

STATE OF NORTH CAROLINA

File No.

19 CV3 1395

ALAMANCE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

OUTLAW LABORATORY, LP

Address

C/O OERTEL, KOONTS & OERTEL, PLLC

City, State, Zip

BURLINGTON NC 27215

FILED

2019 JUN 28 AM 10:33

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Name Of Defendant(s)

Ch1400, M.M. FOWLER, INC., JAY SHREEE GANESH, LLC,

OM of NORTH CAROLINA, LLC, M.L. BARNES, JR., et al

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

C. GARLAND RAKESTRAW

Post Office Box 13

Stoneville

NC 27048

Name And Address Of Defendant 2

C. GARLAND RAKESTRAW, LLC

By its Registered Agent, C. Garland Rakestraw

Post Office Box 13

Stoneville

NC 27048



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

GEOFFREY K. OERTEL

OERTEL, KOONTS & OERTEL, PLLC

3493 FORESTDALE DRIVE, SUITE 103

BURLINGTON

NC 27215

Date Issued

6-28-2019 10:16

Time

AM PM

Signature

C. McBrown

Deputy CSC

Assistant CSC

Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC

Assistant CSC

Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant C. GARLAND RAKESTRAW
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant C. GARLAND RAKESTRAW, LLC
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA FILED

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION**

ALAMANCE COUNTY 2019 JUN 28 AM 10:16

19 CVS 1395

ALAMANCE COUNTY C.L.C

OUTLAW LABORATORY, LP,)
RY ✓)
Plaintiff,)

vs.)

**COMPLAINT and
DEMAND FOR JURY TRIAL**

**Ch1400, LLC., M.M. FOWLER, INC., JAY SHREE
GANESH, LLC, OM of NORTH CAROLINA, LLC,
M. L. BARNES, JR., THE TOBACCO HOT SPOT,
LLC, C. GARLAND RAKESTRAW, C. GARLAND
RAKESTRAW, LLC;**)

Defendants.)

NOW COMES Plaintiff, by and through undersigned counsel, complaining of the acts of the Defendants and alleges and states as follows:

PARTIES, JURISDICTION AND VENUE

1. That Plaintiff, Outlaw Laboratory, LP, is Texas limited partnership organized under the laws of the State of Texas.
2. That upon information and belief the Defendant Ch1400, LLC is a North Carolina Limited Liability Company organized and existing under the laws of the State of North Carolina with its principal office located in the City of Greensboro, Guilford County, North Carolina.
3. That upon information and belief the Defendant M.M. Fowler, Inc. is a North Carolina Corporation organized and existing under the laws of the State of North Carolina with its principal office located in the City of Durham, Durham County, North Carolina.
4. That upon information and belief the Defendant Jay Shree Ganesh, LLC is a North Carolina Limited Liability Company organized and existing under the laws of the State of North Carolina with its principal office located in the City of Jamestown, Guilford County, North Carolina.
5. That upon information and belief the Defendant, OM of North Carolina, LLC is a North Carolina Limited Liability Company organized and existing under the laws of the State of

North Carolina with its principal office located in the City of Greensboro, Guilford County, North Carolina.

6. That upon information and belief the Defendant, M.L. Barnes is a citizen and resident of Durham County, North Carolina.

7. That upon information and belief the Defendant, The Tobacco Hot Spot, LLC is a North Carolina Limited Liability Company organized and existing under the laws of the State of North Carolina with its principal office located in the City of Durham, Durham County, North Carolina.

8. That upon information and belief the Defendant, C. Garland Rakestraw is a citizen and resident of Guilford County, North Carolina.

9. That upon information and belief the Defendant, C. Garland Rakestraw, LLC is a North Carolina Limited Liability Company organized and existing under the laws of the State of North Carolina with its principal office located in the City of Stoneville, Rockingham County, North Carolina.

