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Attorneys for Defendant
Cogent Solutions Group, LLC

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

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

vs.

COGENT SOLUTIONS GROUP, LLC,

Defendant.

Civil Action No. _____

Document electronically filed

NOTICE OF REMOVAL

[Previously pending in the Superior Court of
New Jersey, Bergen County, Law Division,
BER-L-8926-12]

**TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PLEASE TAKE NOTICE THAT Defendant Cogent Solutions Group (“CSG” or “Defendant”), by and through its counsel, Gibbons P.C., respectfully requests that this action be removed from the Superior Court of New Jersey, Law Division, Bergen County to the United States District Court for the District of New Jersey under 28 U.S.C. § 1441(a) on the grounds of diversity jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1132(d). In support of this Notice of Removal, Defendant alleges as follows:

BACKGROUND

1. On December 3, 2012, Plaintiff Harold M. Hoffman (“Plaintiff Hoffman” or “Plaintiff”), pro se, on behalf of himself and as the representative of a class of similarly situated persons, filed a nationwide class action Complaint against Defendant Cogent Solutions Group,

LLC, in the Superior Court of New Jersey, Bergen County, Law Division, captioned: Harold M. Hoffman, individually and on behalf of those similarly situated v. Cogent Solutions Group, LLC., Docket No. BER-L-8926-12. A copy of the Summons and Complaint “served”¹ upon Defendant are annexed hereto as Exhibit A.

2. Though service of process was improper, Defendant received a copy of the Complaint on December 5, 2012 by way of Federal Express.

3. The Complaint alleges that Defendant is liable to Plaintiff and each class member for allegedly violating the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., for committing common law fraud, for breaching an express warranty, and for breaching implied warranties of merchantability and fitness for an intended purpose; the Complaint further alleges that Defendant has been unjustly enriched. See Ex. A, Compl. at Counts I through IX.

4. Specifically, Plaintiff alleges that Defendant advertises, promotes, markets, distributes, and sells a dietary supplement known as Baxyl Hyaluronan,² “which purportedly contains 60mg of Hyaluronic Acid (“HA”) per liquid dose.” See id., Compl. at Overview. Plaintiff alleges that Defendant misrepresents the “product efficacy” by claiming that “oral consumption would deliver joint health and mobility in humans, thereby reducing pain for those suffering from osteoarthritis.” See id., Compl. at Overview and ¶¶ 8, 15.

5. Plaintiff further alleges that there are no “reliable medical studies” to validate Defendant’s claim of the product efficacy of Baxyl, and that Defendant cannot identify any

¹ Cogent Solutions does not waive the defense of insufficient service of process due to attempted service by Federal Express. See N.J. Court Rule 4.4-4 (“[I]n personam jurisdiction may be obtained over any defendant as follows: (C) mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and simultaneously, by ordinary mail . . .”).

² Defendant’s product is marketed and sold as Baxyl®, and will be referred to herein as “Baxyl” for ease of reference.

clinical data and/or scientific research to support its claim of product efficacy. See id., Compl. at Overview and ¶ 8.

6. Plaintiff alleges that he and the class members saw, read, or heard Defendant's advertisements, promises, and representations that Baxyl "deliver[s] joint health and mobility in humans, thereby reducing pain for those suffering osteoarthritis," and "made an out of pocket payment and expenditure" in response thereto. See id., Compl. at Overview and ¶ 22.

7. The Complaint alleges that Plaintiff and members of the class were damaged as a result of Defendant's alleged violations of the New Jersey Consumer Fraud Act and common law fraud. See id., Compl. at Counts I through VI, ¶¶ 31-57. Specifically, the Complaint alleges that Plaintiff and members of the class suffered ascertainable losses: (1) "in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' [sic] unlawful conduct as aforesaid"; (2) "when they received, for their money, a product less than, and different from, the product promised by Defendant"; and (3) when they "received something less than, and different from, what they reasonably expected in view of Defendant's representations." Id., Compl. at ¶¶ 22-24.

8. The Complaint further alleges that "there is a causal relationship between the Defendant's misrepresentations of product efficacy and the loss suffered by plaintiff and class members." Id., Compl. at ¶ 25.

9. In addition, the Complaint claims that Defendant committed common law fraud by, in essence, misrepresenting and knowingly omitting material facts, resulting in damages to Plaintiff and the class. Id., Compl. at Count VI, ¶¶ 46-50.

10. The Complaint further alleges that Defendant is liable to Plaintiff and each class member for unjust enrichment. Id., Compl. at Count VII, ¶¶ 51-57. Specifically, Plaintiff

alleges that as a result of Defendant's unlawful conduct, "the class members paid money to and conferred a benefit upon Defendant in connection with the sale of Defendant's Baxyl Hyaluronan by Defendant to class members" Id., Compl. at ¶ 52. Plaintiff alleges that Defendant is "indebted to class members for the sums paid . . . for purchase of a misrepresented product." Id., Compl. at ¶ 55. Plaintiff alleges that therefore, it would be unjust and inequitable for Defendant to retain the benefit conferred upon it by the class members, so Defendant must disgorge "[a]ll monies paid by class members to Defendant for purchase of Defendant's Baxyl Hyaluronan, including all interest earned by Defendant on such monies while in wrongful possession thereof." Id., Compl. at ¶¶ 55-56. Plaintiff alleges that the class has been damaged by Defendant's conduct. Id., Compl. at ¶ 57.

