. On these

occasions, this representative appeared on behalf of Feeman and his controlled entities, as identified herein.

18. Defendant Olafsson traveled to Western Pennsylvania, to attend and participate in training in the use of the Nutrimost Weight Loss Program on at least the following dates: October 26, 2013; and March 1, 2014; as well as in March and October of 2015. On these dates, Sterling was representing himself and his controlled entities, as identified herein.

19. Defendant Sterling and his controlled entities, on numerous occasions prior to unlawfully competing against Nutrimost and breaching his Franchise Agreements, ordered proprietary Nutrimost products, including supplements, journals and manuals, which orders were placed to and processed from Western Pennsylvania and the supplements shipped from a warehouse located at Western Pennsylvania.

20. Defendant Olafsson and his controlled entities, on numerous occasions prior to unlawfully competing against Nutrimost and breaching his Franchise Agreements, ordered proprietary Nutrimost products, including supplements, journals and manuals, which orders were placed to and processed from Western Pennsylvania and the supplements shipped from a warehouse located at Western Pennsylvania.

21. Defendant Feeman and his controlled entities, on numerous occasions prior to unlawfully competing against Nutrimost and breaching his Franchise Agreements, ordered proprietary Nutrimost products, including supplements, journals and manuals, which orders were placed to and processed from Western Pennsylvania and the supplements shipped from a warehouse located at Western Pennsylvania.

22. Defendant Sterling transmitted his executed Franchise Agreements to Nutrimost's office in Pennsylvania.

23. Defendant Feeman transmitted his executed Franchise Agreements to Nutrimost's office in Pennsylvania.

24. Defendant Olafsson transmitted his executed Franchise Agreements to Nutrimost's office in Pennsylvania.

25. Each of the Defendants regularly sent monthly royalty fee payments and payments for orders of Nutrimost materials to Nutrimost in Pennsylvania.

26. Each of the Defendants received administrative support, including information technology, marketing, advertising and/or accounting support from Nutrimost representatives located in Pennsylvania.

27. The unlawful acts described herein were directed by the Defendants at Plaintiff Nutrimost, which Defendants knew to be a Pennsylvania company, and which conduct caused harm within Pennsylvania.

28. Each of the Defendants have contractually agreed that their respective Franchise Agreements "and the construction thereof shall be governed by the laws of the Commonwealth of Pennsylvania. See, **Exhibits "A" through "U,"** Section Twenty-Six.

29. Specifically, and in addition to their other contacts with this forum, personal jurisdiction and venue are also proper in this judicial district as to all Defendants in accordance with and pursuant to the mandatory forum selection clause contained in each at-issue franchise agreement between Plaintiff and the respective Defendants. **Exhibits "A" through "U,"** Section Twenty-Six.

30. Venue in this action properly rests in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein described occurred within this judicial district.

31. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), § 1391(c) and 18 U.S.C. § 1965.

32. Venue is also proper in this District, inasmuch as each of the Defendants has agreed, in their respective Franchise Agreements with Plaintiff, that “[a]ll legal proceedings arising out of or relating to this Agreement shall be conducted in the Court of Common Pleas of Allegheny County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania.” See, **Exhibits “A” through “U,”** Section Twenty-Six.

33. The choice of venue provision in the Franchise Agreements does not violate any public policy of the forum state, Pennsylvania, and as such is valid, enforceable and binding on the Defendants.

### **III. PARTIES**

34. Plaintiff, Nutrimost Doctors, LLC, is a corporation created pursuant to the laws of the Commonwealth of Pennsylvania, with its registered office 135 Bella Vista Court, Murrysville, Pennsylvania 15668, and a principal place of business at 10483 Frankstown Road, Pittsburgh, Pennsylvania 15235.

35. Defendant, Zane Sterling, D.C. is an adult individual who, upon information and belief resides at 1901 Mountain View Drive, Boise, Idaho 83706.

36. Defendant, Idaho Fat Loss Twin Falls, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Idaho, with its registered place of business at 1317 W. River Street, Boise, Idaho 83702.

37. Defendant, Idaho Fat Loss Idaho Falls, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Idaho, with its registered place of business at 1317 W. River Street, Boise, Idaho 83702.

38. Defendant, Idaho Fat Loss, Inc. is, upon information and belief, a corporation incorporated pursuant to the laws of the State of Idaho, with its registered address at 1317 W. River Street, Boise, Idaho 83702. Idaho Fat Loss, Inc., was formerly known as OptiGenics Health, Inc., including during times where it entered into Franchise Agreements with Nutrimost.

39. Defendant, Sterling Clinics, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Idaho, with its registered address and principal place of business at 1317 W. River Street, Boise, Idaho 83702.

40. Idaho Fat Loss Twin Falls, LLC and Sterling operate a Nutrimost franchise for a territory comprised of Zip Code 83301 with an office located at 236 River Vista Place, Suite 200, Twin Falls, Idaho 83301, and operate under the names Idaho Fat Loss Twin Falls, LLC; Idaho Fat Loss Boise, LLC; and Idaho Fat Loss, LLC of Boise, ID.

41. Idaho Fat Loss Idaho Falls, LLC and Sterling operate a Nutrimost franchise for a territory comprised of Zip Code 83404, with an office located at 3848 South 15<sup>th</sup> East, Suite 100, Idaho Falls, Idaho 83404, and also operates under the names Idaho Fat Loss Idaho Falls, LLC; Idaho Fat Loss of Boise, ID; and Idaho Fat Loss Boise, LLC.

42. Idaho Fat Loss, Inc. and Sterling operate two separate Nutrimost franchises, the first comprised of Zip Code 83642 with an office located at 3313 West Cherry Lane, Suite 1, Meridian, Idaho, 83642; and the second territory comprised of Zip Code 83616, with an office located at 664 South River Shore Lane, Eagle Idaho 83616; and operates under the names: OptiGenics Health, Inc., OptiGenics Health, Inc. of Boise, ID; Idaho Meridian, LLC; Idaho Fat Loss Eagle, LLC, and Idaho Fat Loss, Inc.