INTRODUCTION

11. The preceding paragraphs are re-alleged and incorporated herein as if fully set forth.

12. Defendants are engaged in a scheme to distribute and sell "male enhancement" pills containing undisclosed pharmaceuticals to the general public. Specifically, Defendants offer for sale various sexual enhancement products including, but not limited to, Rhino 25K 15000, Rhino 7 Platinum 5000, Rhino 12 Titanium 6000, GoldReallas, Libigrow XXXXTREME, S.W.A.G, Stiff Nights, Goldreallas Original, Libigirl, FX3000, Rhino 8 Platinum 8000, Black Panther, Grande X 5800, Herb Viagra, Black Mamba Premium, Triple Green, Boss-Rhino Gold X-tra Strength and Black Ant King, (collectively, the "Enhancement Products"). All of the Enhancement Products have been the subject of laboratory testing and public announcements by the FDA, which found these products to contain hidden drug ingredients such as Sildenafil (a prescription drug), desmethyl carbodenafil (an analogue of Sildenafil), dapoxetine (an unapproved anti-depressant drug) and tadalafil (a prescription drug), among other dangerous undisclosed ingredients.

13. The Enhancement products are distributed by individuals and business entities through the retail stores named herein as co-defendants (the "Retail Defendants"). Plaintiff has sent letters to each of the Retail Defendants making demands that they cease and desist from the illicit activity. The Retail Defendants have not complied with the demands.

14. Plaintiff is the manufacturer of competing products called "TriSteel" and "TriSteel 8-hour," which are DSHEA-compliant male enhancement products made in the USA and distributed for sale in all 50 United States.

15. The proliferation of mislabeled male enhancement pills has grown in the shadows of intermittent enforcement of nutritional supplement laws. In this regard, the FDA has issued several public notices regarding the use of Sildenafil in over the counter "male enhancement" supplements but has only taken action on a handful of cases. The Supplier Defendants and the Retail Defendants have taken full advantage of this regulatory landscape, making significant profits selling dangerous products while openly engaging in illicit activity.

16. Thus, Plaintiffs only recourse is a civil action to protect the commercial interests recognized by the Lanham Act and to expose the scheme detailed herein. As such, Defendants have knowingly and materially participated in a false and misleading advertising campaign to promote and sell its Enhancement Products, giving consumers the false impression that these products are safe when in reality, Defendants are well aware that the Enhancement Products contain hidden drug ingredients.

17. Defendants' false and misleading statements and advertising pose extreme health risks to consumers in at least two ways. First, Defendants mislead consumers into believing that the advice and authorization of a licensed medical professional is not required to mitigate or avoid the potentially life-threatening side effects, drug interactions and contraindications of the Sildenafil and other drugs ingredients hidden in the Enhancement Products. Second, by failing to inform consumers that the Enhancement Products contain Sildenafil, consumers who know that their medical history and drug prescriptions make Sildenafil consumption dangerous may nevertheless consume the Enhancement Products because they are not made aware they contain Sildenafil.

18. Defendants have knowingly and materially participated in false and misleading marketing, advertising, dissemination and labeling to promote and sell the Enhancement Products, giving consumers the false impression that these products are safe and natural dietary supplements when in reality Defendants know that the Enhancement Products contain synthetic prescription drug ingredients that pose serious health dangers when taken without the supervision of a licensed medical professional.

19. Such false and misleading marketing and advertising is dangerous to individual consumers and harmful to the dietary supplement industry as a whole. Defendants have created an illegitimate marketplace of consumers seeking to enhance their sexual performance but who are not informed, or who are misinformed, of the serious dangers of using Defendants' Enhancement Products. Consumers of the Enhancement Products have little or no incentive to use natural, legitimate and safe sexual performance enhancement products, such as Plaintiffs TriSteel or TriSteel 8-hour, until they are harmed, or Defendants' Enhancement Products are taken off of the shelves. Defendants' continuing false, misleading, and deceptive practices have violated the Lanham Act and have unjustly enriched Defendants at the expense of Plaintiff, and have harmed Plaintiffs commercial interests, including but not limited to, loss of revenue, disparagement and loss of goodwill.

20. Among other things, this action seeks to enjoin Defendants from the marketing and sale of any and all of the Enhancement Products, disgorgement of Defendants' profits, treble damages, punitive damages and attorneys' fees provided by the Lanham Act.

