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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ED HAZLIN and KAREN ALBENCE on
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

vs.

BOTANICAL LABORATORIES, INC., a
Washington Corporation, SCHWABE
NORTH AMERICA, INC., a Wisconsin
Corporation and BOTANICAL
LABORATORIES, L.L.C., a Delaware
Limited Liability Company and Does 1-20,

Defendants.

Case No. 13-CV-00618-DMS (JMA)

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE
CONSUMERS LEGAL REMEDIES
ACT,
Civil Code §1750, *et seq.*; and
3. BREACH OF EXPRESS
WARRANTY.

JUDGE: HON. DANA M. SABRAW
COURTROOM: 13A

DEMAND FOR JURY TRIAL

1 Plaintiffs ED HAZLIN and KAREN ALBENCE bring this action on behalf of
2 themselves and all others similarly situated against Defendants BOTANICAL
3 LABORATORIES, INC. (“BLI”), BOTANICAL LABORATORIES, L.L.C. (“BLLLC”),
4 SCHWABE NORTH AMERICA, INC. (“SCHWABE”) and Does, 1 through 20
5 (collectively “Defendants”) and state:

6 NATURE OF ACTION

7 1. Defendants distribute, market and sell “Wellesse Joint Movement
8 Glucosamine”, a line of Glucosamine-based supplements that purportedly provide a
9 variety of health benefits centered around improving joint health, mobility, flexibility and
10 lubrication. Defendants represent that the primary active ingredients in its Wellesse JMG
11 products are “glucosamine,” “chondroitin” (Chondroitin Sulfate), and “MSM”. Through
12 an extensive and uniform nationwide advertising campaign, Defendants represent that
13 Wellesse JMG “improves joint health,” provides “less joint discomfort,” and “protects and
14 rebuilds cartilage tissue.” Defendants further warranted at some point in the class period
15 that the claimed benefits can be received in seven days (“Start to feel it in 7 Days”).
16 Defendants have also represented that, “[c]linical studies show that Glucosamine and
17 Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage
18 and flexibility.” *See generally* Exhibit, “A;” Product Labels.

19 2. The statements represented on the Wellesse JMG product packaging are
20 “structure-function” claims which must be limited to a description of the role that a
21 dietary ingredient is “intended to affect the structure or function in humans.” 21 U.S.C. §
22 343 (r)(6). In order to make a structure-function claim, the dietary supplement
23 manufacturer is required to have substantiation that such statements are truthful and not
24 misleading. *Id.*

25 3. Defendants do not have any competent, reliable scientific evidence that
26 substantiates their representations about the health benefits of consuming Wellesse JMG.
27 In fact, all available scientific evidence demonstrates that the Wellesse JMG products
28 have no efficacy at all, are ineffective in the improvement of joint health, and provide no

1 benefits related to increasing the mobility, flexibility or lubrication of human joints.
2 Numerous scientifically valid studies have been conducted on the ingredients, including
3 the core or primary ingredient in Wellesse JMG, glucosamine, and they have universally
4 demonstrated that glucosamine and glucosamine in combination with other ingredients
5 such as chondroitin and MSM have absolutely no scientific value in the treatment of joint
6 pain or discomfort.

7 4. Further, pursuant to 21 C.F.R. § 101.93, Defendants are prohibited from
8 making “disease claims” about their product. Disease claims are generally described as
9 statements which claim to diagnose, mitigate, treat, cure or prevent disease where the
10 statements claim “explicitly or implicitly, that the product...Has an effect on the
11 characteristic signs or symptoms of a specific disease or class of diseases, using scientific
12 or lay terminology.” *Id.* Defendants make representations on the product label for the
13 Wellesse JMG products which directly relate to the treatment of Osteoarthritis. The Mayo
14 Clinic defines symptoms of osteoarthritis as follows:

- 15 • **Pain.** Your joint may hurt during or after movement.
- 16 • **Tenderness.** Your joint may feel tender when you apply light pressure to it.
- 17 • **Stiffness.** Joint stiffness may be most noticeable when you wake up in the morning
18 or after a period of inactivity.
- 19 • **Loss of flexibility.** You may not be able to move your joint through its full range of
20 motion.
- 21 • **Grating sensation.** You may hear or feel a grating sensation when you use the joint.
- 22 • **Bone spurs.** These extra bits of bone, which feel like hard lumps, may form around
23 the affected joint.

24 See <http://www.mayoclinic.com/health/osteoarthritis/DS00019/DSECTION=symptoms>
25 (last viewed February 21, 2013).

26 5. Defendants represent that the active ingredients in Wellesse JMG products
27 provide relief for nearly all of these symptoms. The product labeling states, “Joint
28 Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and

1 scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of
2 your joints. Keep your joints lubricated for improved mobility and flexibility with just 1
3 oz a day...” See product label, attached as Exhibit “A”. The product label further
4 warrants that Wellesse JMG, “Improves Joint Health so you can enjoy the benefits of less
5 joint discomfort and get back to the activities you love.” These bold claims are in addition
6 to other misrepresentations claiming: “Glucosamine at EXTRA STRENGTH levels
7 protects and rebuilds cartilage tissue to keep your joints flexible and your body active”;
8 and that Wellesse JMG “Improves Joint Health”. Taken together, these statements
9 explicitly and implicitly represent that Wellesse JMG is intended to prevent, treat, or
10 otherwise cure symptoms associated with Osteoarthritis.

11 6. Defendants did not obtain the requisite New Drug Application prior to
12 marketing and selling its Wellesse JMG product. As such, making these statements and
13 representations without a New Drug Application (“NDA”) approval from the FDA
14 constitute misbranding and false and misleading conduct pursuant to 21 C.F.R. § 101.93.

15 7. Defendants convey their uniform, deceptive message to consumers through a
16 variety of media including their website and online promotional materials, and, most
17 important, at the point of purchase, on the front of the Products' packaging/labeling where
18 it cannot be missed by consumers. The front of the Wellesse JMG product label states in
19 bold print, “Improves Joint Health” and also “Mobility, Flexibility & Lubrication.” At
20 some point during the class period, an earlier version of the product label also claimed
21 consumers would, “Start to feel it in 7 Days.” The only reason a consumer would
22 purchase Wellesse JMG is to obtain the advertised joint-health benefits, which the
23 Wellesse JMG products do not provide.

24 8. As a result of Defendants’ deceptive advertising and false claims regarding
25 the efficacy of the Wellesse JMG product, Plaintiff and the proposed class have purchased
26 a product which does not perform as represented and they have been harmed in the
27 amount they paid for the product, which, in the case of Plaintiff Hazlin is approximately
28 \$22.00 per 33.8 fluid ounce bottle. Plaintiff Karen Albence paid approximately \$15.00 to

1 \$20.00 for a 16.0 fluid ounce bottle.

2 9. Plaintiffs bring this action on behalf of themselves and other similarly
3 situated consumers who have purchased Defendants' Wellesse JMG products to halt the
4 dissemination of this false, misleading and deceptive advertising message, correct the
5 false and misleading perception it has created in the minds of consumers, and obtain
6 redress for those who have purchased these Products. Based on violations of state unfair
7 competition laws and Defendants' breach of express warranty, Plaintiffs seek injunctive
8 and monetary relief for consumers who purchased the Wellesse JMG products.