43. Sterling Clinics, LLC and Sterling operate a Nutrimost franchise for a territory comprised of Zip Code 83702, with an office located at 1317 W. River Street, Boise Idaho 83702, and operates under the names Sterling Clinic, LLC; Nutrimost Boise; Optigenics; Idaho Fat Loss; idahofatloss.com, and boisefatloss.com.

44. Defendant, Joel Feeman, D.C., is, upon information and belief, an adult individual who resides at 7701 Trentman Road, Fort Wayne, Indiana 46816.

45. Defendant, Complete Health & Wellness, LLC is, upon information and belief, a limited liability company created pursuant to the laws of the State of Ohio, with a registered address 5225 Cleveland Road, Suite F, Wooster, Ohio 44691.

46. Defendant, Customized Health & Wellness, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Ohio, with the address of its registered agent as Robert J. Vechhio, Esq., 526 Superior Avenue East, Suite 720 Cleveland Ohio 44114-1401, and with a principal business address at 1590 Coshocton Avenue, Mount Vernon, Ohio 43050.

47. Defendant, Doctors Health & Wellness, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Ohio, with the address of its

registered agent as Robert J. Vecchio, Esq., 526 Superior Avenue East, Suite 720 Cleveland, Ohio 44114-1401, and with a principal business address at 6011 Tylersville Rd., Suite 107, Mason, Ohio 45040.

48. Defendant, New Life Chiropractic Center, Inc., P.C., is, upon information and belief, a corporation created pursuant to the laws of the State of Indiana, with its registered address at 2051 Reed Road, Fort Wayne, Indiana 46815.

49. Defendant, New Life Health & Wellness Southwest, LLC, is, upon information and belief, a limited liability company created pursuant to the laws of the State of Indiana, with its registered address at 2051 Reed Road, Fort Wayne, Indiana 46815.

50. Complete Health & Wellness, LLC and Feeman operate a Nutrimost franchise for a territory comprised of Zip Codes 44691, 44334, and 44265 from an office location at 5225 Cleveland Road, Suite F, Wooster, Ohio 44691 under the names: Complete Health & Wellness, LLC; Living Well; and Nutrimost Wooster.

51. Customized Health & Wellness, LLC and Feeman operate a Nutrimost franchise for a territory comprised of Zip Code 43050 from an office located at 1590 Coshocton Avenue, Mount Vernon, Ohio 43050 under the names: Customized Health & Wellness, LLC and Nutrimost Mt. Vernon.

52. Doctors Health & Wellness, LLC, and Feeman operate a Nutrimost franchise for a territory comprised of Zip Codes 45040 and 45069 from an office located at 6011 Tylersville Road, Suite 107, Mason, Ohio 45040 under the names: Doctor's Health & Wellness, LLC; Nutrimost Cincinnati; Nutrimost Cincinnati; Cincinnati Nutrimost; Cincinnati Fat Loss; Cincinnati Fat Loss;

Fat Loss Cincinnati; Greater Cincinnati Nutrimost; Nutrimost Greater Cincinnati; and Tri State Nutrimost.

53. New Life Chiropractic Center, Inc., P.C. and Feeman operate a Nutrimost franchise for a territory comprised of Zip Codes 46815, 56805, 46825, 56835 and 46845 from an office location at 2051 Reed Road, Fort Wayne, Indiana 46815 under the names: Nutrimost Fort Wayne; New Life Fat Loss; New Life Chiropractic Center; and New Life Chiropractor Center, Inc. PC.

54. New Life Health & Wellness Southwest, LLC and Feeman operate a Nutrimost franchise for a territory comprised of Zip Codes 46814, 43230, 43065, 53526 and 46808 from an office location at 10210 Chestnut Plaza Drive, Fort Wayne, Indiana 46814 under the names: New Life Health & Wellness SW, LLC; and New Life Health & Wellness Southwest, LLC.

55. Defendant, Jason Olafsson, D.C., is, upon information and belief, an adult individual who resides at 1431 Harwood Drive, Oxford, Michigan 48371.

56. Defendant, Custom Fat Loss, Inc., is, upon information and belief, a corporation created pursuant to the laws of the State of Michigan with its registered address at 3631 South Baldwin Road, Lake Orion, Michigan 48359.

57. Defendant, Custom Chiropractic and Wellness, Inc. is, upon information and belief, a corporation created pursuant to the laws of the State of Michigan with a registered address of 3631 S. Baldwin, Lake Orion, Michigan 48371 and a principal business address as 5390 Clarkson Road, Clarkson, Michigan 48348.

58. Jason Olafsson, D.C. and Custom Fat Loss, Inc. operate a Nutrimost franchise throughout the State of Michigan under the names Custom Fat Loss, Inc.; Back and Body

Chiropractic Center; and Custom Health Center, with a vast territory comprised of the following

Zip Codes:

48329	48309	48098
48331	48310	48150
48334	48312	48152
84335	48313	48154
48346	48314	48167
48316	48236	48080
48317	48301	48081
48322	48302	48083
48323	48304	48084
48359	48307	48085
48384	48148	48381
48360	48170	48382
48362	48135	48390
48371	48187	49428
48377	48230	

59. Jason Olafsson, D.C. and Custom Chiropractic and Wellness, Inc. operate a Nutrimost franchise for a territory comprised of Zip Code 48315 under the names: Custom Chiropractic and Wellness, Inc. and Custom Health Center.

#### **IV. FACTUAL BACKGROUND**

##### **A. The Nutrimost Weight Loss Program**

60. Plaintiff Nutrimost Doctors, LLC (“Nutrimost”) has developed the technology, protocols and methods used in a highly effective weight loss system (the “Nutrimost Weight Loss Program”).

