

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-62312-CIV-ZLOCH

JESSICA MEDINA, CARLA KLEINUBING,
DAVID TALMASON, and LAURA BARBER,
individually, and on behalf of all
those similarly situated,

Plaintiffs,

v.

HOMEOLAB U.S.A., INC.,
a Foreign For Profit Corporation,

Defendant.

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**FIRST AMENDED
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

Plaintiffs, JESSICA MEDINA, CARLA KNEINUBING, DAVID TALMASON, and LAURA BARBER, individually and on behalf of all those similarly situated ("the Plaintiffs"), sue Defendant, HOMEOLAB USA, INC. ("HomeoLab"), and allege as follows:

INTRODUCTION

1. Defendant, HOMEOLAB USA, INC., nationally markets, advertises, distributes and sells "Kids Relief" products as relieving children's medical symptoms. HomeoLab packages and advertises its products as "safe and effective," and its claims are welcomed by hundreds of thousands with children afflicted by ailments the products supposedly treat. Hundreds of thousands have purchased, and continue purchasing, these products for their children as the result of HomeoLab's claims, without receiving the promised benefits. In fact, HomeoLab's products are worthless, and HomeoLab unfairly, deceptively and unjustly enriches itself of the backs of children to turn a corporate profit.

THE PARTIES

2. Plaintiff, JESSICA MEDINA, a Citizen of Florida, and active consumer residing in Sunrise, in the Southern District of Florida, purchased HomeoLab's product, "Kids Relief Flu," for her ailing child at CVS Pharmacy, in the Southern District of Florida, in October 2013, without receiving the promised benefits. Medina relied on HomeoLab's representations regarding "Kids Relief Flu's" ingredients and benefits to her child detailed herein, but for which representations, she would not have purchased that product.

3. Plaintiff, CARLA KLEINUBING, a Citizen of Florida, and active consumer residing in Coconut Creek, within the Southern District of Florida, purchased HomeoLab's "Kids Relief Cough & Cold" for her ill child at Walgreens, in the Southern District of Florida, in October 2012, but did not receive the promised benefits. Kleinubing relied upon HomeoLab's representations as to "Kids Relief Cough & Cold's" ingredients and benefits to her child detailed herein, but for which, she would not have purchased that product.

4. Plaintiff, DAVID TALMASON, a Citizen of Florida, and active consumer residing in Davie, in the Southern District of Florida, purchased HomeoLab's "Kids Relief Pain & Fever" for his child at Walgreens, in the Southern District of Florida, in April 2011, without receiving the promised benefits. Talmason relied on HomeoLab's representations concerning "Kids Relief Pain & Fever's" ingredients and benefits to the child detailed herein, but for which representations, he would not have purchased that product.

5. Plaintiff, LAURA BARBER, a Citizen of Florida, and active consumer residing in Wellington, in the Southern District of Florida, purchased HomeoLab's product, "Kids Relief Earache," for her child at Caduceus Pharmacy, in the Southern District of Florida, in October 2013, without receiving the promised benefits. Barber relied on

HomeoLab's representations concerning "Kids Relief Earache's" ingredients and benefits to the child detailed herein, but for which, Barber would not have purchased that product.

6. Defendant, HomeoLab USA, Inc., incorporated in Delaware, and registered with Florida's Department of State as a Foreign Profit Corporation, is a citizen of, and has its Principal Place of Business in, Lewes, Delaware, and, through its office and distribution center in Boca Raton, Florida, markets, advertises, distributes and sells the products described herein within the Southern District of Florida, and throughout the United States.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2), as amended by the Class Action Fairness Act of 2005, as Class members' aggregate damages, exclusive of interest and costs, exceed \$5,000,000; some Class members are citizens of states different than Defendant; some Class members are Florida citizens and Defendant is a citizen of a foreign state; and less than two-thirds of all proposed classes in the aggregate are citizens of the state in which the action was filed. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367, and § 1331. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), as many of the acts and transactions, including the advertising, distribution, sales and purchases giving rise to this action occurred in this District, and Defendant is a Foreign Profit Corporation which: (i) is authorized to conduct business within this District; (ii) has established its offices and distribution center within this District; (iii) has intentionally availed itself of the laws and markets within this District by promoting, marketing, distributing and selling products within this District; (iv) does substantial business within this District; (v) advertises to consumers residing in this District; and (vi) is subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

I. THE PRODUCTS

A. “Kids Relief Flu”

8. HomeoLab advertises that “Kids Relief Flu” relieves “flu-like symptoms,” “fever and chills,” “aches and pains,” and “feeling run-down” in children 2 years and over.¹ HomeoLab’s advertising and packaging state the product “provides safe, effective relief.” HomeoLab lists “Kids Relief Flu’s” ingredients on packaging and advertising as follows:

Active Ingredients: *Anas barbariae hepatis et cordis extractum* 200C (Autolysate of the heart and liver of the duck): helps relieve flu-like symptoms: fever, aches, pains, chills and feeling run-down.

Inactive Ingredients: Purified water, sorbitol, raspberry and grape flavor, sodium benzoate, potassium sorbate, citric acid.

9. But the heart and liver of a Muscovy duck, at least at the dilutions claimed (as alleged in Part II of this section), can be scientifically and mathematically shown to have no medicinal value, no biological effect on humans, and not “active ingredients.”

