

**IN THE COUNTY COURT FOR PALM  
BEACH COUNTY, FLORIDA**

<b>JODY GORRAN,</b>	)	
	)	Case No.
Plaintiff,	)	
	)	
v.	)	
	)	
<b>ATKINS NUTRITIONALS, INC. and PAUL</b>	)	
<b>D. WOLFF,</b> Solely in his Representative	)	
Capacity as Co-Executor of the <b>Estate of</b>	)	
<b>Robert C. Atkins, M.D.,</b>	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff, Jody Gorran, hereby sues defendants Atkins Nutritionals, Inc. and Paul D. Wolff, solely in Mr. Wolff’s representative capacity as co-executor of the Estate of Robert C. Atkins, M.D., and alleges as follows:

**FACTS COMMON TO ALL COUNTS**

1. Jody Gorran is a 53-year-old businessman, residing in Delray Beach, Palm Beach County, Florida.
2. Defendant, Atkins Nutritionals, Inc. (“Atkins, Inc.”), is, upon information and belief, a New York corporation with a principal place of business in Ronkonkoma, NY.
3. Defendant, Paul D. Wolff, having a principal place of business in Ronkonkoma, NY, is sued solely in his representative capacity as co-executor of the Estate of Robert C. Atkins, M.D. (“Atkins Estate”).

4. Atkins, Inc., the Atkins Estate, and, prior to Dr. Atkins' death, Dr. Atkins personally, conducted a nationwide coordinated business enterprise throughout all 50 states, including Florida, and in each and every county of Florida, including Palm Beach County (the "Atkins Business").

5. The purpose, intent and plan of the Atkins Business was to profit through the sale of various diet-related products to Florida customers and others worldwide. The diet is called The Atkins Nutritional Approach™ (the "Atkins diet"), trademarked by Atkins, Inc.

6. The diet was conceived by Dr. Atkins in the 1970s and was originally marketed in the form of various products including books, nutritional supplements, herbs and minerals. The diet was also used to promote Dr. Atkins' medical clinic in New York City.

7. By 1998, the Atkins Business had become far more sophisticated. By that point, Dr. Atkins and Atkins, Inc., through their Web site ([www.atkins.com](http://www.atkins.com)), were running a coordinated advertising and marketing campaign in Florida and nationwide to convince the public to follow the Atkins diet and buy a series of products, including Atkins' books and other products sold by Atkins, Inc.

8. As set forth on the Atkins, Inc. Web site:

[Atkins, Inc.] was established to provide controlled carbohydrate foods and natural supplements, herbs and minerals to a growing population of people who do [the Atkins diet] and to support the practice of complementary medicine in the United States.

See, <http://atkins.com/Archive/2001/12/21-267286.html> (accessed on April 26, 2004)

(Exhibit A).

9. Since that time Atkins, Inc. has licensed the Atkins Business name and diet to other business organizations in exchange for licensing fees and the financial benefits of cross-promotion by sellers of various products, including food.

10. The Atkins diet is a high-protein, low-carbohydrate diet. The promise of the Atkins diet is that you can eat all you want, lose weight and stay healthy, so long as you restrict carbohydrates. As Atkins, Inc. states on its Web site:

Deprivation is no fun. Once the biological gap between hunger and fulfillment grows too large, the rebound can be rapid, as well as heartbreaking and humiliating. But that's the problem with diets that restrict quantities. The Atkins program refuses to accept hunger as a way of life.

According to the Atkins diet guidelines, you can eat all the steaks, fish, poultry, bacon, eggs and cheese you want, so long as you restrict carbohydrates. See, Atkins, Inc. Web site at:

<http://atkins.com/Archive/2001/11/29-367514.printable.html?> (accessed on May 25, 2004)

(Exhibit B).

11. In *Dr. Atkins' New Diet Revolution* (1999 ed.) Dr. Atkins describes his diet this way:

Diets come and go, but what people hope to get from them remains fairly constant. Let your fancy run free. Wouldn't you rather be on a diet that:

- Sets no limit on the amount of food you can eat?
- Completely excludes hunger from the dieting experience?
- Includes food so rich that you've never seen them on any other diet?
- Reduces your appetite by a perfectly natural function of the body?
- Gives you a metabolic edge so significant that the whole concept of watching calories will be absurd to you?
- Produces steady weight loss even if you have experienced dramatic failures or weight regain on other diets?
- Is so perfectly adapted to use as a lifetime diet that, unlike most diets, the lost weight won't come back?
- Consistently produces improvements in most health problems that accompany overweight?

