

Alexander M. Schack, Esq., Bar No. 99126
LAW OFFICES OF ALEXANDER M. SCHACK
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127
Tel: (858) 485-6535
Fax: (858) 485-0608

Attorneys for Plaintiffs Jeannette Johnson, Christopher Crane
and the Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

JEANNETTE JOHNSON and CHRISTOPHER)	CASE NO.
CRANE, Individually and On Behalf of All Others)	
Similarly Situated,)	<u>CLASS ACTION COMPLAINT</u>
)	
Plaintiffs,)	1) Penal Code § 327 (Endless Chain)
)	2) Business and Professions Code
v.)	§ 17200 (Unfair Business Practices)
)	3) Fraud and Deceit (Concealment)
USANA HEALTH SCIENCES, INC., DENIS E.)	4) Business and Professions Code
WAITLEY, CHRISTINE WOOD, LADD)	§ 17500 (False Advertising)
McNAMARA, DEBORAH WAITLEY-)	
McNAMARA, MYRON W. WENTZ, DAVID A.)	
WENTZ, and GILBERT A. FULLER, and DOES)	
1-50, inclusive,)	
)	
Defendants.)	
)	
)	
)	

Plaintiffs, Jeannette Johnson and Christopher Crane, on behalf of themselves and all others
similarly situated, and demanding trial by jury, complain and allege upon information and belief the
following:

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of all individuals or entities who at anytime between
January 1, 1995, through the present, inclusive (the "Class Period"), were USANA Associates.
2. USANA develops and manufactures nutritionals, personal care, and weight
management products that are sold directly to Associates throughout California.

1 3. Prior to and throughout the Class Period, USANA represented itself to be a highly
2 successful company, based on integrity, with a history of record earnings and a solid business model.
3 However, on or about March 15, 2007, *The Wall Street Journal* revealed the underlying
4 unsustainability of the Company's network marketing business model, and that the Company was
5 perpetrating a pyramid scheme in an attempt to sell its products.

6 4. Plaintiffs allege that, throughout the Class Period, Defendants failed to disclose
7 material adverse facts about the Company, its business relationships, and prospects. Specifically,
8 Defendants failed to disclose and fraudulently concealed the following: (1) that the Company's multi-
9 level marketing model operated as a pyramid scheme; (2) that the Company's business model was
10 unsustainable because it required the constant recruitment of new Associates due to a high level of
11 attrition within the Company's sales force; (3) that the majority of the Company's Associates did not
12 actually sell to consumers, but rather to other Company Associates; (4) that over 74 percent of the
13 Company's Associates were failing within the first year of joining the Company; (5) that over 87
14 percent of the Company's Associates were losing money instead of receiving compensation for their
15 sales efforts; (6) that the Company lacked adequate internal and financial controls; (7) that, as a result
16 of the foregoing, the Company's statements about its future business prospects and projections were
17 lacking in a reasonable basis when made; (8) that the Company's representation of a 75% reduction in
18 "middleman" costs because of its direct marketing system was false or misleading, as each tier of
19 distribution received approximately 8% in commissions, resulting in prices which were 50% - 400%
20 above standard retail prices; for example, a 28 day supply of premium vitamins sells at GNC for \$17
21 and USANA's premium multivitamin "Essentials" sells for \$40; (9) that Associates would be less, not
22 more, profitable if they opened up more than one "business center" because the only true benefit
23 inured in the Company's favor because of the increased costs the Associates paid for additional
24 business centers; (10) that the qualifications of members of the Company's Advisory Board were
25 misrepresented and such members were biased and/or had conflicts of interest which precluded them
26 from providing independent advice; and (11) that the founder of the Company had renounced his U.S.
27 Citizenship and moved substantial assets to the Caribbean tax havens of St. Kitts and Nevis, the Isle of
28 Mann, and Liechtenstein.