FACTUAL ALLEGATIONS

Sildenafil

21. The preceding paragraphs are re-alleged and incorporated herein as if fully set forth.
22. The FDA has approved Sildenafil for treatment of erectile dysfunction. However, because of known side effects, drug interactions and contraindications, the FDA has deemed Sildenafil to be a prescription drug that can only be administered under the supervision of a medical professional.
23. The serious side effects of Sildenafil include, for example, priapism (i.e. prolonged penile erections leading to tissue death and potential permanent erectile dysfunction), severe hypotension (i.e., low blood pressure), myocardial infarction (i.e., heart attack), ventricular arrhythmias, stroke, increased intraocular pressure (i.e. increased eye fluid pressure), anterior optic neuropathy (i.e., permanent optic nerve damage), blurred vision, sudden hearing loss and dizziness.
24. The serious negative drug interactions of Sildenafil include, for example, (i) interacting with alkyl nitrates and alpha-1 blockers to cause angina and life-threatening hypotension, (ii) interacting with protease inhibitors to increase the incidence and severity of side effects of Sildenafil along, and (iii) interacting with erythromycin and cimetidine to cause prolonged plasma half-life levels.
25. In addition to these risks, contraindication of Sildenafil includes underlying cardiovascular risk factors (such as recent heart surgery, stroke or heart attack) since consumption of Sildenafil by individuals with these conditions can greatly increase the risk of heart attack.
26. Because of these dangerous side effects, drug interactions and contraindications, the advice and authorization of appropriate licensed medical professionals is absolutely crucial for the safe consumption of Sildenafil. Without such safeguards, the consequences can be dire; the sale of mislabeled Sildenafil in similar circumstances has led to multiple deaths reported in the media.

Defendants' Scheme

27. The Supplier Defendants are wholesale suppliers and distributors of various sexual enhancement supplements, which are often imported from China, rarely disclose any manufacturer information on their packaging and contain hidden drug ingredients. The Enhancement Products are generally sold in single-pill form. The Supplier Defendants distribute the Enhancement Products through a network of Retail Defendants, detailed herein, who own and operate independent businesses selling the Enhancement Products, disseminate false claims about the Enhancement Products and profit from the sale of dangerous products to consumers at a large markup on each pill.
28. The Supplier Defendants contact retailers such as the Retail Defendants and offer the Enhancement Products for sale. The Enhancement Products are high-margin products and, as such, are situated at or near the checkout counter. The Enhancement Products are all subject to

FDA public announcements regarding their illicit contents, however, the Retail Defendants still participate in their sale, due to their profitability.

Defendants' False Statements Regarding the Enhancement Products

29. Defendant **Ch1400, LLC** operates a retail location at 1402 N. Church Street in Burlington, North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitation, Rhino 8 Platinum 8000, Libigirl and Rhino 12 Titanium 6000.

30. Defendant **M.M. FOWLER, INC** operates a retail location at 3511 Hillsborough Road in Durham, North Carolina which advertises and offers for sale various **sexual enhancement** products, including without limitation, Boss-Rhino Gold X-tra Strength.

31. Defendant **JAY SHREE GANESH, LLC** operates a retail location at 5600 W. Friendly Avenue in Greensboro North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitation, Libigrow XXXTRTEME, S.W.A.G. and Black Panther.

32. Defendant **OM of NORTH CAROLINA, LLC** operates a retail location at 2300 Randleman Road in Greensboro, North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitation, S.W.A.G.

33. Defendant **M. L. BARNES** operates a retail location at 801 Broad Street in Durham, North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitations, _Boss-Rhino Gold X-tra Strength.

34. Defendant **THE TOBACCO HOT SPOT, LLC** operates a retail location at 2806 Guess Road in Durham, North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitation, Boss-Rhino Gold X-tra Strength, Black Panther and Black Mamba Premium.

35. Defendants **C. GARLAND RAKESTRAW (Individually)** and **C. GARLAND RAKESTRAW, LLC** operate a retail location at 601 Gallimore Dairy Road in High Point, North Carolina, which advertises and offers for sale various sexual enhancement products, including without limitation, Rhino 8 Platinum 8000.

36. The Defendants commercially market, advertise, distribute, disseminate, offer for sale and profit from the Enhancement Products. The Enhancements Products claim that they are "ALL NATURAL", a "NATURAL FORMULA," with "NO HARMFUL synthetic chemicals" and "NO PRESCRIPTION necessary." They also claim to offer "NO HEADACHE" and to have limited side effects. However, such claims are materially false and misleading. Contrary to Defendants' statements, recent FDA laboratory analyses have confirmed that the Enhancement Products contain Sildenafil, a synthetic pharmaceutical with profound side effects, among other hidden drug ingredients.