61. Nutrimost has franchised the Nutrimost Weight Loss Program and its technology to numerous medical and chiropractic doctors and other franchised practitioners for use in their treatment of the general public within the confines of their professional practice.

62. Nutrimost has further expanded its services and developed a franchise model for the franchised use of its technology in the operation of the Nutrimost Weight Loss Program, which is being introduced throughout the country in accordance with state and federal franchise laws.

63. The Nutrimost Weight Loss Program employs proprietary computer analysis from informational “scans,” developed and owned by Plaintiff, that are obtained by use of a device known as the Zyto Scanner.

64. These scans are analyzed by the franchised medical practitioners to determine the proper nutritional supplements to be provided to individual patients to support their efforts in dieting and undergoing the Nutrimost Weight Loss Program.

65. The supplements utilized in the program were developed by and are proprietary to the Plaintiff, Nutrimost.

#### **B. The Franchise Agreements**

66. The Nutrimost Weight Loss Program is in widespread use throughout the United States, as it has been used by thousands of patients and, at all times material hereto, has been offered in more than one hundred sixty (160) authorized locations in more than thirty (30) states, including Idaho, Indiana, Ohio and Michigan.

67. The Nutrimost Word Mark was first used in April, 2007.

68. Each and every Defendant is the signatory to a franchise agreement with Plaintiff Nutrimost (Defendants may hereinafter collectively be referred to herein as the “Franchisees”). The individual franchise agreements of the Defendants are substantially similar and are attached hereto and identified as follows:

- a. Defendants Sterling and Idaho Fat Loss Twin Falls, LLC (operating under the name Idaho Fat Loss, LLC, of Boise, ID) having zip code 83301 (attached hereto and marked as **Exhibit “A”**);
- b. Defendants Sterling and Idaho Fat Loss Idaho Falls, LLC (operating under the name Idaho Fat Loss of Boise, ID) having a zip code of 83404 (attached hereto and marked as **Exhibit “B”**);
- c. Defendants Sterling and Idaho Fat Loss, Inc. (formerly known as OptiGenics Health, Inc. of Boise, ID) having a zip code of 83616 (attached hereto and marked as **Exhibit “C”**);
- d. Defendants Sterling and Idaho Fat Loss, Inc. (formerly known as OptiGenics Health, Inc. of Boise, ID) having a zip code of 83642 (attached hereto and marked as **Exhibit “D”**);
- e. Defendants Sterling and Sterling Clinics, LLC having a zip code of 83702 (attached hereto and marked as **Exhibit “E”**);
- f. Defendants Feeman and New Life Chiropractic Center, P.C. having zip codes of 46815, 46805, 46825, 46835 and 46845 (attached hereto and marked as **Exhibit “F”**);
- g. Defendants Feeman and Customized Health & Wellness, LLC having a zip code of 43050 (attached hereto and marked as **Exhibit “G”**);
- h. Defendants Feeman and Complete Health & Wellness, LLC with zip codes 44691, 44334 and 44256 (attached hereto and marked as **Exhibit “H”**);
- i. Defendants Feeman and Doctor’s Health & Wellness LLC with zip codes 45040 and 45069 (attached hereto and marked as **Exhibit “I”**);
- j. Defendants Feeman and New Life Health & Wellness Southwest, LLC with zip codes 46814, 43230, 43065, 43526 and 46808 (attached hereto and marked as **Exhibit “J”**);
- k. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48009, 48067, 48069, 48070 and 48072 (attached hereto and marked as **Exhibit “K”**);
- l. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48381, 48382, 48390, 49428 (attached hereto and marked as **Exhibit “L”**);

- m. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48080, 48081, 48083, 48084 and 48085 (attached hereto and marked as **Exhibit “M”**);
- n. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48316, 48317, 48322, 48323 and 48359 (attached hereto and marked as **Exhibit “N”**);
- o. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48098, 48150, 48152, 48154 and 48167 (attached hereto and marked as **Exhibit “O”**);
- p. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48148, 48170, 48185, 48187 and 48230 (attached hereto and marked as **Exhibit “P”**);
- q. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48236, 48301, 48302, 48304 and 48307 (attached hereto and marked as **Exhibit “Q”**);
- r. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48329, 48331, 48334, 48335 and 48346 (attached hereto and marked as **Exhibit “R”**);
- s. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48384, 48360, 48362, 48371 and 48377 (attached hereto and marked as **Exhibit “S”**);
- t. Defendants Olafsson and Custom Fat Loss, Inc. with zip codes 48309, 48310, 42312, 48313 and 48314 (attached hereto and marked as **Exhibit “T”**);
- u. Defendants Olafsson and Custom Chiropractic & Wellness, Inc. with zip code 48315 (attached hereto and marked as **Exhibit “U”**);

The Franchise Agreements between Nutrimost and the Franchisees/Defendants, attached hereto and marked as **Exhibits “A” through “U”**, are collectively referred to herein as the “Franchise Agreements.”

69. As set forth above, each of the Franchise Agreements contains a “Governing

Law” section, which contains both a choice of law clause providing that Pennsylvania law governs the terms of the Franchise Agreements and a forum selection clause providing that any legal proceedings arising out of or related to the Franchise Agreement or the franchise shall be filed in this Court or in the Court of Common Pleas of Allegheny County, Pennsylvania. See, Franchise Agreements, **Exhibits “A”-“U”**, Section Twenty-Six, which provides:

This Franchise Agreement and the construction thereof shall be governed by the laws of the Commonwealth of Pennsylvania. All legal proceedings arising out of or relating to this Agreement shall be conducted in the Court of Common Pleas of Allegheny County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania.