11. The Complaint contends that Defendant is liable to Plaintiff and each class member for breach of express warranty. See id., Compl. at Count VIII, ¶¶ 58-65. Specifically, Plaintiff claims that he entered into a contract with Defendant when he purchased Baxyl "[i]n or about September of 2012." Id., Compl. at ¶ 59. Plaintiff claims that by way of this "purchase contract," Defendant made promises to Plaintiff about "the efficacy and benefit of" Baxyl, which promises were the basis of the bargain and made to all class members. Id., Compl. at ¶ 60. Plaintiff claims that these alleged promises created an express warranty that Baxyl "conformed to Defendant's promises," leading Plaintiff and the class members to believe "that they would derive the product benefits promised by Defendant." Id., Compl. at ¶¶ 61-62. Plaintiff claims that Defendant breached this express warranty because Baxyl did not conform to the alleged "promises of joint health and mobility in humans." Id., Compl. at ¶ 64. The Complaint alleges that class members notified Defendant of the breach of express warranty, and that Plaintiff and

class members were damaged by “paying monies to purchase a product that failed altogether to conform to Defendant’s express promises and warranty.” Id., Compl. at ¶¶ 64-65.

12. The Complaint contends that Defendant is liable to Plaintiff and each class member for breach of the implied warranties of merchantability and fitness for an intended purpose. Id., Compl. at Count IX, ¶¶ 66-70. Specifically, Plaintiff alleges that a warranty of merchantability was implied in all “contracts of sale of Defendant’s Baxyl Hyaluronan.” Id., Compl. at ¶ 67. Plaintiff further alleges that Baxyl was “not fit for the ordinary purpose for which it was intended to be used” because “it failed to conform to Defendant’s promises of efficacy to deliver joint health and mobility in humans.” Id., Compl. at ¶ 68. The Complaint alleges that class members notified Defendant that Baxyl failed to deliver joint support and to conform to the implied warranty of merchantability. Id., Compl. at ¶ 69. Plaintiff alleges that he and the class members were damaged by paying money for Baxyl because it failed “to conform” to the implied warranty of merchantability and fitness for an intended purpose. Id., Compl. at ¶ 70.

13. The Complaint demands unspecified “punitive damages,” treble damages for each of the five New Jersey Consumer Fraud Act counts, as well as pre-judgment and post-judgment interest, fees, costs, attorneys’ fees, and civil penalties.

14. The Complaint purports to seek certification of a potential class of “all nationwide purchasers of Defendant’s Baxyl Hylaronan for the six year period preceding the filing of this suit.” Id., Compl. at ¶ 26.

JURISDICTIONAL REQUIREMENTS SATISFIED

15. The Court has original jurisdiction over this action pursuant to 28 U.S.C.

§ 1332(d)(2)(A) because:

a. The action filed by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division, is a “class action” as defined in 28 U.S.C. § 1332(d)(1)(B);

b. There is minimal diversity. Specifically, at least one member of the putative, potential nationwide class of plaintiffs, including named Plaintiff Hoffman, is a citizen of a different state than Defendant; and

c. The aggregate value of the amount in controversy based on Plaintiff’s allegations exceeds \$5,000,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2).

Minimal Diversity Exists Pursuant To 28 U.S.C. § 1332(d)(2)(A)

16. Plaintiff Hoffman is a member of the plaintiff class. See Ex. A, Compl. at ¶ 1. Plaintiff Hoffman is an individual purportedly domiciled in the State of New Jersey, Bergen County. See id., Compl. at ¶ 1.

17. Both at the time Plaintiff filed the Complaint in the Superior Court of New Jersey, Bergen County, Law Division against Defendant, and continuing to the present, Defendant CSG was and is corporation organized and existing under the laws of the State of Kentucky, with a principal place of business located at 112 Westhampton Drive, Lexington, Kentucky 40511. See id., Compl. at ¶ 2; see also Certification of James D. Smith, Jr. (“Smith Cert.”), annexed as Exhibit B, at ¶ 1; see also 28 U.S.C. § 1332(c).

18. Plaintiff asserts claims on behalf of himself, a New Jersey citizen, and a class consisting of all persons nationwide who purchased Baxyl. See id., Compl. at ¶ 26. Defendant’s

Baxyl product has been marketed and sold throughout the United States since at least 2006. Id., Smith Cert. ¶ 3.

19. Based on the foregoing, minimal diversity exists because at least one member of the class is a citizen of a different state than Defendant. See 28 U.S.C. § 1132(d)(2).

The Aggregate Value of the Amount in Controversy Exceeds \$5,000,000

20. Although the allegations in the Complaint purport to disclaim that the amount is controversy is less than the \$5,000,000 jurisdictional threshold required for diversity jurisdiction under CAFA, see id., Compl. at ¶ 26, removal is proper here, however, because based upon a fair reading of the Complaint and the Notice of Removal, it appears to a legal certainty that Plaintiff and the class members can recover more than the CAFA jurisdictional amount of \$5,000,000. See Frederico v. Home Depot, 507 F.3d 188, 196-97 (3d Cir. 2007) (citing Morgan v. Gay, 471 F.3d 469 (3d Cir. 2006)).

21. “In removal cases, determining the amount in controversy begins with a reading of the complaint filed in the state court.” Samuel-Bassett v. KIA Motors America, Inc., 357 F.3d 392, 398 (3d Cir. 2004). Plaintiff includes only a conclusory statement that the amount in controversy as to “the individual plaintiff” is “less than \$75,000” and “as to the putative plaintiff class, the amount in controversy . . . is less than \$5 million.” See Ex. A., Compl. at ¶ 26. As such, Plaintiff has not stated an exact sum sought in the Class Action Complaint, so the Court must perform an independent appraisal of the amount in controversy and, in doing so, may rely upon facts alleged in Defendant’s Notice of Removal as well as those alleged in Plaintiff’s Class Action Complaint. See Frederico, 507 F.3d at 197 (“In addition, to determine whether the minimum jurisdictional amount has been met in a diversity case removed to a district court, a defendant’s notice of removal serves the same function as the complaint would if filed in the district court.”); Russ v. Unum Life Ins. Co., 442 F. Supp. 2d 193, 197 (D.N.J. 2006) (“If the

complaint is open-ended and does not allege a specific amount, the court must perform an independent appraisal of the value of the claim by looking at the petition for removal or any other relevant evidence.”).