37. Defendants' false statements and advertising pose extreme health risks to consumers in at least two ways. First, by stating that no prescription is necessary to consume the Enhancement Products, Defendants mislead consumers into believing that the advice and authorization of a licensed medical professional is not required to mitigate or avoid the potentially life-threatening side effects, drug interactions and contraindications of Sildenafil hidden in the Enhancement Products. Second, by failing to inform consumers that the Enhancements Products contain Sildenafil, consumers who know that their medical history and drug prescriptions make Sildenafil consumption dangerous may nevertheless consume the Enhancement Products because they are unaware that they contain Sildenafil.

38. Accordingly, Defendants' false and misleading advertising. Is dangerous to individual consumers and harmful to the dietary supplement industry as a whole. Defendants have created an illegitimate marketplace of consumers seeking to enhance their sexual performance but who are not informed, or who are misinformed, of the serious dangers of using Defendants' Enhancement Products. The ubiquity of the Enhancement Products, their relatively low cost to manufacture in comparison to natural products, and their dramatic enhancement products, such as TriSteel or TriSteel 8hour, are at a huge disadvantage in their efforts to obtain market share.

PLAINTIFF'S DIETARY SUPPLEMENTS: TriSteel and TriSteel 8hour

39. Plaintiff is a manufacturer of DSHEA-compliant dietary supplements. Plaintiff manufactures and offers for sale TriSteel and TriSteel 8hour, male sexual enhancement supplements that promote increased sexual desire and stamina. The ingredients in TriSteel are Epimedium Extract (leaves), Yohimbe Extract (8 mg Yohimbine Alkaloids), Xanthoparmelia Scabrosa Extract (Lichen), Gamma Amino Butric (GABA), L-Arginine, Gelatin, Cellulose, Magnesium Sterate and Silica. Plaintiff sells TriSteel and TriSteel 8hour in all 50 states through its website, as well as through many other online and storefront retail locations.

FIRST CLAIM FOR RELIEF

False Advertising in Violation of Section 43(a)(1)(B) of the Lanham Act

44. Plaintiff incorporates the allegations contained in the foregoing paragraphs as though fully set forth herein in their entirety.

41. Defendants have knowingly and purposely made false and misleading descriptions of fact concerning the nature, characteristics and qualities of the Enhancement Products by, without limitations, commercially marketing and claiming that the Enhancement that they sell are safe and natural "dietary supplements" that will enhance a consumer's sexual performance without requiring a doctor's prescription, all while purposefully omitting that (a) the Enhancement Products contain Sildenafil and therefore cannot be "dietary supplements," (b) Sildenafil is not naturally occurring, (c) Sildenafil is a prescription drug requiring the prior authorization and supervision of a licensed medical professional, and (d) consumption of Sildenafil without consultation and advice from a licensed medical professional poses extreme health risks, including without limitation, hypertension, heart attack and death.

42. The use of such false, misleading and disingenuous marketing has the tendency to deceive a substantial segment of the public and consumers, including those in this district, into believing that they are purchasing a product with different characteristics.

43. This deception is material because it is likely to influence a consumer's purchasing decisions, especially if the consumer (a) is looking for an all-natural sexual enhancement dietary supplement, (b) is purchasing the Enhancement Products out of an attempt to avoid Sildenafil because the consumer know that Sildenafil poses special health risks given such consumer's medical history or current drug prescriptions, and/or (c) wants to avoid taking any prescription drugs, generally, but especially without the supervision of a licensed medical professional. The deception is also material because a consumer's decision to purchase the Enhancement Products could lead to dangerous and unanticipated health consequences of which consumers are not informed.

44. Defendants have introduced their false and misleading statements into interstate commerce via marketing and advertising on product packages and labels, and on display cases placed in retail locations in the state of Georgia. Defendants sell or offer to sell the Enhancement Product to transient interstate travelers.