9 **JURISDICTION AND VENUE**

10 10. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
11 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
12 \$5,000,000 and is a class action in which there are in excess of 100 class members and
13 many members of the Class are citizens of a state different from Defendants.

14 11. This Court has personal jurisdiction over Defendants because Defendants are
15 authorized to conduct and do conduct business in California. Defendants have marketed,
16 promoted, distributed, and sold the Wellesse JMG product in California and Defendants
17 have sufficient minimum contacts with this State and/or sufficiently avail themselves of
18 the markets in this State through their promotion, sales, distribution and marketing within
19 this State to render the exercise of jurisdiction by this Court permissible.

20 12. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
21 because a substantial part of the events or omissions giving rise to Plaintiff's claims
22 occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C.
23 §1965(a) because Defendants transact substantial business in this District.

24 **PARTIES**

25 13. Plaintiff Ed Hazlin resides in San Diego County, California. In or around
26 February of 2010, Plaintiff was exposed to and saw Defendants' representations regarding
27 the joint health benefits of Wellesse JMG by reading the Wellesse JMG product label in a
28 Costco retail store near his home in El Cajon. In reliance on the claims listed on the

1 product label described herein and above, and particularly those claims listed on the front
2 of the product label, that Wellesse JMG would, “Improve Joint Health,” and provide
3 “Mobility, Flexibility & Lubrication”, and “Start to Feel it in 7 Days,” Plaintiff purchased
4 the Wellesse JMG product at a Wal-Mart located at 605 Fletcher Parkway, El Cajon
5 California 92020. He paid approximately \$20.00 for the product. At the time, Mr. Hazlin
6 was experiencing pain and stiffness in his joints. He purchased the product believing it
7 would provide the advertised joint health benefits and improve his joint soreness and
8 comfort. Plaintiff made an additional purchase of the product during the class period.
9 Relying on similar misleading representations, including that Wellesse JMG was “For
10 Healthy Joint Support & Mobility” and that “Clinical studies show that Glucosamine and
11 Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage
12 and flexibility,” and that Glucosamine “is necessary to protect and rebuild cartilage tissue
13 and keep joints strong and healthy,” Plaintiff made an additional purchase within the
14 class period on or around November of 2010 at a Costco located at 8125 Fletcher
15 Parkway, El Cajon, California 91942. As a result, Plaintiff suffered injury in fact and lost
16 money. Had Plaintiff known the truth about Defendants’ misrepresentations and
17 omissions, he would not have purchased the Wellesse JMG product.

18 14. Plaintiff Karen Albence resides in San Diego County, California. In or
19 around March of 2013, Plaintiff was exposed to and saw Defendants’ representations
20 regarding the joint health benefits of Wellesse JMG by reading the Wellesse JMG product
21 label in a Ralph’s grocery retail store near her home in San Diego. In reliance on the
22 claims listed on the product label described herein and above, and particularly those
23 claims listed on the front of the product label, that Wellesse JMG would, “Improve Joint
24 Health,” and provide “Mobility, Flexibility & Lubrication” Plaintiff purchased the
25 Wellesse JMG product at a Ralph’s grocery store. She paid approximately \$15.00 to
26 \$20.00 for the product. Ms. Albence purchased the product believing it would provide the
27 advertised joint health benefits and improve her joint soreness and comfort. As a result,
28 Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about

1 Defendants' misrepresentations and omissions, she would not have purchased the
2 Wellesse JMG product.

3 15. Defendant Botanical Laboratories, L.L.C. ("BLLLC") is a Limited Liability
4 Company organized and existing under the laws of the state of Delaware. BOTANICAL
5 LABS's headquarters and principle place of business is at 1441 West Smith Road,
6 Ferndale, Washington 98248. Botanical Labs manufactures, advertises markets,
7 distributes, and/or sells the Wellesse JMG products to tens of thousands of consumers in
8 California and throughout the United States.

9 16. Defendant Botanical Laboratories, Inc. ("BLI") is a Washington corporation,
10 organized and existing under the laws of the state of Washington. BLI's headquarters and
11 principle place of business is at 1441 West Smith Road, Ferndale, Washington 98248.
12 BLI manufactures, advertises markets, distributes, and/or sells the Wellesse JMG products
13 to tens of thousands of consumers in California and throughout the United States.

14 17. Defendant Schwabe North America, Inc. is a Wisconsin corporation,
15 organized and existing under the laws of the state of Wisconsin. Schwabe's headquarters
16 and principle place of business is at 825 Challenger Drive, Green Bay, Wisconsin 54311.
17 Schwabe manufactures, advertises markets, distributes, and/or sells the Wellesse JMG
18 products to tens of thousands of consumers in California and throughout the United
19 States.

20 18. Plaintiff is informed and believes, and thus alleges, that at all times herein
21 mentioned, each of the Defendants was the agent, employee, representative, partner, joint
22 venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein,
23 was acting within the course and scope of such agency, employment, representation, on
24 behalf of such partnership or joint venture, and/or as such alter ego, with the authority,
25 permission, consent, and/or ratification of the other Defendant.

26
27 ///

28 ///

FACTUAL ALLEGATIONS

The Wellesse JMG Products

19. In the last decade, Defendants have distributed, marketed and sold the Wellesse JMG product on a nation-wide basis. The Wellesse JMG product is sold at a variety of grocery chains and low cost retailers, including Wal-Mart and Costco. The Wellesse JMG product is available in a variety of sized bottles from 16 ounces to 33.8 Fluid Ounces. Plaintiff Hazlin purchased a 33.8 fluid ounce bottle for approximately \$22.00. Plaintiff Albence purchased a 16 fluid ounce bottle for approximately \$15.00 to \$20.00. The Wellesse JMG line of glucosamine products prominently advertises its three core ingredients: “2000 mg Glucosamine,” “1200 mg Chondroitin” and “500 mg MSM”. The various bottle sizes are indistinguishable from an “efficacy” standpoint as Plaintiffs allege that the core ingredients in the products are identical and that the products are each completely inefficacious.

20. Since the inception of the Wellesse JMG product line, Defendants have consistently advertised that Wellesse JMG “improves joint health,” provides “less joint discomfort,” and “protects and rebuilds cartilage tissue.” Defendants further warranted that the claimed benefits can be received in seven days (“Start to feel it in 7 Days”). The product labeling represents, “Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day...” See product label, attached as Exhibit “A”. The product label further warrants that Wellesse JMG, “Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love.” Id. These claims are in addition to other misrepresentations claiming: “Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active”; and that Wellesse JMG “Improves Joint Health”. Id. As more fully set forth herein, the scientific evidence regarding the use of glucosamine, taken alone or in combination with other ingredients, does not provide any of the joint health

1 benefits represented by Defendants.

2 21. Since launching the Wellesse JMG product, Defendants have consistently
3 conveyed the message to consumers throughout the United States, including California,
4 that the Wellesse JMG product provides superior joint comfort on an expedited basis –
5 within 7 days compared to other Glucosamine products. It does not. Defendants’
6 superior joint comfort claims are false, misleading and deceptive; not only do they not
7 provide the advertised benefit within 7 days, they provide no benefit at all.