22. Although Defendant disputes liability and any entitlement of Plaintiff or the proposed class to monetary relief, it is respectfully submitted that, based upon a fair reading of this Notice of Removal together with the Complaint -- including consideration of the relief sought, the class definition, and the scope and size of the class -- that the Complaint seeks damages which exceed the minimum jurisdictional amount of \$5,000,000 under CAFA, to a legal certainty.

23. Although the Complaint does not identify the exact size of the proposed class, it alleges that the class is “so numerous that joinder of all members is impracticable.” See Ex. A, Compl. at ¶ 26. Moreover, the Complaint alleges that the “proposed Class consists of all nationwide purchasers of Defendant’s Baxyl Hyaluronan for the six year period preceding the filing of this suit.” Id., Compl. at ¶ 26. Therefore, the proposed class includes purchasers of Baxyl from December 3, 2006, to the present. See id.

24. The Complaint alleges ascertainable loss “in the form of actual out of pocket payment and expenditure” for the purchase of Baxyl, and alleges a claim of unjust enrichment because Plaintiff and the class members purportedly “conferred a benefit” upon Defendant through their purchases of Baxyl. See id., Compl. at ¶¶ 22, 52.

25. Defendant CSG’s Baxyl is available in a 6-ounce bottle, which has a manufacturer suggested retail price (“MSRP”) of \$39.95. See Ex. B, Smith Cert. ¶ 3.

26. From December 3, 2006 through December 3, 2012, CSG’s total U.S. sales of Baxyl® were at least \$5 million. See Smith Cert. ¶ 4.

27. Given that the Complaint alleges an ascertainable loss in the form of out of pocket payment and expenditures, and seeks treble damages under each of the five counts asserted under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., see Ex. A, Compl. at Counts I through V, the damages sought in the Complaint based upon CSG's sales during the time period in question, trebled under the NJCFA, far exceeds the CAFA jurisdictional threshold minimum amount in controversy of \$5,000,000.

28. In addition to the New Jersey Consumer Fraud Act claims, the Complaint also seeks "punitive damages" for alleged common law fraud. See id., Compl. at Count VI. Punitive damages must be considered in calculating the amount-in-controversy. See Frederico, 507 F.3d at 199; Vigilante v. Statharos, No. 08-cv-3408, 2008 U.S. Dist. LEXIS 68768, at *4-5 (E.D. Pa. Sept. 10, 2008) (complaint seeking \$50,000 in compensatory damages and unspecified punitive damages satisfied the jurisdictional threshold). Under New Jersey law, a plaintiff may collect punitive damages of up to five times the compensatory damages. Frederico, 507 F.3d at 199 (citing N.J.S.A. § 2A:15-5.14(b)). The Complaint also seeks the disgorgement of all profits of Baxyl for alleged unjust enrichment. See Ex. A, Compl. at Count VII.

29. As such, it appears to a legal certainty that the amount in controversy in this action is above the mandatory minimum threshold for jurisdiction under CAFA. Because the Complaint alleges damages in the form of the "out of pocket payment" for Baxyl for nationwide consumers for a six year period, the amount of sales from December 3, 2006 to date -- especially when trebled under the New Jersey Consumer Fraud Act -- would bring the matter in controversy over the \$5 million threshold for purposes of CAFA jurisdiction. This calculation does not take into consideration the punitive damages sought for common law fraud, or the

disgorgement of all profits of Baxyl for alleged unjust enrichment, which would lend further support to the conclusion that Plaintiff can recover the jurisdictional amount.

30. Therefore, based on the allegations of the Complaint, it appears to a legal certainty that the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and thus diversity jurisdiction exists under CAFA.

31. In addition, 28 U.S.C. § 1453 provides an alternate, independent basis for removal. Section 1453 provides that “[a] class action may be removed to a district court of the United States in accordance with section 1446 . . . without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.” Such minimal diversity exists here because, as explained above, Plaintiff is a citizen of New Jersey and Defendant is a citizen of Kentucky.

REMOVAL REQUIREMENTS SATISFIED

32. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after Defendant received a copy of the Complaint (by way of Federal Express) that was filed by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division.

33. Defendant has not filed a responsive pleading in the action commenced by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division against Defendant and no other proceedings have transpired in that action.

34. This Notice of Removal is being filed in the District of New Jersey, the district court of the United States for the district and division within which the state court action is pending, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

35. Promptly after filing this Notice of Removal with the District Court for the District of New Jersey, a copy of this Notice of Removal, along with the Notice of Filing of

Notice of Removal, will be filed with the Clerk of the Superior Court of New Jersey, Bergen County, Law Division pursuant to 28 U.S.C. § 1446(d). A copy of both documents will also be served upon Plaintiff's counsel. A copy of the letter notifying the Clerk of the New Jersey Superior Court, Bergen County, Law Division, of removal from state court, is annexed hereto as Exhibit C.

36. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

WHEREFORE, Defendant respectfully requests that this action be duly removed from the Superior Court of New Jersey, Bergen County, Law Division, to this Court, and that it proceed herein.

Dated: January 3, 2013

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Attorneys for Defendant
Cogent Solutions Group, LLC

EXHIBIT A

HAROLD M. HOFFMAN, ESQ.