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JURISDICTION AND VENUE

5. This is a civil action seeking damages, attorneys' fees and other relief. Jurisdiction as to each Defendant is proper in the County of San Diego pursuant to the provisions of California Code of Civil Procedure Sections 395(a) and 395.5. One or more of the Defendants either maintains an office, transacts business, has an agent, or is found in the County of San Diego. Many of the unlawful acts alleged occurred or caused injury to purchasers of nutritionals, personal care, and weight management products within the State of California and, more particularly, within the County of San Diego. Defendants' trade and commerce hereinafter described is carried on, in part, within the State of California and, more particularly, within the County of San Diego. Plaintiffs believe Defendants have sold substantial amounts of products to the residents of San Diego County.

6. Plaintiffs' claims also arise and are brought pursuant to Business and Professions Code Sections 17203 and 17204 for restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits obtained by Defendants as a result of their unlawful, unfair or fraudulent business acts or practices alleged herein as prohibited by Business and Professions Code Section 17200, *et seq.*, commonly known as the Unfair Competition Law ("UCL"). Defendants' violations of the UCL include business acts and practices constituting distinct and independent violations of the UCL independent of their violations of other laws.

7. This Complaint is not based upon federal law. The amount in controversy for each named class representative is less than \$75,000, and the aggregate total of the claims pled herein is less than \$5,000,000.

8. Venue as to each Defendant is proper in this judicial district, pursuant to Business and Professions Code Section 17203 and California Code of Civil Procedure Sections 395(a) and 395.5. Each Defendant either transacts business, has an agent, or is found in the County of San Diego and is within the jurisdiction of this Court. The unlawful acts alleged herein had a direct effect on consumers within the State of California and, more particularly, within the County of San Diego. Additionally, the trade and commerce described herein is carried on, in substantial part, in the State of California and, more particularly, within the County of San Diego.

9. Plaintiffs reserve the right to amend this Complaint if after a reasonable opportunity for

1 discovery, additional persons are found to be liable, or if any of the other allegations or requests in this
2 Complaint should be amended to conform to such discovery or conform to proof at trial.

3 PARTIES

4 10. Plaintiffs, Jeannette Johnson and Christopher Crane, are residents of San Diego County,
5 California, purchased USANA distributorships and thus became Associates, and lost money or
6 property as a direct result of the violations alleged herein.

7 11. Defendant USANA is a Utah corporation with its principal place of business located at
8 3838 West Parkway Boulevard, Salt Lake City, Utah. It distributes products, in part, through a multi-
9 level marketing scheme with the slogan “True Health & True Wealth.”

10 12. Defendant Denis E. Waitley was, at all relevant times, a Company director, and a
11 resident of Rancho Santa Fe, California. Mr. Waitley falsified his educational credentials to potential
12 Associates of the Company and to the SEC, stating he had a Master’s Degree and Ph.D when in fact
13 he did not.

14 13. Defendants Christine Wood of Del Mar, California, Ladd McNamara of Oceanside,
15 California and Deborah Waitley-McNamara of La Jolla, California, are all members of the Company’s
16 Advisory Board and directors. Each of these Defendants actively participated in promoting the
17 Company’s multi-level marketing scheme, with Ms. Wood appearing on the Company’s online video
18 presentation. On or about June 4, 2007, Mr. McNamara was forced to resign from the Advisory board
19 because it was uncovered that he was practicing medicine without a license.

20 14. Defendant Myron W. Wentz (“M. Wentz”) was, at all relevant times, the Company’s
21 Chief Executive Officer (“CEO”). Mr. Wentz has allegedly renounced his U.S. citizenship and
22 transferred significant assets to the tax havens of St. Kitts and Nevis, the Isle of Mann, and
23 Liechtenstein.

24 15. Defendant David A. Wentz (“D. Wentz”) was, at all relevant times, the Company’s
25 President and a Company Director, and a graduate of the University of California, San Diego.

26 16. Defendant Gilbert A. Fuller (“Fuller”) was, at all relevant times, the Company’s Chief
27 Financial Officer (“CFO”), Chief Accounting Officer (“CAO”), and an Executive Vice President. On
28 June 13, 2007, USANA filed SEC Form 8-K in which it disclosed that although Mr. Fuller was

1 formerly and consistently reported to be a CPA, in fact he was not, as his license had expired in 1986.