70. Each of the Franchise Agreements contains an “Attorney’s Fees” section, which provides that the prevailing party in any legal action filed to enforce the provisions of the Agreement shall be entitled to recover reasonable attorney’s fees from the other party. See, Franchise Agreements, **Exhibits “A”-“U”**, section twenty-four, which provides:

In the event either the Franchisor or the Franchisee deem it necessary to undertake legal action to enforce the provisions of this Agreement, then in that event the prevailing party, in addition to entitlement of the benefits for such action, shall be entitled to recover reasonable attorney’s fees from the other party.

71. Each Franchise Agreement contains an integration clause providing that the Franchise Agreement constitutes the entire agreement between the parties, and that there are no representations, either oral or written, except those contained in the Franchise Disclosure Document and Franchise Agreement. See, Franchise Agreements, **Exhibits “A”-“U”**, Section Twenty-Eight.

72. Each of the franchisees was authorized, pursuant to their respective Franchise Agreements with Plaintiff, to operate a Nutrimost franchise within the specific Zip Code(s) designated in their respective Franchise Agreements. See, Franchise Agreements (**Exhibits “A”-“U”**).

73. The respective Franchise Agreements executed by each of the Defendants provided for a term of five years from the date of execution thereof, in the absence of earlier termination pursuant to the specific terms of the franchise agreements.

### **C. The Contaminated Supplement Scheme**

74. As part of the Nutrimost Weight Loss Program, upon receipt of orders, Nutrimost provided the Defendant Franchisees with proprietary Nutrimost supplements.

75. The Nutrimost supplements provided by Nutrimost to its franchisees (including the Defendant Franchisees named herein) were and are completely free of any and all illegal, banned and/or illicit substances, including, but not limited to, Fenproporex and Aminorex and Fluoxetine.

76. Upon information and belief, Defendants Sterling, Feeman and Olafsson and their respective related or controlled entities, recognizing the efficacy of the innovative Nutrimost Weight Loss Program and desiring to profit therefrom without paying the required royalties to Plaintiff, devised and implemented an unlawful and fraudulent scheme whereby they intended to free themselves from their contractual obligations to Nutrimost, damage Nutrimost's reputation in the marketplace and thereafter misappropriate Nutrimost's intellectual property in marketing a competing enterprise.

77. The scheme involved the intentional adulteration of one or more bottles of a proprietary Nutrimost supplement with three substances, including two banned substances known to have been used for purposes of weight loss: Fenproporex and Aminorex, as well as a third substance, Fluoxetine.

78. Defendant Sterling provided the contaminated supplement to a laboratory known as Avomeen Analytical Services (“Avomeen”), on or before January 7, 2016, knowing that it had been contaminated and requested that it be tested.

79. Avomeen returned a report to Defendant Sterling, dated January 7, 2016, indicating that the sample, purportedly taken from Nutrimost lot no. 150622-FUCO, was positive for trace amounts of the three aforementioned substances, including the two aforementioned banned substances.

80. Defendant Sterling, through his counsel, provided a copy of the report to Nutrimost, by letter dated January 26, 2016. A true and correct copy of this letter and the January 7, 2016 Avomeen report are attached hereto as **Exhibit “V.”**

81. Defendant Sterling demanded, based upon the bogus lab report, that his five Franchise Agreements with Nutrimost be deemed void, on grounds of public policy, given the purported presence of the banned substances in the sample provided by him to the laboratory.

82. Thereafter, on or before February 26, 2016, Defendants Feeman and Olafsson, acting in concert with one another and with Defendant Sterling and the other named Defendants, provided the same contaminated supplement to the same laboratory, Avomeen, with full knowledge that the sample had been contaminated and requested that it be tested again.

83. Avomeen returned a report to Defendants Feeman and Olafsson, dated February 26, 2016, indicating that the sample, again purportedly taken from Nutrimost lot no. 150622-FUCO, was positive for trace amounts of the same three substances.

84. Defendants Olafsson and Feeman, through counsel, provided a copy of the report to Nutrimost, by letters dated March 3, 2016 and March 10, 2016. A true and correct copy of these letters and the February 26, 2016 Avomeen report are attached hereto as **Exhibits “W”** and **“X,”** respectively.

85. Defendants Olafsson and Feeman, like Defendant Sterling demanded, based upon the bogus lab report, that their several Franchise agreements with Nutrimost be deemed void, on grounds of public policy, given the purported presence of the banned substances in the sample provided by them to the laboratory.

86. Defendants Sterling, Feeman and Olafsson, on behalf of themselves and their respective controlled entities, each invoked the lab reports of the doctored version(s) of the Nutrimost supplement, fully knowing that the purposed Nutrimost supplement sample(s) had been intentionally contaminated before being provided to Avomeen.

87. Before waiting for a response from Nutrimost, and even before providing the contaminated samples to Avomeen, Defendants Sterling, Feeman and Olafsson and the other Defendant entities had begun illegally competing with Nutrimost, in violation of their respective Franchise Agreements.

88. Defendants Sterling, Feeman and Olafsson, upon information and belief, before, during and after conceiving and carrying out their conspiracy to intentionally contaminate Plaintiff’s product and have it tested for banned substances, were in contact with a competitor of

Plaintiff's about associating with the competitor with the intention of providing weight loss services in competition with Plaintiff and in conjunction with that competitor, at and from location(s) from which they formerly provided such services as Nutrimost franchisees under the Franchise Agreements.

89. Upon receipt of the Defendants' claims, Nutrimost immediately responded to the claims of product contamination by conducting its own independent and thorough investigation, which included contacting the supplier of its supplements and having an independent laboratory test its control samples of the lot in question, as well as the lots produced immediately before and after the lot in question, for the presence of the banned substances.

90. Testing of the control samples of the lot in question and lots produced before and after revealed absolutely no trace of the three substances claimed by the Defendants to be present in Plaintiff's product. A true and correct copy of the February 16, 2016 and March 15, 2016 Reports of Banned Substance Control Group are attached hereto as **Exhibits "Y" and "Z,"** respectively.

