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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA****LISA WOMACK, Individually
and On Behalf of All Others
Similarly Situated,****Plaintiff,****v.****VITAMIN SHOPPE INDUSTRIES
INC. a/k/a THE VITAMIN
SHOPPE,****Defendant.****Case No.: '13CV1554 BEN BGS****CLASS ACTION****COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
RESTITUTION FOR VIOLATIONS
OF CALIFORNIA'S BUS. & PROF.
CODE §§ 17200 ET SEQ.; BUS. &
PROF. CODE §§ 17500 ET SEQ.;
CALIFORNIA CIVIL CODE §
110660; NEGLIGENT
MISREPRESENTATION AND
INTENTIONAL
MISREPRESENTATION.****JURY TRIAL DEMANDED****CLASS ACTION COMPLAINT**

INTRODUCTION

- 1
2 1. This is a California statewide class action complaint brought by LISA
3 WOMACK (“Plaintiff”), individually and on behalf of all others similarly
4 situated, to challenge the actions of VITAMIN SHOPPE INDUSTRIES,
5 INC. a/k/a THE VITAMIN SHOPPE (“VITAMIN SHOPPE” or
6 “Defendant”) with regard to Defendant’s false promotion of its Betaine HCl
7 product (“Betaine”) as, *inter alia*, consisting of “Betaine HCl” or betaine
8 hydrochloride from “sugar beets” when it is a scientific certainty that
9 betaine hydrochloride can only be created synthetically and is not naturally
10 derived, unlike betaine anhydrous, which may be derived from natural food
11 sources such as sugar beets.
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- 15 2. The nationwide advertising, promotion, marketing, packaging and selling of
16 Betaine constitutes: (a) a violation of California’s Unfair Competition Law,
17 Bus. & Prof. Code §§ 17200 et seq. (“UCL”), and California’s False
18 Advertising Law, Bus. & Prof. Code §§ 17500 et seq. (“FAL”); California
19 Civil Code § 110660; and negligent and intentional misrepresentation. This
20 conduct caused Plaintiff damages and requires restitution and injunctive
21 relief to remedy and/or prevent further damages.
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24
- 25 3. Unless otherwise indicated, the use of any Defendant’s name in this
26 Complaint includes all agents, employees, officers, members, directors,
27 heirs, successors, assigns, principals, trustees, sureties, subrogees,
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representatives and insurers of the named Defendant.

NATURE OF ACTION

4. At all times relevant, VITAMIN SHOPPE has made, and continues to make, affirmative misrepresentations and/or omissions regarding its Betaine product. Specifically, the Betaine product, which has been packaged, advertised, marketed, promoted and sold by Defendant to Plaintiff and other consumers similarly situated, was represented by Defendant to contain “Betaine HCl” or betaine hydrochloride from “sugar beets,” knowing that betaine hydrochloride can only be created synthetically and is not naturally derived. In fact, the betaine hydrochloride in Defendant’s Betaine product is not derived from sugar beets, contrary to Defendant’s claims, which is a fact that Defendant knew and purposely failed to disclose to consumers, including Plaintiff.

5. This product, Betaine, consists of betaine hydrochloride that is synthetically created (i.e., betaine hydrochloride) and is not derived from natural sources such as sugar beets.¹ On the other hand, betaine anhydrous may be derived from natural food sources of such as beets, broccoli, grains, shellfish, and spinach, though commercially it is only available from a chemical synthesis

¹ See <http://www.abvista.com/products/betaine/benefits-of-betaine/natural-or-synthetic> (“Synthetic betaine is produced from chloroacetic acid, sodium hydroxide and trimethylamine. It is usually sold as the hydrochloride salt, (betaine HCl) but it is also available as purified anhydrous betaine.”); see also http://www.wattagnet.com/Reconsidering_betaine_in_poultry_feed_from_a_cost_perspective.html (“betaine hydrochloride ... is synthetically produced”).

or from sugar beets.²

6. “Large amounts of betaine hydrochloride can burn the lining of the stomach.”³ The website for eVitamines.com advises that “People should not take more than 10 grains (650 mg) of betaine HCl without the recommendation of a physician,” even though VITAMIN SHOPPE recommends on its product label that consumers should ingest 1 to 2 of the 600 mg tablets daily as a dietary supplement.

7. To this day, Defendant has taken few, if any meaningful steps to clear up consumers’ misconceptions regarding the Betaine product. In fact, Defendant continues to advertise the Betaine product on its website as “Contain[ing] betaine hydrochloride from **sugar beets**, along with pepsin for digestive support. Formulated for quick delivery and absorption.”⁴

8. As a consequence of Defendant’s unfair and deceptive practices, Plaintiff and other consumers similarly situated have purchased Betaine under the false impression that, by consuming the product they would be enjoying the healthful and nutritional benefits associated with a product which they reasonably believed, based upon Defendant’s representations alleged herein, was derived from sugar beets, rather than betaine hydrochloride that

² <http://umm.edu/health/medical/altmed/supplement/betaine#ixzz2XGiBC15r>.

³ <http://www.evitamins.com/encyclopedia/assets/nutritional-supplement/betaine-hydrochloride/side-effects>.

⁴ See http://www.vitaminshoppe.com/store/en/browse/sku_detail.jsp?id=VS-1196#.Ucnh4aUUsdI (emphasis added).

1 was created synthetically.

