

MEMORANDUM OF POINTS AND AUTHORITIES FACTS Defendant NEWTRITIONAL HEALTH CARE  
According to its Complaint, Plaintiff is an Arizona limited liability company that manufactures and markets dietary supplements. See Compl. ¶¶ 15, 27. In 2011, Plaintiff's owner, Kevin Smith, and Plaintiff's predecessor companies (which were then owned by Smith) were charged by the United States with intent to defraud and mislead by introducing unapproved drugs into interstate commerce.

See RJN, Exs. 2, 3. Plaintiff's predecessors pleaded guilty and paid forfeitures and fines.

See RJN, Exs. 4, 5.

Beginning in 2015, Plaintiff began filing waves of lawsuits against other dietary supplement companies alleging that they were engaging in false advertising under the Lanham Act by selling supplements that contain Selective Androgen Receptor Modulators (SARMs), such as Ostarine.

See RJN, Exs. 6–18. According to Plaintiff, SARMs are new or prescription drugs within the meaning of the Federal Food, Drug, and Cosmetic Act (FFDCA), and therefore are not dietary supplements.

Between late 2015 and early 2016, Plaintiff filed at least nine nearly identical lawsuits in the U.S. District Court for the Central District of California and the U.S. District Court for the District of Arizona making these same allegations and claims.

See RJN, Exs. 6–14. In one of these cases—Nutrition Distribution LLC v. IronMag Labs, LLC—the U.S. District Court for the Central District of California dismissed Plaintiff's complaint because the issues relevant to Plaintiff's claim are within the primary jurisdiction of the U.S. Food and Drug Administration (FDA).

See RJN, Ex. 1. That case is currently on appeal to the Ninth Circuit. After Plaintiff's claim was dismissed by the U.S. District Court for the Central District of California, Plaintiff filed another wave of nearly identical lawsuits—five including this action—in this Court.

See RJN, Exs. 15–18. Although Plaintiff scrubbed the complaints in these cases of any reference to the FFDCA, the gravamen of its complaints remains the same: that the defendants falsely advertised their products as “dietary supplements” when they in fact contain illegal ingredients (SARMs), and that the products are not safe or effective for consumers. See, e.g., Compl. ¶¶ 4, 7, 32–34, 37, 40.

## **ARGUMENT I.**

**I. The Primary Jurisdiction Doctrine Requires Dismissal of This Action.** Even if this Court could exercise personal jurisdiction over NEWTRITIONAL HEALTH CARE, which NEWTRITIONAL HEALTH CARE disputes, Plaintiff's complaint should be dismissed because any ruling on Plaintiff's Lanham Act claim would require this court to make determinations that are within the primary jurisdiction of the FDA.

**A. Federal regulation of food and drugs.** The FFDCa, which is administered by the FDA, contains many provisions governing the labeling and marketing of foods and drugs, including prohibiting the "adulteration or misbranding" of any food or drug, or the introduction of an "adulterated or misbranded" food or drug into interstate commerce. 21 U.S.C. § 331(a),

(b). In the Dietary Supplement Health and Education Act of 1994 (DSHEA), Congress amended the FFDCa to implement a comprehensive federal system for regulating dietary supplements. See Pub. L. No. 103-417, 108 Stat. 4325-35 codified in various sections of 21 U.S.C. §§ 301 to 399. **These provisions of the FFDCa were added specifically to "supersede the current ad hoc, patchwork regulatory policy on dietary supplements." DSHEA, § 2, ¶ 15(B), 108 Stat. at 4326.**

Under DSHEA, a "dietary supplement" is defined as a product intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any of the previously indicated ingredients. See 21 U.S.C. § 321(ff).

DSHEA further classifies a dietary supplement as a "food" under the FFDCa, except where a dietary supplement otherwise qualifies as a "drug." *Id.* Due to the classification of dietary supplements as "foods," as opposed to drugs, dietary supplements are legally presumed to be safe without the necessity of pre-market clinical testing and scientific review for safety or efficacy. See 21 U.S.C. § 342(f)(1)(A); 21 U.S.C. §§ 331(v) and 350b(c). **However, where the safety of a dietary supplement is allegedly at issue—i.e., where the product or an ingredient "presents a significant or unreasonable risk of injury" or "contains any poisonous or deleterious substance which may render it injurious to health"—DSHEA provides special procedures for FDA enforcement. See 21 U.S.C. § 342(f)(1), (2).**

Typically, the FDA is required to make such findings on a product-by-product basis. To date, there has been only a single occasion in which the FDA has taken action against an entire class of dietary supplements through this procedure. See Final Rule Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk," 69 Fed. Reg. 6788

(February 11, 2004), codified at 21 C.F.R. § 119.1. **The FFDCa does not provide for a private right of action or other private enforcement. See PhotoMedex, Inc. v. Irwin, 601 F.3d 919, 924 (9th Cir. 2010); Ginochio v. Surgikos, Inc., 864 F. Supp. 948, 956–57 (N.D. Cal.,**