10. HomeoLab markets “Kids Relief Flu” to consumers, who unwittingly spend millions of dollars a year on worthless doses, relying on representations HomeoLab has made in its packaging, marketing and advertising that it is “effective” in relieving flu-like symptoms. Plaintiffs and the Class read, believed and relied upon HomeoLab’s claims.

11. The United States Center for Disease Control (“CDC”) estimates that as many as 49,000 persons may die from flu in any single year when virulent strains appear.²

¹ http://www.kidsrelief.com/flu_relief.html

² http://www.cdc.gov/flu/about/disease/us_flu-related_deaths.htm#how-many-die

In April 2009, the virulent “swine flu” emerged, spreading fear as it swept into the United States. In June 2009, the World Health Organization declared the outbreak a pandemic.

12. In October of 2013, Plaintiff Medina purchased “Kids Relief Flu” for her child over 2 suffering flu-like symptoms, after reading, believing and relying upon HomeoLab’s claims that it was effective in providing relief from “flu-like symptoms,” “fever and chills,” “aches and pains,” and “feeling run-down.” **Exhibit A.** Medina administered “Kids Relief Flu” to her child as directed on HomeoLab’s packaging, but the child obtained none of the promised results. As HomeoLab’s “Kids Relief Flu” has no stated or implied purpose other than to relieve such symptoms, its lack of efficacy rendered the product worthless.

13. Absent HomeoLab’s foregoing misstatements, Plaintiffs and the Class would not have purchased “Kids Relief Flu.” To Plaintiffs’, similarly situated consumers’, and, significantly, their children’s detriment, the substance listed as the “active ingredient” in “Kids Relief Flu” is not “active” at all in combating or relieving any symptoms of the flu, not only because a Muscovy duck’s organs do not relieve flu symptoms, but because, given the numerous dilutions used in its preparation (as alleged in Part II of this section), it is not measurably present in the “Kids Relief Flu” sold to Plaintiff and Class members.

B. “Kids Relief Cough & Cold”

14. HomeoLab touts another product, “Kids Relief Cough & Cold,” as providing “[e]ffective relief that helps relieve dry cough, relieve chest congestion thin & loosen mucus, suppress cough, relieve pain and reduce fever” in children 2 years and over.³ HomeoLab lists “Kids Relief Cough & Cold’s” ingredients as follows:

³ http://www.kidsrelief.com/cough_cold_medicine.html

Active Ingredients: Drosera1C, Sundew, for Dry Cough, Arnica Montana3C, Leopard's Bane, for Aches & Pains, Chest Congestion, Bryonia3C, White Bryony, for Painful Cough, Ipecacuanha3C, Ipecac, for Night Cough, Cetraria Islandica1C, Iceland Moss, for Cough with Expectoration, Belladonna3C, Deadly Nightshade, for Cold & Fever, Coccus Cacti3C, Cochineal, for Cough with Expectoration, Corallium Rubrum3C, Red Coral, for Painful Cough, Stannum Metallicum3C, Tin, for Mucus, Cough & Chills

Inactive Ingredients: Purified Water, Sorbitol, Caramel, Sodium Benzoate, Potassium Sorbate, Citric Acid

15. The common cold is caused by many different viruses.⁴ There is no known cure, nor any treatment to shorten the duration of the viruses causing the common cold.

16. Coughs come in two types, and have many causes and classifications. Coughs may be dry (no sputum) or productive (accompanied by sputum). Coughs may be acute (sudden onset), subacute (lasting 3-8 weeks), or chronic (longer than 8 weeks). Coughs may be caused by irritants, viruses, bacteria, disease, choking, nasal drip, tumors, heart failure, or medication, and may be noted as normal, hacking, barking, etc. In children, the particular type of cough is more indicative of the underlying problem. Despite the many causes of coughs, HomeoLab markets "Kids Relief Cough & Cold" as medicine to relieve both types of cough (wet and dry), regardless of its cause or classification, claiming that "Kids Relief Cough & Cold" treats both types of cough.

17. HomeoLab claims its product, "Kids Relief Cough & Cold," treats each of the aforementioned symptoms. HomeoLab claims this product relieves: "dry cough," "cough with expectoration," "chest congestion," "aches and pains" and "fever."

⁴ The Center for Disease Control and Prevention reports over 200 viruses cause the common cold. <http://www.cdc.gov/getsmart/antibiotic-use/uri/colds.html>

18. Several ingredients in "Kids Relief Cough & Cold," are poisons. *Belladonna*, for example, commonly known as the "Deadly Nightshade," can be toxic in higher doses. *Arnica Montana*, commonly known as "Wolf's Bane," "Leopard's Bane," or "Mountain Tobacco," contains the toxin helenalin, which can be poisonous when larger amounts are ingested, producing severe gastroenteritis and internal bleeding of the digestive tract. *Bryonia Alba*, known as "White Byony," contains the toxin bryonin, which is poisonous.

19. Fortunately (as the substances are highly toxic), the ingredients are diluted 1 part to 1,000,000, or 1 part to 1,000,000,000,000. As discussed in Part II of this section, the ingredients are diluted to the point they have no biological effect on the human body.

20. HomeoLab's "Kids Relief Cough & Cold" has no stated or implied purpose other than to combat the cold, cough and symptoms of the cold and, as such, its lack of efficacy renders the product completely worthless.

21. "Kids Relief Cough & Cold," sells for approximately \$10.00 per unit based on the above-described false, misleading, and deceptive advertising claims. As a result, HomeoLab has wrongfully taken millions of dollars from Plaintiff and Class members.