2 9. Each consumer, including Plaintiff, was exposed to virtually the same
3 material misrepresentations and/or omissions, which are prominently
4 displayed on the product's packaging for Betaine – as well as on
5 Defendant's website – prior to purchasing the product.
6

7 10. Additionally, Defendant completely omitted from its labeling and
8 advertising the fact that betaine hydrochloride is synthetically created rather
9 than derived from sugar beets, which means that the main ingredient in
10 Betaine is not natural, may be harmful in the recommended dosage, and is
11 therefore not as healthful as beet-derived betaine anhydrous.
12

13 11. As a result of Defendant's representations and/or omissions regarding
14 Betaine, Plaintiff and other consumers similarly situated overpaid for the
15 product because the value of the product was diminished at the time it was
16 sold to consumers. Had Plaintiff and other consumers similarly situated
17 been made aware that Betaine is synthetically created rather than derived
18 from natural sources such as sugar beets, they would not have purchased
19 Betaine, would have paid less for it, or purchased a different betaine
20 supplement.
21

22 12. As a result of Defendant's false and misleading statements and failures to
23 disclose, as well as Defendant's other conduct described herein, Plaintiff
24 and other consumers similarly situated purchased tens of thousands of units
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of Betaine and have suffered, and continue to suffer, injury in fact.

13. Defendant's conduct as alleged herein violates several California State laws, as alleged more fully herein.

14. This action seeks, among other things, equitable and injunctive relief; restitution of all amounts illegally retained by Defendant; and disgorgement of all ill-gotten profits from Defendant's wrongdoing alleged herein.

JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), as the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000 and is a class action in which the named Plaintiff is a citizen of a State different from Defendant.

16. This Court has personal jurisdiction over Defendant because Defendant does business in the State of California, is incorporated in the State of New York, has sufficient minimum contacts with California, and otherwise purposely avails itself of the markets in California through the promotion, sale, and marketing of its products in this state, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, in that Plaintiff resides within the judicial district and many of the acts and transactions giving rise to this action occurred in this district because Defendant:

(a) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district;

(b) does substantial business in this district;

(c) is subject to personal jurisdiction in this district; and

(d) the harm to Plaintiff occurred within this district.

PARTIES

18. Plaintiff is, and at all relevant times was, a natural person residing in the State of California, County of San Diego.

19. Plaintiff is informed and believes, and thereon alleges, that Defendant is incorporated under the laws of the State of New York with its principal place of business in New Jersey, and does business within the State of California and within this judicial district.

GENERAL ALLEGATIONS

20. VITAMIN SHOPPE is a leading manufacturer and retail seller in the United States of a variety of health supplements. Defendant sells Betaine in various quantities, including 100 tablets containing 600 mg of betaine HCl, throughout the United States, including in California.

21. It has become recently well known that betaine anhydrous, as opposed to betaine hydrochloric, may produce certain health benefits such as lowering levels of homocysteine. High levels of homocysteine are associated with

1 increased risk of heart disease and stroke. Also, “[r]esearch has
2 demonstrated additional health benefits for skin care, immune health, brain
3 health, prenatal nutrition, and kidney and liver health.”
4 <http://www.purebeets.com/>.

5
6 22. “Synthetic betaine (known as trimethyl amine hydrochloride, TMA, or
7 Betaine HCl) is often marketed as a substitute to the all-natural version and
8 the labeling of these synthetic products is often misleading. These products
9 have not been subject to the same stringent safety and efficacy studies as
10 the natural ingredient such Betaine PURE.” <http://www.purebeets.com>. It is
11 also known that large amounts of betaine HCl can burn the lining of the
12 stomach.
13

14
15 23. During the “Class Period” as defined below, Plaintiff was exposed to and
16 saw Defendant’s advertising, marketing, promotional and packaging claims,
17 purchased Betaine in reliance on these claims, and suffered injury in fact
18 and lost money as a result of Defendant’s unfair, misleading and unlawful
19 conduct described herein.
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22 24. In making Plaintiff’s decision to purchase Betaine, Plaintiff relied upon,
23 *inter alia*, the labeling, packaging, advertising and/or other promotional
24 materials prepared and approved by Defendant and its agents and
25 disseminated through its packaging, advertising, marketing, promotion,
26 and/or through local and national advertising media, including Defendant’s
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1 internet website/s, media and in-store advertisement, containing the
2 misrepresentations and/or omissions alleged herein.

3 25. With the possible nutritional and health benefits of betaine from natural
4 sources becoming more widely known, consumers demand for betaine has
5 increased over the past several years. Defendant hoped to profit from such
6 research and discovery by falsely selling its Betaine product as derived
7 from sugar beets. The words “sugar beets” is used on Betaine packaging,
8 labeling, the brand’s website, and social media presence.

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11 26. Defendant seeks to capitalize on consumers’ preference for natural health
12 supplements with the association between such foods and supplements and
13 a wholesome and healthy way of life. Defendant is aware that consumers
14 are willing to pay more for natural supplements because of this association,
15 as well as the perceived higher quality, health and safety benefits with
16 products labeled as derived from natural sources such as sugar beets.
17 Indeed, the Supplement Facts panel on the back of the Betaine product
18 further indicates the Defendant’s understanding that consumers desire
19 natural supplements, since there are no “Preservatives” or “Artificial Colors
20 or Flavors Added” in Betaine.

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22 27. The scope of Defendant’s advertising of Betaine is wide-spread. Betaine is
23 marketed in California and throughout the nation. “Defendant has
24 advertised its Betaine product continuously during the Class Period.
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28. On the front of the packaging, VITAMIN SHOPPE advertises the Betaine product as follows:

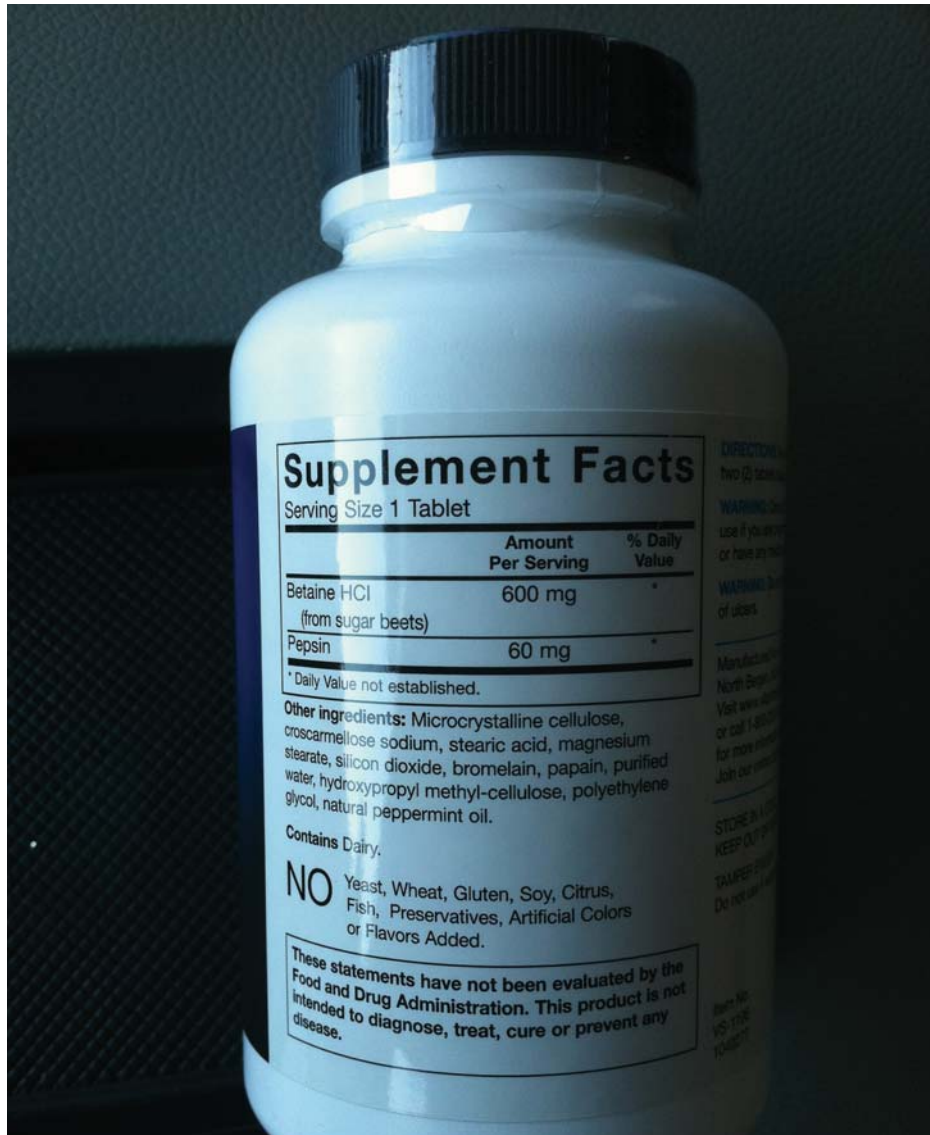


Thus, the front packaging states that the product contains “Betaine HCl” or Betaine Hydrochloride.⁵ Furthermore, on the front label, in a conspicuous manner, Defendant purports Betaine to be “Known as Trimethylglycine (TMG)” when this is incorrect and misleading. Trimethylglycine only refers to betaine anhydrous and not betaine hydrochloride. Defendant’s mislabeling further misleads consumers into believing they are receiving

⁵ The product image was pulled from Defendant’s website located at http://www.vitaminshoppe.com/store/en/browse/sku_detail.jsp?id=VS-1196#.UcnusKUUsdI.

1 health benefit associated with betaine anhydrous in addition to those
2 associated with betaine hydrochloride.

- 3 29. On the Supplement Facts panel on the back of the product, Betaine purports
4 to contain betaine from “sugar beets,” specifically, listing “Betaine HCl”
5 just above “(from sugar beets).” However, Betaine HCl or betaine
6 hydrochloride is not naturally derived from sugar beets and in fact can only
7 be synthetically created. The Supplement Facts panel appears on the back
8 of the Betaine product as follows:
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30. Even though Betaine does not contain betaine from sugar beets, Defendant made a tactical marketing and/or advertising decision to create a deceptive and misleading label for Betaine, which label falsely states that the product contains “Betaine HCl” from “sugar beets” when Defendant, a sophisticated company with significant scientific and quality assurance resources and

1 means, knows or should have known that betaine hydrochloride can only be
2 synthetically created, and that it is betaine anhydrous which is derived from
3 natural food sources such as sugar beets.
4

5 31. VITMAIN SHOPPE could have easily omitted “(from sugar beets)” from
6 the product’s Supplemental Facts panel and its advertising and marketing,
7 but Defendant deliberately chose to represent to consumers that the product
8 contained betaine hydrochloride from sugar beets when this is in fact not
9 true. Alternatively, Defendant could have chosen to sell its product
10 containing betaine anhydrous, which may be derived from natural food
11 sources such as sugar beets.
12

13
14 32. The effect of Defendant’s label is to communicate that the product is
15 composed of betaine hydrochloride from sugar beets, not betaine
16 hydrochloride that is synthetically created in a lab. As a result, purchasers
17 are likely mislead and deceived by the product’s label and other forms of
18 marketing and advertising, and reasonably expect that Betaine actually
19 consist primarily of betaine hydrochloride from sugar beets, when, in fact,
20 this is not the case.
21

22
23 33. Plaintiff’s claim that Betaine’s product label and associated advertising is
24 misleading and deceptive does not seek to challenge the product’s formal
25 name and labeling in areas for which the Food and Drug Administration
26 (“FDA”) has promulgated regulations implementing the Federal Food and
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1 Drug and Cosmetic Act (“FFDCA”). Plaintiff’s claim is, instead, predicated
2 on the fact that the labeling and associated advertising is misleading and
3 deceptive even if in compliance with the minimum requirements set forth
4 by the FDA, as the FDA regulations set the floor or minimum requirements.
5 Indeed, compliance with the minimum requirements is necessary, but it is
6 not sufficient to determine whether a product’s label is false and
7 misleading, and simply does not provide a shield from liability. *See e.g.,*
8 *Wyeth v. Levine*, 129 S. Ct 1187, 12012 (2009).