**1994); LeBlanc Nutrition, Inc. v. AdvancedNutra LLC, No. 05-581, 2005 WL 1398538, \*5–\*6 (E.D. Cal. 2005) To the contrary, the FFDCA provides that enforcement authority is reserved to the federal government (except for certain limited, highly restricted proceedings that may be brought by a State itself in its own name). 21 U.S.C. § 337(a) (“all such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States”). The FDA can either commence administrative enforcement actions or direct the commencement of judicial actions through the Department of Justice. 21 U.S.C. §§ 332–334. Although there is no private right of action, private parties may avail themselves of the “citizen petition” and petition the FDA to take action. See 21 C.F.R. § 10.30; PhotoMedex, Inc., 601 F.3d at 924.**

**B. Plaintiff’s Lanham Act claim would require this court to determine issues that are within the primary jurisdiction of the FDA. The “primary jurisdiction” doctrine allows courts to dismiss complaints pending referral and resolution of issues “within the special competence of an administrative agency.” Clark v. Time Warner Cable, 523 F.3d 1110, 1114 (9th Cir. 2008) (citations omitted).**

The doctrine applies when “a court determines that an otherwise cognizable claim implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry rather than by the judicial branch.” *Id.* The purpose of the doctrine is to protect agencies possessing quasi-legislative powers and that are actively involved in the administration of regulatory schemes. See, e.g., *Gordon v. Church & Dwight Co.*, No. 09-5585, 2010 WL 1341184, at \* 5 (N.D. Cal., April 2, 2010). In applying the primary jurisdiction doctrine, courts look to whether there is a need to resolve an issue that has been placed by Congress within the jurisdiction of an administrative body having regulatory authority pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that requires expertise or uniformity in administration.

Clark, 523 F.3d at 1114; see also *All One God Faith, Inc. v. Hain Celestial Group, Inc.*, 2009 WL 4907433, at \*6 (N.D. Cal. Dec. 14, 2009).

Plaintiff's claim in this case implicates the primary jurisdiction of the FDA because resolution of Plaintiff's claim would require this Court to determine whether all SARMs (including Ostarine) are properly categorized as a "dietary supplement" (as opposed to a "new or prescription drug") and are safe and effective for consumers— determinations that Congress has mandated be made exclusively by the FDA. Other courts have determined that whether particular products qualify as dietary supplements must be decided administratively by the FDA, as opposed to the courts. See, e.g., *Braintree Laboratories, Inc. v. Nephro-Tech, Inc.*, 1997 WL 94237 (D. Kan., Feb. 26, 1997). In *Braintree*, the court addressed unfair competition and false advertising claims based on allegations that a particular product labeled and advertised as a dietary supplement did not qualify as such, and was thus "misbranded" and falsely advertised (much like Plaintiff's claim in this case). See *Braintree*, 1997 WL 94237, at \*2; see also Compl. ¶¶ 1, 2, 4, 7, 32, 40.

The court granted the defendants motion to dismiss because the Plaintiff's "claims require direct interpretation and application of the [FFDCA]" and "are not properly recognized because such matters are more appropriately addressed by the FDA, especially in light of Congress's intention to repose in that body the task of enforcing the [FFDCA]." *Braintree*, 1997 WL 94237 at \*6. As the court recognized, "it is not for the court to interpret and apply the definition of 'dietary supplement.'" *Id.* at \*7; see also *JHP Pharmaceuticals, LLC v. Hospira, Inc.*, 52 F. Supp. 3d 992, 1004 (C.D. Ca. 2014) ("Whether a drug . . . can be lawfully marketed under the FDCA involves complex issues of history, public safety, and administrative priorities that Congress has delegated exclusively to the FDA"); *Summit Tech., Inc. v. High-Line Medical Instruments, Co.*, 933 F. Supp. 918, 933 (C.D. Cal. 1996) (false advertising claim improper where it "would allow a private litigant to interfere with the FDA's own investigatory time-table and prosecutorial decision making [and] . . . force the court to rule directly on the legality of Defendants' conduct before the FDA has had the chance to do so"); *Healthpoint, Ltd. v. Stratus Pharm., Inc.*, 273 F. Supp. 2d 769, 787 (W.D. Tex. 2001) (false advertising "claims based on alleged mislabeling are, in essence, misbranding claims which should be decided by the FDA").

Plaintiff's Lanham Act claim is premised on its allegations that SARMs cannot be legally marketed as a dietary supplement. See Compl. ¶¶ 1, 2, 4, 7, 32, 40. "Allowing the plaintiff's Lanham Act claim to proceed [in this case] would be to arrogate the authority of the FDA to decide . . . the legality or illegality of marketing a particular substance." *JHP Pharmaceuticals*, 52 F. Supp. 3d at 1004.

Plaintiff's Lanham Act claim also implicates the primary jurisdiction of the FDA by asking this Court to determine whether SARMs (including Ostarine) are safe and effective. See Compl. ¶¶ 3, 4, 7, 33, 37, 40, 41. The FDA possesses the exclusive authority to evaluate the "safety" of, and to take related enforcement actions relating to dietary supplements. This is because such a determination requires agency expertise (including scientific and technical analysis). Indeed, courts have found that the primary jurisdiction doctrine requires dismissal where the plaintiff's claim is based on allegations that a dietary supplement had been wrongly promoted as "safe and healthy." See *Aaronson v. Vital Pharmaceuticals*,

Inc., 2010 WL 625337, at \*1–2 (S.D. Cal., Feb. 17, 2010). In *Aaronson*, the court found that under the primary jurisdiction doctrine, the determination of whether a product is safe is “best suited for the FDA” as the court would likely need to evaluate conflicting clinical studies. *Id.* at \*2. According to the court: [T]he FDA has both the expertise and the authority to determine whether [the product] is safe, and the Court believes the FDA is in the better position to make that determination...the FDA’s unique ability to discern scientific data and ensure uniform regulation in the field of dietary supplements weigh in favor of dismissing *Aaronson*’s...claims on the grounds of the FDA’s primary jurisdiction. *Id.* at \*3; see also *Healthpoint*, 273 F.Supp.2d at 788 (“whether *Kovia* is dangerous or unsafe [is an] enforcement issue . . . committed to the FDA and better suited for resolution by the FDA”).