8 22. In addition to the three primary ingredients which Defendants prominently
9 promote as providing the purported joint-health benefits, Defendants’ Wellesse JMG
10 product contains smaller amounts of other purported ingredients, including: Vitamin D3,
11 sodium and lesser composition and coloring ingredients. These minor ingredients are also
12 not effective in providing the joint health benefits represented by Defendants, but in any
13 event the focus of this action is on the uniform false and deceptive representations and
14 omissions that Defendants makes about glucosamine, chondroitin and MSM on the
15 package labeling of each of the Wellesse JMG products.

16 23. Even though numerous clinical studies have found that glucosamine in,
17 alone, or in combination with chondroitin and other supplements, is ineffective,
18 Defendants continue to state on the Products’ packaging and labeling that Wellesse JMG
19 helps to, inter alia: improve joint health, provides less joint discomfort, and protect and
20 rebuild cartilage tissue.

21 24. Plaintiff and Class members have been and will continue to be deceived or
22 misled by Defendants’ deceptive joint health benefit claims. Each plaintiff purchased and
23 consumed Wellesse JMG during the Class period and in doing so, read and considered the
24 joint health benefit representations on the Wellesse JMG product label and based their
25 decisions to purchase the Wellesse JMG product on the joint health benefit claims. Mr.
26 Hazlin based his purchase decision in large part on the representation that it would
27 provide benefits faster than other brands, including within 7 days. Defendants’ joint health
28 benefit claims were a material factor in influencing Plaintiffs’ decisions to purchase and

1 use Wellesse JMG. Plaintiffs would not have purchased Wellesse JMG had they known
2 that the Product does not provide the represented joint comfort. Representative Product
3 Packaging Labels are attached as Exhibit, "A".

4 25. Independent scientific studies confirm that the representations made on the
5 Wellesse JMG product label, relied upon by Plaintiffs in making their purchases, are false
6 and misleading. Despite knowledge of these studies, Defendants continued to make the
7 described representations, misleading Plaintiffs and members of the class into believing
8 the Wellesse JMG product had actual efficacy and would provide the benefits described in
9 its advertising.

10 26. Defendants knew or should have known that glucosamine alone and taken in
11 combination with the other ingredients present in Wellesse JMG have no actual medicinal
12 value and do not provide any of the warranted benefits as represented by Defendant's
13 Wellesse JMG products' labels. In fact, there is no scientific study demonstrating that any
14 glucosamine product can "regenerate cartilage tissue" as claimed by the Wellesse JMG
15 product label. To the contrary, as numerous studies have confirmed, neither glucosamine,
16 chondroitin, or any other supplements or ingredients actually regenerate cartilage or
17 provide joint comfort or relief from pain:

18 27. For example, a 1999 study involving 100 subjects by Houpt et al., entitled
19 *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*,
20 26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed
21 no better than placebo at reducing pain at the conclusion of the eight week trial.

22 28. In February 2004, a Supplement to the American Journal of Orthopedics
23 published an article entitled "*Restoring Articular Cartilage in the Knee.*" The authors
24 concluded that adult cartilage cannot be regenerated because it is not vascularized,
25 meaning that blood does not flow to damaged cartilage which prevents any mechanism for
26 regeneration.

27 29. Likewise, a 2004 study by McAlindon, et al., entitled, *Effectiveness of*
28 *Glucosamine For Symptoms of Knee Osteoarthritis: Results From and Internet-Based*

1 *Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649-9 (Nov. 2004),
2 concluded that "glucosamine was no more effective than placebo in treating symptoms of
3 knee osteoarthritis" - in short, that glucosamine is ineffective. Id. at 646 ("we found no
4 difference between the glucosamine and placebo groups in any of the outcome measures,
5 at any of the assessment time points").

6 30. A 2004 study by Cibere, et al., entitled, "*Randomized, Double-Blind,*
7 *Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*", 51(5)
8 *Arthritis Care & Research* 738-45 (Oct. 15, 2004), studied users of glucosamine who had
9 claimed to have experienced at least moderate improvement after starting glucosamine.
10 These patients were divided into two groups - one that continued using glucosamine and
11 one that was given a placebo. For six months, the primary outcome observed was the
12 proportion of disease flares in the glucosamine and placebo groups. A secondary outcome
13 was the time to disease flare. The study results reflected that there were no differences in
14 either the primary or secondary outcomes for glucosamine and placebo. The authors
15 concluded that the study provided no evidence of symptomatic benefit from continued use
16 of glucosamine - in other words, any prior perceived benefits were due to the placebo
17 effect and not glucosamine. Id. at 743 ("In this study, we found that knee OA disease
18 flare occurred as frequently, as quickly, and as severely in patients who were randomized
19 to continue receiving glucosamine compared with those who received placebo. As a
20 result, the efficacy of glucosamine as a symptom-modifying drug in knee OA is not
21 supported by our study.").

22 31. A large (1,583 subjects), 24-week, multi-center RCT study sponsored by the
23 National Institute of Health ("NIH"), published in the *New England Journal of Medicine*
24 (the "2006 GAIT Study"), concluded: "[t]he analysis of the primary outcome measure did
25 not show that either [glucosamine or chondroitin], alone or in combination, was
26 efficacious. . . ." Clegg, D., et al., *Glucosamine, Chondroitin Sulfate, and the Two in*
27 *Combination for Painful Knee Osteoarthritis*, 354 *New England J. of Med.* 795, 806
28 (2006).

1 32. The 2006 GAIT Study authors rigorously evaluated the effectiveness of
2 glucosamine hydrochloride and chondroitin, alone and in combination, on osteoarthritis
3 for six months. According to the study's authors, "[t]he analysis of the primary outcome
4 measure did not show that either supplement, alone or in combination, was efficacious. . .
5 ." 2006 GAIT Study at 806.

6 33. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and
7 chondroitin did not rebuild cartilage and were otherwise ineffective - even in patients with
8 moderate to severe knee pain for which the 2006 reported results were inconclusive. *See*
9 *Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on the*
10 *Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) *J. Arthritis Rheum.* 3183-91
11 (Oct. 2008); *Sawitzke, A.D., Clinical Efficacy And Safety Of Glucosamine, Chondroitin*
12 *Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of*
13 *The Knee: 2 Year Results From GAIT*, 69(8) *Ann Rheum. Dis.* 1459-64 (Aug. 2010).

14 34. The GAIT studies are consistent with the reported results of prior and
15 subsequent studies. For example, the National Collaborating Centre for Chronic
16 Conditions ("NCCCC") reported "the evidence to support the efficacy of glucosamine
17 hydrochloride as a symptom modifier is poor" and the "evidence for efficacy of
18 chondroitin was less convincing." NCCCC, *Osteoarthritis National Clinical Guideline for*
19 *Care and Management of Adults*, Royal College of Physicians, London 2008. Consistent
20 with its lack of efficacy findings, the NCCCC Guideline did not recommend the use of
21 glucosamine or chondroitin for treating osteoarthritis. *Id.* at 33.

22 35. In a 2007 report, Vlad, et al. reviewed all studies involving glucosamine
23 hydrochloride and concluded that "[g]lucosamine hydrochloride is not effective."
24 *Glucosamine for Pain in Osteoarthritis*, 56:7 *Arthritis Rheum.* 2267-77 (2007); *see also id.*
25 at 2275 ("we believe that there is sufficient information to conclude that glucosamine
26 hydrochloride lacks efficacy for pain in OA").