22. Plaintiff Kleinubing purchased "Kids Relief Cough & Cold" for her child, who was over the age of 2 and suffering from a cold and cough. Ms. Kleinubing purchased "Kids Relief Cough & Cold" after reading, believing and relying upon HomeoLab's advertising, including representations that "Kids Relief Cough & Cold" was "effective" in fighting the cold and relieving symptoms of a cold and cough. **Exhibit B.** Ms. Kleinubing administered "Kids Relief Cough & Cold" to her child as directed by HomeoLab, but the child did not obtain the promised benefits. "Kids Relief Cough & Cold" had no impact on Ms. Kleinubing's child's cold, cough, or any symptoms that accompany a cold.

C. “Kids Relief Pain & Fever”

23. Another HomeoLab product containing some of the above substances, “Kids Relief Pain & Fever” is likewise no more than “snake oil” HomeoLab advertises as having the ability to relieve pain and reduce fever in children 2 years and over. HomeoLab’s advertising and packaging says the product “provides safe, effective relief,”⁵ as does its FaceBook page.⁶ HomeoLab lists the “Kids Relief Pain & Fever” ingredients:

Active Ingredients: Arnica Montana (Montana Flower) (Fever, aches, pain, headache, sore throat), Ferrum Phosphoricum (Iron Phosphate) 8X (fever, inflammation), Hypericum Perforatum 8X (pain in the extremities, toothache, fever), Belladonna 8X (fever, shooting pain, headache, sore throat), Thuja Occidentalis (Cedar) 8X (sinus congestion, headache, muscle pain), Ledum Palustre 8X (chills and fever)

Inactive Ingredients: Purified Water, Sorbitol, Cherry Flavor, Sodium Benzoate, Potassium Sorbate, Citric Acid

24. Like the ingredients of (previously mentioned) “Kids Relief Cough & Cold,” which have no effect at such extreme dilutions, “Kids Relief Pain & Fever” ingredients are poisons (*Belladonna*, *Arnica Montana*) which at higher doses may cause illness or death.

25. Fortunately (as the substances are highly toxic), the ingredients are diluted 1 part to 1,000,000, or 1 part to 1,000,000,000,000. As discussed in Part II of this section, the ingredients are diluted to the point they have no biological effect on the human body.

26. As “Kids Relief Pain & Fever” has no stated or implied purpose other than to relieve pain and fever, its lack of efficacy renders the product completely worthless.

⁵ <http://www.kidsrelief.com/pain-relief.html>

⁶ <https://www.facebook.com/notes/kids-0-9/homeolab-usa-develops-homeopathic-otc-pain-and-fever-medicine-for-children/10150250405915093>

27. HomeoLab's "Kids Relief Pain & Fever" sells for approximately \$10.00 per unit based on the above-described false, misleading, and deceptive advertising claims. As a result, HomeoLab has wrongfully taken millions of dollars from consumers.

28. Plaintiff Talmason purchased "Kids Relief Pain & Fever" for his child over 2 suffering pain and fever. He purchased "Kids Relief Pain & Fever" after reading, believing and relying upon HomeoLab's packaging and advertising, including that as to its efficacy in providing a child relief from pain and fever. **Exhibit C.** Talmason gave "Kids Relief Pain & Fever" to his child as directed by HomeoLab, but the child did not receive the promised benefits. "Kids Relief Pain & Fever" had no impact on the child's pain or fever.

D. "Kids Relief Earache"

29. Another example of HomeoLab's deception is "Kids Relief Earache,"⁷ whose packaging and advertising claim gives "fast acting, effective relief that helps relieve mild to severe ear pain, soothe throbbing pain and pressure, and reduce inflammation" in children 0-9 years of age. HomeoLab lists the "Kids Relief Earache" ingredients:

Active Ingredients: Ferrum Phosphoricum (Iron Phosphate) 30X (inflammation and fever), Capsicum Annuum 30X (acute pain and pressure in the ears), Pyrogenium 30X (infection and fever), Arsenicum Album 30X (burning pain in the ears), Belladonna 30X (throbbing pain and inflammation)

Inactive Ingredients: Purified Water, Sorbitol, Grape Flavor, Raspberry Flavor, Sodium Benzoate, Potassium Sorbate, Citric Acid

30. Though HomeoLab claims "Kids Relief Earache" is "safe and effective" to treat a child's earache, treatment without medical supervision is neither safe nor effective

⁷ http://www.kidsrelief.com/earache_solution.html

for ear pain, as consumers cannot distinguish its symptoms from more serious disorders of the ear or adjacent tissues, which are not amenable to treatment without medical supervision, and can lead to serious injury if not accurately diagnosed and treated.⁸

31. “Kids Relief Earache” also contains *Belladonna* (“Deadly Nightshade”), and *Arsenicum Album* (arsenic trioxide), which in higher doses may cause illness or death.

32. Fortunately (as the substances are highly toxic), the ingredients are diluted 1 part to 1,000,000, or 1 part to 1,000,000,000,000. As discussed in Part II of this section, the ingredients are diluted to the point they have no biological effect on the human body.

33. As “Kids Relief Earache” has no stated or implied purpose other than to relieve a child’s earache, its lack of efficacy renders the product completely worthless.

34. HomeoLab’s “Kids Relief Earache” sells for approximately \$10.00 per unit based on each of the above-described false, misleading and deceptive advertising claims. As a result, HomeoLab has wrongfully taken millions of dollars from consumers.

