

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY**

JOHN J. GROSS, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

RITE AID CORPORATION,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

FILED ELECTRONICALLY

CLASS ACTION COMPLAINT

Plaintiff John J. Gross, by and through his attorneys, brings this class action on behalf of himself and similarly-situated others who purchased health supplements containing glucosamine and/or chondroitin manufactured and marketed Rite Aid, Corp. (“Rite Aid” or “Defendant”) and sold under its own house-brand label, and states as follows:

INTRODUCTION AND NATURE OF ACTION

1. Rite Aid is a national retailer/pharmacy with approximately 4,600 stores in 31 states and the District of Columbia.
2. Rite Aid sells its name-brand products in its stores and online via its website. Rite Aid operates stores in the State of New Jersey and, in addition, ships a significant amount of products to residents of New Jersey.
3. In addition to brand-name products, Rite Aid manufactures and sells a house-brand line of products under the “Rite Aid” label, including joint health dietary supplements

(collectively referred to as the “Supplements”).¹ According to the labels on these products, the purported active ingredients are, among others, glucosamine sulfate, chondroitin sulfate.

4. In its uniform, nationwide marketing of the Supplements, Rite Aid promises that they “help rebuild cartilage & lubricate joints”.

5. While Rite Aid’s claims regarding the improved joint function associated with the Supplements are directed at anyone seeking to alleviate joint pain or stiffness, they are particularly directed at people suffering from osteoarthritis. Indeed, the most common symptoms of osteoarthritis include joint pain and stiffness—the very symptoms the Supplements claim to remedy.²

6. Despite Rite Aid’s claims regarding the benefits and efficacy of glucosamine and chondroitin, however, the bulk, if not all, of the reliable and published scientific studies demonstrate that Rite Aid’s claims are false and misleading.

7. Most damning to Rite Aid’s claims is a large scale study sponsored and conducted by the National Institute of Health (“NIH”) called the Glucosamine/chondroitin Arthritis Intervention Trial (“GAIT”), which concluded, in a report published in the *New England Journal of Medicine*, that “[glucosamine and chondroitin], alone or in combination, was not efficacious. . . .” Clegg, D., et al., *Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis*, 354 *New England J. of Med.* 795, 806 (2006).³

¹ The Supplements include, but are not necessarily limited to 1) Rite Aid Glucosamine/Chondroitin; 2) Rite Aid Natural Glucosamine/Chondroitin; 3) Rite Aid Glucosamine Chondroitin Advanced Complex; 4) Rite Aid Glucosamine Chondroitin, Triple Strength + MSM; 5) Rite Aid Glucosamine Chondroitin + MSM; 6) Rite Aid Glucosamine Chondroitin Advanced Complex with HA.

² See <http://www.webmd.com/osteoarthritis/guide/osteoarthritis-basics> (noting that the symptoms of osteoarthritis include “joint aching and soreness,” “pain,” and “stiffness”).

³ The GAIT Study was conducted by the National Center for Complementary and Alternative Medicine, which is, according to its website “is the Federal Government’s lead agency for

8. Thus, in addition to affirmatively misrepresenting the joint health benefits of the Supplements, Rite Aid's failure to disclose facts regarding this and other similar studies also constitutes deception by omission or concealment. As a result, Defendant's joint health benefit representations and omissions are false, misleading and reasonably likely to deceive the public.

9. The misleading representations and omissions by Rite Aid are conveyed to the consuming public uniformly and through a variety of media including its website and online promotional materials and the labeling/packaging of the Supplements themselves. In short, Defendant's uniform advertising and marketing virtually ensure that the only reason a consumer would purchase the Supplements is to obtain the advertised joint health benefits—benefits that Rite Aid knows the Supplements fail to provide.

10. As a result of Defendant's deceptive joint health benefit representations, consumers – including Plaintiff and members of the proposed Class – have purchased products that do not perform as advertised.