2 17. The Individual Defendants, because of their positions with the Company, were
3 provided with copies of the Company's reports, opportunity meeting agendas, and press releases
4 alleged herein to be misleading prior to, or shortly after, their issuance, and had the ability and
5 opportunity to prevent the misrepresentations or cause them to be corrected. Because of their positions
6 and access to material non-public information available to them, each of these Defendants knew that
7 the adverse facts specified herein had not been disclosed to, and were being concealed from the public,
8 and that the positive representations which were being made were then materially false and
9 misleading. The Individual Defendants are liable for the false statements pleaded herein, as those
10 statements were each group-published information, the result of the collective actions of the Individual
11 Defendants and others. Additionally, each individual Defendant herein had a direct stake in the
12 success of the USANA network marketing scheme, and gave substantial assistance or encouragement
13 thereto in order to make more money.

14 JOINT VENTURE, ALTER EGO, CO-CONSPIRATOR AND DOE DEFENDANTS

15 18. At times, each of the Defendants named herein, including DOES 1-50, acted as the
16 agent, joint venturer or alter ego of or for the other Defendants with respect to the acts, violations, and
17 common course of conduct alleged herein or is otherwise liable.

18 19. The acts charged in this Complaint as having been done by Defendants and the DOE
19 Defendants were authorized, ordered, or done by their officers, agents, employees, or representatives,
20 while actively engaged in the management of the Defendants' businesses or affairs.

21 20. Various persons named as Defendants have participated or acted in furtherance of the
22 violations alleged herein, including acting as co-conspirators. When and if Plaintiffs learn the identity
23 of additional persons, Plaintiffs may seek leave to amend this Complaint to add said co-conspirators as
24 Defendants.

25 21. Pursuant to Business and Professions Code ' 17200 *et seq.*, Plaintiffs bring this action
26 individually and on behalf of the general public.

27 CLASS ACTION ALLEGATIONS

28 22. Plaintiffs, Jeannette Johnson and Christopher Crane, brings this action, on behalf of

1 themselves and all others similarly situated, as a class action pursuant to Section 382 of the California
2 Code of Civil Procedure. The Plaintiff Class, which Plaintiffs seek to represent, is composed of and
3 defined as follows:

4 All persons or entities who are citizens of the State of California and
5 which at anytime between January 1, 1995 and the present were an
6 Associate of USANA. Specifically excluded from the Plaintiff Class are
7 the Defendants herein; officers, directors, or employees of any
8 Defendants; any entity in which any Defendant has a controlling
9 interest; the affiliates, legal representatives, attorneys, heirs or assigns of
any Defendant. Also excluded are any federal, state or local
governmental entity, and any judge, justice, or judicial officer presiding
over this matter and the members of their immediate families and
judicial staffs.

10 23. This action has been brought and may properly be maintained as a class action,
11 pursuant to the provisions of Code of Civil Procedure Section 382 because there is a well defined
12 community of interest in the litigation and the proposed class is ascertainable.

13 24. Numerosity: The Plaintiff class is so numerous that the individual joinder of all
14 members is impracticable under the circumstances of this case. While the exact number of class
15 members is unknown to Plaintiff at this time, based upon the amount of sales of such products,
16 Plaintiff is informed and believes that thousands of dollars worth of products have been sold to
17 hundreds of distributors. Joinder of all members of the Plaintiff Class is not practicable.

18 25. Common Questions Predominate: Common questions of law and fact exist as to all
19 members of the Plaintiff Class and predominate over any questions which affect only individual
20 members of the class. These common questions of law and fact include, without limitation:

- 21 a. Whether Defendants conspired to operate a pyramid scheme, or endless chain
22 under Penal Code § 327;
- 23 b. Whether Defendants' business acts or practices violated the Unfair Competition
24 Law, §§ 17200 *et seq.* of the California Business and Professions Code
25 ("UCL");
- 26 c. Whether Defendants are liable for fraudulent concealment;
- 27 d. Whether Defendants are liable for violating Business and Professions Code
28 § 17500;