35. Plaintiff Barber purchased “Kids Relief Earache” for her child of the indicated age suffering from pain and fever. Ms. Barber purchased “Kids Relief Earache” after reading, believing and relying upon HomeoLab’s advertising, including its representations as to the efficacy of “Kids Relief Earache” in providing a child relief from the pain associated with an earache. **Exhibit D.** Ms. Barber subsequently administered

⁸ Indeed, on September 19, 2013, the FDA issued HomeoLab a warning letter concerning “Kids Relief Earache,” finding its “labeling is false or misleading because it represents the product as suitable for use by consumers to treat a condition which the Agency has found not appropriate for OTC drug treatment, and because it encourages OTC treatment for ear pain, but fails to distinguish among conditions that manifest with ear pain and that can lead to serious injury if not accurately diagnosed and treated by a licensed physician.” <http://www.fda.gov/iceci/enforcementactions/warningletters/2013/ucm369655.htm>

"Kids Relief Earache" to her child as directed by HomeoLab, but the child obtained none of the promised benefits. "Kids Relief Earache" had no impact on the child's earache.

E. The Nature & Effect of HomeoLab's Misleading Marketing

36. HomeoLab's misrepresentations in marketing its products' ingredients, efficacy and benefits--including that they have been approved by the FDA--were designed to, and did, induce reliance by reasonable consumers, including Plaintiffs and the Class.⁹

⁹ HomeoLab's intent behind its misrepresentations escaped well before the class period, in the April 8, 1996 issue of *Chain Drug Review*, which quoted President Michele Boisvert: "Drug chains need to recoup the revenues that are disappearing from other categories. . . . But pharmacists want products with clear claims." During the class period, HomeoLab's intent to increase its sales by making increasingly "clear claims" escalated. First, a February 18, 2010 article for HomeoLab in the *Chain Drug Review* claimed: "Homeopathy dates back to 460 B.C., and is considered safe and effective over-the-counter medicine by the Food and Drug Administration." A February 22, 2010 article in *Mass Market Retailers* reported, "[e]xecutives emphasize that Homeolab's homeopathic remedies are made from only the finest of natural ingredients, and all are manufactured in strict accordance with the guidelines of . . . the Food and Drug Administration." Following other child drug recalls, March 1, 2010's *Chain Drug Review* quoted Boisvert: "With recent FDA concerns regarding cough and cold products for children, it seems that the category is allowing for more homeopathic penetration." June 7, 2010's *Chain Drug Review*: "All HomeoLab products are manufactured in strict accordance with FDA guidelines." February 28, 2011's *Chain Drug Review*: "Boisvert, president of Kids Relief marketer Homeolab USA, says the company features 'bright, crisp and simple packaging which resonates with the consumer.'" June 18, 2012's *Mass Market Retailers* quoted her: "[O]ur medicines are manufactured from only the finest of natural ingredients in strict accordance with the regulations and guidelines of the Food and Drug Administration." HomeoLab's "goal is to reach \$100 million in sales within the next five years." *Id.* The August 19, 2013 *Chain Drug Review* notes Homeolab "plans to run a television campaign in the fall that will air on such popular shows as 'Dr. Oz' and 'Nickelodeon Mom' and TV Land network. The company has also mounted an extensive print campaign that includes Parents magazine, Working Mother and other publications." In pursuit of its sales goal, HomeoLab marketer Lou Machin stated in 2012: "Homeolab USA is an innovative 25 year old manufacturer of Homeopathic FDA approved safe and effective remedies. Top items include Kids Relief children's medicines and innovative Real Relief adult remedies." See: http://www.linkedin.com/profile/view?id=11013177&authType=NAME_SEARCH&authToken=7M1K&locale=en_US&srchid=1424498071382467668455&srchindex=1&srchtotale=11&trk=vsrp_people_res_name&trkInfo=VSRPsearchId%3A1424498071382467668455%2CVSRPtargetId%3A11013177%2CVSRPcmpt%3APrimary

Homeolab disseminates the same misleading claims in its packaging on its “Kids Relief” website,¹⁰ HomeoLab website,¹¹ FaceBook,¹² YouTube,¹³ and television commercials.¹⁴

37. As the direct and proximate result of HomeoLab’s false and misleading representations, reasonable consumers, including named Plaintiffs and Class members, were led to believe HomeoLab products would relieve their children’s medical symptoms. Based on the false beliefs induced by HomeoLab’s false and misleading representations, named Plaintiffs and Class members purchased HomeoLab products for their children.

38. But for HomeoLab’s misrepresentations, Plaintiffs and Class members would not have purchased HomeoLab’s “Kids Relief” products for their children.

39. HomeoLab’s advertising is consistently false, misleading, and deceptive. All of its products advance the same false and deceptive advertising in the same manner. During the class period, HomeoLab sold the same products under the name “Kids 0-9.”¹⁵ HomeoLab’s misrepresentations of its “Kids Relief” products’ efficacy were designed to, and did, lead consumers to believe the products would relieve their children’s symptoms. Plaintiffs and the Class relied to their detriment on HomeoLab’s misrepresentations, and would not have run out and paid for the products but for those misrepresentations.