240 GRAND AVENUE

ENGLEWOOD, NJ 07631

(201) 569-0086

ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

HAROLD M. HOFFMAN, individually and on behalf of
those similarly situated,

Plaintiff,

-against-

COGENT SOLUTIONS GROUP, LLC,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: BER-L-8926-12

CIVIL ACTION

SUMMONS

From the State of New Jersey To the Defendant(s) named above:

COGENT SOLUTIONS GROUP, LLC

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided). If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A \$200 filing fee, payable to the Clerk of the Superior Court, and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

/s/ Jennifer M. Perez

Jennifer M. Perez, Acting Superior Court Clerk

Dated: December 4, 2012

Name of Defendant to be Served:

COGENT SOLUTIONS GROUP, LLC

Address of Defendant to be Served:

c/o James D. Smith (Reg. Agent), 112 Westhampton Dr., Lexington, KY 40511

ATLANTIC COUNTY

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., 1st Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY

Deputy Clerk of the Superior Court
Case Processing Section - Rm 113
Justice Center - 10 Main St.
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY

Deputy Clerk of the Superior Court
Central Processing Office
Attn.: Judicial Intake
49 Rancocas Rd., 1st Fl.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Records, Suite 150
101 S. Fifth St.
Camden, NJ 08103-4001
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY

Deputy Clerk of the Superior Court
Court House
9 N. Main Street
Cape May, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., PO Box 10
Bridgeport, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY

Deputy Clerk of the Superior Court
237 Hall of Records
465 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(973) 533-6755
Legal Services
(973) 624-4500

GLOUCESTER COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Delaware Streets
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 964-9400

HUDSON COUNTY

Deputy Clerk of the Superior Court
Administration Bldg
Hudson Fee Office, Room G-9
595 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY

Deputy Clerk of the Superior Court
Local Filing Office, Court House
175 S. Broad St., PO Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY

Deputy Clerk of the Superior Court
Court House, 1st Fl.
1 Kennedy Sq., PO Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY

Deputy Clerk of the Superior Court
71 Monument Park, PO Box 1260
Court House
Freehold, NJ 07728-1262
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY

Deputy Clerk of the Superior Court
Civil Division
PO Box 910
Morristown, NJ 07930-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY

Deputy Clerk of the Superior Court
Court House, Room 121
118 Washington St.
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY

Deputy Clerk of the Superior Court
92 Market St., PO Box 29
Salem, NJ 08079
LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House, 3rd Fl.
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY

Deputy Clerk of the Superior Court
Court House, Room 107
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 387-1835
LEGAL SERVICES
(908) 475-2010

HAROLD M. HOFFMAN, ESQ.
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ENGLEWOOD, NJ 07631
(201) 569-0086

ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

| | |
|----------------|---------|
| DATE FILED | 12-3-12 |
| BATCH # | 009 |
| PAYMENT # | 141867 |
| CA CK CC MO CG | CG |
| PAYOR | Hoffman |
| AMOUNT | \$200- |
| OVER | |

SUPERIOR COURT BERGEN COUNTY

FILED

DEC 03 2012

Jim Gudman

DEPUTY CLERK

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

-against-

COGENT SOLUTIONS GROUP, LLC,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: BER-L- 8926 -12

CIVIL ACTION

COMPLAINT AND JURY
DEMAND IN CLASS ACTION

OVERVIEW

By this civil action, Plaintiff brings claims on his own behalf and on behalf of those similarly situated (the "Class"), to redress nationwide injury inflicted on the United States consumer public. As detailed below, Defendant, on a nationwide basis, advertised, promoted, marketed, distributed and sold – both online and in retail stores throughout the nation, including the State of New Jersey – a dietary supplement known as *Baxyl Hyaluronan*, in liquid form, based upon false and misrepresented claims of product efficacy.

As alleged below, Defendant's product, Baxyl Hyaluronan, in liquid form for oral administration, which purportedly contains 60 mg of Hyaluronic Acid ("HA") per liquid

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699
DTC
Chavre

dose, and purportedly derived from biological fermentation, was sold to the U.S. consumer public based upon entirely false claims of product efficacy, including but not limited to the claim that its oral consumption would deliver joint health and mobility in humans, thereby reducing pain for those suffering from osteoarthritis. In truth and in fact, Defendant's orally administered product, in the dosage recommended and in the form derived, can deliver none of these benefits. There are no reliable medical studies validating Defendant's claim of product efficacy and Defendant possesses no reliable clinical data and/or scientific research supporting its marketing claims. Defendant took consumers' money predicated on specific claims of health benefit and delivered to them, in return, nothing but broken promises.

The putative class comprises all nationwide purchasers of Defendant's Baxyl Hyaluronan for the six year period preceding the filing of this suit.

1. At all times relevant, Plaintiff Harold M. Hoffman had a place of residence in the State of New Jersey, County of Bergen. Plaintiff was exposed to and read, saw and/or heard Defendant's advertising and marketing claims and promises with respect to Defendant's product, and thereafter purchased Defendant's Baxyl Hyaluronan, in or about September of 2012.

2. At all relevant times, Defendant COGENT SOLUTIONS GROUP, LLC, was a limited liability company organized and existing pursuant to the laws of the State of

Kentucky, with a principal place of business located in Lexington, KY. Upon information and belief, Defendant advertises, markets and sells a variety of dietary supplements to consumers throughout the nation.

3. Defendant advertised, marketed, distributed and sold Defendant's Baxyl Hyaluronan in commerce throughout the United States, including but not limited to the State of New Jersey.

4. At all relevant times, plaintiff was and is a consumer, with a place of residence in the State of New Jersey, County of Bergen.

5. At all relevant times, Defendant constituted a "person" as defined in the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1(d)*.

6. For the six-year period preceding the filing of this action, Defendant, through television, radio, internet, electronic mail, telephone, and other marketing, as well as through retail distribution throughout the nation, including the State of New Jersey, marketed, advertised, promoted and offered its products to consumers, including Defendant's Baxyl Hyaluronan, a supplement purportedly containing 60 mg per liquid dose of Hyaluronic Acid derived from biological fermentation.