Too good to be true? Not at all. Simply true. Moreover, repeatedly demonstrable and scientifically unimpeachable. That's a revelation.

*Id.* at 4. (Exhibit C).

12. In its most radical form, the “Induction Stage,” Atkins demands that consumers avoid all fruit, legumes (beans, peas and lentils), starchy vegetables, grains, grain products, and milk, and also abstain from caffeine and alcohol. What that leaves is meat, poultry, fish, cheese, eggs and a limited amount (no more than three cups) of salad or non-starchy vegetables.

13. In later stages of the diet, more carbohydrates are permitted, though they are still severely limited, but there is never a restriction on eating foods high in saturated fat or cholesterol.

#### **HEART DISEASE RISKS FROM THE ATKINS DIET**

14. According to the American Heart Association, approximately 1,200,000 Americans will suffer a coronary attack in 2004, that is, about 3,300 every day. American Heart Association, *Heart Disease and Stroke Statistics-2004 Update*, 2003.

15. The most common form of heart disease is atherosclerosis. Atherosclerosis occurs when plaques of cholesterol and other substances form in the artery walls, eventually clogging the passageway for blood. When plaques rupture, they trigger the formation of a blood clot, occluding the artery. When the blood supply is cut off, a part of the heart muscle dies; this is known as a heart attack.

16. Atherosclerosis is not, for the most part, caused by heredity. Only a small percentage of the population has a true genetic tendency toward heart disease.

17. Atherosclerosis is not caused by old age. The main reason that older people are more likely to have heart problems than younger people is that they have had more time to be exposed to factors encouraging atherosclerotic progression, including unhealthy eating habits.

18. Rather, the risk of developing heart disease is clearly linked to serum cholesterol concentration. The higher a person's serum cholesterol concentration, the greater the chance that person will develop heart disease.

19. The amount of saturated fat and dietary cholesterol a person consumes will influence that person's serum cholesterol level.

20. Cholesterol is found only in food products that come from animals, including beef, pork, poultry, fish, eggs, milk, cheese, yogurt, and essentially every other meat, egg, and dairy product. No foods from plants contain cholesterol.

21. Since the human body is designed to produce enough cholesterol for its needs, the intake of cholesterol through diet is unnecessary.

22. According to U.S. government recommendations, serum cholesterol levels should be below 200 milligrams per deciliter. Cholesterol consumed through diet tends to add to one's serum cholesterol level.

23. The National Heart, Lung and Blood Institute ("NHLBI"), a division of the federal government's National Institutes of Health that provides leadership for a national program of research and education in diseases of the heart, recommends that for good health, the average American adult should consume no more than 300 milligrams of dietary cholesterol per day. NHLBI further suggests that persons seeking to lower their cholesterol levels and reduce their chances of developing heart disease should consume no more than 200 milligrams of dietary cholesterol per day. These limits have been incorporated into NHLBI's National Cholesterol Education Program ("NCEP"), an educational campaign that aims to raise awareness and understanding about high blood cholesterol as a risk factor for heart disease and the benefits of lowering cholesterol levels as a means of preventing heart disease. NCEP also recommends

limiting the quantity of meat, including poultry, to be included in a cholesterol-reducing diet to no more than six ounces per day.

24. Animal products also contain saturated fat, which causes the liver to produce more cholesterol. Unsaturated fats do not have this effect. The effect of dietary saturated fat on serum cholesterol levels is greater than the effect of ingested cholesterol (although most foods high in saturated fats are also high in cholesterol and vice versa). The NCEP recommends that people seeking to lower their cholesterol levels limit their intake of saturated fat to less than seven percent of total calories.

25. The Atkins diet ignores all these recommendations. As set forth in *Dr. Atkins' New Diet Revolution* (1999 ed.) at 13, dieters

[C]an eat an almost limitless variety of meat and fish and salad and vegetables prepared in the most appetizing manner (i.e., with butter and cream and spices and herbs to taste) . . .

Further, as set forth in the preface to the paperback edition (reprinted in the hardcover edition) of Dr. Atkins' book, "you'll be able to lose while eating second and third helpings of traditional main courses." The hardcover at 22 states that:

Fat satiates the appetite. Fat is the only one of the three food categories that can stabilize blood sugar. Fat stops carbohydrate craving. And fat, in the absence of carbohydrates, accelerates the burning of stored fat. **The wise dieter can use fat to his advantage.** [Emphasis supplied.]