**Plaintiff’s claims also implicate the uniformity in administration of the FFDCA. As explained above, Plaintiff has made a broad-based attack on SARMS by filing at least 70 LAWSUITS ALMOST IDENTICAL alleging that various products containing SARMS are being “illegally” marketed as dietary supplements.** Because many of these actions are pending before different courts, **it is possible that the courts would reach conflicting decisions on whether SARMS are appropriate ingredients for a dietary supplement (or, instead, turn the supplement into a “new or prescription drug”) or whether SARMS are safe and effective. This would lead to the anomalous result of certain entities or individuals being permitted to sell and market products containing SARMS as dietary supplements (or as safe and effective) while others would be prohibited from doing so. This type of inconsistent application of the FFDCA is the exact reason that the primary jurisdiction doctrine exists.** See *Clark*, 523 F.3d at 1114; *Aaronson*, 2010 WL 625337, at \*3. In fact, the U.S. District Court for the Central District of California dismissed one of Plaintiff’s nearly identical complaints—a complaint that alleged that the defendant was “illegally” marketing SARMS as a dietary supplement—under the primary jurisdiction doctrine. See *Nutrition Distribution LLC v. IronMag Labs, LLC*, No. 16–55632 (9th Cir. Apr. 29, 2016) (RJN, Ex. 1). As Central District Court found, Plaintiff’s allegations would require the court (or a jury) to determine whether two products containing SARMS “are or contain a new or prescription drug that may not be sold or included in a dietary supplement. Such an expedition requires expertise and uniformity in administration, not practicable through the courts.” *Id.* at \*3 (citing *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015)).

The Central District Court also concluded that “the same is true of Plaintiff’s allegations that Defendants engaged in false advertising because of their statements and omissions about the health effects of Defendants’ products.” *Id.* This Court should follow the reasoned opinion of the Central District Court and dismiss Plaintiff’s claim under the primary jurisdiction doctrine.<sup>3 / / / / / 3</sup> In 2014, the Supreme Court held that claims for misleading labeling under the Lanham Act may proceed despite the fact that food and beverage labels are regulated under the FFDCA. See *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2239 (2014), **That opinion is inapposite to this case. There, the plaintiff claimed that the defendant’s product label was misleading because the picture and product name emphasized pomegranate and blueberry juice when the product only contained a small amount of each. See *id.* at 2230. That allegation, of course, is not an issue that implicates the FDA’s jurisdiction to make decisions about what substances should be categorized as “dietary supplements” versus “new or prescription drugs” or that requires any particular scientific expertise or consistency in administration.**

**Indeed, the opinion did not discuss the primary jurisdiction doctrine, which is the basis of NEWTRITIONAL HEALTH CARE's motion under Rule 12(b)(6). This Court lacks personal jurisdiction over NEWTRITIONAL HEALTH CARE. NEWTRITIONAL HEALTH CARE is not organized under the laws of California and does not have its principle place of business in the state.**

**Furthermore, the company lacks the minimum (or, indeed, any) contacts to California sufficient to satisfy due process.**

**The complaint should therefore be dismissed.**

Even if this Court had personal jurisdiction over NEWTRITIONAL HEALTH CARE, Plaintiff's Lanham Act claim would require this Court to determine issues that are within the primary jurisdiction of the FDA. The complaint should be dismissed under the primary jurisdiction doctrine. Dated: September 16, 2016  
WFBM, LLP By: /s/ Thom

**DUE TO THE REASONS ABOVE THE THREATS SENT BY PLAINTIFF TO NEWTRITIONAL HEALTH CARE AND OVER 70 OTHER COMPANIES HE HAS NOT THE AUTHORITY TO SUE (It is NEWTRITIONAL HEALTH CARE's belief that Tauler Smith has enriched himself using the same lawsuit to force most all of these companies to pay him to settle as can be seen by the cases laid out below. Notice none of them have been resolved by a judgment but all settled out of court. Seth Williams (NEWtritional Health Care llc owner) can personally attest of 2 companies in Alabama that settled out of court with mr tauler before ever filing and I have provided a true and original copy of the extortion letter sent to Newtritional health care demanding money in order to not litigate and it has been told the same method was used by every company I have contacted.**

With this knowledge I present that Tauler Smith llp and nutrition distribution llc is not interested in anything more than beating his competition into bankruptcy or into monetary settlement for the purpose of **enriching himself with settlement monies while hitting companies with the same club that Nutrition distribution (the plaintiff) lost \$600,000 in Alabama for selling drugs marked as dietary supplements to which he paid in cash \$100,000 that day (more than the defendant would make in a year) only without the justification of the same charge.**

In the case of nutrition distribution (Plaintiff is an Arizona limited liability company that manufacturers and markets dietary supplements. See Compl. ¶¶ 15, 27. In 2011, Plaintiff's owner, Kevin Smith, and Plaintiff's predecessor companies (which were then owned by Smith) were charged by the United States with intent to defraud and mislead by introducing unapproved drugs into interstate commerce. See RJN, Exs. 2, 3. Plaintiff's predecessors pleaded guilty and paid forfeitures and fines. See RJN, Exs. 4, 5.)