¹⁰ <http://www.kidsrelief.com/>

¹¹ <http://www.homeolab.com/>

¹² <https://www.facebook.com/pages/Kids-0-9/39144803481?v=wall>

¹³ E.g., <http://youtu.be/8se9yjuT6hw> and http://youtu.be/M29maWRhd_s [VIDEOS]

¹⁴ E.g., <http://youtu.be/PgT5srbuaEE> and <http://youtu.be/WzJM1ImleUQ> [VIDEOS]

¹⁵ <http://www.kidsrelief.com/news.html>

II. THE HOMEOPATHIC PRETEXT

40. Each of the foregoing products, like all HomeoLab products, are substances used in what calls itself "homeopathic medicine": a matter mentioned in the finest of print in HomeoLab's packaging and advertising, yet never explained. Homeopathic drugs are not held to the standards of non-homeopathic over-the-counter ("OTC") drugs, which require approval by the Food and Drug Administration ("FDA") after a detailed drug application, with evidence of adequate, well-controlled investigations and clinical trials by experts qualified by scientific training and experience to evaluate the drug's effectiveness on a basis from which such experts could fairly and responsibly conclude the drug will have the effect it is represented to have under the conditions of use prescribed, recommended or suggested in its labeling or proposed labeling. 21 U.S.C. § 355.

41. Unlike non-homeopathic OTC drugs, homeopathic drugs--including those here at issue--are not evaluated by the FDA, which has led to confusion. Here, this confusion crosses the line into deception. HomeoLab is not only taking advantage of consumers' desire for natural medicine, but also deceiving consumers into believing that HomeoLab's products are effective, regulated drugs that are held to the same standards as true medical drugs and non-homeopathic OTC drugs, claiming on its website that all of its products are "manufactured in strict accordance with FDA . . . guidelines":

Our commitment to quality and purity assure that you are getting the finest products available. All Homeolab products are manufactured in strict accordance with FDA and HPUS guidelines.¹⁶

¹⁶ <http://www.kidsrelief.com/about.html> [See also Footnote 9, *supra*].

42. Homeopathic drugs are not classified by demonstrated effectiveness, but by homeopathic "provings" in the 1800's and early 1900's, which did not show effectiveness in curing an ailment, but that the substance *caused* symptoms similar to the ailment. This was based on a homeopathic "law of similars"--the notion that symptoms of a disease, ailment or condition could be cured by extremely small doses of substances that produce similar symptoms in healthy people in larger doses. After "provings," homeopathic drugs were included in the "Homeopathic Pharmacopeia of the United States" ("HPUS").

43. The FDA does not recognize homeopathic drugs as "effective" for anything.

44. Indeed, the HPUS does not list its drugs as effective to treat any symptom, ailment or condition, but describes only how drugs are prepared for homeopathic use, leaving decisions about homeopathic drugs' use up to the practitioner (or manufacturer).

45. The FDA has stated a "product's compliance with requirements of the HPUS ... does not establish that it has been shown by appropriate means to be safe, effective, and not misbranded for its intended use." FDA Compliance Policy Guides § 400.400.

46. Though "studies" have claimed such remedies effective, none has survived scrutiny. The 2005 Swiss Government's comprehensive placebo-controlled homeopathy trials found any positive clinical effects of homeopathy are no more than placebo effects, echoing a British medical review finding homeopathic treatment "placebo therapy at best and quackery at worst."¹⁷ The American Medical Association and National Health Service have issued statements that no scientific evidence supports homeopathic treatments.

47. As indicated below, scientific evidence contradicts and refutes such claims.

¹⁷ Ernst, E.; Pittler, MH (1998), "Efficacy of Homeopathic Arnica: A Systematic Review of Placebo-Controlled Clinical Trials," *Archives of Surgery* 133 (11): 1187–90.

48. Homeopathic remedies are prepared by serially diluting "natural" ingredients, and repeatedly shaking and striking them to increase their "effectiveness."

49. Homeopathy uses logarithmic dilution scales. The "centesimal" or "C scale" dilutes a substance by a factor of 100 each time. A "2C" dilution is a substance diluted to one part in 100, and then 1% of that dilution is diluted by a factor of 100. This equals one part of the original substance in 10,000 parts of the solution. A "6C" dilution repeats dilution six times, ending up with the original substance diluted by a factor of $100^{-6}=10^{-12}$ (one part in one trillion or 1/1,000,000,000,000). Higher dilutions follow the same pattern. A decimal potency scale (noted "X" or "D") means dilution by a factor of 10 at each stage. The product is so diluted it is indistinguishable from the dilutant (water, sugar or alcohol).

50. HomeoLab claims its products' homeopathic ingredients include flowers, animal organs, vegetables, insects, metals and poisons, and that (apparently so as not to poison the consumer's child), the dilutions in HomeoLab's products are up to 200C.

51. The dilution of Muscovy duck heart and liver stated on the packaging and internet marketing of HomeoLab's "Kids Relief Fever," *supra*, for example, is 200C.

52. As there are about 10^{80} atoms in the entire observable universe, a dilution of 1 molecule into that universe would be about 40C. "Kids Relief Fever" would thus need 10^{320} more universes than are known to exist to have 1 molecule in the final substance.¹⁸

53. The laws of chemistry state there is a limit to dilution without losing the original substance entirely, known as Avogadro's number (about 6.023×10^{-23}), a dilution at which there is less than a 50% chance that even a single molecule of material remains.

¹⁸ Robert L. Park (2008), "Superstition: Belief in the Age of Science," Princeton University Press, pp. 145–146, ISBN 0-691-13355-7.

54. The notion a substance could be physically absent, and undetectable using the latest tools, yet still "effective" (as HomeoLab claims) violates the most fundamental principles of science, and runs afoul of the dose-response relationship of pharmacology.