On page 26, Dr. Atkins states that he will show his readers:

How to use the rich sumptuous foods forbidden on other diets to make your new diet a luxurious eating pattern fit for a prince or princess.

(Exhibit D).

26. As set forth above, the Atkins Business insists that the Atkins diet is safe for everyone, regardless of the amount of high-fat food eaten.

27. The Atkins Business makes these claims despite the fact that there has not been a single long-term study of the Atkins diet. The longest study done to date followed participants for only one year. Furthermore, no study has tracked a large number of participants. As a result, there is no scientific evidence as to what effect following the Atkins diet will have on customers who follow the Atkins diet for periods longer than one year.

28. The short-term studies done to date do not establish that people can safely eat unlimited high-fat food as claimed by the Atkins Business. On the contrary, the effects of low-carbohydrate diets, including the Atkins diet, are highly variable from one person to another. Studies have shown that serum cholesterol concentrations for a sizable number of people either do not improve or significantly deteriorate on low-carbohydrate diets such as Atkins. In several studies, cholesterol levels have been shown to rise for at least some individuals on such diets. For example, two recent studies funded by the Atkins Center for Complementary Medicine (Westman 2002 and Yancy 2004) showed that approximately 30 percent of participants had increased LDL (“bad”) cholesterol. The investigators in one study reported, “Perhaps the biggest concern about the low-carbohydrate diet is that the increase in fat intake will have detrimental effects on serum lipid [i.e., cholesterol] levels.” (Yancy 2004)

29. No studies show that individuals following the Atkins diet or any other Atkins-style diet have fewer heart attacks or other cardiac events. Moreover, some studies have suggested that, because the Atkins diet is highly skewed in its macronutrient profile—very high in fat, saturated fat, protein, and cholesterol, and low in carbohydrate and fiber—even those individuals whose cholesterol levels may appear to improve over the short run on the diet have no assurance of reduced risk of heart problems.

30. Dr. Atkins acknowledged in his own writings that, for a large minority of people, risk factors worsen on the Atkins diet.

31. In *Dr. Atkins' New Diet Revolution* (1999 ed.) at page 139, Dr. Atkins states as follows:

I admit that there are individuals who are fat-sensitive and will develop a less favorable cholesterol level on a high-fat diet than on a low-fat diet. **Intensive study of medical reports strongly suggests that fewer than one person in three falls into this category.** [Emphasis supplied.]

Dr. Atkins called this phenomenon “Fat Sensitivity.” (Exhibit E).

32. Thus, defendants knew that approximately one-third of those customers who bought their products and followed their nutritional advice would have **increased** cholesterol levels and, correspondingly, **increased** risk of cardiovascular disease.

33. Plaintiff, Jody Gorran, began the Atkins diet in early May 2001. He went on the Atkins diet relying on Dr. Atkins' book, *Dr. Atkins' New Diet Revolution*, and on information learned on the Atkins, Inc. Web site. Mr. Gorran remained on the Atkins diet, in reliance on the book and the Web site, until the end of October 2003.

34. Prior to starting the Atkins diet, Mr. Gorran researched the diet and learned of warnings by the medical and scientific community that diets high in saturated fats posed a significantly increased risk for cardiovascular disease. These warnings were discussed in Dr. Atkins' book and on the Atkins, Inc. Web site. In each case, readers of the book and the Web site were told to ignore the warnings and instead to rely upon Dr. Atkins and Atkins, Inc. for advice on a healthful diet. For example, the following statements are found on the Web site:

Of the many misconceptions that surround the Atkins Nutritional Approach™, perhaps the most widespread is the assumption that eating foods high in fat is a health risk. Not so—in the absence of refined carbohydrates.

Fallacy: A nutritional approach that promotes a liberal intake of high-fat meats and dairy products will raise cholesterol levels, ultimately leading to heart disease.

Fact: It is true that every major health organization, as well as the U.S. government, endorses a low-fat diet in the unquestioned belief that fat causes heart disease. But are they right? A good deal of compelling evidence points in the opposite direction.

See, <http://atkins.com/Archive/2001/12/18-292461.html> (accessed April 29, 2004).

Is it OK for me to consume more than 20 percent of my calories in the form of saturated fat?

Absolutely, although you would really have to work at it because protein-rich foods that are high in saturated fat, such as bacon, sausage, butter, cream, the skin on poultry and the fat in red meat, fill you up pretty quickly, which means that your appetite for them is self-limiting. But this is actually beside the point. Whether you end up with 15 percent of your calories as saturated fat—or even 20 or 25 percent—you're fine *as long as you're also following the rules of the ANA, which include controlling your carbs*. There is no scientific research showing that consuming fat, saturated or otherwise, is bad for you in the context of a controlled-carbohydrate lifestyle. Indeed, as most of our followers are now aware, independent studies on the ANA released in the past two years have repeatedly confirmed that Atkins offers a hearty-healthy lifestyle.