11. Plaintiff brings this action on behalf of himself and all other similarly situated consumers to halt the dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Supplements based on violations of New Jersey unfair competition laws and breach of express warranties. Plaintiff seeks injunctive and monetary relief for all consumers who purchased the Supplements.

scientific research on the diverse medical and health care systems, practices, and products that are not generally considered part of conventional medicine.”

JURISDICTION AND VENUE

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

13. This Court has jurisdiction because Defendant conducts business in the State of New Jersey by regularly selling its products to New Jersey residents in both its stores and via its website.

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

PARTIES

15. Plaintiff John J. Gross resides in Mount Royal, New Jersey. Plaintiff Gross suffers from joint discomfort. During the class period, Plaintiff Gross purchased certain of the Supplements at Rite Aid stores in New Jersey on several occasions in in reliance on Rite Aid's claims that the Supplements would "help rebuild cartilage & lubricate joints." If Plaintiff Gross was aware that Rite Aid had both misrepresented the benefits of the Supplements and, in addition, concealed its knowledge of studies demonstrating the lack of efficacy of those products, he would not have purchased the Supplements. Plaintiff Gross used the Supplements as directed and did not receive any of the promised benefits. As a result, Plaintiff Gross suffered an injury in fact and lost the money associated with his purchase.

16. Defendant Rite Aid is a Delaware corporation with its principal place of business at 30 Hunter Lane, Camp Hill, Pennsylvania 17011. At all relevant times, Rite Aid has

advertised, marketed, provided, offered, distributed, and/or sold the Supplements throughout the United States including to individuals in New Jersey such as Plaintiff and the Class.

ALLEGATIONS

The False and Misleading Marketing Claims

17. This lawsuit concerns the products marketed and sold by Rite Aid including, but not limited to: 1) Rite Aid Glucosamine/Chondroitin; 2) Rite Aid Natural Glucosamine/Chondroitin; 3) Rite Aid Glucosamine Chondroitin Advanced Complex; 4) Rite Aid Glucosamine Chondroitin, Triple Strength + MSM; 5) Rite Aid Glucosamine Chondroitin + MSM; 6) Rite Aid Glucosamine Chondroitin Advanced Complex with HA (all listed and unlisted products referred to herein, collectively, as the “Supplements”).⁴ These products frequently come in a variety of dosages and sizes, so the total number of relevant products sold by Rite Aid may exceed those listed above.

18. Marketed as joint health dietary supplements, the Supplements purportedly relieve joint pain through the combination of their ingredients.

19. According to Defendant’s website and to the packaging/label, the Supplements “help rebuild cartilage & lubricate joints.”

Multiple Clinical Studies Demonstrate That the Supplements Are Ineffective

20. Rite Aid’s representations about the efficacy of the ingredients in the Supplements products are totally contradicted by all credible scientific evidence. Indeed, since 2004, multiple clinical studies have found that glucosamine and chondroitin, alone or in combination, are not effective in providing the represented joint health benefits.

⁴ Plaintiff reserves the right to include other products upon completion of discovery.

21. In 2004, one study concluded that glucosamine was no more effective than a placebo in treating the symptoms of knee osteoarthritis. McAlindon et al., *Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based Randomized Double-Blind Controlled Trial*, 117(9) *Am. J. Med.* 649 (Nov. 2004).

22. Indeed, as early as 2004, other clinical studies indicated a significant “placebo” effect when patients consumed products they were told had the potential to cure joint aches and pains. For example, one 2004 study involved a six-month study of the effects of glucosamine compared with placebo and concluded that there was no difference in primary or secondary outcomes between the two. Cibere et al., *Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*, 51(5) *Arthritis Care & Research* 738-45 (Oct. 15, 2004). The authors concluded that the study provided **no evidence** of symptomatic benefit from continued use of glucosamine and that perceived benefits were, in fact, due to the placebo effect and not any real benefit provided by glucosamine. *Id.*

23. In 2006, the first GAIT study concluded that “[t]he analysis of the primary outcome measure did not show that either supplement, alone or in combination, was efficacious.” 2006 GAIT Study at 806. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage⁵ and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 GAIT study reported results were inconclusive. See Sawitzke, A.D., et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) *J. Arthritis Rheum.* 3183–91 (Oct.