45. Plaintiff has been injured as a result of Defendants' false and misleading statements. Specifically, Defendants' false and misleading advertising concerning the Enhancement Products has negatively impacted Plaintiffs sales of TriSteel and TriSteel 8hour because both products are intended for sexual performance enhancement and target the same consumers. Thus, Plaintiff has suffered both an ascertainable economic loss of money and reputational injury by the diversion of business from Plaintiff to Defendants and the loss of goodwill in Plaintiffs products. The ubiquity of the Enhancement Products, their relatively low cost to manufacture in comparison to natural products (like TriSteel and TriSteel 8 hour), struggle to obtain market share. Moreover, Defendants conduct has created reputational damage in that Defendants misconduct damages the marketplace as a whole and has the tendency to disparage the goodwill associated the Plaintiff's brand.

46. Defendants' actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising promotion, misrepresent the nature, characteristics, and qualities of its products in violation of Section 43(a)(1)(B) of the Lanham Act.

SECOND CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C.G.S. 75-1.1)

47. Plaintiff incorporates the allegations contained in the foregoing paragraphs as though fully set forth herein in their entirety.

48. The acts and conduct of the Defendants as alleged herein constitute unfair and deceptive trade practices, and unfair competition in violation of N.C. Ge Stat. 75-1.1, *et seq.*, including making false and misleading advertising regarding the products they sell and other acts described herein.

49. The conduct of the Defendants as alleged herein was in and affecting commerce.

50. As a direct and proximate result of Defendants unfair and deceptive conduct, Plaintiffs sales of TriSteel and TriSteel 8hour have been negatively impacted because both products are intended for sexual performance enhancement and target the same consumers.


51. As a direct and proximate result of Defendants conduct Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial.

PRAYERS FOR RELIEF

Wherefore, Plaintiff prays for Judgment against Defendants as follows:

1. For preliminary and permanent injunctive relief enjoining Defendants from producing, licensing, disseminating, marketing and selling any of the Enhancement Products, including but not limited to: Rhino 25K 15000, Rhino 7 Platinum 5000, Rhino 12 Titanium 6000, GoldReallas, Libigrow XXXTREME, S.W.A.G, Stiff Nights, Goldreallas Original, Libigirl, FX3000, Rhino 8 Platinum 8000, Black Panther, Grande X 5800, Herb Viagra, Black Mamba Premium, Triple Green, Boss-Rhino Gold X-tra Strength and Black Ant King;
2. For an award of compensatory damages to be proven at trial in accordance with 15 U.S.C. § 1117, in an amount to be proven at trial in excess of Twenty-Five Thousand Dollars (\$25,000.00);
3. For an award of any and all of Defendants' profits arising from the foregoing acts in accordance with 15 U.S.C. § 1117 and other applicable laws;
4. For restitution of Defendants' ill-gotten gains;
5. For treble damages in accordance with 15 U.S.C. § 1117;
6. For treble damages in accordance with N.C.Gen. Stat. 75-16;
7. For punitive damages;
8. For costs and attorneys' fees;
9. For attorneys' fees in accordance with N.C. Gen. Stat. 75-16.1;
10. For trial by jury on all issues raised herein; and
11. For any other and further relief which the Court may deem just and proper.

Respectfully submitted this 26th day of June, 2019.



Geoffrey K. Oertel

[NCSB# 29371]

Attorney for Plaintiff

OERTEL, KOONTS & OERTEL, PLLC

3493 Forestdale Drive, Suite 103

Burlington, NC 27215

Telephone: 336-524-0355

Facsimile: 336-584-3972

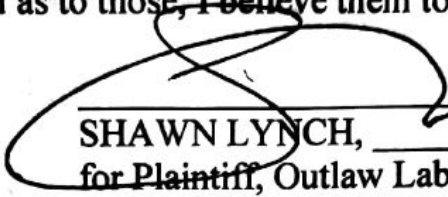
Email: GeoffOertel@okolaw.com

VERIFICATION


STATE OF TEXAS

COUNTY OF HARRIS

I, SHAWN LYNCH, being first duly sworn, deposes and says that I am the vice president for OUTLAW LABORATORY, LP, the Plaintiff herein, and that I have read the foregoing COMPLAINT and DEMAND FOR JURY TRIAL; that all matters and things alleged therein are true of my own knowledge, save and except those things stated therein upon information and belief, and as to those, I believe them to be true.


SHAWN LYNCH,
for Plaintiff, Outlaw Laboratory, LP

SWORN TO AND SUBSCRIBED before me this 22 day of June, 2019.



Notary Public

My Commission Expires: 06/18/2022