27 36. In October 2008, the American College of Rheumatology's *Journal, Arthritis*
28 *& Rheumatism* published a report on a double blind study conducted at multiple centers in

1 the United States examining joint space width loss with radiograph films in patients who
2 were treated with glucosamine hydrochloride. The authors concluded that after two years
3 of treatment with this supplement, the treatment did not demonstrate a clinically important
4 difference in joint space width loss. Sawitzke et al., *Glucosamine for Pain in*
5 *Osteoarthritis: Why do Trial Results Differ?*, *Arthritis Rheum.*, 58:3183-3191 (2008).

6 37. In December 2008, the American Academy of Orthopaedic Surgeons
7 published clinical practice guidelines for the "Treatment of Osteoarthritis of the Knee
8 (Non-Arthroplasty)," and recommended that "glucosamine and sulfate or hydrochloride
9 should not be prescribed for patients with symptomatic OA of the knee." Richmond et al.,
10 *Treatment of osteoarthritis of the knee (nonarthroplasty)*, *J. Am. Acad. Orthop. Surg.* Vol.
11 17 No. 9 591-600 (2009). This recommendation was based on a 2007 report from the
12 Agency for Healthcare Research and Quality (AHRQ), which states that "the best
13 available evidence found that glucosamine hydrochloride, chondroitin sulfate, or their
14 combination did not have any clinical benefit in patients with primary OA of the knee."
15 Samson, et al., *Treatment of Primary and Secondary Osteoarthritis of the Knee*, Agency
16 for Healthcare Research and Quality, 2007 Sep 1. Report No. 157.

17 38. Even studies not concerning the type of glucosamine in the Wellesle JMG
18 demonstrate that glucosamine does not provide the joint health benefits that Defendants
19 represent. For example, a study by Rozendaal, et al., entitled, *Effect of Glucosamine*
20 *Sulfate on Hip Osteoarthritis*, 148 *Ann. of Intern. Med.* 268-77 (2008), assessing the
21 effectiveness of glucosamine on the symptoms and structural progression of hip
22 osteoarthritis during two years of treatment, concluded that glucosamine was no better
23 than placebo in reducing symptoms and progression of hip osteoarthritis.

24 39. In March 2009, Harvard Medical School published a study conclusively
25 proving that the ingestion of glucosamine could not affect the growth of cartilage. The
26 study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt"
27 upon the value of glucosamine. The authors went on to conduct an independent study of
28 subjects ingesting 1500 mg of glucosamine, and proved that *only trace amounts of*

1 *glucosamine* entered the human serum, far below any amount that could possibly affect
2 cartilage (emphasis added). Moreover, even those trace amounts were present only for a
3 few hours after ingestion. The authors noted that a 1986 study had found no glucosamine
4 in human plasma after ingestion of four times the usual 1500 mg of glucosamine chloride
5 or sulphate. Silbert, *Dietary Glucosamine Under Question*, *Glycobiology* 19(6):564-567
6 (2009).

7 40. In April 2009, the Journal of Orthopedic Surgery published an article
8 entitled, "*Review Article: Glucosamine*." The article's authors concluded that, based on
9 their literature review, there was "little or no evidence" to suggest that glucosamine was
10 superior to a placebo even in slowing down cartilage deterioration, much less regenerating
11 it. Kirkham, et al., *Review Article: Glucosamine*, *Journal of Orthopedic Surgery*, 17(1):
12 72-6 (2009).

13 41. In 2009, a panel of scientists from the European Food Safety Authority
14 ("EFSA") (a panel established by the European Union to provide independent scientific
15 advice to improve food safety and consumer protection), reviewed nineteen studies
16 submitted by an applicant, and concluded that "a cause and effect relationship has not
17 been established between the consumption of glucosamine hydrochloride and a reduced
18 rate of cartilage degeneration in individuals without osteoarthritis." EFSA Panel on
19 Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a*
20 *health claim related to glucosamine hydrochloride and reduced rate of cartilage*
21 *degeneration and reduced risk of osteoarthritis*, *EFSA Journal* (2009), 7(10):1358.

22 42. In a separate opinion from 2009, an EFSA panel examined the evidence for
23 glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin
24 sulfate and maintenance of joints. The claimed effect was "joint health," and the proposed
25 claims included "helps to maintain healthy joint," "supports mobility," and "helps to keep
26 joints supple and flexible." Based on its review of eleven human intervention studies,
27 three meta-analyses, 21 reviews and background papers, two animal studies, one in vitro
28 study, one short report, and one case report, the EFSA panel concluded that "a cause and

1 effect relationship has not been established between the consumption of glucosamine
2 (either as glucosamine hydrochloride or as glucosamine sulphate), either alone or in
3 combination with chondroitin sulphate, and the maintenance of normal joints." EFSA
4 Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the*
5 *substantiation of health claims related to glucosamine alone or in combination with*
6 *chondroitin sulphate and maintenance of joints and reduction of inflammation*, EFSA
7 Journal (2009), 7(9):1264.

8 43. A 2010 meta-analysis by Wandel, et al., entitled *Effects of Glucosamine,*
9 *Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network*
10 *Meta- Analysis*, BMJ 341:c4675 (2010), examined prior studies involving glucosamine
11 and chondroitin, alone or in combination, and whether they relieved the symptoms or
12 progression of arthritis of the knee or hip. The study authors reported that glucosamine
13 and chondroitin, alone or in combination, did not reduce joint pain or have an impact on
14 the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and
15 their combination do not result in a relevant reduction of joint pain nor affect joint space
16 narrowing compared with placebo." Id. at 8. The authors further concluded "[w]e believe
17 it unlikely that future trials will show a clinically relevant benefit of any of the evaluated
18 preparations." Id.

19 44. On July 7, 2010, Wilkens, et al., reported that there was no difference
20 between placebo and glucosamine for the treatment of low back pain and lumbar
21 osteoarthritis and that neither glucosamine, nor a placebo, were effective in reducing pain
22 related disability. The researchers also concluded that, "Based on our results, it seems
23 unwise to recommend glucosamine to all patients" with low back pain and lumbar
24 osteoarthritis. Wilkens, et al., *Effect of Glucosamine on Pain-Related Disability in*
25 *Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1)
26 JAMA 45-52 (July 7, 2010).

27 45. In 2011, Miller and Clegg, after surveying the clinical study history of
28 glucosamine and chondroitin, concluded that, "[t]he cost-effectiveness of these dietary

1 supplements alone or in combination in the treatment of OA has not been demonstrated in
2 North America." Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*,
3 *Rheum. Dis. Clin. N. Am.* 37 103-118 (2011).

4 46. In June 2011, the Journal of Pharmacy & Pharmaceutical Sciences published
5 an article entitled, "*The Glucosamine Controversy; A Pharmacokinetic Issue.*" The
6 authors concluded that regardless of the formulation used, no or marginal beneficial
7 effects were observed as a result of low glucosamine bioavailability. Aghazadeh-Habashi
8 and Jamali, *The Glucosamine Controversy; A Pharmacokinetic Issue, Journal of*
9 *Pharmacy & Pharmaceutical Sciences*, 14(2): 264-273 (2011).

10 47. In 2012, a report by Rovati, et al. entitled *Crystalline glucosamine sulfate in*
11 *the management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties*,
12 *Ther Adv Muskoloskel Dis* 4(3) 167-180, noted that glucosamine hydrochloride "ha[s]
13 never been shown to be effective."