7. Hyaluronic Acid is a substance that is naturally present in the human body. It is found in the highest concentrations in fluids in the eyes and joints. Hyaluronic Acid

is produced commercially by either extraction from animal tissues (e.g. rooster comb) or bacterial fermentation. Hyaluronic Acid from bacterial sources – the source of Defendant's Baxyl Hyaluronan – is of a lower grade (lower molecular weight) compared with the product extracted from animal tissues. Hyaluronic Acid is administered, with limited success, for various joint disorders, including osteoarthritis. But, to be at all effective, it must be injected directly into the affected joint by a healthcare professional. The FDA has approved the use of Hyaluronic Acid during certain eye surgeries including cataract removal, corneal transplantation, and repair of a detached retina and other eye injuries. It is injected into the eye during the procedure to help replace natural fluids. Hyaluronic Acid is also used as a lip filler in plastic surgery.

8. There is no reliable clinical evidence to support the Defendant's claim that orally ingesting Hyaluronic Acid produced through biological fermentation, in a 60 mg liquid dose, can deliver any relief from osteoarthritis; any joint benefit; any joint support; and/or joint pain relief whatsoever. Hyaluronic Acid, when naturally found in the joint, works by acting as a cushion and lubricant in the joints and other tissues. Thus, when injected by a health care professional, with ultrasound guidance, directly into the affected joint, it delivers short-term, limited benefit in some patients on the belief that it supplements viscosity. Oral administration of Hyaluronic Acid results in its degradation during digestion with no benefit whatsoever to the osteo-arthritic patient, and no joint support and/or enhanced mobility, as claimed by Defendant. Moreover, sodium

hyaluronate, the principal ingredient in Defendant's product, is not the naturally occurring Hyaluronic Acid compound made by all cells of the body. It has salt attached to every single disaccharide unit. Not only does this increase sodium intake for the consumer, the molecule itself is abnormal. This cheap, synthetic Hyaluronic Acid is typically made through bacterial fermentation, contains molecules too large to absorb, and has not been proven to reach the joint and/or deliver any benefit.

9. In connection with the marketing, advertisement and sale of Defendant's Baxyl Hyaluronan, Defendant affirmatively promised and represented, among other false promises, that its product delivered joint health and mobility in humans.

10. Prior to purchasing Defendant's product, plaintiff was seeking, and in need of, a product that would, among other things, deliver this purported benefit.

11. The affirmative promises and representations made by Defendant in connection with the marketing, advertisement and sale of Defendant's Baxyl Hyaluronan, as aforesaid, are false and are without valid medical/clinical support. Indeed, the relevant scientific data negates Defendant's claims and promises.

12. Plaintiff and members of the putative class are purchasers of Defendant's Baxyl Hyaluronan and, prior to purchasing the product, saw, read and/or heard Defendant's advertisements, promises and representations, as aforesaid.

13. Plaintiff and members of the class, prior to purchasing the product, saw, read and/or heard Defendant's promises and representations as aforesaid, and made an out of pocket payment to Defendant in response thereto.

14. The very purpose of the New Jersey Consumer Fraud Act is to protect consumers, such as the putative class members at bar, from being victimized by false promises and claims with respect to product efficacy and benefit.

15. In truth and fact, Defendant misrepresented the efficacy and benefit of its product. Plaintiff and members of the class paid for a product that Defendant affirmatively and specifically represented to be beneficial for joint health and mobility in humans. In truth, the orally administered product sold by Defendant has been clinically shown to deliver zero benefit.

16. Here, consumers, including Plaintiff, made purchasing decisions and did, in fact, make purchases from Defendant based upon Defendant's specific representations of product efficacy and benefit.

17. Defendant has affirmatively misrepresented and mislabeled its product.

18. The affirmative promises and representations made by Defendant – both in product labeling and in marketing advertisements and representations – in connection with its product are false and misleading. Indeed, Defendant has affirmatively misrepresented

the product's purported salutary benefits. Plaintiff and members of the class were entitled to trust the Defendant's labeling and marketing representations with respect to the product. The product delivered by Defendant to Plaintiff and members of the putative class misrepresented product efficacy and benefit.

19. Defendant's advertisements, promises and representations concerning Defendant's Baxyl Hyaluronan are false and constitute a deception; a misrepresentation; an unconscionable trade practice; a sharp and deceitful marketplace practice, and are a false promise.

20. Defendant's advertisement, promises and representations concerning Defendant's Baxyl Hyaluronan result in nationwide consumers who purchased it, being subjected to misrepresentation, false promise, fraud, deceit, trickery and false and deceptive advertising.

21. Defendant has made affirmative misrepresentations in connection with the sale, marketing and/or advertisement of its product, Baxyl Hyaluronan.

22. Plaintiff and members of the putative class suffered ascertainable loss in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' unlawful conduct as aforesaid. Plaintiff and members of the putative class paid hard earned money and received from Defendant, in exchange, a product that was unable to deliver the benefits promised by Defendant. Indeed, there was a substantial

difference between the price paid by consumers, including plaintiff, for the Defendant's product, and the represented value of the product.

23. Here, plaintiff and members of the class suffered ascertainable loss when they received, for their money, a product less than, and different from, the product promised by Defendant. The Defendant's product failed to measure up to the consumers' reasonable expectations based on the representations made by Defendant. Thus, purchasers of said product were injured and suffered loss.

24. For their money, plaintiff and members of the class received something less than, and different from, what they reasonably expected in view of Defendant's representations. As a result, they suffered ascertainable loss.

25. Defendant marketed and sold Defendant's Baxyl Hyaluronan- and consumers purchased it - on the premise that the product could deliver specified health benefit and joint support. It cannot do so. Thus, there is a causal relationship between the Defendant's misrepresentations of product efficacy and the loss suffered by plaintiff and class members.

CLASS ALLEGATIONS

26. Plaintiff brings this suit as a class action individually and in behalf of others similarly situated pursuant to New Jersey Court Rule 4:32. This action has been brought and may properly be maintained as a class action pursuant to New Jersey Court Rule 4:32.