See, <http://atkins.com/Archive/2004/2/3-915798.html> (accessed April 29, 2004).

### The Truth About Cholesterol

Rather than creating high cholesterol levels, eating saturated fat actually reduces those levels. Cholesterol is a vital substance, crucial for many bodily functions and the building block for every hormone in the body. While cardiovascular disease has been associated with elevated cholesterol levels, it's never been proven that cholesterol causes arterial plaque formation or **Atherosclerosis**.

See, <http://atkins.com/Archive/2001/12/21-587266.html> (accessed April 29, 2004).

Everyone should try to reach optimal levels of high HDL and low LDL, but Dr. Atkins does not believe that cholesterol elevations are as important a risk factor as high triglycerides, homocysteine and C-reactive protein. He does not recommend the use of statin drugs to reduce cholesterol for several reasons, including the potential risk of liver disease, muscle atrophy and, in the case of women, higher risk of cancer. Also, numerous studies on cholesterol-lowering drugs fail to show any extension of life expectancy.

See,

<http://atkins.com/helpatkins/newfaq/answers/IAMJustStartingAtkinsButMyPhysicianSaysIShould.html> (accessed April 29, 2004).

However, if you're not eating meat because you're worried about saturated fat and cholesterol, your concern may well be misplaced. As Dr. Atkins often explained, the cholesterol in your blood has very little to do with the fat and cholesterol you eat. You will lower your high-risk LDL cholesterol and total triglycerides far more effectively—and far more quickly—if you control carbohydrate consumption in general and avoid refined carbs in particular than if you avoid animal foods that contain cholesterol. In fact, lowering your dietary cholesterol intake has been shown time and again to have virtually no effect on the amount of cholesterol in your bloodstream.

See, <http://atkins.com/Archive/2003/4/30-745147.html> (accessed April 29, 2004) (Exhibit F).

35. After doing the research and reading Dr. Atkins' book and the Web site, Mr. Gorran chose to rely upon Dr. Atkins and Atkins, Inc. and followed their diet advice.

36. Before beginning the Atkins Diet, Mr. Gorran periodically had his cholesterol tested. Historically his cholesterol counts were well within the safe range (under 200 mg/dl) as established by leading medical authorities and the federal government. On October 11, 1999, his total cholesterol was 153 mg/dl, his HDL ("good") cholesterol was 62 mg/dl, his LDL ("bad") cholesterol was 81 mg/dl, and his triglycerides were 52 mg/dl. On November 9, 2000, his total cholesterol was 146 mg/dl, his HDL was 53 mg/dl, LDL was 85 mg/dl and triglycerides were 42 mg/dl. Attached hereto as Exhibit G are true copies of his laboratory results.

37. On December 21, 2000, some six months prior to starting the Atkins diet, Mr. Gorran went to Heartscore of South Florida ("Heartscore") in Boca Raton, Florida to have a computed tomography ("CT") scan of his colon performed. He did so after a colonoscopy because the doctor performing the procedure advised that he was unable to visualize the entire colon. While at Heartscore, Mr. Gorran was offered the opportunity to have a heart CT scan performed. While

he had no history of coronary artery or cardiovascular disease, simply out of curiosity Mr. Gorran decided to undergo the test. The CT scan examines the blood vessels surrounding the heart for calcified plaque. The result of Mr. Gorran's CT test was a calcium score of 0. According to the report that score led to a diagnosis of "Normal, no identifiable atherosclerotic, very low [coronary vascular disease] risk." The clinical interpretation of the test was "Negative predictive value greater than 95% for absence of significant coronary artery disease." Attached hereto as Exhibit H is a true copy of the Heartscore report dated December 21, 2000.

38. In short, six months prior to beginning the Atkins diet, Mr. Gorran had no observable atherosclerosis and his cholesterol was well within the safe range.