In these cases Mr Smith and Mr Tauler are claiming to have the same powers as the FDA to bring into question anyone that may be selling anything in violation of DSHEA and after over 70 cases

as outlined below of almost exactly the same charge and wording. (Mr Tauler should know better and can be acting on no other motive than to extract funds from his victims.)

[Nutrition Distribution LLC \(2:16-cv-02333\)](#)

Courts > Nevada District Court

**Filed:** Oct 05, 2016

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Lecheek Nutrition, Inc. \(2:15-cv-01322\)](#)

Courts > California Central District Court

**Filed:** Feb 25, 2015

**Judge:** Michael W Fitzgerald

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Lecheek Nutrition, Inc. \(3:15-cv-03036\)](#)

Courts > Arkansas Western District Court

**Filed:** Jun 05, 2015

**Judge:** Timothy L Brooks

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Culbertson \(2:16-cv-02357\)](#)

Courts > Nevada District Court

**Filed:** Oct 07, 2016

**Judge:** Richard F Boulware, II

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Furious Nutrition LLC et al \(2:15-cv-09801\)](#)

Courts > California Central District Court

**Filed:** Dec 21, 2015

**Judge:** George H Wu

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution, LCC v. Innovative Line Nutrition et al \(2:16-cv-02484\)](#)

Courts > California Central District Court

**Filed:** Apr 11, 2016

**Judge:** Terry J Hatter, Jr

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Acolyte Sports Nutrition LLC et al \(3:17-cv-00841\)](#)

Courts > California Southern District Court

**Filed:** Apr 25, 2017

**Judge:** William Q Hayes

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution LLC v. SK2 Nutrition Corp. et al \(3:17-cv-00840\)](#)

Courts > California Southern District Court

**Filed:** Apr 25, 2017

**Judge:** Janis L Sammartino

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Boss Sports Nutrition et al \(2:16-cv-07280\)](#)

Courts > California Central District Court

**Filed:** Sep 27, 2016

**Judge:** Fernando M Olguin

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question



[Nutrition Distribution LLC v. Nexxt Level Nutrition LLC et al \(2:17-cv-01870\)](#)

Courts > Arizona District Court

**Filed:** Jun 16, 2017

**Judge:** Douglas L Rayes

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution, LLC v. Giant Nutrition, et al \(2:07-cv-01655\)](#)

Courts > Arizona District Court

**Filed:** Aug 29, 2007

**Nature of Suit:** Property Rights - Trademark

[Nutrition Distribution LLC v. Line One Nutrition, Inc. et al \(3:16-cv-02647\)](#)

Courts > California Southern District Court

**Filed:** Oct 25, 2016

**Judge:** Gonzalo P Curiel

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution, LLC v. Wicked Nutrition Labs, LLC et al \(3:17-cv-01688\)](#)

Courts > California Southern District Court

**Filed:** Aug 22, 2017

**Judge:** Thomas J Whelan

**Nature of Suit:** Other Statutes - Other Statutory Actions

[Nutrition Distribution LLC v. Peak Nutrition LLC et al \(3:16-cv-01967\)](#)

Courts > California Southern District Court

**Filed:** Aug 04, 2016

**Judge:** Anthony J Battaglia

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Pureline Nutrition Austin LLC et al \(2:17-cv-00936\)](#)

Courts > Arizona District Court

**Filed:** Mar 29, 2017

**Judge:** Douglas L Rayes

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Channell v. Nutrition Distribution, LLC et al \(2:07-cv-01103\)](#)

Courts > Alabama Middle District Court

**Filed:** Dec 19, 2007

**Nature of Suit:** Torts - Personal Injury - Product Liability

**Cause:** 28:1332 Diversity-Personal Injury

[Channell v. Nutrition Distribution, LLC et al \(2:08-cv-00794\)](#)

Courts > Alabama Middle District Court

**Filed:** Sep 25, 2008

**Nature of Suit:** Torts - Personal Injury - Product Liability

**Cause:** 28:1332 Diversity-Product Liability

[Nutrition Distribution, LLC v. Suppz, Inc. \(3:17-cv-00351\)](#)

Courts > Wisconsin Western District Court

**Filed:** May 10, 2017

**Judge:** Barbara B Crabb

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Cerqueira et al \(3:17-cv-01248\)](#)

Courts > California Southern District Court

**Filed:** Jun 19, 2017

**Judge:** Jeffrey T Miller

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Strong Supplements LLC \(2:17-cv-02603\)](#)

Courts > Nevada District Court

**Filed:** Oct 05, 2017

**Judge:** Gloria M Navarro

**Nature of Suit:** Other Statutes - False Claims Act

**Cause:** 31:3729 False Claims Act

[Nutrition Distribution LLC v. Rubio et al \(3:17-cv-00839\)](#)