- 1 e. The class-wide nature of Defendants' course of conduct;
- 2 f. The amount of additional revenues and profits obtained by Defendants
- 3 attributable to their unlawful conduct;
- 4 g. The appropriate nature of class-wide equitable relief including injunctions and
- 5 corrective and remedial action;
- 6 h. Whether the members of each Plaintiff Class are entitled to rescission and
- 7 restitution as a result of Defendants' conduct and, if so, what is the proper
- 8 measure and appropriate formula to be applied in determining such restitution;
- 9 i. Whether the members of each Plaintiff Class have sustained damages as a
- 10 result of Defendants' conduct and, if so, what is the proper measure and
- 11 appropriate formula to be applied in determining such damages; and
- 12 j. Whether the members of each Plaintiff Class are entitled to punitive and
- 13 exemplary damages as a result of Defendants' acts of fraud, malice and
- 14 oppression or in conscious disregard of the rights of Plaintiffs and each
- 15 Plaintiff Class, and, if so, what is the proper amount of such punitive and
- 16 exemplary damages.
- 17

18 26. Typicality: Plaintiffs' claims are typical of the claims of the members of the Plaintiff

19 Class because Plaintiffs and each member of the Plaintiff Class was an Associate of USANA,

20 purchased nutritionals, personal care, and weight management products from one or more of the

21 Defendants, and due to the violations alleged herein, suffered injury thereby as a result of Defendants'

22 common course of conduct in violation of law as alleged herein.

23 27. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of

24 the Plaintiff Class. Plaintiffs are citizens of and reside in California and purchased in San Diego

25 County, nutritionals, personal care, and weight management products during the Relevant Period, were

26 USANA Associates, lost money or property as a result thereof, and are adequate representatives of the

27 Plaintiff Class as they have no interests that are adverse to the interests of absent class members.

28 Plaintiffs have retained counsel who has substantial experience in the prosecution of complex class

action and consumer protection litigation.

1 the high earning potential of becoming a USANA Associate. These opportunity meetings had a cult-
2 like atmosphere where individuals told of their financial success and the “financial security” USANA
3 provides. Potential recruits were also enticed by allegedly low start-up costs for signing up to be an
4 Associate, with costs as low as \$19.95. USANA promised “True Health & True Wealth” at these
5 opportunity meetings, yet the only true wealth was found in the initial perpetrators of the scheme, i.e.,
6 those who were at the top of the pyramid.

7 32. If a USANA Associate complained about the difficulty in selling the high priced
8 products, their “upline” Associate was taught to sell them additional materials which allegedly would
9 assist in making them profitable. USANA’s practice was to make unsuccessful Associates feel as if the
10 lack of profit was due to their own inadequacies, as others were extremely profitable. Yet in fact, 87%
11 of Associates were losing money, a fact fraudulently concealed from new recruits.

12 33. USANA and its recruiters knew no bounds. The promotions targeted both the elderly
13 and the not-so-well-off. USANA’s online presentation states that ... 40% of Aging Americans are not
14 sure if they have enough money to retire. Half of all bankruptcies are caused by illness or medical
15 bills. The average household owes \$8,000 in credit card debt, with most people living paycheck to
16 paycheck, “Change your life”, let USANA be your retirement solution, without high start up costs or
17 complex business plans. You work for yourself not by yourself... Yet, once those on the lower level of
18 the pyramid inevitably failed, they truly were by themselves.

19 34. In one instance, the Fraud Discovery Institute of San Diego uncovered an extremely
20 egregious example. An elderly blind man lost his life savings and mortgaged his home in a failed
21 effort to realize the USANA dream of true wealth. In fact, contrary to the statements made at
22 opportunity meetings, Defendants fraudulently concealed and never disclosed to potential Associates
23 that 74% of Associates failed in the first year. As a publicly traded Company, and because
24 Defendants’ touted the potential profitability of its Associates, Defendants had a duty to disclose these
25 adverse facts, yet never did. Like a true pyramid scheme, the initial members of USANA made money
26 from recruiting others, who recruited others, and so on. However, those further down the line were
27 doomed to fail. As shown by recent events, USANA’s business was built on misrepresentations and
28 concealment, which have caused the Plaintiffs and members of the Class to lose money.