14 48. In 2012, EFSA examined the evidence to determine if glucosamine sulphate
15 or glucosamine hydrochloride, could substantiate a claimed effect of "contributes to the
16 maintenance of normal joint cartilage." Based on its review of 61 references provided by
17 Merck Consumer Healthcare, the EFSA panel concluded that "a cause and effect
18 relationship has not been established between the consumption of glucosamine and
19 maintenance of normal joint cartilage in individuals without osteoarthritis." EFSA Panel
20 on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a*
21 *health claim related to glucosamine and maintenance of normal joint cartilage*, EFSA
22 *Journal* 2012, 10(5): 2691.

23 49. To date, there are only two studies, both of which are more than a decade old,
24 purporting to claim that the ingestion of glucosamine can affect the growth or
25 deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer:
26 Pavelka et. al. *Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis*,
27 *Arch. Intern. Med.*, 162: 2113-2123 (2002); Reginster et. al. *Long-term Effects of*
28 *Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled*

1 *Clinical Trial*, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of
2 Orthopedic Surgery article, the methodologies in those studies had "inherently poor
3 reproducibility," and even minor changes in posture by the subjects during scans could
4 cause false apparent changes in cartilage. The authors of the Journal of Orthopedic
5 Surgery article explained the manufacturer-sponsored studies' findings by noting that
6 "industry-sponsored trials report positive effects more often than do non-sponsored trials
7 and more find pro-industry results." No reliable scientific medical study has shown that
8 glucosamine and chondroitin, alone or in combination, have a structure modifying effect
9 that will regenerate cartilage that has broken down or worn away.

10 50. As a result, Plaintiffs and the Class members have been damaged by their
11 purchases of the Wellesse JMG product and have been deceived into purchasing Products
12 that they believed, based on Defendants' representations, provided joint health benefits
13 and overall joint comfort when, in fact, they do not.

14 51. Defendants have reaped enormous profits from their false marketing and sale
15 of the Wellesse JMG products.

16 17 **CLASS DEFINITION AND ALLEGATIONS**

18 52. Plaintiffs brings this action on behalf of themselves and all other similarly
19 situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of
20 Civil Procedure and seeks certification of the following Class against Defendants for
21 violations of California state laws:

22 **California-Only Class Action**

23 All California consumers who purchased a Wellesse JMG
24 product, within the applicable statute of limitations, for personal
use until the date notice is disseminated.

25 Excluded from this Class are Defendants and their officers,
26 directors and employees, and those who purchased a Wellesse
JMG product for the purpose of resale.

1 53. **Numerosity.** The members of the Class are so numerous that joinder of all
2 members of the Class is impracticable. Plaintiffs are informed and believe that the
3 proposed Class contains thousands of purchasers of the Wellesse JMG products who have
4 been damaged by Defendants' conduct as alleged herein. The precise number of Class
5 members is unknown to Plaintiffs.

6 54. **Existence and Predominance of Common Questions of Law and Fact.** This
7 action involves common questions of law and fact, which predominate over any questions
8 affecting individual Class members. These common legal and factual questions include,
9 but are not limited to, the following:

10 (a) whether the claims discussed above are true, or are misleading, or
11 objectively reasonably likely to deceive;

12 (b) whether Defendants' alleged conduct violates public policy;

13 (c) whether the alleged conduct constitutes violations of the laws
14 asserted;

15 (d) whether Defendants engaged in false or misleading advertising;

16 (e) whether Plaintiffs and Class members have sustained monetary loss
17 and the proper measure of that loss; and

18 (f) whether Plaintiffs and Class members are entitled to other appropriate
19 remedies, including corrective advertising and injunctive relief.

20 55. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the
21 Class because, *inter alia*, all Class members were injured through the uniform misconduct
22 described above and were subject to Defendants' deceptive joint health benefit claims that
23 accompanied each and every Wellesse JMG product Defendant sold. Plaintiffs are
24 advancing the same claims and legal theories on behalf of themselves and all members of
25 the Class.

26 56. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the
27 interests of the members of the Class. Plaintiffs have retained counsel experienced in
28

1 complex consumer class action litigation, and Plaintiffs intend to prosecute this action
2 vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Class.

3 57. *Superiority.* A class action is superior to all other available means for the
4 fair and efficient adjudication of this controversy. The damages or other financial
5 detriment suffered by individual Class members is relatively small compared to the
6 burden and expense that would be entailed by individual litigation of their claims against
7 Defendants. It would thus be virtually impossible for Plaintiffs and Class members, on an
8 individual basis, to obtain effective redress for the wrongs done to them. Furthermore,
9 even if Class members could afford such individualized litigation, the court system could
10 not. Individualized litigation would create the danger of inconsistent or contradictory
11 judgments arising from the same set of facts. Individualized litigation would also increase
12 the delay and expense to all parties and the court system from the issues raised by this
13 action. By contrast, the class action device provides the benefits of adjudication of these
14 issues in a single proceeding, economies of scale, and comprehensive supervision by a
15 single court, and presents no unusual management difficulties under the circumstances
16 here.

17 58. The Class also may be certified because Defendants have acted or refused to
18 act on grounds generally applicable to the Class thereby making appropriate final
19 declaratory and/or injunctive relief with respect to the members of the Class as a whole.

20 59. Plaintiffs seek preliminary and permanent injunctive and equitable relief on
21 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
22 and prevent Defendants from engaging in the acts described, and requiring Defendants to
23 provide full restitution to Plaintiffs and Class members.

24 60. Unless a Class is certified, Defendants will retain monies received as a result
25 of their conduct that were taken from Plaintiffs and Class members. Unless a Class-wide
26 injunction is issued, Defendants will continue to commit the violations alleged, and the
27 members of the Class and the general public will continue to be misled.

COUNT I
Violation of Business & Professions Code §17200, et seq.

61. Plaintiffs repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

62. Plaintiffs bring this claim on behalf of themselves and on behalf of the Class. As alleged herein, Plaintiffs have suffered injury in fact and lost money or property as a result of Defendants' conduct because they purchased a Wellesse JMG product in reliance on Defendants' joint-health benefit claims, including *inter alia*, that the Wellesse JMG product:

- “Improves Joint Health;”
- Provides “less joint discomfort;”
- “protects and rebuilds cartilage tissue;”
- Provides “Mobility, Flexibility & Lubrication;”
- [As to Plaintiff Hazlin] That the claimed benefits could be achieved within seven days, “Start To Feel It In 7 Days;”
- That Wellesse JMG was “For Healthy Joint Support & Mobility” and that “Clinical studies show that Glucosamine and Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage and flexibility,” and that Glucosamine “is necessary to protect and rebuild cartilage tissue and keep joints strong and healthy;”

(See Exhibit, “A”) but Plaintiffs did not receive any benefits. The product labeling further represents, “Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day...” See product label, attached as Exhibit “A”. It also warrants, “Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love.” Other misrepresentations include: “Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints

1 flexible and your body active”; and that Wellesse JMG “Improves Joint Health”.

2 63. Plaintiffs did not receive a product that provided any joint comfort at all, and
3 provided no comfort within the proscribed 7 day period.