⁵ To a similar effect, a study by Kwok, et al., entitled *The Joints On Glucosamine (JOG) Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI*, 60 *Arthritis Rheum* 725 (2009), concluded that glucosamine was not effective in preventing the worsening of cartilage damage.

2008); Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT*, 69(8) Ann Rheum. Dis. 1459-64 (Aug. 2010).

24. The GAIT studies are consistent with the reported results of other studies that have demonstrated the ineffectiveness of both glucosamine and chondroitin.

- In 2008, a study concluded that glucosamine was no better than a placebo in reducing either the symptoms or progression of hip osteoarthritis. Rozendaal et al., *Effect of Glucosamine Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008)

- A 2010 a meta-analysis examined prior studies involving glucosamine and chondroitin, alone or in combination, and reported that the collection of studies supported a conclusion that those compounds neither reduced joint pain nor had an impact on the narrowing of joint space. Wandel et al., *Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis*, BMJ 341:c4675 (2010).

- Another 2010 study concluded that there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that there was no data recommending the use of glucosamine. Wilkens et al., *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

- In 2011, a summary article reviewed the available literature and concluded that “[t]he cost-effectiveness of these dietary supplements alone or in combination in the treatment of OA has not been demonstrated in North America.” Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*, Rheum. Dis. Clin. N. Am. 37 (2011) 103-118.

- Most recently, a meta-analysis synthesized all available studies evaluating the efficacy of glucosamine for treating osteoarthritis and concluded that glucosamine showed *no pain reduction benefits* for osteoarthritis. Wu D. et al., *Efficacies of different preparations of glucosamine for the treatment of osteoarthritis: a meta-analysis of randomised, double-blind, placebo-controlled trials*, 67(6) Int. J. Clin. Pract. 585-94 (June 2013).

25. Scientific studies have also shown that the other ingredients in the Supplements are similarly ineffective. *See, e.g., S. Brien, et. al., Systematic Review Of The Nutritional Supplements (DMSO) And Methylsulfonylmethane (MSM) In The Treatment Of Osteoarthritis*, 16 *Osteoarthritis and Cartilage*, 1277 (Nov. 2008); Usha PR and Naidu MU, *Randomised, Double-Blind, Parallel, Placebo-Controlled Study of Oral Glucosamine, Methylsulfonylmethane and their Combination in Osteoarthritis*, 24 *Clinical Drug Investigation* 353-63 (2004); *see also* Biegert C et al., *Efficacy and Safety of Willow Bark Extract in the Treatment of Osteoarthritis and Rheumatoid Arthritis: Results of 2 Randomized Double-Blind Controlled Trials*, *Journal of Rheumatology* 31.11 (2004): 2121-30 (no efficacy for willow bark as compared with placebo and willow bark less effective than low dosages of non-steroidal anti-inflammatory); *see also* Abdel-Tawb, M., et al., *Boswellia Serrata: An Overall Assessment Of In Vitro, Preclinical, Pharmacokinetic And Clinical Data*, 50 *Clin Pharmacokinet.* 349-69 (2011).

26. Rite Aid's claims that the Supplements Products "help rebuild cartilage" are also totally belied by the available scientific evidence:

- In October 2008, the GAIT Study also concluded that glucosamine and/or chondroitin, alone or in combination, did not demonstrate a clinically important difference in joint space loss, indicating that they were ineffective in rebuilding or regenerating cartilage. Sawitzke et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of*

Knee Osteoarthritis, A Report from the Glucosamine/Chondroitin Arthritis Intervention Trial, 58 *Arthritis Rheum.* 3183-3191 (2008).