11 34. Plaintiff’s state law claims are aimed at the features of the labeling of
12 Betaine and associated advertising that are voluntary, and not required by
13 the FDA regulations, which Defendant selected in order to maximize the
14 label’s deceptive impact upon Plaintiff and other consumer’s similarly
15 situated. Defendant made the decision to so label its product because of its
16 marketing strategy. The FDA regulations do not require that Defendant
17 state that “Betaine HCl” is “from sugar beets.” Indeed, Defendant’s strategy
18 misleads consumers to buy Betaine as a result of this deceptive message,
19 and Defendant has been successful thus far.

23 35. In addition to the deceptive label, Defendant deceptively describes Betaine
24 on its website/s. Defendant’s interactive website is accessible to the general
25 public. Defendant’s website also conveys in a similar deceptive manner the
26 product Betaine. As explained below, Defendant’s website conveys the
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28

1 marketing and/or advertising message in a calculated way to lead
2 consumers to believe that the product primary contains betaine
3 hydrochloride from “sugar beets” when in fact it does not.
4

5 36. Plaintiff’s claim that Betaine’s website is misleading and deceptive is based
6 on specific marketing and/or advertising content, which Defendant displays
7 on its website, distinct from the misleading aspects of the product label.
8 Specifically, the misleading and deceptive website content was not required
9 by the FDA labeling requirements. Defendant’s website also falsely informs
10 consumers that the primacy ingredient in “Betaine HCl” from “sugar beets,”
11 stating: “Contains betaine hydrochloride from sugar beets, along with
12 pepsin for digestive support. Formulated for quick delivery and
13 absorption.”⁶ Such statement/s lead a reasonable consumer to believe that
14 s/he is receiving betaine hydrochloride from “sugar beets,” not betaine
15 hydrochloride from synthetic sources, unlike betaine anhydrous which may
16 be from sugar beets. Such statement/s are false and/or misleading
17 representations concerning the Betaine product.
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22 37. On Defendant’s professional LinkedIn page, Defendant states: “The
23 Vitamin Shoppe is dedicated to healthy living. We seek to differentiate
24 ourselves by providing the **highest quality products** at discount prices and
25 by providing exceptional customer service. We increase the value we offer
26
27

28 ⁶ See http://www.vitaminshoppe.com/store/en/browse/sku_detail.jsp?id=VS-1196#.UcnusKUUsdI.

1 to our customers through Vitamin Shoppe brand products and by being an
 2 education destination for our customers. And, only at the Vitamin Shoppe
 3 will customers find Associates, or Health Enthusiasts, committed to sharing
 4 information regarding health, fitness and nutrition! At The Vitamin
 5 Shoppe we believe that everyone can achieve better health and happiness
 6 through proper nutrition and supplementation. You may not be able to
 7 change the ingredients of all the foods you eat – but you can use vitamins
 8 and nutrients to round out your diet and help your body achieve its proper
 9 balance. Have you got a passion for health and fitness? If you think you'd
 10 like to change the world one healthy body at a time, visit our career center
 11 at www.vitaminshoppe.com/careers. Where you can apply to both
 12 opportunities at our Corporate Headquarters in Northern NJ as well as our
 13 Retail Stores located nationwide.”⁷

14 38. In addition, Plaintiff is informed and believes, and thereupon alleges, that
 15 Defendant has also engaged in other forms of advertising and/or marketing
 16 of Betaine, including print advertisements, point-of-purchase displays, and
 17 national in-store programs. Through the uniform deceptive and misleading
 18 advertising and marketing campaigns, VITAMIN SHOPPE leads
 19 consumers to believe that the primacy ingredient in the product is betaine
 20 hydrochloride from sugar beets, not betaine hydrochloride from synthetic
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28 ⁷ <http://www.linkedin.com/company/the-vitamin-shoppe> (Emphasis added.)

1 sources. As a result of this campaign, the average consumer, unaware that
2 the product does not actually contain betaine hydrochloride from natural
3 sugar beets, purchases Betaine on a false pretense.

4
5 39. Moreover, consumers' confusion is reasonable, given that Defendant's
6 product should contain primarily betaine hydrochloride from sugar beets
7 because Defendant represents as much on its product label and in its
8 marketing campaign. Defendant should have used betaine anhydrous rather
9 than betaine hydrochloride if it wanted to represent that Betaine is natural
10 and derived from sugar beets, but Defendant made a tactical marketing
11 decision to do otherwise.
12

13
14 40. Accordingly, Defendant's representations regarding Betaine are false,
15 misleading and/or fail to disclose material facts. Defendant knew or should
16 have known and/or was reckless in not knowing and adequately disclosing
17 that Betaine did not contain betaine primarily from sugar beets. Defendant
18 knew or should have known that its representations concerning Betaine
19 were likely to deceive consumers into believing that they were purchasing
20 primarily betaine hydrochloride from sugar beets when that was not the
21 case. Further, reasonable consumers do not expect to be ingesting synthetic
22 betaine when the label indicates betaine hydrochloride from "sugar beets."
23

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25
26 41. As a result of Defendant's representations and/or omissions, Plaintiff
27 overpaid for Betaine that Plaintiff purchased because the value of the
28

1 supplement was diminished at the time of the sale. Had Plaintiff been aware
2 that Betaine included betaine hydrochloride from synthetic sources rather
3 than betaine hydrochloride from sugar beets, Plaintiff would not have
4 purchased it, would have paid less for it, or would have purchased a
5 different betaine supplement. For all the reasons stated herein, Plaintiff
6 suffered injury in fact and has lost monies as a result of Defendant's
7 actions.
8

9
10 42. Plaintiff is a generally health conscientious person who often shops at
11 health foods stores. Purity of health supplements and accuracy of a
12 product's labeling is important to Plaintiff.
13

14 43. Health conscientious people, like Plaintiff, typically rely on a company's
15 representations, including representations found on a company's website,
16 when purchasing that company's products, especially representations that a
17 product is primarily betaine hydrochloride from sugar beets, which Betaine
18 product is sold by VITAMIN SHOPPE.
19