39. On June 26, 2001, after following the Atkins diet for about two months, Mr. Gorran had his blood checked by Quest Diagnostics, following his customary practice of having it checked yearly. The report showed trace amounts of ketones in his blood, indicating that Mr. Gorran was in ketosis as a result of abiding carefully by the Atkins diet. The Atkins Business touts ketosis as the metabolic miracle that makes the Atkins diet work. The report also showed that Mr. Gorran's total cholesterol was 230 mg/dl, his HDL ("good") cholesterol was 65 mg/dl, his LDL ("bad") cholesterol was 154 mg/dl and his triglycerides were 56 mg/dl. Thus, after about two months on the Atkins diet, Mr. Gorran's total cholesterol had risen from the safe range, well below 200 mg/dl, to the danger range, well over 200 mg/dl. The Quest report is attached hereto as Exhibit I.

40. Mr. Gorran was not concerned about this increase in his cholesterol, although he was aware that cholesterol is considered by the U.S. government to be a risk factor for heart disease. Rather, in reliance on the Atkins book and the Atkins, Inc. Web site, he believed that the diet would keep him safe as long as he strictly limited carbohydrates.

41. Had Mr. Gorran returned to Dr. Atkins' book for comfort about his heightened cholesterol levels, he would have read the following:

I admit that there are individuals who are fat-sensitive and will develop a less favorable cholesterol level on a high-fat diet than on a low fat diet. Intensive study of medical reports strongly suggests that fewer than one person in three falls into this category.

If [your cholesterol levels go up] you may be a person who is fat-sensitive. So for the next interval, eat only the lean proteins-turkey roll, skinless chicken breast, fish, farmer cheese, lean cuts of meat and so on-but do not increase your carbohydrate intake more than 5 grams. **However, if you're not happy on the low-fat version of the diet or get hungry or don't feel well on it, then don't bother with it; go back to the regular Atkins diet that you enjoyed more.**

*Dr. Atkins' New Diet Revolution* (1999 ed.) at 139. (Emphasis supplied.) (Exhibit J)

42. The Atkins, Inc. Web site gave similar assurances that increased cholesterol levels are not a reason to go off the diet. For example, posted on the Web site is an inquiry from an Atkins customer whose cholesterol had increased on the diet. In response, Atkins, Inc. suggests strict conformity with the diet and there is no suggestion that the customer should consider going off the diet.

See, <http://atkins.com/helpatkins/newfaq/answers/SinceIHaveBeenOnAtkinsMyCholesterolHasGone.html> (Exhibit K).

43. Mr. Gorran remained on the Atkins diet from early May 2001 through the end of October 2003, relying on the statements in the Atkins book and Web site that the diet was safe for everyone.

44. While on the Atkins diet, Mr. Gorran consumed numerous products purchased from Atkins, Inc., including Advantage Bars, Pancake Mix, and Pancake Syrup.

45. In early October 2003, Mr. Gorran was walking in New York City while on vacation, and felt chest pressure and pain so severe that he had to end his walk and take a taxi to his hotel.

That evening, while rushing to a play, the chest pain returned and was very severe. Upon returning home to Florida, Mr. Gorran attempted his ordinary exercise routine, but found the chest pain returned upon exercise.

46. Thereafter, Mr. Gorran scheduled a visit with a cardiologist, Bruce R. Martin, M.D., at the Boca Delray Cardiology Center and had his initial consultation on October 22, 2003. Dr. Martin took a history and physical and ordered blood work, an echocardiogram/Doppler study and a Thallium stress test. Mr. Gorran's medical records for his evaluation and treatment by Dr. Martin and his colleagues for the period October 2003 through December 2003 are attached hereto as Exhibit L.

47. Mr. Gorran's blood tests, taken on October 23, 2003 showed that he had total cholesterol of 209 mg/dl (in the danger range) with HDL ("good") cholesterol of 53 mg/dl, LDL ("bad") cholesterol of 127 mg/dl, and triglycerides of 144 mg/dl.

48. The stress test findings included "moderate ischemia of the anterior wall and apex," meaning that there was some blockage of the blood vessels leading to Mr. Gorran's heart. Mr. Gorran suffered chest discomfort during the test.

49. The echocardiogram/Doppler study findings included, "mildly abnormal LV [left ventricle] with mild hypokinesis [abnormally diminished muscular function or mobility] of the anterior wall and apex."

50. As a result of the foregoing, Dr. Martin directed Mr. Gorran to undergo immediate cardiac catheterization at the Delray Medical Center. Dr. Rasvan M. Carp performed the initial diagnostic procedure. The hypokinesis observed during the echocardiogram was demonstrated. Critically, there was a 99% stenosis [narrowing] of one of Mr. Gorran's coronary arteries. As a result of this observation, Dr. Richard Kim performed angioplasty (surgical repair of the blood

vessel by inserting a balloon tipped catheter to unclog it). Dr. Kim then placed a drug-coated stent (a small expandable tube) into Mr. Gorran's artery to help it remain open.