91. As a further part of its independent and thorough investigation, Nutrimost also requested that the Defendants provide, for testing, a bottle and/or sample of the allegedly contaminated supplement, taken from the same lot and case from which the samples tested on behalf of the Defendants was allegedly drawn, as well as an aliquot of the samples actually tested by Avomeen.

92. Tellingly, Defendants have utterly refused to provide such samples for testing, despite repeated requests from Nutrimost, but rather have simply persisted in asserting that their respective Franchise Agreements are void, based upon the bogus laboratory results.

93. Defendants have not provided any documentation of as much as a single patient experiencing any adverse effect from the use of the allegedly contaminated Nutrimost product.

**D. Defendants' Misappropriation of the Nutrimost Weight Loss Program**

94. Defendants, having carried out the Contaminated Supplement Scheme as described herein, are now unlawfully competing with Plaintiff, in violation of the Franchise Agreements, by offering weight loss services, both within and beyond their respective franchised territories, including by using the trade secrets of Plaintiff, including the following particulars:

- a. Using Plaintiff's proprietary Nutrimost Weight Loss System in competition with Plaintiff;
- b. Offering the Nutrimost Weight Loss System other than as authorized by Nutrimost;
- c. Using Plaintiff's testimonials and other marketing or advertising content; and/or
- d. Otherwise using, misappropriating and/or competing with Plaintiff using the Nutrimost Weight Loss System and other trade secrets provided to Defendants by Plaintiff in violation of the Franchise Agreements.

**V. CAUSES OF ACTION**

**COUNT I  
(Against All Defendants - Common Law Fraud)**

95. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 94, above, as if they were set forth more fully at length herein.

96. By intentionally adulterating the proprietary Nutrimost supplement by introducing banned substances and by retaining a testing laboratory to test the supplement for the banned

substances thus introduced, and by providing the resulting lab report to Nutrimost, representing the lab results to be bona fide, Defendants either directly or through their designated agents, misstated, misrepresented and/or omitted to state and disclose material facts concerning the presence of the banned substances in a lot of Nutrimost's proprietary supplement.

97. All of the foregoing material misstatements and misrepresentations of material facts and/or omissions of material facts were known by Defendants to have been false when made, and were made by Defendants deliberately and with an intent to deceive and to deprive Plaintiff of the contractual royalties and product sales that would have obtained from Defendants continued performance of their contractual duties as Nutrimost franchisees.

98. Defendants further intended that Nutrimost rely upon the false lab report in releasing Defendants from their Franchise Agreements, allowing Defendants to compete with Nutrimost, in violation of the restrictions upon such competition contained in the Franchise Agreements.

99. Plaintiff has incurred costs and expenses in responding to Defendants' fraudulent misrepresentations, including investigative costs, independent laboratory fees and legal expenses.

100. Plaintiff, before learning that Defendants misrepresentations were fraudulent, rightfully and responsibly relied on the all statements and representations, as described above.

101. The foregoing actions of Defendants were willful, fraudulent, and intentional, involve a high degree of moral turpitude and violate Federal and State laws as alleged herein.

102. Defendants knew and intended that Plaintiff would rely to its detriment upon Defendants misrepresentations.

103. Plaintiff reasonably relied to its detriment upon Defendants' misrepresentations and omissions.

104. By virtue of the fraudulent acts and schemes described in this Complaint, Defendants are liable to Plaintiff for the damages that Plaintiff suffered as a result of Defendants actions and schemes, plus punitive damages in an amount to be determined at trial.

WHEREFORE, by virtue of the fraudulent acts and schemes described in this Complaint, Defendants are liable to Plaintiff for the damages that Plaintiff suffered as a result of Defendants actions and schemes, plus punitive damages, costs and such other relief as is just and proper under the circumstances, in an amount to be determined at trial.

**COUNT II**  
**(Against All Defendants - Breach of Contract)**

105. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 104, above, as if they were set forth more fully at length herein.

106. In the Franchise Agreements, Defendants covenanted and agreed, among other things, that they would:

- (a) Pay a royalty of \$599 per zip code per month for an initial period of sixty (60) months, with payment to be made by the 10<sup>th</sup> of each month;
- (b) Use Plaintiff Nutrimost's equipment, supplies, materials, logos and other intellectual property/trade secrets only in the furtherance of their undertaking as authorized Nutrimost franchisees;
- (c) Not reveal Plaintiff's method of providing weight loss and nutritional services;
- (d) Not to enter a competitive business with Plaintiff, during the five year term of the Franchise Agreements and any renewal thereof, involving the sale of any weight loss products or services sold as a weight loss product without first obtaining prior written consent of Plaintiff; and

- (e) Upon termination of the Franchise Agreements, not engage in a business competitive with that of Plaintiff involving the sale of any weight loss products or services within five (5) miles of any part of each Defendant's respective prior zip code territory for a period of two (2) years.

107. Defendants have materially breached the Franchise Agreements and failed substantially to comply with their aforesaid obligations under the Franchise Agreements, generally and in the following particulars:

- a. In failing to remit monthly royalties owed for each of the franchised zip codes and failing to pay sums owed for Nutrimost products purchased by them;
- b. In using Plaintiff's trade secrets, other than as specifically allowed in the Franchise Agreements;
- c. In continuing to utilize Plaintiff's intellectual property, including the Nutrimost Weight Loss System and related advertising materials, images, testimonials, scans, equipment and other proprietary information and trade secrets, even after having breached the Franchise Agreements and ceasing to pay royalties;
- d. In operating competing weight loss programs, while franchisees of Plaintiff;
- e. In operating competing weight loss programs within 5 miles of the locations at which they last operated as compliant, authorized Nutrimost Franchisees;
- f. In failing to return the business personal property of Plaintiff, as described in Section five (50) of the Franchise Agreements;
- g. In failing to protect the Plaintiff's trade secrets;
- h. In redirecting traffic from Nutrimost websites to the website(s) of their competing enterprise;
- i. In selling weight loss products other than Plaintiff's; and
- j. In wrongfully deeming the Franchise Agreements to be void.