4 64. The Unfair Competition Law, Business & Professions Code §17200, et seq.
5 (“UCL”), and similar laws in other states, prohibit any “unlawful,” “fraudulent” or
6 “unfair” business act or practice and any false or misleading advertising. In the course of
7 conducting business, Defendants committed unlawful business practices by, *inter alia*,
8 making the above referenced claims in paragraph 63 and as alleged throughout herein
9 (which also constitutes advertising within the meaning of §17200) and omissions of
10 material facts related to the numerous scientific studies which demonstrate no joint-health
11 benefits derived from the consumption of the ingredients present in Wellesse JMG, and
12 violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code
13 §§17200, et seq., 17500, et seq., and the common law.

14 65. Plaintiffs and the Class reserve the right to allege other violations of law,
15 which constitute other unlawful business acts or practices. Such conduct is ongoing and
16 continues to this date.

17 66. Defendants’ actions also constitute “unfair” business acts or practices
18 because, as alleged above, *inter alia*, Defendants engaged in false advertising,
19 misrepresented and omitted material facts regarding the Wellesse JMG product, and
20 thereby offended an established public policy, and engaged in immoral, unethical,
21 oppressive, and unscrupulous activities that are substantially injurious to consumers.

22 67. As stated in this Complaint, Plaintiffs allege violations of consumer
23 protection, unfair competition and truth in advertising laws in California and other states,
24 resulting in harm to consumers. Defendants’ acts and omissions also violate and offend
25 the public policy against engaging in false and misleading advertising, unfair competition
26 and deceptive conduct towards consumers. This conduct constitutes violations of the
27 unfair prong of Business & Professions Code §17200, et seq.

1 68. There were reasonably available alternatives to further Defendants'
2 legitimate business interests, other than the conduct described herein.

3 69. Business & Professions Code §17200, et seq. also prohibits any “fraudulent
4 business act or practice.”

5 70. Defendants’ actions, claims, nondisclosures and misleading statements, as
6 more fully set forth above, were also false, misleading and/or likely to deceive the
7 consuming public within the meaning of Business & Professions Code §17200, et seq.

8 71. Plaintiffs and other members of the Class have in fact been deceived as a
9 result of their reliance on Defendants’ material representations and omissions, which are
10 described above. This reliance has caused harm to Plaintiffs and other members of the
11 Class who each purchased a Wellesse JMG product. Plaintiffs and the other Class
12 members have suffered injury in fact and lost money as a result of these unlawful, unfair,
13 and fraudulent practices.

14 72. As a result of their deception, Defendants have been able to reap unjust
15 revenue and profit.

16 73. Unless restrained and enjoined, Defendants will continue to engage in the
17 above-described conduct. Accordingly, injunctive relief is appropriate.

18 74. Plaintiffs, on behalf of themselves, all others similarly situated, and the
19 general public, seeks restitution and disgorgement of all money obtained from Plaintiffs
20 and the members of the Class collected as a result of unfair competition, an injunction
21 prohibiting Defendants from continuing such practices, corrective advertising and all
22 other relief this Court deems appropriate, consistent with Business & Professions Code
23 §17203.

24
25 **COUNT II**
26 **Violations of the Consumers Legal Remedies Act –**
27 **Civil Code §1750 *et seq.***

28 75. Plaintiffs repeat and re-allege the allegations contained in the paragraphs
above, as if fully set forth herein.

1 76. Plaintiffs bring this claim each individually and on behalf of the Class.

2 77. This cause of action is brought pursuant to the Consumers Legal Remedies
3 Act, California Civil Code §1750, et seq. (the “Act”) and similar laws in other states.
4 Plaintiffs are “consumers” as defined by California Civil Code §1761(d). The Products
5 in the Wellesse JMG line of glucosamine chondroitin products are “goods” within the
6 meaning of the Act.

7 78. Defendants violated and continue to violate the Act by engaging in the
8 following practices proscribed by California Civil Code §1770(a) in transactions with
9 Plaintiff and the Class which were intended to result in, and did result in, the sale of the
10 Wellesse JMG products:

11 (5) Representing that [the Products] have . . . approval, characteristics, . . . uses
12 [and] benefits . . . which [they do] not have

13 * * *

14 (7) Representing that [the Products] are of a particular standard, quality or
15 grade . . . if [they are] of another.

16 * * *

17 (9) Advertising goods . . . with intent not to sell them as advertised.

18 * * *

19 (16) Representing that [the Products have] been supplied in accordance with a
20 previous representation when [they have] not.

21
22 79. Defendants violated the Act by representing and failing to disclose material
23 facts on the Wellesse JMG labeling and packaging and associated advertising, as
24 described above, when they knew, or should have known, that the representations were
25 false and misleading and that the omissions were of material facts they were obligated to
26 disclose.

1 80. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order
2 enjoining the above-described wrongful acts and practices of Defendants and for
3 restitution and disgorgement.

4 81. Pursuant to §1782 of the Act, Plaintiff Hazlin notified Defendant BLI in
5 writing by certified mail of the particular violations of §1770 of the Act and demanded
6 that BLI rectify the problems associated with the actions detailed above and give notice to
7 all affected consumers of Defendants' intent to so act. BLI failed to respond to Plaintiff
8 Hazlin's letter or agree to rectify the problems associated with the actions detailed above
9 and give notice to all affected consumers within 30 days of the date of written notice
10 pursuant to §1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive
11 and statutory damages, as appropriate against BLI.

12 82. Also, pursuant to §1782 of the Act, Plaintiffs notified Defendants BLLLC
13 and SCHWABE in writing by certified mail of the particular violations of §1770 of the
14 Act and demanded that they rectify the problems associated with the actions detailed
15 above and give notice to all affected consumers of their intent to so act.

16 83. Copies of the letters are attached hereto as Exhibit B.

17 84. If Defendants BLLLC and SCHWABE fail to rectify or agree to rectify the
18 problems associated with the actions detailed above and give notice to all affected
19 consumers within 30 days of the date of written notice pursuant to §1782 of the Act,
20 Plaintiffs will amend this complaint to add claims for actual, punitive and statutory
21 damages, as appropriate.

22 85. Defendants' conduct is fraudulent, wanton and malicious.

23 86. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit
24 showing that this action has been commenced in the proper forum.

25
26 **COUNT III**
Breach of Express Warranty

27 87. Plaintiffs repeat and re-allege the allegations contained in the paragraphs
28 above, as if fully set forth herein.

1 88. Plaintiffs bring this claim each individually and on behalf of the Class.

2 89. The Uniform Commercial Code section 2-313 provides that an affirmation of
3 fact or promise, including a description of the goods, becomes part of the basis of the
4 bargain and creates an express warranty that the goods shall conform to the promise and
5 to the description.

6 90. At all times, California and other states have codified and adopted the
7 provisions in the Uniform Commercial Code governing the express warranty of
8 merchantability.

9 91. As discussed above, Defendants expressly warranted on each and every
10 Product label of the Wellesse JMG products that the product lived up to the represented
11 joint-health benefits described herein and listed on the product labels. The joint-health
12 benefit claims made by Defendants are affirmations of fact that became part of the basis
13 of the bargain and created an express warranty that the goods would conform to the stated
14 promise. Plaintiff placed importance on Defendants' representations.

15 92. All conditions precedent to Defendants' liability under this contract have
16 been performed by Plaintiff and the Class.

17 93. Defendants were provided notice of these issues by, *inter alia*, the instant
18 Complaint.