Courts > California Southern District Court

**Filed:** Apr 25, 2017

**Judge:** Janis L Sammartino

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Kenna et al \(2:16-cv-00448\)](#)

Courts > Arizona District Court

**Filed:** Feb 17, 2016

**Judge:** James A Teilborg

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution, LLC v. Enhanced Athlete, Inc. \(2:17-cv-01491\)](#)

Courts > California Eastern District Court

**Filed:** Jul 17, 2017

**Judge:** Troy L Nunley

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. DeGrave et al \(3:17-cv-00843\)](#)

Courts > California Southern District Court

**Filed:** Apr 25, 2017

**Judge:** William Q Hayes

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution LLC v. Gold Start Distribution LLC et al \(2:17-cv-03742\)](#)

Courts > Arizona District Court

**Filed:** Oct 12, 2017

**Judge:** David G Campbell

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution LLC v. Driven Sports et al \(2:13-cv-06195\)](#)

Courts > California Central District Court

**Filed:** Aug 22, 2013

**Judge:** John A Kronstadt

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Lucas Thompson et al \(2:15-cv-02220\)](#)

Courts > California Central District Court

**Filed:** Mar 25, 2015

**Judge:** Consuelo B Marshall

**Nature of Suit:** Property Rights - Trademark

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Blackstone Labs et al \(2:15-cv-01670\)](#)

Courts > California Central District Court

**Filed:** Mar 06, 2015

**Judge:** Terry J Hatter, Jr

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Revolution Distribution v. Evol Nutrition Associates Incorporated et al \(2:11-cv-02120\)](#)

Courts > Arizona District Court

**Filed:** Oct 27, 2011

**Judge:** James A Teilborg

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Befit Supplements et al \(3:16-cv-03118\)](#)

Courts > California Southern District Court

**Filed:** Dec 30, 2016

**Judge:** Cathy Ann Bencivengo

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[CREATIVE DISTRIBUTION LLC v. SYNERGISTIC SPORTS NUTRITION, INC \(0:16-cv-62067\)](#)

Courts > Florida Southern District Court

**Filed:** Aug 26, 2016

**Judge:** William J Zloch

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution LLC v. PEP Research, LLC et al \(3:16-cv-02328\)](#)

Courts > California Southern District Court

**Filed:** Sep 15, 2016

**Judge:** William Q Hayes

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution, LLC v. Lockout Supplements et al \(3:16-cv-02666\)](#)

Courts > California Southern District Court

**Filed:** Oct 27, 2016

**Judge:** Marilyn L Huff

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Muscle Store Incorporated et al \(2:17-cv-02116\)](#)

Courts > Arizona District Court

**Filed:** Jul 03, 2017

**Judge:** G Murray Snow

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. DuraCap Labs LLC et al \(2:16-cv-00460\)](#)

Courts > Arizona District Court

**Filed:** Feb 18, 2016

**Judge:** G Murray Snow

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution LLC v. King Peptides LLC et al \(2:16-cv-00451\)](#)

Courts > Arizona District Court

**Filed:** Feb 17, 2016

**Judge:** Douglas L Rayes

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[NYER NUTRITIONAL, et al v. NATIONAL DISTRIBUT, et al \(1:00-cv-00265\)](#)

Courts > Maine District Court

**Filed:** Dec 26, 2000

**Nature of Suit:** Contract - Other Contract

[Revolution Distribution v. Evol Nutrition Associates Incorporated et al \(1:12-cv-02149\)](#)

Courts > Georgia Northern District Court

**Filed:** Jun 21, 2012

**Judge:** Thomas W Thrash, Jr

**Nature of Suit:** Property Rights - Trademark

[Nutrition Distribution LLC v. My Supplement Store et al \(3:16-cv-03117\)](#)

Courts > California Southern District Court

**Filed:** Dec 30, 2016

**Judge:** Marilyn L Huff

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Madison James Research et al \(3:16-cv-02445\)](#)

Courts > California Southern District Court

**Filed:** Sep 28, 2016

**Judge:** Cathy Ann Bencivengo

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution LLC v. New Health Ventures LLC et al \(3:16-cv-02338\)](#)

Courts > California Southern District Court

**Filed:** Sep 15, 2016

**Judge:** Barry Ted Moskowitz

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Total Fitness Warehouse, LLC et al \(3:17-cv-00930\)](#)

Courts > California Southern District Court

**Filed:** May 05, 2017

**Judge:** Barry Ted Moskowitz

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution, LLC v. Sarm Pharm et al \(3:16-cv-02667\)](#)

Courts > California Southern District Court

**Filed:** Oct 27, 2016

**Judge:** Larry Alan Burns

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Chaos and Pain, LLC et al \(3:16-cv-01932\)](#)

Courts > California Southern District Court

**Filed:** Aug 01, 2016

**Judge:** Thomas J Whelan

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution LLC v. Custom Nutraceuticals LLC et al \(2:16-cv-00173\)](#)

Courts > Arizona District Court

**Filed:** Jan 26, 2016

**Judge:** David G Campbell

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1391 Personal Injury

[Nutrition Distribution LLC v. Icon Supplements LLC et al \(2:16-cv-03572\)](#)