Subject to additional information obtained through further investigation and/or discovery, the definition of the Class may be expanded or narrowed. The proposed Class consists of all nationwide purchasers of Defendant's Baxyl Hyaluronan for the six year period preceding the filing of this suit. As to the individual plaintiff, the amount in controversy in this action, including, without limitation, compensatory, treble, and/or punitive damages and counsel fees, is less than \$75,000.00. As to the putative plaintiff class, the amount in controversy in this action, including, without limitation, compensatory, treble, and/or punitive damages and counsel fees, is less than \$5 million.

Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. The Class is comprised of thousands of consumers throughout the United States.

Commonality: Common questions of law and fact exist as to all members of the Class. These common questions predominate over the questions affecting only individual Class members, and include:

- a. Whether Defendant made affirmative misrepresentations in violation of the New Jersey Consumer Fraud Act;
- b. Whether Defendant misrepresented the efficacy of Defendant's Baxyl Hyaluronan; and
- c. The appropriate measure of damages sustained by the Plaintiff and/or other members of the Class.

Typicality: Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Class, purchased Defendant's Baxyl Hyaluronan after exposure to the same misrepresentations and/or omissions in Defendants' advertising and received a product less than and different from the promised product. Plaintiff is advancing claims and legal theories typical to the Class.

Adequacy: Plaintiff's claims are made in a representative capacity on behalf of all members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

27. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class. Plaintiff may identify and propose additional class representatives with the filing of Plaintiff's motion for class certification.

28. This suit may be maintained as a class action because Defendant has acted, and/or has refused to act, on grounds generally applicable to the Class, thereby making appropriate final relief.

29. At bar, Plaintiff also seeks injunctive relief requiring Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing Defendant's

Baxyl Hyaluronan as delivering joint health and mobility in humans; (ii) undertake a public information campaign to Class members of their false and deceitful prior practices; and (iii) correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of Defendant's Baxyl Hyaluronan, including without limitation, the placement of corrective advertising and providing written notice to the public.

30. **Superiority:** In addition, this suit may be maintained as a class action because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The claims asserted herein are applicable to all consumers throughout the United States who purchased Defendant's Baxyl Hyaluronan. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually effectively and cost-efficiently to redress Defendant's wrongful conduct. Individual litigation would enhance delay and expense to all parties. 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.

COUNT I

31. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

32. Defendant's conduct constitutes an unconscionable commercial practice in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

33. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A. 56:8-19*, and any other and further relief as the Court deems just and proper.

COUNT II

34. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

35. Defendant's conduct constitutes deception in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

36. As a proximate result of Defendant's conduct, plaintiff and members of

the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT III

37. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

38. Defendant's conduct constitutes fraud in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

39. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT IV

40. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

41. Defendant's conduct constitutes false pretense, false promise and/or misrepresentation, in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

42. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT V

43. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

44. Defendant's conduct constitutes knowing concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of any merchandise in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

45. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and

post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT VI

46. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

47. Defendant, in the advertisement, marketing and sale of Defendant's Baxyl Hyaluronan, deliberately engaged in deception, false pretense, false promise and/or misrepresentation with respect to material facts, and did so with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

48. Defendant, in the advertisement, marketing and sale of Defendant's Baxyl Hyaluronan, deliberately and knowingly engaged in concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

49. As a proximate result of defendant's conduct, members of the class were damaged.

50. Defendant's conduct constitutes common law fraud.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for treble damages and/or punitive damages together with pre-judgment

and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

COUNT VII

51. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

52. As a result of Defendant's false and deceptive advertisements, promises and representations concerning the efficacy of Defendant's Baxyl Hyaluronan, and as a consequence of Defendant's unconscionable trade practices, its sharp and deceitful marketplace practices, and its false promises, all as aforesaid, the class members paid money to and conferred a benefit upon Defendant in connection with the sale of Defendant's Baxyl Hyaluronan by Defendant to class members, which benefit was received and continues to be retained by Defendant.

53. Retention of that benefit without reimbursement by Defendant to all class members would be unjust and inequitable.

54. Retention of that benefit by Defendant at the expense of all class members would be unjust and inequitable.

55. Defendant, as a result of its false and deceptive conduct as aforesaid, became indebted to class members for the sums paid by class members to Defendant for purchase of a misrepresented product. Retention of said sums, without reimbursement, would result in the unlawful, unjust and inequitable enrichment of Defendant beyond

its lawful rights in connection with the sale of Defendant's Baxyl Hyaluronanto class members.

56. All monies paid by class members to Defendant for purchase of Defendant's Baxyl Hyaluronan, including all interest earned by Defendant on such monies while in wrongful possession thereof, should be disgorged by Defendant and reimbursed to class members under principles of unjust enrichment.

57. As a proximate result of Defendant's conduct, members of the class were damaged.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for reimbursement of sums paid by class members to Defendant for purchase of a misrepresented product, Defendant's Baxyl Hyaluronan, together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

COUNT VIII

58. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

59. In or about September of 2012, Plaintiff entered into a contract with Defendant to purchase Defendant's Baxyl Hyaluronan.

60. In connection with such purchase contract, Defendant, as seller, made promises to Plaintiff, as purchaser, as to the efficacy and benefit of Defendant's Baxyl

Hyaluronan that became part of the basis of the bargain. These same promises were made by Defendant to all members of the class that purchased Defendant's Baxyl Hyaluronan.

61. The aforesaid promises made by Defendant, which factored into the purchase by Plaintiff and class members of Defendant's Baxyl Hyaluronan from Defendant, created an express warranty that Defendant's product conformed to Defendant's promises.

62. Plaintiff and class members believed that Defendant's Baxyl Hyaluronan conformed to Defendant's promises and that they would derive the product benefits promised by Defendant.

63. Defendant's Baxyl Hyaluronan did not conform to Defendant's promises of efficacy and benefit. Thus, Defendant breached its express warranty.

64. Upon information and belief, class members gave notice to Defendant that Defendant's Baxyl Hyaluronan did not conform to Defendant's promises of joint health and mobility in humans.