1 35. Regarding the Company's distribution and marketing system, the Company's Form 10-
2 K, in relevant part, stated:

3 Distribution and Marketing

4 We distribute products through a network marketing system, which is a
5 form of person-to-person direct selling through a network of vertically
6 organized independent distributors who purchase products at wholesale
7 prices from the manufacturer and then make retail sales to consumers.
8 The emergence of readily available means of mass communication, such
9 as personal computers, facsimiles, low-cost long distance telephone
10 services, satellite conferencing and the Internet, has contributed to the
11 rapid growth of network marketing. The concept of network marketing
12 is based on the strength of personal recommendations that frequently
13 come from friends, neighbors, relatives, and close acquaintances. We
14 believe that network marketing is an effective way to distribute our
15 products because it allows person-to-person product education, which is
16 not as readily available through other distribution channels.

17 A person who wishes to sell USANA products must join our
18 independent sales force as an Associate. A person becomes an Associate
19 by completing an application under the sponsorship of an existing
20 Associate. The new Associate then becomes part of the sponsoring
21 Associate's downline sales organization. New Associates sign a written
22 contract and agree to adhere to the USANA policies and procedures.
23 New Associates are also required to purchase a starter kit that includes a
24 detailed manual, including our policies and procedures.

25 * * *

26 Associates cannot simply recruit others for the purpose of developing a
27 downline and earn income passively, depending solely on the efforts of
28 their downline. Each Associate is required to purchase a certain amount
of product each month ("Qualifying Purchases"), which they must either
resell to consumers or personally use, in order to be qualified to earn
commissions or bonuses under USANA's Compensation Plan.
[Emphasis added.]

36. The fact that one could qualify for commissions by personal use brings USANA's
business model within the parameters of a pyramid scheme or endless chain under Penal Code § 327.
Furthermore, USANA either intentionally or negligently failed to adopt the necessary internal
practices in order to insure that the Company was not operating as a pyramid scheme.

37. Regarding the sustainability of the Company's business model, the Company's Form
10-K, in relevant part, stated:

 Attract and Retain Associates and Preferred Customers

 We recognize the need to continue to attract and retain Associates. We
maintain emphasis on the partnership between the USANA management

1 team and our Associate leads. Through this partnership, our Associate
2 leaders continue to host “Health & Freedom” meetings and online
3 presentations, both aimed at presenting the business opportunity to
4 potential Associates and providing additional training and resources for
5 existing Associates. In addition to our Annual International Convention
6 and our Asia Pacific Convention, we hold several regional events in key
7 growth areas to provide support and training to new Associates in these
8 areas. We intend to continue growing our business by maintaining a
9 focus on our two core values, “True Health” and “True Wealth.” We
10 plan to accomplish this by increasing the number of active Associates
11 and teaching them how to build a strong customer base. By leveraging
12 the current growth we have in our Associate field, we believe we can
13 continue to attract individuals that are interested in joining a winning
14 team and starting a home-based business with USANA.

15 38. Regarding the Company’s compensation plan for its associates, the Company’s Form
16 10-K, in relevant part, stated:

17 **Attractive Associate Compensation Plan and Benefits**

18 We are committed to providing a highly competitive compensation plan
19 to attract and retain Associates who constitute our sales force. We
20 believe the USANA Associate compensation plan (the “Compensation
21 Plan”) is one of the most financially rewarding in the network marketing
22 industry. Associate incentives totaled \$146.3 million, or 40.1% of net
23 sales for the Direct Selling segment in 2006. We pay Associate incentive
24 weekly and our Compensation Plan is a global-seamless plan, meaning
25 that Associates can be compensated each week for their business success
26 in any market in which we conduct business. To support our Associates,
27 we sponsor meetings and events throughout the year, which offer
28 information about our products and our network marketing system.
These meetings are designed to assist Associates in business
development and to provide a forum for interaction with successful
Associates and the USANA management team. We also provide low
cost sales tools, which we believe are an integral part of building and
maintaining a successful home-based business for Associates.