Courts > Arizona District Court

**Filed:** Oct 17, 2016

**Judge:** John J Tuchi

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1121 Trademark Infringement

[Nutrition Distribution LLC v. Apogee Peptides, LLC et al \(3:17-cv-00584\)](#)

Courts > California Southern District Court



**Filed:** Mar 23, 2017

**Judge:** Barry Ted Moskowitz

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Dynamic Technical Formulations LLC et al \(2:17-cv-02782\)](#)

Courts > Arizona District Court

**Filed:** Aug 17, 2017

**Judge:** John J Tuchi

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Revolt Pharma Incorporated et al \(2:15-cv-02270\)](#)

Courts > Arizona District Court

**Filed:** Nov 10, 2015

**Judge:** Douglas L Rayes

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Nutrition Distribution, LLC v. Enhanced Athlete, Inc. et al \(2:17-cv-02069\)](#)

Courts > California Eastern District Court

**Filed:** Oct 05, 2017

**Judge:** Troy L Nunley

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Madison James Research et al \(3:16-cv-02445\)](#)

Courts > California Southern District Court

**Filed:** Sep 28, 2016

**Judge:** Cathy Ann Bencivengo

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Nutrition Distribution LLC v. Musclegen Research Inc. et al \(3:16-cv-03113\)](#)

Courts > California Southern District Court

**Filed:** Dec 30, 2016

**Judge:** Janis L Sammartino

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. My Supplement Store et al \(3:16-cv-03117\)](#)

Courts > California Southern District Court

**Filed:** Dec 30, 2016

**Judge:** Marilyn L Huff

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1125la Trademark Infringement (Lanham Act)

[Nutrition Distribution LLC v. Muscle Store Incorporated et al \(2:17-cv-02116\)](#)

Courts > Arizona District Court

**Filed:** Jul 03, 2017

**Judge:** G Murray Snow

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Metabolic Edge Nutritional Supplements LLC et al \(2:17-cv-01522\)](#)

Courts > Arizona District Court

**Filed:** May 18, 2017

**Judge:** David G Campbell

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[Nutrition Distribution LLC v. Begley Research Group, Inc. et al \(3:16-cv-01933\)](#)

Courts > California Southern District Court

**Filed:** Aug 01, 2016

**Judge:** M James Lorenz

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125(a) False representation of goods sold in interstate commerce

[Ancient Nutrition, LLC v. PDM Distribution Services, Inc. et al \(4:17-cv-00260\)](#)

Courts > Iowa Southern District Court

**Filed:** Jul 17, 2017

**Judge:** Charles R Wolle

**Nature of Suit:** Property Rights - Trademark

**Cause:** 15:1114 Trademark Infringement

[Nutrition Distribution LLC v. The Muscle Store, Inc. et al \(3:17-cv-01246\)](#)

Courts > California Southern District Court

**Filed:** Jun 19, 2017

**Judge:** Cathy Ann Bencivengo

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1331 Fed. Question

[NUTRITION DISTRIBUTION LLC v. THE MUSCLE STORE, INC. et al \(2:17-cv-01515\)](#)

Courts > Pennsylvania Western District Court

**Filed:** Nov 14, 2017

**Judge:** Cynthia Reed Eddy

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[v. Nutrition Distribution, LLC, an Arizona limited liability company et al \(1:17-cv-00363\)](#)

Courts > Texas Eastern District Court

**Filed:** Aug 22, 2017

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

[Next Nutrition Inc v. Elan Nutrition LLC \(3:01-cv-01859\)](#)

Courts > California Southern District Court

**Filed:** Oct 11, 2001

**Nature of Suit:** Torts - Personal Property - Other Fraud

[Agro Distribution, LLC \(2:10-cv-00129\)](#)

Courts > Mississippi Northern District Court

**Filed:** Aug 04, 2010

**Nature of Suit:** Contract - Other Contract

[NUTRITION DISTRIBUTION LLC, an Arizona Limited Liability Company, v. Southern SARMS Inc \(2:16-cv-04137\)](#)

Courts > California Central District Court

**Filed:** Jun 10, 2016

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 28:1332 Diversity-Petition for Removal

[Nutrition Distribution, LLC, an Arizona limited liability company v. Cerqueira et al \(1:17-cv-00415\)](#)

Courts > Texas Eastern District Court

**Filed:** Sep 26, 2017

**Judge:** Ron Clark

**Nature of Suit:** Other Statutes - Other Statutory Actions

**Cause:** 15:1125 Trademark Infringement (Lanham Act)

Argument II

**This Court Lacks Personal Jurisdiction over NEWtritional Health Care llc. Plaintiff cannot meet its burden to demonstrate facts enough to permit the exercise of personal jurisdiction over NEWTRITIONAL HEALTH CARE LLC. by this Court.** “there is no applicable federal Case 3:16-cv-01967-AJB-KSC Document 5-1 Filed 09/16/16 PageID.41 Page 7 of 20

“California’s long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014). The Court must therefore determine whether personal jurisdiction “comports with the limits imposed by federal due process.” *Id.* **To satisfy due process, a “nonresident generally must have ‘certain minimum contacts [with the forum]. . . such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”** *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). **“The strength of contacts required depends on which of the two categories of personal jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction.”** *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (citing *Daimler*, 134 S. Ct. at 754). **In this case, Plaintiff has not (and cannot) show that NEWTRITIONAL HEALTH CARE has minimum contacts with California sufficient to support personal jurisdiction under either category.**