19 94. Defendants breached the terms of this contract, including the express
20 warranties, with Plaintiffs and the Class by not providing a Product that provided joint
21 comfort and/or easing joint flare-ups and/or relieving occasional joint stiffness as
22 represented.

23 95. As a result of Defendants' breach of their contract, Plaintiffs and the Class
24 have been damaged in the amount of the price of the Products they purchased.

25
26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiffs pray for a judgment:

28 A. Certifying the Class as requested herein;

1 B. Awarding Plaintiffs and the proposed Class members damages;

2 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs
3 and the proposed Class members;

4 D. Awarding declaratory and injunctive relief as permitted by law or equity,
5 including: enjoining Defendants from continuing the unlawful practices as set forth
6 herein, and directing Defendants to identify, with Court supervision, victims of their
7 conduct and pay them all money they are required to pay;

8 E. Ordering Defendants to engage in a corrective advertising campaign;

9 F. Awarding attorneys' fees and costs;

10 G. Providing such further relief as may be just and proper.

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by
14 law.

15 Dated: May 30, 2013

CARPENTER LAW GROUP

17
18 By: /s/ Todd D. Carpenter

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.347.3517
Facsimile: 619.756.6991
todd@carpenterlawyers.com

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20
21
22 **PATTERSON LAW GROUP**
James R. Patterson (CA 211102)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.398.4760
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

23
24
25
26 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

1
2 The undersigned hereby certify that on May 30, 2013, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system per Civil Local Rule 5.4
4 which will send notification of such filing to the e-mail addresses denoted on the
5 Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document
6 or paper via the United States Postal Service to the non-CM/ECF participants indicated on
7 the Manual Notice list. I certify under penalty of perjury under the laws of the United
8 States of America that the foregoing is true and correct.

9
10 /s/ Todd D. Carpenter
11 Todd D. Carpenter

EXHIBIT "A"





Certified
GF
Gluten-Free

Supplement Facts

Serving Size: 2 Tablespoons (1 oz/30 mL)
Servings per container: 16

Amount per Serving	% Daily Value*	
Calories	30	
Sodium	115 mg	5%
Total Carbohydrates	7 g	2%
Dietary Fiber	1 g	4%
Sugars	0 g	
Vitamin D ₃ (Cholecalciferol)	400 IU	100%
Glucosamine HCl	2000 mg	**
Chondroitin Sulfate Sodium	1200 mg	**
MSM (Methylsulfonylmethane)	500 mg	**

*Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

Other Ingredients: Purified Water, Vegetable Glycerin, Erythritol, Natural Flavors, Fruit and Vegetable Juice Blend (for color), Citric Acid, Potassium Benzoate (to preserve freshness), Sucralose, Sodium EDTA (to preserve freshness).

Allergens: Contains Shellfish (crab and shrimp).

Gluten Free

Manufactured By:
Botanical Laboratories, Inc.
Ferndale, WA 98248
800-232-4005 • Made in the U.S.A.

†This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Visit us at:
www.wellese.com

Directions: SHAKE WELL.

Adults and children over the age of 12, take 2 measuring tablespoons (1 oz) daily. Do not exceed recommended daily serving.

May be taken directly or mixed in water or juice. Wash dosage cup after each use. Product may be stored at room temperature, or refrigerated after opening for added freshness.

Wellese Joint Movement Glucosamine is made with natural ingredients that can darken over time. Product quality, potency and purity is not affected.

Tamper Evident: Do not use if the seal on the cap is broken or missing, or if the inner seal is not intact.

Caution: Pregnant or lactating women and people with known medical conditions and/or taking medications should consult with a healthcare practitioner before taking dietary supplements.

Warning: Keep out of the reach of children.



ST1394 3:10:B

EXHIBIT "B"



JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

May 30, 2013

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Botanical Laboratories, L.L.C.
505 Union Avenue SE, Suite 120
Olympia, Washington 98501

Re: Hazlin and Albence v. Botanical Laboratories, Inc., et al

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Ed Hazlin and Karen Albence and all other similarly situated California Residents in an action against Botanical Laboratories, L.L.C. (“Botanical Labs”), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Wellesse Joint Movement Glucosamine (“Wellesse JMG”) line of joint dietary supplements:

- “Improves joint health;”
- Provides “less joint discomfort;”
- “Protects and rebuilds cartilage tissue;” and
- “For Healthy Joint Support & Flexibility.”

As you are aware, Botanical Labs and/or its predecessor entity warranted on some product labeling that the claimed benefits can be received in seven days (“Start to feel it in 7 Days”). The product labeling also represents, “Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day...” The product label further warrants that Wellesse JMG, “Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love.” These bold claims are in addition to other misrepresentations claiming: “Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active”; and that Wellesse JMG “Improves Joint Health”. Other labels represent, “Clinical studies show that Glucosamine and Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage and flexibility.”

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Page Two

Mr. Hazlin and Ms. Albence and others similarly situated purchased the Wellesse Joint Movement Glucosamine products unaware that Botancial Labs' representations found on the Products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Wellesse Joint Movement Glucosamine products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Second Amended Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Botancial Labs' representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Botanical Labs' with the intent to result in the sale of the Wellesse Joint Movement Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Wellesse Joint Movement Glucosamine has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Wellesse Joint Movement Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Wellesse Joint Movement Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Botanical Labs' representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Second Amended Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Botanical Labs immediately correct and

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Page Three

rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Second Amended Complaint. In addition, Botanical Labs should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Second Amended Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Botanical Labs address this problem immediately.

Botanical Labs must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Botanical Labs will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Wellesse Joint Movement Glucosamine purchasers who so request; and

///

///

///

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Page Four

4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Second Amended Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

A handwritten signature in blue ink, appearing to read "James R. Patterson", is written over a light blue rectangular background.

James R. Patterson

Enclosure(s)

Cc: Todd D. Carpenter, Esq.



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

May 30, 2013

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Schwabe North America, Inc.
825 Challenger Drive
Green Bay, Wisconsin 54311

Re: Hazlin and Albence v. Botanical Laboratories, Inc., et al

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Ed Hazlin and Karen Albence and all other similarly situated California Residents in an action against Schwabe North America, Inc. ("Schwabe"), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Wellesse Joint Movement Glucosamine ("Wellesse JMG") line of joint dietary supplements:

- "Improves joint health;"
- Provides "less joint discomfort;"
- "Protects and rebuilds cartilage tissue;" and
- "For Healthy Joint Support & Flexibility."

As you are aware, Schwabe and/or its predecessor entity warranted on some product labeling that the claimed benefits can be received in seven days ("Start to feel it in 7 Days"). The product labeling also represents, "Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day..." The product label further warrants that Wellesse JMG, "Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love." These bold claims are in addition to other misrepresentations claiming: "Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active"; and that Wellesse JMG "Improves Joint Health". Other labels represent, "Clinical studies show that Glucosamine and Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage and flexibility."

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Page Two

Mr. Hazlin and Ms. Albence and others similarly situated purchased the Wellesse Joint Movement Glucosamine products unaware that Schwabe's representations found on the Products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Wellesse Joint Movement Glucosamine products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Second Amended Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Schwabe's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Schwabe with the intent to result in the sale of the Wellesse Joint Movement Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Wellesse Joint Movement Glucosamine has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Wellesse Joint Movement Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Wellesse Joint Movement Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Schwabe's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Second Amended Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Schwabe immediately correct and

May 30, 2013
Page Three

rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Second Amended Complaint. In addition, Schwabe should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Second Amended Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Schwabe address this problem immediately.