65. As a proximate result of Defendant's conduct, Plaintiff and members of the class were damaged by paying monies to purchase a product that failed altogether to conform to Defendant's express promises and warranty.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for damages in an amount to be proven at trial, together with pre-judgment

and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

COUNT IX

66. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

67. At all relevant times, Defendant was a merchant with respect to the Defendant's Baxyl Hyaluronan product sold by Defendant to Plaintiff and members of the class. Thus, a warranty that the Defendant's Baxyl Hyaluronan product was merchantable was implied in all contracts of sale of Defendant's Baxyl Hyaluronan by Defendant to class members.

68. Defendant breached the implied warranty of merchantability with respect to Defendant's Baxyl Hyaluronan in that it failed to conform to Defendant's promises of efficacy to deliver joint health and mobility in humans. Further, the Defendant's Baxyl Hyaluronan product, as a result of Defendant's false labeling and misrepresentations of product efficacy, was not fit for the ordinary purpose for which it was intended to be used.

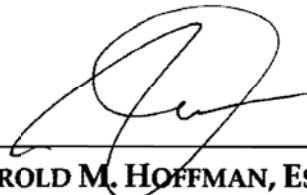
69. Upon information and belief, class members gave notice to Defendant that Defendant's Baxyl Hyaluronan did not conform to Defendant's promises of efficacy to deliver joint support and implied warranty of merchantability.

70. As a proximate result of Defendant's conduct, Plaintiff and members of

the class were damaged by paying monies to purchase a product that failed altogether to conform to Defendant's implied warranty of merchantability and fitness for intended purpose.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for damages in an amount to be proven at trial, together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

Dated: November 30, 2012



HAROLD M. HOFFMAN, ESQ.
Counsel for Plaintiff and the Putative Class
240 Grand Avenue
Englewood, NJ 07631
hoffman.esq@verizon.net

JURY DEMAND

Demand is hereby made for trial by jury as to all issues.

TRIAL COUNSEL DESIGNATION

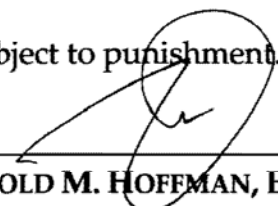
Pursuant to Rule 4:25-4, the Court is respectfully advised that Harold M. Hoffman, Esq., is hereby designated as trial counsel in behalf of plaintiff.

CERTIFICATION PURSUANT TO RULE 4:5-1

Harold M. Hoffman, counsel for plaintiff, hereby certifies that the matter in controversy is not the subject of any other known pending action in this or any other

Court or any pending arbitration, nor is any other action or arbitration known to be contemplated. At this time, no other known party, other than members of the class, are anticipated for joinder.

I certify that the foregoing is true to the best of my knowledge. I am aware that if any of the foregoing is wilfully false, I am subject to punishment.



HAROLD M. HOFFMAN, ESQ.

Dated: November 30, 2012

EXHIBIT B

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Cogent Solutions Group, LLC

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

HAROLD M. HOFFMAN, individually
and on behalf of those similarly situated,

Plaintiff,

vs.

COGENT SOLUTIONS GROUP, LLC

Defendant.

Civil Action No. _____

Document electronically filed

**CERTIFICATION OF
JAMES D. SMITH, JR.**

I, James D. Smith, Jr., certify as follows:

1. I am the President and Chief Operating Officer of Cogent Solutions Group, LLC (“CSG”), a limited liability company organized and existing under the laws of the Commonwealth of Kentucky. The principal place of business for CSG is 112 Westhampton Drive, Lexington, Kentucky 40511.

2. I have been employed as the President and Chief Operating Officer of CSG since I founded CSG in 2005. In that capacity, I am familiar with the marketing and sales of our product Baxyl®, which is referred to as “Baxyl Hyaluronan” in Plaintiff’s Complaint.

3. CSG has marketed and sold Baxyl®, under its federally registered trademark, throughout the United States since at least 2006. Baxyl® is available in a 6-ounce bottle, which has a manufacturer suggested retail price (“MSRP”) of \$39.95.

4. From December 3, 2006 through December 3, 2012, CSG's total U.S. sales of Baxyl® were at least \$5 million.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 3 day of January, 2013, in Lexington, Kentucky.

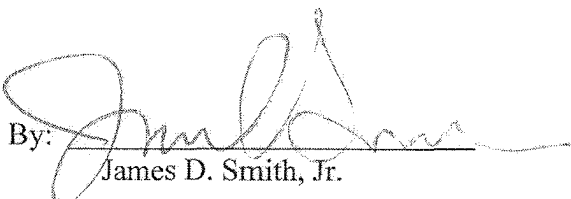
By: 
James D. Smith, Jr.

EXHIBIT C



MICHAEL R. MCDONALD
Director

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4827 Fax: (973) 639-6295
mmcdonald@gibbonslaw.com

January 3, 2012

VIA FEDEX

Clerk of the Court
Superior Court of New Jersey
Bergen County
10 Main Street
Hackensack, New Jersey 07601-7699

Re: *Harold M. Hoffman v. Cogent Solutions Group, LLC*
Docket No. BER-L-8926-12

Dear Sir or Madam:

This law firm represents Defendant Cogent Solutions Group, LLC in the above-referenced matter. I enclose herewith for filing an original and two (2) copies of our Notice of Filing Notice of Removal of this matter to the United States District Court for the District of New Jersey. Please charge our account number 0018800 (our internal number is 111828-82713) for any fees associated with this filing. Please return a stamped "Filed" copy to me in the pre-paid, self-addressed envelope enclosed.

If you have any questions, please contact me with any questions or concerns regarding the foregoing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael R. McDonald".

Michael R. McDonald

MRM/mmm

Enclosures

cc: Harold M. Hoffman, Esq. (*via Federal Express w/enclosures*)
Jennifer Marino Thibodaux, Esq.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Cogent Solutions Group, LLC

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

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

vs.

COGENT SOLUTIONS GROUP, LLC,

Defendant.