108. Plaintiff has duly performed all of the obligations on its part to be performed under the Franchise Agreements.

109. As a result of the aforementioned material breaches by Defendants of the Franchise Agreements, which are continuing, Plaintiff has been deprived of the full benefits to which it is entitled under the Franchise Agreements.

110. By reason of the foregoing, Plaintiff has suffered damages in a precise amount to be determined.

WHEREFORE, Plaintiff, Nutrimost Doctors, LLC, demands judgment in its favor along with an award of compensatory damages, attorney's fees, costs of suit and such other relief as this Honorable Court should deem just and proper under the circumstances.

**COUNT III**  
**(Against All Defendants for Violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") - 18 U.S.C. § 1962)**

111. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 110, above, as if they were set forth more fully at length herein.

112. Plaintiff is a "person" within the meaning of 18 U.S.C. §§1961(3) and 1964(c).

113. Each of the named Defendants is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(a).

114. The following persons and organizations constitute "enterprises" under 18 U.S.C. §§ 1961(4) and 1962(c):

Sterling and Olafsson; and/or

Olafsson and Feeman; and/or

Feeman and Olafsson; and/or

Sterling, Olafsson and/or Feeman; and/or

any combination of the foregoing and/or the various corporate defendants.

115. Since on or prior to January 2016, each of the aforementioned enterprises was, and continues to be, engaged in, and their activities affected, and continue to affect, interstate trade and commerce.

116. Alternatively, each of the defendants, and certain entities or individuals associated with them, including certain employees of the Defendants, constitute a group associated in fact with regard to the unlawful conduct alleged herein and therefore constitute an "enterprise" that is engaged in, whose activities affect, interstate or foreign commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c).

117. Defendants, and their co-conspirators, each being a "person" employed by or associated in fact with an "enterprise" hereinabove identified, conducted or participated (as principals and/or accomplices and/or conspirators), directly or indirectly, in the conduct of the "enterprise's" affairs through the pattern of racketeering activities hereinabove and hereinafter described.

118. Sterling, Olafsson and Feeman have each engaged in two or more predicate acts of racketeering activities during the past year.

119. Between on or prior to January 2016 and the date of the filing of this civil action, both dates being approximate and inclusive, Sterling, Olafsson and Feeman knowingly and intentionally devised a scheme and artifice to defraud Plaintiff and obtain money and property from it by means of materially false and fraudulent representations and omissions.

120. In order to more fully effectuate their fraudulent scheme, Sterling, Olafsson and Feeman and their co-conspirators made and caused to be made communications that were transmitted in interstate commerce as set forth below.

121. In particular, at Sterling, Olafsson and/or Feeman's instance and/or direction, Defendants provided purported samples of Plaintiff's product, known by Defendants to have been intentionally contaminated, to the Avomeen laboratory for testing.

122. Each sample submitted to Avomeen by or on behalf of Defendants was knowingly false and fraudulent, in that such samples were known by Defendants to have been intentionally contaminated.

123. Each such submission to Avomeen constitutes a communication in interstate commerce made for the purpose of executing the previously devised scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent representations, all in violation of 18 U.S.C. § 1341.

124. Each of the interstate communications made in furtherance of the scheme constitutes a distinct and separate offense under the mail fraud statute, 18 U.S.C. § 1341.

125. In order to more fully effectuate their fraudulent scheme, Sterling, Olafsson and Feeman and their co-conspirators also made or caused to be made threats to Nutrimost, threatening to report the bogus lab results to the Food and Drug Administration ("FDA") if Plaintiff would not release them from their respective Franchise Agreements.

126. Defendants each, conversely, offered to remain silent and not report the bogus laboratory results to the FDA if Plaintiff would allow them to be released from their respective franchise agreements.

127. Defendant Feeman, through counsel, further sought to extort the sum of \$600,000 from Plaintiff, in addition to being released from his franchise agreements, in exchange for keeping silent about the bogus laboratory results.

128. Defendants each intended Plaintiff to rely upon their threats of reporting the bogus lab results to the FDA and thereby intended to extort from Plaintiff their release from their respective Franchise Agreements and, in the case of Feeman, the sum of \$600,000.

129. Defendants' conduct, as described, constitutes blackmail as defined in 18 U.S.C. § 873.

130. Defendants' conduct, as described, constitutes criminal coercion as defined in 18 Pa.C.S.A. § 2906(a).

131. Defendants' conduct, as described, constitutes wire fraud as defined in 18 U.S.C. 1341.

132. Defendants' conduct, as described, constitutes bribery and/or extortion, under the law of the several states in which the conduct occurred.

133. Each such offense constitutes "racketeering activity" within the meaning of Section 1961(1) of RICO.

134. Defendants conduct as described constitutes a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961 and 1962.

135. Defendants' unlawful activities, as well as the normal day-to-day operations of the several weight loss practice locations, involve and affect interstate commerce.

136. Additionally, the activities alleged in this case had an adverse impact on Plaintiff, which operates in interstate commerce.

137. Defendants and their co-conspirators form an association-in- fact enterprise which is engaged in, and whose activities affect, interstate commerce.

138. Defendants have conducted or participated, directly or indirectly, in the management and operation of their association-in-fact enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c).

139. Plaintiff has been injured in its business or property by reason of this violation of 18 U.S.C. § 1962(c).

140. By virtue of defendants' violation of 18 U.S.C. § 1962(c), defendants are liable, jointly and severally, to Plaintiff for three times the damages that Plaintiff suffered as a result of defendants' fraudulent actions, plus the costs of this suit, including reasonable attorneys' fees.