Schwabe must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Schwabe will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Wellesse Joint Movement Glucosamine purchasers who so request; and

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May 30, 2013
Page Four

4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Second Amended Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

A handwritten signature in blue ink, appearing to read "James R. Patterson", is written over a light blue rectangular background.

James R. Patterson

Enclosure(s)

Cc: Todd D. Carpenter, Esq.



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

May 20, 2013

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Botanical Laboratories, L.L.C.
505 Union Avenue SE, Suite 120
Olympia, Washington 98501

Re: Hazlin v. Botanical Laboratories, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Ed Hazlin and Karen Albence and all other similarly situated California Residents in an action against Botanical Laboratories, L.L.C. ("Botanical Labs"), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Wellesse Joint Movement Glucosamine ("Wellesse JMG") line of joint dietary supplements:

- "Improves joint health;"
- Provides "less joint discomfort;"
- "Protects and rebuilds cartilage tissue;" and
- "For Healthy Joint Support & Flexibility."

As you are aware, Botanical Labs and/or its predecessor entity warranted on some product labeling that the claimed benefits can be received in seven days ("Start to feel it in 7 Days"). The product labeling also represents, "Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day..." The product label further warrants that Wellesse JMG, "Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love." These bold claims are in addition to other misrepresentations claiming: "Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active"; and that Wellesse JMG "Improves Joint Health". Other labels represent, "Clinical studies show that Glucosamine and Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage and flexibility."

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Page Two

Mr. Hazlin and Ms. Albence and others similarly situated purchased the Wellesse Joint Movement Glucosamine products unaware that Botancial Labs' representations found on the Products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Wellesse Joint Movement Glucosamine products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Botancial Labs' representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Botanical Labs' with the intent to result in the sale of the Wellesse Joint Movement Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Wellesse Joint Movement Glucosamine has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Wellesse Joint Movement Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Wellesse Joint Movement Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Botanical Labs' representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Botanical Labs immediately correct and rectify this violation of

May 20, 2013
Page Three

California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Botanical Labs should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Botanical Labs address this problem immediately.

Botanical Labs must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Botanical Labs will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Wellesse Joint Movement Glucosamine purchasers who so request; and

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May 20, 2013
Page Four

4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

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James R. Patterson

Enclosure(s)

Cc: Todd D. Carpenter, Esq.



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

May 20, 2013

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Schwabe North America, Inc.
825 Challenger Drive
Green Bay, Wisconsin 54311

Re: Hazlin v. Botanical Laboratories, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Ed Hazlin and Karen Albence and all other similarly situated California Residents in an action against Schwabe North America, Inc. ("Schwabe"), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Wellesse Joint Movement Glucosamine ("Wellesse JMG") line of joint dietary supplements:

- "Improves joint health;"
- Provides "less joint discomfort;"
- "Protects and rebuilds cartilage tissue;" and
- "For Healthy Joint Support & Flexibility."

As you are aware, Schwabe and/or its predecessor entity warranted on some product labeling that the claimed benefits can be received in seven days ("Start to feel it in 7 Days"). The product labeling also represents, "Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day..." The product label further warrants that Wellesse JMG, "Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love." These bold claims are in addition to other misrepresentations claiming: "Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active"; and that Wellesse JMG "Improves Joint Health". Other labels represent, "Clinical studies show that Glucosamine and Chondroitin in combination are beneficial in maintaining healthy joint function, cartilage and flexibility."

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Page Two

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Schwabe's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Schwabe with the intent to result in the sale of the Wellesse Joint Movement Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Wellesse Joint Movement Glucosamine has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Wellesse Joint Movement Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Wellesse Joint Movement Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

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May 20, 2013
Page Three

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2. Notify all such purchasers so identified that upon their request, Schwabe will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
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May 20, 2013
Page Four

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We await your response.

Sincerely,

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James R. Patterson

Enclosure(s)

Cc: Todd D. Carpenter, Esq.



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

March 15, 2013

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Jim Thorton
Chief Executive Officer
Botanical Laboratories, L.L.C.
505 Union Avenue SE, Suite 120
Olympia, Washington 98501

Re: Hazlin v. Botanical Laboratories, Inc.

Dear Mr. Thorton:

Our law firm and Carpenter Law Group represent Ed Hazlin and all other similarly situated California Residents in an action against Botanical Laboratories, L.L.C. (“Botancial Labs”), arising out of, *inter alia*, misrepresentations, either express or implied, by to consumers that its Wellesse Joint Movement Glucosamine (“Wellesse JMG”) line of joint dietary supplements:

- “Improves joint health;”
- Provides “less joint discomfort;” and
- “Protects and rebuilds cartilage tissue.”

As you are aware, Botancial Labs further warrants that the claimed benefits can be received in seven days (“Start to feel it in 7 Days”). The product labeling represents, “Joint Movement Glucosamine Liquid provides EXTRA STRENGTH Glucosamine and scientifically supported levels of Chondroitin plus MSM to maintain healthy movement of your joints. Keep your joints lubricated for improved mobility and flexibility with just 1 oz a day...” The product label further warrants that Wellesse JMG, “Improves Joint Health so you can enjoy the benefits of less joint discomfort and get back to the activities you love.” These bold claims are in addition to other misrepresentations claiming: “Glucosamine at EXTRA STRENGTH levels protects and rebuilds cartilage tissue to keep your joints flexible and your body active”; and that Wellesse JMG “Improves Joint Health”.

Mr. Hazlin and others similarly situated purchased the Wellesse Joint Movement Glucosamine products unaware that Botancial Labs’ representations found on the Products’ labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Wellesse Joint Movement Glucosamine products and joint renewal, mobility

March 15, 2013
Page Two

and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Botanical Labs' representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Botanical Labs' with the intent to result in the sale of the Wellesse Joint Movement Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

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- (7) Representing that [Wellesse Joint Movement Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

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- (9) Advertising goods . . . with the intent not to sell them as advertised.

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Botanical Labs' representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California Residents that Botanical Labs immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Botanical Labs should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

March 15, 2013
Page Three

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Botanical Labs address this problem immediately.

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2. Notify all such purchasers so identified that upon their request, BOTANCIAL LABS will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Wellesse Joint Movement Glucosamine purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

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James R. Patterson

Enclosure(s)

EXHIBIT "C"

CARPENTER LAW GROUP
Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.347.3517
Facsimile: 619.756.6991
todd@carpenterlawyers.com

PATTERSON LAW GROUP
James R. Patterson (CA 211102)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.398.4760
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ED HAZLIN and KAREN ALBENCE on
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

vs.

BOTANICAL LABORATORIES, INC., a
Washington Corporation, SCHWABE
NORTH AMERICA, INC., a Wisconsin
Corporation and BOTANICAL
LABORATORIES, L.L.C., a Delaware
Limited Liability Company and Does 1-20,

Defendants.

Case No. 13-CV-00618-DMS (JMA)

**DECLARATION OF TODD D.
CARPENTER RE: JURISDICTION**

I, Todd D. Carpenter, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the principle and owner of the Carpenter Law Group, and the counsel of record for plaintiffs in the above-entitled action

2. Defendant Botanical Laboratories, L.L.C., has done and is doing business in