55. HomeoLab preys on consumer trust and fear. Out of fear for their children's safety, they trust HomeoLab as it misleads them to believe: (1) ingredients in its products are "active"; (2) ingredients are actually present in its products in a quantity sufficient to produce a biological effect; and (3) its products are considered effective by the FDA.

56. In fact: (1) the Products contain no active ingredient(s); (2) serial dilution leaves any ingredient(s) non-existent and incapable of producing any biological effect in humans; (3) the Products have not been shown effective in relieving symptoms by the FDA, and basic principles of science show HomeoLab's claims are no more than a hoax.

57. Plaintiffs and the Class thus bring suit to enjoin Homeolab's deception of hundreds of thousands of consumers, and recover funds taken by their unlawful practice.

RULE 9(B) ALLEGATIONS

Rule 9(b), Federal Rules of Civil Procedure, requires "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."

58. As HomeoLab misrepresented or failed to disclose facts alleged herein, Plaintiffs are unable to identify all individuals responsible for such, and the allegations herein speak for themselves, including references to HomeoLab's statements by officers, in its packaging, website, trade journals, television, social media, and other advertising.

59. HomeoLab misrepresented to Plaintiffs and the Class any efficacy or "active" nature of its product ingredients by claiming: (1) that "Kids Relief Flu" could relieve

flu-like symptoms, fever, chills, aches, pains, and feeling run-down; (2) that "Kids Relief Cough & Cold" could relieve a child's dry cough or chest congestion, thin or loosen mucus, suppress cough, relieve pain, or reduce fever; (3) that "Kids Relief Pain & Fever" could relieve a child's pain and reduce fever; (4) that "Kids Relief Earache" could provide "fast acting, effective relief that helps relieve mild to severe ear pain, soothe throbbing pain and pressure, and reduce inflammation"; (5) that ingredients are present in the products, or present in sufficient amounts to comprise "active" ingredients; (6) that other HomeoLab products relieve the symptoms claimed; (7) that HomeoLab products are manufactured under FDA guidelines; and (8) that they are considered safe and effective by the FDA.

60. In fact, the products: (1) had no effect on the symptoms that HomeoLab claimed; (2) are so diluted as to be completely *inactive*; and (3) were neither manufactured under FDA guidelines, nor considered safe or effective by the FDA.

61. HomeoLab made the material misrepresentations, intentional omissions, and non-disclosures detailed herein continuously throughout the class period.

62. HomeoLab made each of the material misrepresentations, omissions and non-disclosures alleged herein on the products' packaging and other media, and made misrepresentations on the "HomeoLab" website, and "Kids Relief" website which were designed to, and did, mislead Plaintiffs and Class members to purchase the products.

63. HomeoLab made the material misrepresentations, intentional omissions, and non-disclosures detailed herein for the express purpose of inducing the Plaintiffs, Class members and other reasonable consumers to purchase and give their children "Kids Relief Flu," "Kids Relief Cough & Cold," "Kids Relief Pain & Fever," and "Kids Relief Earache," based on the false belief that the products would relieve their child's symptoms.

CLASS ACTION ALLEGATIONS

I. Class Definitions

64. Plaintiffs bring this Nationwide Class Action for declaratory and injunctive relief, damages and other monetary relief, on behalf of the following Class:

All persons 18 years of age or older who, while residing in the United States, purchased in the United States: (a) "Kids Relief Flu," "Kids Relief Cough & Cold," and/or "Kids Relief Pain & Fever," for their child(ren) 2 years of age or over; and/or (b) "Kids Relief Earache," for child(ren) between 0 - 9 years of age, and/or (c) "0-9 Kids" labels at any time during the 4 years preceding the filing of this Complaint.

65. Alternatively, Plaintiffs bring a Statewide Class Action for declaratory and injunctive relief, damages and other monetary relief, on behalf of the following Class:

All persons 18 years of age or older who, while residing in the State of Florida, purchased in Florida: (a) "Kids Relief Flu," "Kids Relief Cough & Cold," and/or "Kids Relief Pain & Fever," for their child(ren) from 2 years of age or over; and/or (b) "Kids Relief Earache," for their child(ren) between 0 - 9 years of age, and/or (c) "0-9 Kids" labels any time during the 4 years preceding filing of this Complaint.

66. Excluded from the Class are governmental entities, HomeoLab, any entity in which HomeoLab has a controlling interest, HomeoLab's officers, directors, affiliates, legal counsel, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded are the Court, its staff and officers, and members of their immediate families.

II. Numerosity

67. The Class is so numerous individual joinder of all members is impracticable. Due to the nature of the trade and commerce and HomeoLab's sizeable market share of the sale of homeopathic products, the number of Class members is at least in the hundreds of thousands and geographically dispersed. Whereas the exact number and

identities of all Class members are unknown at this time, such information may be ascertained through discovery. The disposition of the Class members' claims in a single class action will provide substantial benefits to all parties and to the Court.

III. Commonality

68. Questions of fact and law common to Class members predominate over any questions affecting only individual members, including, but not limited to:

- a. Whether HomeoLab communicated a message that the products at issue were effective in treating the identified symptoms;
- b. Whether HomeoLab's efficacy claims can be scientifically shown to be false;
- c. Whether HomeoLab has falsely represented that the HomeoLab products at issue have benefits which they do not have;
- d. Whether HomeoLab knew or should have known its claims were false;
- e. Whether HomeoLab's efficacy claims were unfair and deceptive;
- f. Whether HomeoLab's conduct constitutes the alleged violations of law;
- g. Whether Plaintiffs and Class members have sustained loss, injury in fact, actual damages, and the proper measure of those damages;
- h. Whether Plaintiffs and the Class are entitled to compensatory damages, including actual and statutory damages plus interest thereon, and/or monetary restitution;
- i. Whether HomeoLab acted willfully, recklessly, and/or with gross negligence in committing the violations of the law alleged herein;
- j. Whether Plaintiffs and Class members are entitled to punitive damages;
- k. Whether Plaintiffs and the Class are entitled to declaratory/injunctive relief.