141. Defendants and their co-conspirators agreed and conspired to violate 18 U.S.C. § 1962(c) by conducting or participating in, directly or indirectly, the affairs of the enterprises identified herein through a pattern of racketeering activity, thereby violating 18 U.S.C. § 1962(d).

142. In furtherance of the conspiracy, defendants and their co-conspirators each agreed to commit two or more predicate acts of racketeering and engage in other wrongful acts in connection therewith.

143. Defendants and their co-conspirators agreed and conspired to violate 18 U.S.C. § 1962(c) by conducting or participating in, directly or indirectly, the affairs of the enterprises identified herein through a pattern of racketeering activity, thereby violating 18 U.S.C. § 1962(d).

144. Plaintiff has been injured in its business or property by reason of this conspiratorial conduct.

145. By virtue of defendants violations of 18 U.S.C. § 1962(d), defendants are liable, jointly and severally, to Plaintiff for three times the damages that Plaintiff suffered as a result of the actions that defendants and their co-conspirators undertook in furtherance of their conspiracy, plus the costs of this suit, including reasonable attorneys' fees.

WHEREFORE, Plaintiff demands judgment in its favor and against the Defendants for their violation of the RICO Act, along with the following relief:

- a. an order preliminarily and permanently restraining these Defendants from engaging in the aforementioned racketeering activity and unlawful conduct;
- b. compensatory damages for Plaintiff's actual losses and damages;
- c. liquidated, consequential, punitive and treble damages;
- d. an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiff's rights;
- e. an award of pre- and post-judgment interest; and
- f. Such other and further legal or equitable relief as this Honorable Court deems to be just and proper under the circumstances.

**COUNT IV**  
**(Against All Defendants for Civil Conspiracy)**

146. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 145, above, as if they were set forth more fully at length herein.

147. Defendants conspired to do unlawful acts – namely to participate in a plan to deliberately contaminate Plaintiff's product, as described above, and to fraudulently utilize the

bogus lab report(s) in an effort to bribe and/or extort Plaintiff into releasing them from their respective Franchise Agreements.

148. Defendants further conspired to misappropriate the trade secrets, goodwill, proprietary programs, property, and business of the Plaintiff.

149. Defendants committed overt acts in furtherance of their conspiracy, including those acts described herein, generally and in County III specifically.

150. Plaintiff has suffered, and continues to suffer injury, damage and harm as a result of Defendants' conspiracy. As a result of the civil conspiracy, each of the Defendants is liable to the same extent as the other Defendants, for all acts committed in furtherance of the conspiracy.

WHEREFORE, Plaintiff demands an award of actual, compensatory, and punitive damages, along with such other and further relief that the Court deems just and proper.

**COUNT V**  
**(Against All Defendants - Mandatory Injunction)**

151. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 150, above, as if they were set forth more fully at length herein.

152. Plaintiff is being, and will continue to be, irreparably damaged and injured by the aforementioned practices of Defendants and, unless Defendants are directed to cease their competition with the Plaintiff and use of the trade secrets of Plaintiff, including some or all of the Nutrimost Weight Loss System, Plaintiff will be caused irreparable injury and damage.

153. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests the entry of a preliminary injunction and a judgment permanently enjoining Defendants from undertaking jointly or severally, and activity to engage

in competition with the Plaintiff and the use of the trade secrets of the Plaintiff, including some or all of the Nutrimost Weight Loss Program or an approximation thereof, in any manner, and further, that the Court award actual, compensatory, and punitive damages, along with such other and further relief that the Court deems just and proper.

**COUNT VI**  
**(Against All Defendants - Violation of the Pennsylvania Uniform Trade Secrets Act**  
**(12 Pa. C.S.A. 5301, et seq.)**

154. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 153, above, as if they were set forth more fully at length herein.

155. The technology and components of the Nutrimost Weight Loss Program constitute trade secrets that Nutrimost has undertaken reasonable efforts to maintain as a secret.

156. Further, the Nutrimost Weight Loss Program derives independent economic value from not being generally known to and/or not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

157. Defendants have misappropriated and continue to misappropriate the trade secrets associated with the Nutrimost Weight Loss Program since at least January, 2016 through their above-described conduct, which includes:

- a. acquisition of the Nutrimost Weight Loss Program when they actually knew or reasonably should have known that improper means, including but not limited to misrepresentation and/or breach of a duty to maintain secrecy, were utilized to acquire the Nutrimost Weight Loss Program;
- b. disclosure of the Nutrimost Weight Loss Program to others, without the express or implied consent of Nutrimost when improper means, including but not limited to misrepresentation and/or breach of a duty to maintain secrecy, were utilized to acquire the Nutrimost Weight Loss Program;

c. use of the Nutrimost Weight Loss Program without the express or implied consent of Nutrimost when improper means, including but not limited to misrepresentation and/or breach of a duty to maintain secrecy, were utilized to acquire the Nutrimost Weight Loss Program;

d. disclosure of the Nutrimost Weight Loss Program to others, without the express or implied consent of Nutrimost, at a time when they actually knew or reasonably should have known that they owed a duty to Nutrimost to maintain its secrecy or limit its use to the confines of the Franchise Agreements;

e. otherwise have misappropriated and/or converted the Nutrimost Weight Loss Program when it was actually known and/or reasonably should have been known that the Nutrimost Weight Loss Program constitutes proprietary, confidential and/or restricted trade secrets belonging to Nutrimost.

158. The misappropriation by Defendants of Nutrimost's trade secrets, including the Nutrimost Weight Loss Program was and continues to be willful and malicious.