A. NEWTRITIONAL HEALTH CARE is not subject to general jurisdiction in California. General jurisdiction permits a court to hear “any and all claims” against a defendant, even if the conduct has no connection to the forum state. See, e.g., *Ranza*, 793 F.3d at 1068. The Supreme Court has been clear that general jurisdiction over an out-of-state defendant is permissible only “when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler*, 134 S. Ct. at 754 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Except in the most extraordinary cases, a company is only subject to general jurisdiction in the state in which it is incorporated and the state in which its principle place of business is located. See *Daimler*, 134 S. Ct. at 760. NEWTRITIONAL HEALTH CARE is an Alabama limited liability company that has its principle place of business in Alabama. See *Stratman Decl.* at ¶¶ 2, 7; see also *Compl.* ¶ 24. Because NEWTRITIONAL HEALTH CARE is not organized under the laws of California and does not have its principle place of business in California, due process does not permit the exercise of general jurisdiction over NEWTRITIONAL HEALTH CARE by this Court. See, e.g., *Ranza*, 793 F.3d at 1069 (9th Cir. 2015) (sending employees and products to forum state insufficient to assert general jurisdiction); *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (no general jurisdiction in California where company was organized and had its principle place of business in France and had no physical presence in California).

B. NEWTRITIONAL HEALTH CARE is not subject to specific jurisdiction in California. Specific jurisdiction “depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear*, 564 U.S. at 915. “For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.” *Walden*, 134 S. Ct. at 1121. “[R]andom, fortuitous, or attenuated contacts” will not suffice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

**The Ninth Circuit employs a three-part test to determine whether a nonresident defendant has minimum contacts sufficient to satisfy due process:**

(1) the defendant must perform an act or consummate a transaction within the forum, purposefully availing itself of the privilege of conducting activities in the forum and invoking the benefits and protections of its laws;

(2) the claim must arise out of or result from the defendant's forum related activities; and

(3) the exercise of jurisdiction must be reasonable. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015); *Rano*, 987 F.2d at 588. Plaintiffs have not demonstrated, and cannot demonstrate, facts that meet these elements. NEWTRITIONAL HEALTH CARE has not purposefully availed itself of the privilege of conducting activities in California.

**NEWTRITIONAL HEALTH CARE does not have any employees in California and does not source the supplements at issue in this case from California. See Stratman Decl. at ¶¶ 15–16.**

**NEWTRITIONAL HEALTH CARE'S business operations are not connected to California in any meaningful way.**

**NEWTRITIONAL HEALTH CARE simply has not taken any action to avail itself of the privilege of conducting activities within California or invoked the benefits and protections of California's law. NEWtritional Health Care has no specific contacts with California, and certainly no contacts that "create a substantial connection to the forum state." *Walden*, 134 S. Ct. at 1121; see also *Love*, 611 F.3d at 609.2 2.**

**Jurisdiction over NEWTRITIONAL HEALTH CARE would be unreasonable. Jurisdiction over NEWTRITIONAL HEALTH CARE by this Court would also be unreasonable.**

The Ninth Circuit employs a seven-factor test to evaluate reasonableness:

(1) the existence of an alternative forum;

(2) the burden of defense in the forum;

(3) the most efficient judicial resolution of the controversy;

(4) the importance of the chosen forum to the plaintiff's interest in convenient and effective relief;

(5) the defendant's purposeful interjection into the forum;

(6) the extent of conflict with the sovereignty of defendant's state; and

(7) the forum state's interest in the dispute. *Fields v. Sedgwick Assoc. Risks, Ltd.*, 796 F.2d 299, 302 (9th Cir. 1986).

Every one of the seven factors weigh against the exercise of personal jurisdiction in this case.

**First, the federal courts in ALABAMA could provide an acceptable alternative forum. See Fed. Deposit Ins. Corp. v. British-Am. Ins. Co., 828 F.2d 1439, 1445 (9th Cir. 1987) (plaintiff has burden of proving unavailability of alternative forum).**

**Second,** it would be burdensome for NEWTRITIONAL HEALTH CARE—an Alabama based company with no specific California connections—to defend itself in a court halfway across the country. *Id.* (the primary concern is the defendant’s burden, particularly when it “has done little to reach out to the forum state”); *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th 2 Because newtritional health care does not have any specific California-related activities, the second prong of the three-part test for specific jurisdiction also is not meet. where the burdens on the parties are equal, the factor favors defendant).

**Third,** California is not the location of any alleged injury and is not the location where any evidence is located. Therefore, it is not the most efficient forum for resolution of the controversy. See *Pac. Atl. Trading Co. v. M/V Main Exp.*, 758 F.2d 1325, 1331 (9th Cir. 1985) (“[T]he site where the injury occurred and where evidence is located usually will be the most efficient forum.”).

**Fourth,** the relief that Plaintiff seeks is equally available in another federal forum. A California forum does nothing to make Plaintiff’s requested relief more convenient or effective. See *Fed. Deposit Ins. Corp.*, 828 F.2d at 1445 (relief equally available in Fiji means factor weighs in favor of defendant).