IV. Typicality

69. Plaintiffs' claims are typical of those of the Class as all purchased and administered to their ailing child(ren) products HomeoLab misrepresented as effective in relieving their child(ren)'s symptoms, but did not receive the promised benefits. Plaintiffs and the Class all sustained the same injury from HomeoLab's common course of conduct. Plaintiffs' and Class member's injury was caused directly by HomeoLab's uniform wrongful, illegal conduct. Each Class member has sustained, and continues to sustain, damages in the same manner as Plaintiffs as a result of HomeoLab's wrongful conduct.

V. Adequacy of Representation

70. Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel with substantial experience handling complex litigation in general and scientific claims in particular. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the resources to do so.

VI. Requirements of Fed. R. Civ. P. 23(b)(3)

71. The present action is appropriate for adjudication as a class action pursuant to the provisions of Rule 23(b)(3), Federal Rules of Civil Procedure.

72. Questions of law or fact common to class members predominate over any questions of law or fact affecting only individual members.

VII. Superiority

73. The class action mechanism is superior to other available methods for fairly and efficiently adjudicating the controversy, in part because:

(a) Joinder of all individual Class members would create extreme hardship and inconvenience for the affected consumers, as they are geographically diverse;

(b) Individual claims are impractical as the costs of pursuing individual claims would exceed the value of what any one class member would have at stake. As a result, individual class members have no interest in prosecuting and controlling separate actions;

(c) There are no known individual class members who are interested in individually controlling the prosecution of separate actions;

(d) The interests of justice would best be served by resolving the common disputes of potential class members in one forum;

(e) Individual lawsuits would not be cost effective or economically maintainable;

(f) This action is manageable as a class action.

74. Plaintiff is unaware of any difficulty likely to be encountered in management of a class action that would preclude its maintenance as a class action.

VIII. Requirements of Fed. R. Civ. P. 23(b)(1) & (2)

75. Prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for HomeoLab.

76. HomeoLab acted or failed to act in a way generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to the Class as a whole.

77. HomeoLab's wrongful conduct, if not enjoined, will subject Class members and other members of the public to substantial continuing harm, causing irreparable injury to Plaintiffs, Class members and other consumers damaged by such conduct.

CAUSES OF ACTION

**COUNT I
UNJUST ENRICHMENT**

78. Plaintiffs and the Class (collectively "Plaintiffs") re-allege and incorporate paragraphs 1 through 77, *supra*, as though fully set forth herein, and further allege:

79. Through misrepresentations that its products were effective in relieving child(ren)'s medical symptoms, HomeoLab received monetary profits from Plaintiffs.

80. HomeoLab misled Plaintiffs to believe that its products contained active ingredients capable of treating symptoms suffered by Plaintiffs' child(ren).

81. In fact, HomeoLab's products had no effect on humans, and were worthless.

82. HomeoLab collected money from Plaintiffs well in excess of what Plaintiffs would have paid for a useless product.

83. The aforementioned money directly benefited HomeoLab, and was taken to the detriment of Plaintiffs, as well as their children.

84. Plaintiffs believed they were paying for ingredients effective in relieving their child(ren)'s medical symptoms, but were, in fact, inert substances with no value.

85. HomeoLab received financial benefits in the form of unjust profits.

86. As a result, Plaintiffs have conferred a benefit on HomeoLab.

87. HomeoLab knew of this benefit, yet voluntarily accepted and retained it.

88. HomeoLab would be unjustly enriched if allowed to retain such benefits.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of those similarly situated, demand award in sums by which HomeoLab has been unjustly enriched at Plaintiffs' expense and such other and further relief as to the Court seems just and proper.

COUNT II
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

89. Plaintiffs and the Class (collectively "Plaintiffs") re-allege and incorporate paragraphs 1 through 77, *supra*, as though fully set forth herein, and further allege:

90. The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

91. Plaintiffs are "consumers," defined in § 501.203(7), Fla. Stat.

92. Plaintiffs have standing to pursue this claim as they have suffered injury in fact and have lost money or property as a result of HomeoLab's actions.

93. HomeoLab has engaged in, and continues to engage in, unconscionable acts or practices, and unfair or deceptive acts in the conduct of its trade and/or commerce.

94. HomeoLab's practices are unfair, offend public policy, are immoral, unethical, unscrupulous, injurious to consumers, and violate the FDUTPA.

95. HomeoLab misled Plaintiffs to believe its products had active ingredients capable of relieving symptoms suffered by their children, despite evidence to the contrary.

96. HomeoLab's practices are "deceptive" because they are likely to, and did, deceive reasonable consumers, including Plaintiffs.

97. HomeoLab's acts intended to and did obtain unfair/unlawful compensation.

98. Plaintiffs and Class members relied on HomeoLab's misrepresentations.

99. HomeoLab's actions violate the FDUTPA, and were conceived, devised, planned, implemented, approved and executed from within the State of Florida.