39. The statements contained in ¶¶ 30 – 38 were materially false and misleading when
made because Defendants failed to disclose or indicate at least the following: (1) that the Company’s
business model was unsustainable because it required the constant recruitment of new Associates due
to a high level of attrition within the Company’s sales force; (2) that the Company’s multi-level
marketing model operated as a pyramid scheme; (3) that the majority of the Company’s Associates did
not actually sell to consumers, but rather to other Company Associates; (4) that over 74 percent of the
Company’s Associates were failing within the first year of joining the Company; (5) that over 87
percent of the Company’s Associates were losing money instead of receiving compensation for their
sales efforts; (6) that the Company lacked adequate internal and financial controls; and (7) that, as a

1 result of the foregoing, the Company's statements about its future business prospects and projections
2 was lacking in a reasonable basis when made.

3 FIRST CAUSE OF ACTION

4 Violation of California Penal Code § 327

5 Pyramid Scheme/Endless Chain

6 40. Plaintiffs, Jeannette Johnson and Christopher Crane, on behalf of themselves and all
7 others similarly situated, incorporate and reallege paragraphs 1 through 39 above, as though fully set
8 forth herein.

9 41. California Penal Code § 327, clearly defines a pyramid scheme or endless chain as a
10 crime against public decency and good morals:

11 Every person who contrives, prepares, sets up, proposes, or operates any
12 endless chain is guilty of a public offense, and is punishable by
13 imprisonment in the county jail not exceeding one year or in state prison
14 for 16 months, two, or three years.

15 As used in this section, an 'endless chain' means any scheme for the
16 disposal or distribution of property whereby a participant pays a
17 valuable consideration for the chance to receive compensation for
18 introducing one or more additional persons into participation in the
19 scheme or for the chance to receive compensation when a person
20 introduced by the participant introduces a new participant.

21 Compensation, as used in this section, does not mean or include
22 payment based upon sales made to persons who are not participants in
23 the scheme and who are not purchasing in order to participate in the
24 scheme.

25 42. As stated in Defendant USANA's 10-K, in order to qualify for commissions or
26 bonuses, a distributor must either resell products to consumers or personally use such products. In
27 practice, the distributor is taught and does sell almost exclusively to new participants in the scheme
28 because USANA must consistently recruit new Associates, or personally uses the relevant products.
Thus, distributor sales to actual retail consumers were less than 50%. Furthermore, USANA lacks the
internal controls to insure that the Company is not operating as a pyramid scheme. This is a direct
violation of Penal Code § 327.

43. Plaintiffs have suffered injury in fact and have lost money or property as a result of
Defendants' business acts, omissions and practices as alleged herein.

1 from home as an enticement to lure persons into becoming USANA distributors, targeting at times the
2 elderly and the not-so-well-off. In fact, Defendants fail to disclose the fact that very few persons made
3 money at such distributorships, and only the very top of the pyramid made substantial amounts. One of
4 Defendants' reasons for the scheme is to mask the excess prices charged for Defendants' products by
5 convincing distributors the cost will be lowered by their commission.

6 51. Defendants have also engaged in the other illegal practices alleged herein, such as
7 fraud, deceit and concealment.

8 52. The foregoing acts and omissions of Defendants, as set forth hereinabove, constitute
9 and continue to constitute unfair business practices within the meaning of section 17200 *et seq.* of the
10 California Business and Professions Code.

11 53. The effect on Plaintiffs and upon the Plaintiff Class is that the Plaintiffs and the
12 Plaintiff Class lost money and were also overcharged for the products purchased.

13 54. As a direct result of the conduct of the Defendants—whether unlawful, unfair, or
14 deceptive—as herein alleged, Plaintiffs and the Plaintiff Class have lost money and have been
15 overcharged for products purchased directly from Defendants.

16 55. Plaintiffs have suffered injury in fact and have lost money or property as a result of
17 Defendants' business acts, omissions and practices as alleged herein.

18 56. Plaintiffs, and all those similarly situated, accordingly are entitled to equitable relief
19 including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

20 57. Plaintiffs seek class certification of this cause of action as a class action, on behalf of
21 all those similarly situated, pursuant to CCP § 382.