- In April 2009, the *Journal of Orthopaedic Surgery* published an article that concluded that there was scant evidence to support a claim that glucosamine was superior to placebo in even arresting the deterioration of cartilage, to say nothing of arresting that process and promoting regeneration or rebuilding. Kirkham, et al., *Review Article: Glucosamine*, 17(1) *Journal of Orthopaedic Surgery* 72-6 (2009).

Rite Aid Harms Consumers By Continuing To Market And Sell the Supplements

27. Undeterred by the weight of scientific evidence demonstrating that the ingredients in the Supplements are wholly ineffective, Rite Aid conveyed and continues to convey one uniform message: the Supplements lubricate and comfort joints and promote growth of cartilage.

28. As the manufacturer and/or distributor of the Supplements, Rite Aid possesses specialized knowledge regarding the efficacy of the ingredients contained in its products and, moreover, is in a superior position to, and has, learned of the lack of efficacy for all of the key ingredients in the Supplements.

29. Specifically, Rite Aid knew, but failed to disclose, that the Supplements do not provide the joint health benefits represented and that well-conducted, clinical studies have found the ingredients in the Supplements to be ineffective in providing the joint health benefits claimed by Rite Aid.

30. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's deceptive joint health benefit representations. Plaintiff purchased and consumed one of the Supplements during the Class period and in doing so, read and considered the advertising and marketing by Rite Aid and based his decision to purchase the Products on the

joint health benefit representations on the packaging and on Defendant's website. Rite Aid's joint health benefit representations and omissions were a material factor in influencing Plaintiff's decision to purchase and consume the product he purchased.

31. Other than obtaining the benefits that the Supplements promise but do not deliver, there is no other reason for Plaintiff and the Class to have purchased the Supplements as the Supplements are not represented to provide any other benefits and Plaintiff and the Class would not have purchased the Supplements had they known Rite Aid's joint health benefit statements were false and misleading and that clinical cause and effect studies have found the ingredients to be ineffective for the represented joint health benefits.

32. As a result, Plaintiff and the Class members have been injured in fact in their purchases of the Supplements in that they were deceived into purchasing Products that do not perform as advertised.

33. Rite Aid, by contrast, reaped enormous profit from its false marketing and sale of the Supplements.

CLASS DEFINITION AND ALLEGATIONS

34. Plaintiff Gross brings this action on behalf of himself and all other similarly situated persons pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

All consumers who, within the applicable statute of limitations period, purchased the Supplements within the State of New Jersey.

Excluded from the Class are Rite Aid, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Supplements for resale.

35. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains

thousands of purchasers of the Supplements who have been damaged by Rite Aid's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

36. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (1) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (2) whether Rite Aid's alleged conduct violates public policy;
- (3) whether the alleged conduct constitutes violations of the laws asserted;
- (4) whether Rite Aid engaged in false or misleading advertising;
- (5) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- (6) whether Plaintiff and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

37. Plaintiff's claims are typical of the claims of the members of the Class because, inter alia, all Class members were injured through the uniform misconduct described above having been exposed to Rite Aid's false representations regarding the efficacy of the Supplements. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

38. Plaintiff will fairly and adequately protect the interests of the members of the Class, has retained counsel experienced in complex consumer class action litigation, and intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

39. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Rite Aid. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts and would also increase the delay and expense to all parties and the courts. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, ensures economies of scale and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

40. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, preventing Rite Aid from further engaging in the acts described and requiring Rite Aid to provide full restitution to Plaintiff and Class members.

41. Unless a Class is certified, Rite Aid will retain monies received as a result of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Rite Aid will continue to commit the violations alleged, and the members of the Class and the general public will continue to be deceived.

42. Rite Aid has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION
New Jersey Consumer Fraud Act
(N.J.S.A. 56:8-1 *et seq.*)
(New Jersey Class)

43. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

44. The New Jersey Consumer Fraud Act (“NJCFA”) prohibits “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise” including any sale or distribution of any services. N.J.S.A. 56:8-2; N.J.S.A. 56:8-1(c), (e).