20
21 44. Health conscientious people, like Plaintiff, also typically rely on the
22 packing of consumable products from retail stores.
23

24 45. On or about May 16, 2013, Plaintiff purchased a bottle of Betaine (100
25 tablets) from the Vitamin Shoppe in Rancho Bernardo, California, Store
26 #251, because Plaintiff had been exposed to representations by Defendant,
27 that it was betaine from "sugar beets." Plaintiff paid \$8.49 before tax for the
28

1 Betaine product.

2 46. Plaintiff was seeking dietary health supplements that contained betaine
3 hydrochloride because Plaintiff believed that such substance would likely
4 result in health benefits. Plaintiff reasonably relied upon the representations
5 on Betaine packaging and various forms of advertisement, rather than
6 performing in-depth independent research into the truthfulness or accuracy
7 of Defendant's representations that "Betaine HCl" was from "sugar beets."
8

9
10 47. Sometime after purchasing and consuming Betaine, Plaintiff learned that it
11 was not likely that the betaine hydrochloride in Betaine was from sugar
12 beets.
13

14 48. Defendant's many representations concerning the Betaine product led
15 Plaintiff to believe that Betaine contained betaine hydrochloride from sugar
16 beets rather than synthetic sources, as explained in detail above. Plaintiff
17 was shocked to learn that Betaine is primarily betaine hydrochloride from
18 synthetic sources, rather than betaine hydrochloride from sugar beets as
19 represented by Defendant.
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21

22 49. Betaine is therefore a deceptively packaged and advertised product
23 designed to induce the purchase of Betaine as containing betaine from sugar
24 beets, although betaine hydrochloride is less expensive than betaine
25 anhydrous (which may be derived from sugar beets) and may be harmful in
26 the dosage recommended by Defendant.
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**I. FIRST CAUSE OF ACTION FOR VIOLATION OF
CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.
(California's Unfair Competition Law)**

50. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if fully stated herein.

51. "Unfair competition" is defined in Business and Professions Code Section § 17200 as encompassing any one of the five types of business "wrongs," three of which are at issue here: (1) an "unlawful" business act or practice; (2) an "unfair" business act or practice; and (3) a "fraudulent" business act or practice. The definitions in § 17200 are disjunctive, meaning that each of these five "wrongs," of which Plaintiff alleges three of them, operates independently from the others.

52. Plaintiff and Defendant are both "person[s]" as defined by California Business & Professions Code § 17201. Section 17204 authorizes a private right of action on both an individual and representative basis.

a. "Unlawful" Prong

53. Because Defendant has violated California's False Advertising Law, Business & Professions Code §§ 17500 *et seq.*, as well as California's Health and Safety Code § 110660, Defendant has violated California's Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*, which provides a cause of action for an "unlawful" business act or practice perpetrated on members of the California public.

1 54. State law claims based on a food products misleading and deceptive label
2 are expressly permitted when they impose legal obligations identical to the
3 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing
4 FDA regulations, including FDA regulations concerning naming and
5 labeling. *See e.g., In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077,
6 1094-95 (2008). The Sherman law expressly incorporates into California
7 law all of the food labeling regulations adopted pursuant to the FFDCA.
8 Plaintiff’s § 17200 claim that the label of the Betaine product violates
9 California Health & Safety Code § 110660 imposes legal obligations
10 identical to 21 U.S.C. § 343(a) of the FFDCA. Since § 110660 and poses
11 the identical legal obligation that “any food is misbranded if its labeling is
12 false or misleading in any particular,” point of section 17200 claim, which
13 is based in part on § 110660, is expressly permitted and not preempted by
14 the FFDCA. Further, § 343(a) of the FFDCA is not subject to express
15 preemption provision set forth in 21 U.S.C. § 343-1 of the FFDCA.
16

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21 55. Section 110660 states, “any food is misbranded if its labeling is false or
22 misleading in any particular.” Section 110660 is part of California's
23 Sherman Food, Drug and Cosmetic law, California Health & Safety Code §
24 109875, et seq. (the “Sherman law”). Defendant has violated § 110660
25 because the product label misleads and deceives consumers into believing
26 that the primary ingredient in Betaine is betaine hydrochloride from sugar
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1 beets, when in fact, the product contains betaine hydrochloride that is
 2 synthetically created. The product label misleads and deceives consumers
 3 into believing that Betaine is more healthful than it actually is because it
 4 purportedly primarily contains betaine hydrochloride from natural sources
 5 such as sugar beets.
 6

7 56. There were reasonably available alternatives to further Defendant's
 8 legitimate business interest, other than the conduct described herein, such as
 9 using betaine anhydrous or not stating that the betaine hydrochloride used
 10 in Betaine comes from sugar beets.
 11

12 57. Plaintiff and the putative class reserve the right to allege other violations of
 13 law, which constitute other unlawful business practices or acts, as such
 14 conduct is ongoing and continues to this date.
 15

16 **b. "Unfair" Prong**

17 58. Defendant's actions and representations constitute an "unfair" business act
 18 or practice under § 17200, in that Defendant's conduct is substantially
 19 injurious to consumers, offends public policy, and is immoral, unethical,
 20 oppressive, and unscrupulous as the gravity of the conduct outweighs any
 21 alleged benefits attributable to such conduct. Without limitation, it is an
 22 unfair business act or practice for Defendant to knowingly or negligently
 23 represent to the consuming public, including Plaintiff, that Betaine is
 24 primarily composed of betaine hydrochloride from sugar beets when it is in
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fact primarily composed of a synthetic source of betaine hydrochloride. Such conduct by Defendant is "unfair" because it offends established public policy and/or are in moral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are led to believe that Betaine has qualities and benefits, including quantities of betaine from natural sources such as sugar beets that it does not have. The product label misleads and deceives consumers into believing that Betaine contains betaine hydrochloride from natural sources when it actually contains betaine hydrochloride from synthetic sources.

59. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant has committed acts of unfair competition as defined by Business & Professions Code §§ 17200 et seq., by engaging in the false advertising and promotion of Betaine as, *inter alia*, "Betaine HCl" from "sugar beets" as described above.

60. Plaintiff and other members of the class could not reasonably have avoided the injury suffered by each of them. Plaintiff reserves the right to allege further conduct that constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

61. Defendant could have and should have furthered its legitimate business interests by expressly indicating on its packaging and website/s that betaine HCl is from synthetic sources rather than from natural food sources such as

sugar beets. Alternatively, Defendant could have refrained from misstating that the betaine in “Betaine HCl” is “from sugar beets.”

c. “Fraudulent” Prong

62. Defendant’s claims and misleading statements were false, misleading and/or likely to deceive the consuming public within the meaning of § 17200. Without limitation, it is a fraudulent act or business act or practice for Defendant to knowingly or negligently represent to Plaintiffs, whether by conduct, orally or in writing by:

(a) intentionally and misleadingly designing the product’s Supplement Facts panel by displaying “Betaine HCl” just above “(from sugar beets),” without accurately identifying that the primary ingredient is actually betaine hydrochloride from synthetic sources, which is a less expensive source of betaine, and may be harmful in the dosage recommended by Defendant;

(b) intentionally and misleadingly designing the product’s front label to state that Betaine HCl is also known as Trimethylglycine when in fact Trimethylglycine refers to betaine anhydrous and not betaine hydrochloride; and

(c) intentionally creating Defendant’s website to mislead and deceive consumers into believing that Betaine primarily contains betaine hydrochloride from sugar beets, without accurately identifying

1 that the primary ingredient is actually betaine hydrochloride from
2 synthetic sources, which is a less expensive source of betaine,
3 and may be harmful in the dosage recommended by Defendant.
4

5 63. Plaintiff reserves the right to allege further conduct that constitutes other
6 fraudulent business acts of practices. Such conduct is ongoing and
7 continues to this date.
8

9 64. The fraudulent, unlawful and unfair business practices and false and
10 misleading advertising of Defendant, as described above, presents a
11 continuing threat to consumers in that they will continue to be misled into
12 purchasing Betaine, and likely consuming it, on false premises.
13

14 65. As a direct and proximate result of the aforementioned acts and
15 representations of Defendant, Defendant received and continues to hold
16 monies rightfully belonging to Plaintiff and other similarly situated
17 consumers who were led to purchase, purchase more of, or pay more for,
18 the Betaine product, due to the unlawful acts of Defendant.
19
20

21 66. Thus, Defendant caused Plaintiff and other members of the Class to
22 purchase Betaine on false premises during the Class Period.
23

24 67. Defendant has engaged in unlawful, unfair and fraudulent business acts or
25 practices, entitling Plaintiff to judgment and equitable relief against
26 Defendant, as set forth in the Prayer for Relief. Pursuant to Business &
27 Professions Code § 17203, as result of each and every violation of the UCL,
28

1 which are continuing, Plaintiff is entitled to restitution and injunctive relief
2 against Defendant, as set forth in the Prayer for Relief.

3 68. Plaintiff and members of the putative class have suffered injury in fact and
4 have lost money or property as a result of Defendant's unfair competition,
5 as more fully set forth herein. Plaintiff and members of the putative class
6 have been injured because they overpaid for Betaine, since the value of the
7 supplement was diminished at the time of sale. Plaintiff and members of the
8 class have been injured because, had they been made aware that the product
9 contained primarily betaine hydrochloride from synthetic sources rather
10 than betaine from sugar beets, they would not have purchased the product,
11 would you paid less for it, or purchased a different betaine supplement.
12

13 69. Defendant, through its acts of unfair competition, has unfairly acquired
14 money from Plaintiff and members of the putative class. It is impossible for
15 the Plaintiff to determine the exact amount of money that Defendant has
16 obtained without a detailed review of the Defendant's books and records.
17 Plaintiff requests that this Court restore this money and enjoin Defendant
18 from continuing to violate California Business & Professions Code § 17200
19 *et seq.*, as discussed above.
20

21 70. Unless Defendant is enjoined from continuing to engage in the unlawful,
22 unfair, fraudulent, untrue, and deceptive business acts and practices as
23 described herein, consumers residing within California, will continue to be
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exposed to and damaged by Defendant's unfair competition.

71. Plaintiff also seeks an order requiring Defendant to undertake a public information campaign to inform members of the putative class of its prior acts or practices in violation of the law as alleged herein.

72. Plaintiff further seeks an order requiring Defendant to make full restitution of all moneys wrongfully obtained and disgorge all ill-gotten revenues and/or profits, together with interest thereupon.

73. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, California Civil Code section 1021.5.

**II. SECOND CAUSE OF ACTION FOR VIOLATION OF
CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.
(California's False Advertising Law)**

74. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if set forth fully herein.

75. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative Class.

76. The misrepresentations, acts and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising and therefore violates Business & Professions Code §§ 17500 *et seq.*

77. At all times relevant, Defendant's advertising and promotion regarding Betaine was untrue, misleading and likely to deceive the public and/or has deceived the Plaintiff and California consumers similarly situated by

1 representing that the product contained primarily betaine hydrochloride
2 from sugar beets when in fact Defendant knew and failed to disclose that
3 the product contained primarily betaine hydrochloride from synthetic
4 sources.
5

6 78. State law claims based on a food products misleading and deceptive labels
7 are expressly permitted when they impose legal obligations identical to
8 those of the FFDCA and its implementing FDA regulations, including FDA
9 regulations concerning naming and labeling. *See e.g., In re Farm Raised*
10 *Salmon Cases*, 22 Cal. 4th 1077, 1094-95 (2008). Plaintiff § 17500 claim
11 that the label of the Betaine product is false or misleading imposes legal
12 obligations identical to 21 U.S.C. § 343(a) of the FFDCA, which states that,
13 “a food shall be deemed to be misbranded...[i]f (1) its labeling is false or
14 misleading in any particular[.]” Further, section 343(a) of the FFDCA is not
15 subject to express preemption provision set forth in 21 U.S.C. § 343-1 of
16 the FFDCA.
17