22 THIRD CAUSE OF ACTION

23 (On Behalf Of The Plaintiff Class For Fraud and Deceit Against All Defendants)

24 58. Plaintiffs, Jeannette Johnson and Christopher Crane, on behalf of themselves and all
25 others similarly situated, incorporate and reallege paragraphs 1 through 57 above, as though fully set
26 forth herein.

27 59. Plaintiffs allege that, throughout the Class Period, Defendants failed to disclose
28 material adverse facts about the Company, its business relationships, and prospects. Specifically,

1 Defendants failed to disclose and concealed the following: (1) that the Company's multi-level
2 marketing model operated as a pyramid scheme; (2) that the Company's business model was
3 unsustainable because it required the constant recruitment of new Associates due to a high level of
4 attrition within the Company's sales force; (3) that the majority of the Company's Associates did not
5 actually sell to consumers, but rather to other Company Associates; (4) that over 74 percent of the
6 Company's Associates were failing within the first year of joining the Company; (5) that over 87
7 percent of the Company's Associates were losing money instead of receiving compensation for their
8 sales efforts; (6) that the Company lacked adequate internal and financial controls; (7) that, as a result
9 of the foregoing, the Company's statements about its future business prospects and projections were
10 lacking in a reasonable basis when made; (8) that the Company's representation of a 75% reduction in
11 "middleman" costs because of its direct marketing system was false or misleading, as each tier of
12 distribution received approximately 8% in commissions, resulting in prices which were 50% - 400%
13 above standard retail prices; for example, a 28 day supply of premium vitamins sells at GNC for \$17
14 and USANA's premium multivitamin "Essentials" sells for \$40; (9) that Associates would be less, not
15 more, profitable if they opened up more than one "business center" because the only true benefit
16 inured in the Company's favor because of the increased costs the Associates paid for additional
17 business centers; (10) that the qualifications of members of the Company's Advisory Board were
18 misrepresented and such members were biased and/or had conflicts of interest which precluded them
19 from providing independent advice; and (11) that the founder of the Company had renounced his U.S.
20 Citizenship and moved substantial assets to the Caribbean tax havens of St. Kitts and Nevis, the Isle of
21 Mann, and Liechtenstein.

22
23 60. Defendants' concealed from the Plaintiffs and the Plaintiff Class the true facts. The true
24 facts were that Defendants operated a pyramid scheme, 74% of Associates failed in the first year, and
25 87% of Associates were losing money, even though the Plaintiffs and the Plaintiff Class ordered and
26 paid for premium product, Defendants would instead supply the Plaintiffs and the Plaintiff Class with
27 similar product to that found in any retail store, that USANA did not provide "True Wealth", and that
28 the Company's stability was questionable as evidenced by Myron Wentz's attempt to insulate himself
from the jurisdiction of the United States judicial system.

1 public to enter into any obligation, to make or disseminate or cause to be made or disseminated in any
2 newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in
3 any other manner or means whatever, including over the Internet, any statement which is untrue or
4 misleading, and which is known, or which by the exercise of reasonable care should be known, to be
5 untrue or misleading.

6
7 67. Plaintiffs allege that, throughout the Class Period, Defendants failed to disclose
8 material adverse facts about the Company, its business relationships, and prospects. Specifically,
9 Defendants failed to disclose and concealed the following: (1) that the Company's multi-level
10 marketing model operated as a pyramid scheme; (2) that the Company's business model was
11 unsustainable because it required the constant recruitment of new Associates due to a high level of
12 attrition within the Company's sales force; (3) that the majority of the Company's Associates did not
13 actually sell to consumers, but rather to other Company Associates; (4) that over 74 percent of the
14 Company's Associates were failing within the first year of joining the Company; (5) that over 87
15 percent of the Company's Associates were losing money instead of receiving compensation for their
16 sales efforts; (6) that the Company lacked adequate internal and financial controls; (7) that, as a result
17 of the foregoing, the Company's statements about its future business prospects and projections were
18 lacking in a reasonable basis when made; (8) that the Company's representation of a 75% reduction in
19 "middleman" costs because of its direct marketing system was false or misleading, as each tier of
20 distribution received approximately 8% in commissions, resulting in prices which were 50% - 400%
21 above standard retail prices; for example, a 28 day supply of premium vitamins sells at GNC for \$17
22 and USANA's premium multivitamin "Essentials" sells for \$40; (9) that Associates would be less, not
23 more, profitable if they opened up more than one "business center" because the only true benefit
24 inured in the Company's favor because of the increased costs the Associates paid for additional
25 business centers; (10) that the qualifications of members of the Company's Advisory Board were
26 misrepresented and such members were biased and/or had conflicts of interest which precluded them
27 from providing independent advice; and (11) that the founder of the Company had renounced his U.S.
28 Citizenship and moved substantial assets to the Caribbean tax havens of St. Kitts and Nevis, the Isle of
Mann, and Liechtenstein.