51. Upon discharge from the hospital on October 28, 2003, Dr. Martin advised Mr. Gorran to discontinue the Atkins diet (as noted in his medical records, Mr. Gorran had been eating large amounts of pastrami and cheesecake, because the Atkins diet allows unlimited pastrami and Atkins, Inc. sells a cheesecake that is "Atkins friendly") and to stop taking all herbs and supplements. Dr. Martin recommended that Mr. Gorran stop the Atkins diet because of the dangers of saturated fat allowed on the diet.

52. Dr. Martin advised Mr. Gorran that if he had not sought prompt treatment for his condition, he might well have had a massive heart attack and died within a short period of time.

53. On December 22, 2003, Mr. Gorran returned to Dr. Martin for a follow-up visit. Dr. Martin ordered blood work, which was done the following day. With Mr. Gorran off the Atkins diet, his total cholesterol returned to levels normal for Mr. Gorran with total cholesterol of 146 mg/dl, HDL of 52 mg/dl, LDL of 81 mg/dl and triglycerides of 65 mg/dl.

54. After his cardiac problems, Mr. Gorran again researched the Atkins diet and learned that widely respected members of the medical and scientific community had continued to issue warnings about the Atkins diet, warnings that Dr. Atkins and Atkins, Inc. had urged their readers to ignore. Had Mr. Gorran not been misled by the statements in Dr. Atkins' book and the Web site, that these widespread warnings were incorrect or false, he would never have followed the diet **and would never have suffered blockage.**

55. Such warnings include, but are not limited to the following. The American Heart Association makes the following recommendation with respect to high-protein diets, such as the Atkins Diet:

**The American Heart Association doesn't recommend high-protein diets for weight loss. Some of these diets restrict healthful foods that provide essential nutrients and don't provide the variety of foods needed to adequately meet nutritional needs. People who stay on these diets very long may not get enough vitamins and minerals and face other potential health risks.**

## Background

Many Americans follow popular diets such as Atkins . . . . Most of these diets aren't balanced in terms of the essential nutrients our bodies need. Some are high protein and emphasize foods like meat, eggs and cheese, which are rich in protein and saturated fat. Some restrict important carbohydrates such as cereals, grains, fruits, vegetables and low-fat dairy products. If followed for a long time, they can result in potential health problems. And while they may result in quick weight loss, they have not been proven effective for long-term weight loss.

These diets can cause a quick drop in weight because eliminating carbohydrates causes a loss of body fluids. Lowering carbohydrate intake also prevents the body from completely burning fat. In the diets that are also high in protein, substances called ketones are formed and released into the bloodstream, a condition called ketosis. It makes dieting easier because it lowers appetite and may cause nausea.

But these diets have other effects besides inducing quick weight loss. Most Americans already eat more protein than their bodies need. And eating too much protein can increase health risks. High-protein animal foods are usually also high in saturated fat. Eating large amounts of high-fat foods for a sustained period raises the risk of coronary heart disease, diabetes, stroke and several types of cancer. People who can't use excess protein effectively may be at higher risk of kidney and liver disorders, and osteoporosis.

That's why the American Heart Association guidelines urge adults who are trying to lose weight and keep it off to eat no more than 30 percent of total daily calories from fat and less than 10 percent from saturated fat. On most high-protein diets, meeting these goals isn't possible.

Some high-protein diets de-emphasize high-carbohydrate, high-fiber plant foods. These foods help lower cholesterol when eaten as part of a nutritionally balanced diet. Reducing consumption of these foods usually means other, higher-fat foods are eaten instead. This raises cholesterol levels even more and increases cardiovascular risk.

High-protein diets don't provide some essential vitamins, minerals, fiber and other nutritional elements. A high-carbohydrate diet that includes fruits, vegetables, non-fat dairy products and whole grains also has been shown to reduce blood pressure. Thus, limiting these

foods may raise blood pressure by reducing the intake of calcium, potassium and magnesium while simultaneously increasing sodium intake. [Emphasis in the original.]

See American Heart Association Web Site at

<http://www.americanheart.org/presenter.jhtml?identifier=11234> (accessed on March 17, 2004) (Exhibit

M).

56. The American Dietetic Association issued the following warning: “Fad Diets:

What You May Be Missing:”

How can you spot a fad diet?