18 79. Defendant engaged in the false and/or misleading advertising and marketing
19 alleged herein with the intent to directly or indirectly induce the purchase of
20 Betaine.
21

22 80. In making and disseminating the statements and and/or omissions alleged
23 herein, Defendant knew or should have known that the statements and
24 and/or omissions were untrue or misleading, and acted in violation of
25
26
27
28

1 California Business & Professions Code §§ 17500 *et seq.*

2 81. Plaintiff and members of the putative class have suffered injury in fact and
3 have lost money or property as a result of Defendant's False Advertising,
4 has more fully set forth herein. Plaintiff and members of the class have been
5 injured because the overpaid for Betaine, since the value of the supplement
6 was diminished at the time of sale. Plaintiff and members of the putative
7 class have been injured because had they been made aware that the Betaine
8 product contains primarily betaine hydrochloride from synthetic sources
9 rather than betaine from natural sources such as sugar beets, they would
10 have not purchased the supplement, would have paid less for it, or would
11 purchased different betaine supplement.
12

13 82. At a date presently unknown to Plaintiff, but at least four years prior to the
14 filing of this action, and as set forth above, Defendant has committed acts of
15 untrue and misleading advertising and promotion of Betaine, as defined by
16 Business & Professions Code §§ 17500 *et seq.*, by engaging in the false
17 advertising and promotion of Betaine as "Betaine HCl" "from sugar beets"
18 on the Supplement Facts panel and Defendant's website, as described
19 above.
20

21 83. The fraudulent, unlawful and unfair business practices and false and
22 misleading advertising of Defendant, as described above, presents a
23 continuing threat to consumers in that they will continue to mislead
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consumers to purchase Betaine on false premises.

84. As a direct and proximate result of the aforementioned acts and representations of Defendant, Defendant received and continues to hold monies rightfully belonging to Plaintiff and other similarly situated consumers who were led to purchase, purchase more of, or pay more for, the Betaine product, due to the unlawful acts of Defendant, during the Class Period.

III. THIRD CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

85. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if fully stated herein.

86. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant represented to the public, including Plaintiff, by packaging and other means, that Betaine is primarily betaine hydrochloride from natural sources such as sugar beets rather than betaine from synthetic sources, as described above.

87. Defendant made the representations herein alleged with the intention of inducing the public, including Plaintiff, to purchase Betaine.

88. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased the products, as described above.

89. At all times relevant, Defendant made the misrepresentations herein

alleged, Defendant had no reasonable ground/s for believing the representations to be true.

90. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other consumers similarly situated were induced to purchase, purchase more of, or pay more for, the Betaine product, due to the unlawful acts of Defendant, in an amount to be determined at trial, during the Class Period.

IV. FOURTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION

91. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations.

At a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant intentionally represented to the public, including Plaintiff, by packaging an other means, such as "Betaine HCl" from "from sugar beets" on the product's Supplement Facts panel and Defendant's website, as described above. Defendant's representations were untrue.

92. Defendant made the representations herein alleged with the intention of inducing the public, including Plaintiff, to purchase Betaine.

93. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant's advertising representations and, in reliance on them, purchased the products, as described above.

94. At all times relevant, Defendant made the misrepresentations herein

1 alleged, Defendant knew the representations to be false.

2 95. As a proximate result of Defendant's intentional misrepresentations,
3 Plaintiff and other consumers similarly situated were induced to spend an
4 amount of money to be determined at trial on Defendant's product Betaine.
5

6 96. Plaintiff is informed, and believes, and thereupon alleges, that Defendant
7 knew that Betaine was not as healthy or natural as promoted, as it does in
8 fact not contain primarily betaine from sugar beets but rather betaine
9 hydrochloride from synthetic sources, and intended that consumers and the
10 unknowing public should rely on their representations. Plaintiff and other
11 consumers similarly situated, in purchasing and using the products as herein
12 alleged, did rely on Defendant's representations, all to their damage and/or
13 detriment as herein alleged. By engaging in said acts, Defendant is guilty of
14 malice, oppression, and fraud, and Plaintiff is therefore entitled to recover
15 exemplary or punitive damages.
16
17
18

19 **CLASS ACTION ALLEGATIONS**
20

21 97. Plaintiff and the members of the Class have all suffered injury in fact as a
22 result of the Defendant's unlawful and misleading conduct.
23

24 98. The "Class Period" means four years prior to filing of the Complaint in this
25 action.
26

27 99. Plaintiff brings this lawsuit on behalf of herself and the other California
28 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal

Rules of Civil Procedure. Subject to additional information obtained through further investigation and/or discovery, the proposed “Class” consists of:

“All persons in California who purchased Betaine from Defendant within four years prior to the filing of the Complaint in this action.”

Excluded from the Class are Defendant and any of its officers, directors, and employees, or anyone who purchased Betaine for the purposes of resale. Plaintiff reserves the right to modify or amend the Class definition before the Court determines whether certification is appropriate.

100. ***Ascertainability.*** The members of the Class are readily ascertainable by resort to Defendant’s records and/or Defendant’s agent’s records regarding retail and online sales, as well as through public notice.

101. ***Numerosity.*** The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed class contains tens of thousands of members.

102. ***Existence and Predominance of Common Questions of Law and Fact.***

Common questions of law and fact exist as to all members of the Class predominate over any questions affecting only individual Class members.