45. Plaintiff Gross brings this Count on behalf of himself and the members of the Class against Defendant.

46. Through its conduct described above, Defendant has engaged in unconscionable and deceptive acts and practices in violation of the NJCFA, the stated terms and intent of which is to protect consumers from unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

47. Representing that the Supplements help “rebuild cartilage” is deceptive, and has the capacity, tendency and effect of deceiving reasonable consumers who purchase the products. Reasonable consumers would believe that the Supplements help rebuild cartilage, based upon Defendant’s misrepresentations to that effect.

48. Defendant knew, or should have known, that the representations that the Supplements help rebuild cartilage were untrue.

49. Defendant made the representation that the Supplements help rebuild cartilage and/or joints with the intent to induce consumers, and members of the class sought herein, to

purchase the products by causing them to rely on the representation that the products will help repair, regenerate, maintain, preserve, replace, renew, or rebuild cartilage.

50. Plaintiff and the Class have been aggrieved and have suffered losses as a result of the Defendant's violations of NJCFA. By virtue of the foregoing unfair, unconscionable, and deceptive acts in the conduct of trade or commerce, Plaintiff and the members of the Class have been substantially injured in the amount of the purchase prices for the Supplements that they paid, or, in the alternative, have been damaged by paying more for the Supplements that they purchased than for other products containing the same or similar ingredients that do not represent or promote that they will help repair, regenerate, maintain, preserve, replace, renew, or rebuild cartilage.

51. Defendant violated the NJCFA and aggrieved the members of the Class.

52. By reason of the foregoing, Defendant has violated the NJCFA and is liable to Plaintiff and the Class for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, and attorneys' fees and costs. Plaintiff further demands injunctive relief enjoining Defendant from engaging in use, or employing any act, including advertisements, packaging, or other representations, prohibited by NJCFA.

COUNT II
(Breach of Express Warranty
U.C.C. § 2-313 (N.J. Stat. Ann. 12A:2-313)
(New Jersey Class)

53. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

54. Plaintiff Gross brings this Count individually and on behalf of the members of the Class against Defendant.

55. Defendant is and was at all relevant times a merchant.

56. Defendant, as the manufacturer, marketer, distributor, and/or seller expressly warranted that the Supplements were fit for their intended purpose by making the Express Warranties described *supra* at ¶¶ 4, 15 and 19.

57. In fact, the Supplements are not fit for such purpose because each of the Express Warranties is false and misleading.

58. Plaintiff Gross and the Class members were injured as a direct and proximate result of Defendant's breach because they would not have purchased the Supplements if they knew the truth about the product.

59. Defendant was provided notice of these issues by the letter sent by FedEx to Rite Aid on behalf of Plaintiff Gross in advance of the filing of this Complaint.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Rite Aid's revenues to Plaintiff and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including enjoining Rite Aid from continuing the unlawful practices as set forth herein, and directing Rite Aid to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- E. Ordering Rite Aid to engage in a corrective advertising campaign;
- F. Awarding statutory and punitive damages, as appropriate;
- G. Awarding attorneys' fees and costs; and

H. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: November 1, 2013

Respectfully submitted,

By: s/ David Bahuriak
David Bahuriak
BAHURIAK LAW GROUP
210 Haddon Avenue
Westmont, NJ 08108

R. Bruce Carlson
Stephanie Goldin
Jamisen Etzel
CARLSON LYNCH LTD
PNC Park
115 Federal Street, Suite 210
Pittsburgh, PA 15212
Tel: (412) 322-9243
Fax: (412) 231-0246

Benjamin J. Sweet
Edwin J. Kilpela, Jr.
DEL SOLE CAVANAUGH STROYD LLC
200 First Avenue, Suite 300
Pittsburgh, PA 15222
Tel: (412) 261-2393
Fax: (412) 261-2110

Counsel for Plaintiff and the Class