Weight-loss advice comes in literally hundreds of disguises. Most often the “new” and “revolutionary” diets are really old fad diets making an encore appearance. Examples of fad diets include those that

- tout or ban a specific food or food group,
- suggest that food can change body chemistry, or
- blame specific hormones for weight problems.

Food-specific diets rely on the myth that some foods have special properties that can cause weight loss or gain. But no food can. These diets don’t teach healthful eating habits; therefore, you won’t stick with them. Sooner or later, you’ll have a taste for something else -- anything that is not among the foods you’ve been “allowed” on the diet.

The popular high-protein, low-carbohydrate diets are based on the idea that carbohydrates are bad, that many people are “allergic” to them or are insulin-resistant, and therefore gain weight when they eat them. The truth is that people are eating more total calories and getting less physical activity, and that is the real reason they are gaining weight. These high-protein, low-carbohydrate diets tend to be low in calcium and fiber, as well as healthy phytochemicals (plant chemicals). Some authors of these fad diets advise taking vitamin-mineral supplements to replace lost nutrients. However, supplements should “bridge the gap” in healthy eating and not be used as a replacement for nutrient-rich foods.

Also, the authors of high-protein, low-carbohydrate diets advocate taking advantage of ketosis to accelerate weight loss. Ketosis is an abnormal body process that occurs during starvation due to lack of carbohydrates. Ketosis can cause fatigue, constipation, nausea, and vomiting. Potential long-term side effects of ketosis include heart disease, bone loss, and kidney damage.

See, American Dietetic Association Web site at

[http://www.webdietitians.org/Print/92\\_nfs0200b.cfm](http://www.webdietitians.org/Print/92_nfs0200b.cfm) (accessed March 17, 2004) (Exhibit N).

57. Mr. Gorran suffered severe pain and physical and emotional distress as a result of his cardiac problems and surgical repair.

58. Mr. Gorran has now returned to normal health, except that he may have to undergo additional surgical procedures if his stent fails and requires replacement.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

(Negligent Misrepresentation Causing Personal Injury)

59. Plaintiff repeats and incorporates by reference paragraphs 1-58 of the complaint.

60. This is an action for damages less than \$15,000.00, exclusive of interest, costs, and attorney's fees.

61. Atkins, Inc. and Dr. Atkins made misrepresentations of fact in the Atkins' books and on the Atkins, Inc. Web site, including without limitation statements to the effect that it was safe for all persons to eat a high-fat diet, as long as carbohydrate intake was restricted in accordance with the Atkins diet.

62. Atkins, Inc. and Dr. Atkins knew, or should have known, that certain of their statements about the Atkins diet were false.

63. Atkins, Inc. and Dr. Atkins intended customers to rely upon the statements in the books and on the Web site to induce purchase of books and other products, including food and nutritional supplements.

64. Mr. Gorran relied upon the statements of Atkins, Inc. and Dr. Atkins in going on and staying on the Atkins diet and was injured as result of his reliance.

65. Mr. Gorran has suffered severe and potentially permanent damages as a result of his reliance on the false statements of Atkins, Inc. and Dr. Atkins.

WHEREFORE, Plaintiff demands judgment against Defendants, Atkins Nutritionals, Inc., and the Estate of Robert C. Atkins, M.D., for damages less than \$15,000.00, interest (including prejudgment interest), and costs incurred herein, and for any and all such other relief as the Court deems just and proper.

**SECOND CAUSE OF ACTION**  
(Product Liability Claim for Personal Injury)

66. Plaintiff repeats and incorporates by reference paragraphs 1-58 and 61-65 of the complaint.

67. This is an action for damages less than \$15,000.00, exclusive of interest, costs, and attorney's fees.

68. The books, nutritional supplements, minerals, and herbs sold by Atkins, Inc. and Dr. Atkins are products, sold by Atkins, Inc. and Dr. Atkins in the course of their business.

69. All of these products are marketed by use of the books, the Atkins, Inc. Web site, and a multi-million-dollar nationwide advertising campaign to develop a large number of customers who adopt the Atkins diet, rely on the books and Web site to stay on the diet, and purchase various products sold by Atkins, Inc. and Dr. Atkins as a result of that marketing campaign.

70. The products are defective and unreasonably dangerous, in that the diet and the diet advice put at least a substantial minority of persons purchasing the products and following the diet at increased risk of cardiovascular disease and other illnesses.

71. Mr. Gorran used the products and the advice in a reasonable manner and as Atkins, Inc. and Dr. Atkins intended they be used.

72. Mr. Gorran suffered serious injury from his reasonable and foreseeable use of the products of Atkins, Inc., and Dr. Atkins.