Civil Action No. _____

Document electronically filed

**CERTIFICATION PURSUANT TO
LOCAL CIVIL RULE 10.1(a)**

Pursuant to Local Civil Rule 10.1(a), attached hereto as Exhibit A is a Service List that sets forth the names and addresses of each party, as well as counsel for each of the parties, in the above-captioned action.

Dated: January 3, 2012
Newark, New Jersey

By: s/Michael R. McDonald
Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500
mmcdonald@gibbonslaw.com
jthibodaux@gibbonslaw.com

Attorneys for Defendant
Cogent Solutions Group, LLC

Exhibit A

HAROLD M. HOFFMAN
v.
COGENT SOLUTIONS GROUP, LLC

Civil Action No.: _____

Service List

Plaintiff / Plaintiff's Counsel

Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, New Jersey 07631
(201) 569-0086
hoffman.esq@verizon.net

Defendant

Cogent Solutions Group, LLC
112 Westhampton Drive
Lexington, KY 40511

Defendant's Counsel

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500
mmcdonald@gibbonslaw.com
jthibodaux@gibbonslaw.com

Attorneys for Defendant
Cogent Solutions Group, LLC

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Cogent Solutions Group, LLC

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

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

vs.

COGENT SOLUTIONS GROUP, LLC,

Defendant.

Civil Action No. _____

Document electronically filed

**CERTIFICATION PURSUANT TO
LOCAL CIVIL RULE 11.2**

I, Michael R. McDonald, admitted to the bars of the State of New Jersey and this Court and a member of the law firm of Gibbons P.C., counsel for Defendant Cogent Solutions Group, LLC, in the above-captioned matter, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: January 3, 2013

By: s/ Michael R. McDonald, Esq.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Phone: (973) 596-4500
Facsimile: (973) 639-6295
mmcdonald@gibbonslaw.com
jthibodaux@gibbonslaw.com

Attorneys for Defendant
Cogent Solutions Group, LLC

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Cogent Solutions Group, LLC

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

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

vs.

COGENT SOLUTIONS GROUP, LLC,

Defendant.

Civil Action No. _____

Document electronically filed

CERTIFICATE OF SERVICE

I, **MICHAEL R. MCDONALD, ESQ.**, hereby certify as follows:

1. I am an attorney at law admitted to practice before this Court and am a member of the firm Gibbons P.C., attorneys for Defendant Cogent Solutions Group, LLC in the above-captioned matter. On January 3, 2013, I electronically filed and served the following documents on behalf of Defendant:

- Notice of Removal with accompanying exhibits;
- Corporate Disclosure Statement Pursuant to Federal Rule of Civil Procedure 7.1;
- Statement Pursuant to Local Civil Rule 10.1(a);
- Certification Pursuant to Local Civil 11.2;
- Civil Cover Sheet; and
- Certificate of Service.

2. Service was also made on this date upon the following counsel in accordance with the Federal Rules of Civil Procedure and the District of New Jersey's Local Rules on Electronic Service:

Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, New Jersey 07631
Phone: (201) 569-0086
hoffman.esq@verizon.net

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 3, 2013

By: s/ Michael R. McDonald, Esq.

Michael R. McDonald, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Phone: (973) 596-4500
Facsimile: (973) 639-6295
mmcdonald@gibbonslaw.com

Attorneys for Defendant
Cogent Solutions Group, LLC

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) PLAINTIFF

HAROLD M. HOFFMAN, individually and on behalf of the class of purchasers of Nordic Naturals Ultimate Omega

(b) COUNTY OF RESIDENT OF FIRST LISTED PLAINTIFF Bergen, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Cogent Solutions Group, LLC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Lexington-Fayette, KY
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, NJ 07631
(201) 569-0086

ATTORNEYS (IF KNOWN)

Michael R. McDonald, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
973-596-4500

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** ☒ 4 **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 checked="" 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 checked="" type="checkbox"/> 2 | Incorporated or Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" 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"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med. | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product | <input type="checkbox"/> 365 Personal Injury - Malpractice | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 28 USC 158 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Liability Assault, & Libel Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 630 Liquor Laws | | <input type="checkbox"/> 450 Commerce/ICC Rates/etc. |
| <input type="checkbox"/> 150 Recovery of Overpayment and enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 640 RR & Truck | PROPERTY RIGHTS | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 650 Airline Regs | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 470 Racketeer Influenced |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 160 Stockholder's Suits | <input type="checkbox"/> 360 Other Personal Injury | PRISONER PETITIONS | LABOR | SOCIAL SECURITY | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 190 Other Contract | CIVIL RIGHTS | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 530 General | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 892 Economic Stabilization Act |
| | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 893 Environmental Matters |
| | <input type="checkbox"/> 443 Housing/ | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 864 SSID Title (XVI) | <input type="checkbox"/> 894 Energy Allocation Act |
| | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 550 Other | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 895 Freedom of Information Act |
| | <input type="checkbox"/> 440 Other Civil Rights | | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | FEDERAL TAX SUITS | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | | | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| | | | | <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | <input checked="" type="checkbox"/> 890 Other Statutory Actions |

VI ORIGIN

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

(Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

28 U.S.C. 1332(d)

Brief description of cause: This is a putative class action lawsuit alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq., common law fraud, unjust enrichment, breach of express warranty, and breach of the implied warranties of merchantability and fitness for an intended purpose.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A ☒ UNDER F.R.C.P. 23

CLASS ACTION**DEMAND \$**

N/A

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions)

JUDGE

DOCKET
NUMBER

Explanation:

DATE January 3, 2013

SIGNATURE OF ATTORNEY OF RECORD

s/ Michael R. McDonald.

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 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 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 firm name, address, telephone number, and attorney or record. If there are several attorneys, list then 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 is 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. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. 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 IV more than one nature of suit, select the most definitive.

VI. 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's decision.

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 in a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating 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.