1 68. Defendants have violated Section 17500 of the California Business and Professions
2 Code in several respects. Defendants represent that their business model eliminates 75% of middleman
3 costs. In fact, since each tier of the pyramid receives approximately 8% in commissions, the result is
4 prices for Defendants' product are 50% - 400% of competitive pricing. Defendants' Internet website
5 falsely advertises in their "opportunity" section that the Company provides an incredible experience
6 for unlimited earning potential. Defendants have further violated Section 17500 of the California
7 Business and Professions Code by making untrue or misleading statements on its Internet website. The
8 true fact of the matter is as stated herein and that USANA has concealed material information, certain
9 of its highest officers, employees and directors lack credibility, the founder has put assets offshore,
10 and the pyramid scheme is bound to fail.

11 69. Each of the members of the Plaintiff Class relied on these untrue and misleading
12 statements or omissions disseminated via Internet website, advertising materials, and/or at opportunity
13 meetings.

14 70. As a direct result of the foregoing facts, Plaintiffs and the Plaintiff Class have suffered
15 injury in fact, and have lost money or property as a result of Defendants' business acts, omissions, and
16 practices as alleged herein.

17 71. Pursuant to the provisions of Section 17535 of the California Business and Professions
18 Code, Plaintiffs, and others similarly situated, are entitled to injunctive relief, and to be restored any
19 money or property, which may have been acquired by Defendants by means of the violations of
20 Section 17500 of the California Business and Professions Code, as alleged herein.

21 72. Plaintiffs seek class certification of this cause of action as a class action, on behalf of
22 all those similarly situated, pursuant to CCP § 382.

23 WHEREFORE, Plaintiffs and the other members of the Class pray for relief as follows:

24 a. That this action be certified and maintained as a class action under California
25 Code of Civil Procedure Section 382;

26 b. That Plaintiffs and the members of the Class be awarded all damages
27 determined to have been sustained by them as a result of Defendants' conduct as complained of
28 herein, and that joint and several judgments be entered against each Defendant for the amount so

1 determined;

2 c. That the Court rescind the Associate Agreements and award restitution and/or
3 order disgorgement in favor of the Plaintiff Class through its equitable powers and through the
4 provisions of California statutes;

5 d. That the Plaintiffs and members of the Class be awarded punitive and
6 exemplary damages based on the conduct of the Defendants;

7 e. That the Court enjoin the subject conduct and enter an injunction prescribing
8 such conduct including remedial relief;

9 f. That the Court issue an injunction preventing the Defendants from transferring
10 any money or other assets outside the United States, and such other equitable relief as it deems
11 necessary;

12 g. That the Court award Plaintiffs and the members of the class prejudgment
13 interest at the maximum legal rate;

14 h. That the Court award Plaintiffs and the members of the Class costs of this
15 action, including reasonable attorneys' fees; and

16 i. That the Court give Plaintiffs and the members of the Class all other relief as
17 the Court deems just and proper.
18

19 JURY TRIAL DEMANDED

20 Plaintiffs hereby demand a jury trial.

21 Respectfully submitted,

22 LAW OFFICES OF ALEXANDER M. SCHACK
23

24
25 Dated: June 20, 2007

26 _____
27 Alexander M. Schack
28 Attorneys for Plaintiffs Jeannette Johnson,
Christopher Crane, and the Plaintiff Class