WHEREFORE, Plaintiff demands judgment against Defendants, Atkins Nutritionals, Inc., and the Estate of Robert C. Atkins, M.D., for damages less than \$15,000.00, interest (including prejudgment interest), and costs incurred herein, and for any and all such other relief as the Court deems just and proper.

**THIRD CAUSE OF ACTION**  
(Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"))

73. Plaintiff repeats and incorporates by reference paragraphs 1-58, 61-65, 68-72 of the complaint.

74. This is an action for damages in the amount of \$40.45, exclusive of interest, costs, and attorney's fees, and for injunctive relief.

75. Mr. Gorran is a consumer within the meaning of Section 501.203(7), *Florida Statutes*.

76. Atkins, Inc. and Dr. Atkins have conducted trade or commerce with Mr. Gorran, within the meaning of Sections 501.203(8), *Florida Statutes*.

77. Atkins, Inc. and Dr. Atkins have engaged in unfair or deceptive acts or practices, or unconscionable acts or practices, in the conduct of trade or commerce with Mr. Gorran, which acts or practices are unlawful, pursuant to Section 501.204(1), *Florida Statutes*.

78. Atkins, Inc.'s and Dr. Atkins' unfair, deceptive, or unconscionable acts or practices, unlawful under Section 501.204, *Florida Statutes*, include, without limitation, the following:

a. Touting the Atkins diet and products as safe for all customers when they well knew that, for at least a substantial minority of their customers, the diet and their products carried potential serious risks.

b. Failing to give adequate warnings about the adverse health consequences of a high-fat diet.

c. Claiming that the diet was “fool-proof” and a guaranteed success when they well knew that there would be people for whom the diet would not be safe.

79. Atkins, Inc.’s and Dr. Atkins’ unfair, deceptive, or unconscionable acts or practices offend established public policy.

80. Atkins, Inc.’s and Dr. Atkins’ unfair, deceptive, or unconscionable acts or practices are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, including Mr. Gorran.

81. Atkins, Inc.’s and Dr. Atkins’ unfair, deceptive, or unconscionable acts or practices involve false representations, express or implied, to Mr. Gorran concerning material facts.

82. Millions of consumers acting reasonably under the circumstances have relied, as Mr. Gorran relied, on Atkins Inc.’s and Dr. Atkins’ misrepresentations concerning their diet and products and have been misled under the circumstances, as Mr. Gorran was misled. But for these misrepresentations, Mr. Gorran would never have purchased any of defendants’ products.

83. Atkins, Inc.’s and Dr. Atkins’ unfair, deceptive, or unconscionable acts or practices constitute violations of FDUTPA within the meaning of Section 501.203(3), *Florida Statutes*.

84. Mr. Gorran has suffered a loss as a result of Atkins, Inc.’s and Dr. Atkins’ violations of FDUTPA and is entitled to recover actual damages from defendants, pursuant to Section 501.211(2), *Florida Statutes*. Mr. Gorran’s actual damages include the cost of the 1999 edition of Dr. Atkins’ book in paperback, \$7.50, plus the cost of the 2002 edition of Dr. Atkins’s book in paperback, \$7.95, plus the cost of products purchased from Atkins, Inc., in the approximate amount of \$25, plus prejudgment interest as provided by law.

85. Atkins, Inc. and Dr. Atkins continue to violate FDUTPA and will continue to violate FDUPTA unless this Court issues an injunction preventing further violations of the law. That

injunction should require warnings on all Atkins' related books, Web sites and products such as the following:

**WARNING - LOW-CARBOHYDRATE DIETS MAY BE HAZARDOUS TO YOUR HEALTH - CHECK WITH YOUR PHYSICIAN.**

**WARNING - LOW-CARBOHYDRATE DIETS CAN INCREASE THE LEVEL OF LDL ("BAD") CHOLESTEROL IN YOUR BLOOD.**

WHEREFORE, Plaintiff demands judgment against Defendants, Atkins Nutritionals, Inc. and the Estate of Robert C. Atkins, M.D., for damages in the amount of \$40.45, interest (including prejudgment interest), and costs incurred herein; a declaratory judgment that defendants have violated FDUTPA; a permanent injunction preventing Atkins Nutritionals, Inc., and Dr. Atkins from promoting and marketing their diet and products unless each such product and all marketing materials used have warnings deemed adequate by the Court to advise consumers of the risks of the Atkins diet; and for such other and further relief as the Court deems just and proper.

Dated: May 26, 2004

Respectfully submitted,

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