All members of the Class have been subject to the same conduct and their claims are based on the standardized marketing, advertisements and

1 promotions. The common legal and factual questions include, but are not
2 limited to, the following:

- 3 (a) Whether Betaine contains primarily betaine from synthetic
4 sources;
5
6 (b) Whether Betaine contains any amount of betaine from sugar
7 beets;
8
9 (c) Whether Defendant's claims and representations above are
10 untrue, or are misleading, or reasonably likely to deceive;
11
12 (d) Whether Defendant's conduct is an unlawful act or practice
13 within the meaning of California Business & Professions Code
14 § 17200;
15
16 (e) Whether Defendant's conduct is a deceptive act or practice
17 within the meaning of California Business & Professions Code
18 § 17200;
19
20 (f) Whether Defendant's conduct is an unfair act or practice
21 within the meaning of California Business & Professions Code
22 § 17200;
23
24 (g) Whether Defendant's advertising is untrue or misleading with
25 the meaning of California Business & Professions Code §
26 17500;
27
28 (h) Whether Defendant's advertising is untrue or misleading in

violation of California Civil Code § 110660;

- (i) Whether Defendant, through its conduct, received money that, in equity and good conscience, belongs to Plaintiff and members of the Class;
- (j) Whether Plaintiff and proposed members of the Class are entitled to equitable relief, including but not limited to restitution and/or disgorgement; and
- (k) Whether Plaintiff and proposed members of the Class are entitled to injunctive relief sought herein.

103. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent. Plaintiff, like members of the proposed Class, purchased Betaine after exposure to the same material misrepresentations and/or omissions appearing on the product packaging, and received a product that contained betaine hydrochloride from synthetic sources rather than betaine hydrochloride from sugar beets. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Class. Defendant has no defenses unique to the Plaintiff.

104. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experience in consumer protection law, including class actions. Plaintiff has

1 no adverse or antagonistic interest to those in the Class, and will fairly and
2 adequately protect the interests of the Class. Plaintiff's attorneys are aware
3 of no interests adverse or antagonistic to those of the Plaintiff and proposed
4 Class.
5

6 105. ***Superiority.*** A class-action is superior to all other available means for the
7 fair and efficient adjudication of this controversy. Individualized litigation
8 would create the danger inconsistent or contradictory judgments arising
9 from the same set of facts. Individualized litigation would also increase the
10 delay and expense to all parties and court system and the issues raised by
11 this action. The damages or other financial detriment suffered by individual
12 Class members may be relatively small compared to the burden and
13 expense that would be entailed by individual litigation of the claims against
14 the Defendant. The injury suffered by each individual member of the
15 proposed class is relatively small in comparison to the burden and expense
16 of individual prosecution of the complex and extensive litigation
17 necessitated by Defendant's conduct. It would be virtually impossible for
18 members of the proposed Class to individually redress effectively the
19 wrongs to them. Even if the members of the proposed Class could afford
20 such litigation, the court system could not. Individualized litigation
21 increases the delay and expense to all parties, and to the court system,
22 presented by the complex legal and factual issues of the case. By contrast,
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the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Therefore, a class action is maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

106. Unless a Class is certified, Defendant will retain monies received as a result of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-wide injunction is issued, Defendant will also likely continue to advertise, market, promote and package Betaine in an unlawful and misleading manner, and members of the Class will continue to be misled, harmed, and denied their rights under California law.

107. Further, Defendant has acted or refused to act on grounds that are generally applicable to the class so that declaratory and injunctive relief is appropriate to the Class as a whole, making class certification appropriate pursuant to Fed. R. Civ. P. 23(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff and Class members be awarded damages from Defendant as follows:

- a. Certifying the Class as requested herein;
- b. A temporary, preliminary and/or permanent order for injunctive relief requiring Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing its Betaine as composed primarily

1 betaine hydrochloride from sugar beets; (ii) discontinue advertising,
2 marketing, packaging and otherwise representing its Betaine HCl as
3 “known as Trimethylglycine”; (iii) disclose how much, if any, betaine is
4 actually from sugar beets in each tablet; (iv) disclose the presence of
5 betaine hydrochloride from synthetic sources and how much synthetic
6 betaine hydrochloride is in each tablet; (v) undertake an immediate
7 public information campaign to inform members of the proposed class
8 as to their prior practices; and (vi) correct any erroneous impression
9 consumers may have derived concerning the nature, characteristics, or
10 qualities and quantities of its Betaine product, including without
11 limitation, the placement of corrective advertising and providing written
12 notice to the public;
13

14 c. An order requiring imposition of a constructive trust and and/or
15 disgorgement of Defendant’s ill-gotten gains and to pay restitution to
16 Plaintiff and all members of the Class and to restore to the plaintiff and
17 members of the class all funds acquired by means of any act or practice
18 declared by this court to be an unlawful, fraudulent or unfair business act
19 or practice, in violation of laws, statutes or regulations, or constituting
20 unfair competition;
21

22 d. Distribution of any monies recovered on behalf of members of the Class
23 via fluid recovery or *cy pres* recovery were necessary and as applicable,
24
25
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28

to prevent Defendant from retaining the benefits of their wrongful conduct;

e. Statutory prejudgment and post judgment interest;

f. Special, general, and compensatory damages to Plaintiff and the Class;

g. Exemplary and/or punitive damages for intentional misrepresentations pursuant to, *inter alia*, Cal. Civ. Code § 3294;

h. Costs of this suit;

i. Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and

j. Awarding any and all other relief that this Court deems necessary or appropriate.

Dated: July 2, 2013

KAZEROUNI LAW GROUP, APC

BY: /S/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

Trial By Jury

108. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 2, 2013

KAZEROUNI LAW GROUP, APC

BY: /S/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Lisa Womack, Individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kazerouni Law Group, APC; 2700 N. Main Street, Suite 1000
Santa Ana, CA 92705 (800) 400-6808

DEFENDANTS

Vitamin Shoppe Industries Inc., a/k/a The Vitamin Shoppe

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '13CV1554 BEN BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity).
Cal. Bus. & Prof. Code §§ 17200 et seq.; Bus & Prof. Code §§ 17500 et seq.; Cal. Civ. Code § 110660;

Brief description of cause:

Negligent Misrepresentation and Intentional misrepresentation ; 28 : 1332

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,001.00+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/02/2013

s/Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.