100. HomeoLab's practice of packaging and marketing its products as containing active ingredients capable of relieving the symptoms of children's diseases, ailments or

conditions comprises a *per se* violation of FDUTPA pursuant to § 501.203(3)(c), Fla. Stat., as such practice itself violates the Florida Drug and Cosmetic Act, § 499.007(1), Fla. Stat. ("A drug or device is misbranded . . . [i]f its labeling is in any way false or misleading.").

101. Misbranded products cannot be legally sold, and are thus legally worthless.

102. Plaintiffs sustained damages as the proximate result of such practices.

103. § 501.211(2), Fla. Stat. creates a private right of action against Plaintiff.

104. As a result of HomeoLab's deceptive and unfair practices, Plaintiffs have been damaged, as they spent money on products for which they received no value.

105. HomeoLab's practices comprise a continuing course of unfair competition, as it marketed its products in a manner that offends public policy, and/or in a manner that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

106. Plaintiffs have been damaged by HomeoLab's deceptive and unfair conduct as they purchased a misbranded and worthless product for their child(ren), or paid prices they would not have paid had HomeoLab not misrepresented the product.

107. Plaintiff and the Class have suffered and continue to suffer irreparable harm if HomeoLab continues to engage in such deceptive, unfair and unreasonable practices.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of all those similarly situated, demand judgment for compensatory damages, pre- and post-judgment interest, attorney fees, injunctive and declaratory relief, and the costs of bringing this action.

COUNT III NEGLIGENT MISREPRESENTATION

108. Plaintiffs and the Class (collectively "Plaintiffs") re-allege and incorporate paragraphs 1 through 77, *supra*, as though fully set forth herein, and further allege:

109. In packaging, advertising, marketing and selling their products, HomeoLab represented to Plaintiffs that they contained active ingredients, were effective in relieving the symptoms HomeoLab claimed, and were manufactured according to FDA guidelines.

110. HomeoLab's representations concerning the products were false, as they contained no active ingredients, had no effect, and were not made under FDA guidelines.

111. HomeoLab's misrepresentations of the products' characteristics, benefits and manufacture were material because a reasonable consumer would attach importance to such representations in determining whether to purchase and consume the products.

112. As the products had no stated or implied purpose other than to relieve the symptoms HomeoLab claimed, the lack of effectiveness rendered the products worthless.

113. HomeoLab's material misrepresentations of the products' characteristics and benefits were false and made without reasonable grounds to believe them to be true.

114. HomeoLab knew or should have known its material misrepresentations of its products' characteristics, benefits and manufacture under FDA guidelines were false.

115. HomeoLab materially misrepresented the products' characteristics and benefits with the intent to induce Plaintiffs and the Class to purchase the products.

116. Plaintiffs reasonably relied upon HomeoLab's material misrepresentations in choosing to purchase the products for their children.

117. As a direct and proximate result of HomeoLab's conduct, Plaintiffs have incurred damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of all those similarly situated, demand judgment against HomeoLab in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of all those similarly situated, demand judgment against Defendant HomeoLab:

- (1) Certifying this suit a class action under Rule 23(a), (b)(1) and (2), or (b)(3), Fed. R. Civ. P., and declaring Plaintiffs and their counsel representatives of the Class;
- (2) Enjoining HomeoLab from continuing the practices described herein;
- (3) Awarding damages sustained by Plaintiffs and the members of the Class as a result of HomeoLab's conduct, together with pre-judgment interest;
- (4) Finding HomeoLab has been unjustly enriched;
- (5) Finding HomeoLab's acts unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce;
- (6) Finding HomeoLab's conduct constituted negligent misrepresentation;
- (7) Requiring HomeoLab refund all unjust benefits to Plaintiffs and the Class, together with pre- and post-judgment interest;
- (8) Awarding Plaintiffs and the Class costs and disbursements, reasonable expert and attorney fees, and reimbursement of expenses; and
- (9) Awarding such other and further relief as the Court deems just and proper.

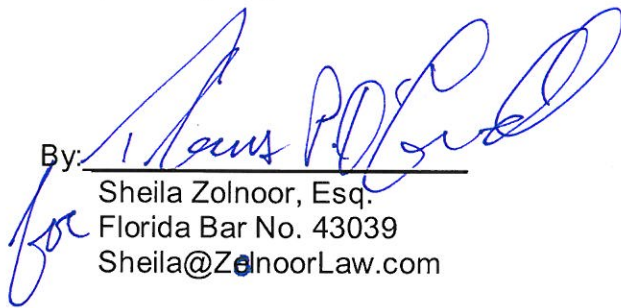
DEMAND FOR JURY TRIAL

Plaintiffs and the Class request trial by jury as to all such issues so triable.

Submitted this 25th day of October, 2013.

SHEILA ZOLNOOR, ESQUIRE

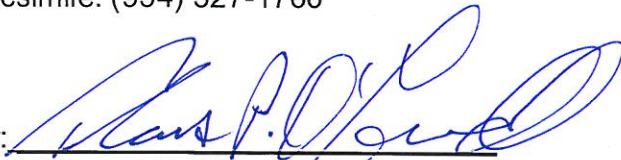
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CERTIFICATE OF SERVICE

I CERTIFY a true and correct copy hereof was electronically filed via CM/ECF
this 25th day of October, 2013 and served on any parties of record electronically.

By: 

Thomas P. O'Connell, Esq.
Florida Bar No. 931292
TrialTom2@aol.com



EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D