159. The conduct and acts resulting in the misappropriation of Nutrimost's trade secrets, including the Nutrimost Weight Loss Program, by Defendants was and continues to be intentional and/or so grossly negligent and/or with an entire want of care as to evidence a reckless indifference of the rights of Nutrimost such that such that these Defendants are conscious of the consequences of their carelessness with respect to the misappropriation of Nutrimost's rights.

160. As the result of the misappropriation of Nutrimost's trade secrets, including the Nutrimost Weight Loss System, by Defendants, Nutrimost has suffered actual harm and damages, including the loss of profits, loss of business opportunities, and other damages as may be proven at trial.

161. The willful and malicious misappropriation of trade secrets by Defendants is in violation of the Pennsylvania Uniform Trade Secrets Act, 12 Pa. C.S.A. §§ 5301, et seq. and/or other statutes and common law protections against misappropriation of trade secrets.

WHEREFORE, the Plaintiff, Nutrimost Doctors, LLC, requests that judgment be entered in its favor seeks the following relief:

- a. Injunctive relief preventing the misappropriation of Nutrimost's trade secrets;
- b. Lost royalties resulting from the misappropriation of Nutrimost's trade secrets;
- c. Compensatory damages for actual loss resulting from the misappropriation of Nutrimost's trade secrets;
- d. Compensatory damages for the unjust enrichment to the Defendants resulting from the misappropriation of Nutrimost's trade secrets;
- e. Recoverable exemplary damages for the misappropriation of Nutrimost's trade secrets;
- f. Reasonable and recoverable attorney's fees and costs; and
- g. Such other relief as this Honorable Court should deem just and proper under the circumstances.

**COUNT VII**  
**(Against All Defendants - Declaratory Judgment)**

162. Plaintiff incorporates by reference its allegations contained in Paragraphs 1 through 161, above, as if they were set forth more fully at length herein.

163. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, this Court has jurisdiction to determine disputes between Plaintiff and Defendants concerning the validity, formation and operation of the Franchise Agreements.

164. A dispute exists between Plaintiff and Defendants as to whether the Franchise Agreements are void, as against public policy, whether Defendants have fulfilled their obligations thereunder, and whether Defendants have breached their contractual duties to Plaintiff.

165. Plaintiff has complied with all of its obligations to each Defendant under all applicable federal and state statutes and regulations regarding the offer and sale of franchises.

166. The “lab results” obtained by the Defendants resulted from the conspiracy and fraud of some or all of the Defendants, as set forth above.

167. Plaintiff has taken all appropriate actions in response to the fraudulent and pretextual claims of product contamination asserted by the Defendants.

168. Plaintiff has performed all of its obligations under the Franchise Agreements and has not negligently or willfully caused any damage to Defendants.

169. The Franchise Agreements' choice of Pennsylvania law bars Defendants from asserting claims under other states' statutory or common law and its selection of Pennsylvania as the proper forum for litigation arising out of or connected to the Franchise Agreements bars Defendants from bringing actions in any forum except Pennsylvania.

170. Even had the lot of Nutrimost product contained the trace amounts of the banned substances, as described in the bogus Avomeen reports and which is denied, Plaintiff has responded appropriately to the Defendants' reports, there is no evidence whatsoever that Plaintiff's products contain the banned substances or pose any risk to public health, such that the Franchise Agreements are not void as against public policy.

WHEREFORE, Plaintiff Nutrimost Doctors, LLC demands a judgment in its favor and a declaration that:

- a. Plaintiff complied with its disclosure and pre-sale obligations to each Defendant under all applicable federal or state statutes and regulations;
- b. The Franchise Agreements are valid and were properly entered into with each Defendant by Plaintiff;
- c. Plaintiff has fulfilled all of its obligations to each Defendant under the Franchise Agreements;
- d. The Franchise Agreements are not void as against Public Policy;
- e. The Franchise Agreements' choice of Pennsylvania law bars Defendants from asserting claims under other states' statutory or common law and its selection of Pennsylvania as the proper forum for litigation arising out of or connected to the Franchise Agreements bars Defendants from bringing actions in any forum except Pennsylvania;
- f. Awarding Plaintiff treble and compensatory damages suffered by Plaintiff as a result of defendants' fraudulent actions in violation of 18 U.S.C. § 1962(c), in an amount to be determined at trial, plus the costs of this suit, including reasonable attorneys' fees;
- g. Awarding Plaintiff treble and compensatory damages suffered by Plaintiff as a result of the actions that defendants and their co-conspirators undertook in furtherance of their conspiracy in violation of 18 U.S.C. § 1962(d), in an amount to be determined at trial, plus the costs of this suit, including reasonable attorneys' fees;
- h. Awarding compensatory damages that Plaintiff suffered as a result of Defendants' actions and schemes, plus punitive damages, in amounts to be determined at trial, the costs of this suit and reasonable attorneys' fees;
- i. That the Court determine and declare that (i) Defendants are and have been in breach of their respective Franchise Agreements (ii) Plaintiff is legally entitled to possession of the all intellectual property and business personal property entrusted to the Defendants pursuant to the Franchise Agreements, and (iii) Defendants have no further rights in or to the use of the Nutrimost Weight Loss System under the Franchise Agreement; and

- j. That Defendants and their agents, servants, employees and all persons acting in concert or participation with them, or holding by, through or under them, or acting under the authority of or in privity with them, and each and all of them, be enjoined and restrained, at first preliminarily during the pendency of this action, and thereafter permanently, from:
- (i) Offering Weight Loss services in competition with Plaintiff for the remainder of their respective five-year contractual obligations and for two years thereafter, within five miles of each franchised zip code; and
  - (ii) Instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in the subparagraphs above.

**JURY DEMAND**

Plaintiff demands a trial by jury to hear and decide any and all issues so triable by jury.

Dated: July 18, 2016

Respectfully Submitted,

**MARGOLIS EDELSTEIN**

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