**Fifth,** newtritional health care did not interject itself into California. On the contrary, newtritional health care llc. has no relevant contacts with California. See *id.* at 1444 (the “smaller the element of purposeful interjection, the less is jurisdiction to be anticipated and the less reasonable is its exercise”); *Terracom*, 49 F.3d at 561 (where there is no purposeful availment, the interjection factor “weighs heavily” in defendant’s favor).

**Sixth,** ALABAMA has a greater interest in the dispute than California because one of the parties is a resident of that state (while none are a resident of California) and the majority of the events that gave rise to the dispute—i.e., advertising and sales—took place in Alabama. See *Kellner v. Tech. Associates, Inc.*, 844 F.2d 792 (9th Cir. 1988) (factor weighs in favor of defendant where events took place in its home state).

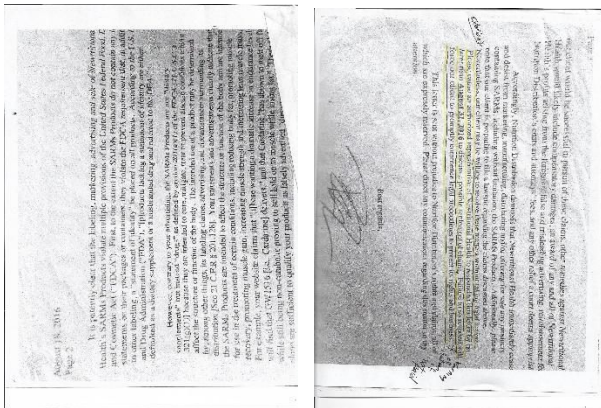
**Finally,** California has little to no interest in this dispute between an Arizona entity and an Alabama entity on a matter of federal law. See *Pac. Atl. Trading Co.*, 758 F.2d at 1330 (California’s interest in adjudicating dispute between two noncitizens “relatively weak”); *Fields*, 796 F.2d at 302–03 (California’s interest in adjudicating dispute of noncitizen resident “considerably lessened”). Taking these factors as a whole, it is clear that the exercise of personal jurisdiction over NEWTRITIONAL HEALTH CARE by this Court would be unreasonable. \* \* \*

It is the belief of the defendant as seen in multiple cases listed that the plaintiff does not desire to try cases that do not fall under California and he is guilty of beguiling the courts

1. **Tauler smith llp tries cases that are not in their jurisdiction for the purpose of personal convenience** (notice no case has went forward in any other court except the cases in state court

(nutrition distribution vs Sarms pharm in which the case was lost by plaintiff on demur) and due to having such a case load also in attempt to cost the defendants so much money the either settle due to monetary and time constraint or go broke litigating and setting an example for future victims of the Tauler Smith extortion practice (case enhanced athlete vs nutrition distribution where the plaintiff has posted on YouTube and multiple other public social venues the deposition of Tony Hughes <https://www.youtube.com/watch?v=MDnjwcaMau8> <https://www.youtube.com/watch?v=xSUewzw0QR4> <https://www.youtube.com/watch?v=FijixxYqTIE> ) Tauler uses this as an example of what will happen to defendants that dare not to pay him.

2. **Tauler smith llp has sent multiple extortion letters to many owners of nutrition companies and will settle out of court.** I have seen this with Swinney nutrition and anabolic creations llc both being in the same area of Alabama as NEWtritional Health Care also seeing how many cases he has in the courts and knowing the money he demanded from these companies (small mom and pop shops that did not have the funds to waste and completely destroyed Anabolic Kreation's business and came close to causing Swinney nutrition the same fate) it leads me to believe Tauler Smith may have amassed millions throughout the country on the backs of small businesses that drive this economy not to mention bring a service to their community that not deserving of the fate these rich lawyers bring them



3. Due to the **public mockery Tauler Smith llp makes of his defendants and the court by displaying depositions on youtube** to be used as warnings and his other 70+ defendants to show what is to come if they do not pay.
4. Due to **Mr. Tauler enriching himself at the expense of the small business owner** to the degree of putting them out of business even with no case and no willingness to get a resolution to set case law (this would end his extortion racket).
5. Due to Tauler smiths Plaintiff Nutrition distributions unclean hands **having been found guilty of selling drugs as supplements then falsely accusing his competitors of the same** in order to break them financially or to enrich himself at their expense
6. Due to Tauler Smiths blatant arrogance to openly extort men for money he has not earned for personal gain to the tune of over 70 cases of the same charges and almost identical letters of extortion
7. Due to Tauler Smiths continued need to try cases under multiple venues and judges as to pit the court against itself in the case of a loss.



**I Seth Williams ask in the public interest that Robert Tauler have his bar license taken from him and he be asked to pay back his victims the money and loss of revenue to the extent the court sees fit.**

**This Court cannot, consistent with due process, exercise jurisdiction over NEWTRITIONAL HEALTH CARE. NEWTRITIONAL HEALTH CARE is not formed under the laws of California and does not have its principal place of business in the state. And NEWTRITIONAL HEALTH CARE'S lack of contacts with California means that the exercise of personal jurisdiction by this Court would violate due process. Consequently, Plaintiff's Complaint should be dismissed.**

Much thanks to

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