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Attorneys for Plaintiffs

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

ELIZABETH MITCHELL on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

SCHIFF NUTRITION INTERNATIONAL,
INC., a Utah corporation; SCHIFF
NUTRITION GROUP, INC., a Utah
corporation; and DOES 1-20,

Defendants.

Case No. '14CV0387 JAH RBB

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §§ 1750, *et seq.*;
2. VIOLATION OF THE ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT, Welfare and Institutions Code §§ 15600, *et seq.*; and
3. ACTS AGAINST SENIOR CITIZENS, Civil Code § 3345

DEMAND FOR JURY TRIAL

1 Plaintiff Elizabeth Mitchell brings this action on behalf of herself and all others
2 similarly situated against Defendants Schiff Nutrition International, Inc., a Utah
3 corporation, and Schiff Nutrition Group, Inc., a Utah corporation, and Does, 1 through 20
4 (together “Defendants”) and states:

5 NATURE OF ACTION

6 1. Defendants manufacture, distribute, market, and sell Move Free[®], a line of
7 glucosamine and chondroitin-based joint-health dietary supplements that purportedly
8 provide a variety of health benefits centered around protecting joint cartilage from
9 breakdown and repairing it, improving joint function, and reducing joint pain.¹ The
10 primary active ingredients in Defendants’ Move Free products are glucosamine
11 hydrochloride and chondroitin sulfate. Through an extensive and uniform nationwide
12 advertising campaign, Defendants represent that Move Free provides “Total Joint Health,”
13 “Promotes the health of joints,” is a “Joint Strengthener,” has “Joint Fluid,” “comforts,
14 protects and lubricates joints,” “Supports joint health and flexibility,” provides joint
15 “cushioning,” “protect[s] joint tissue and cartilage from breakdown,” “support[s] joint
16 comfort and soothes joints,” “helps your overall bone health and joint movement,” and
17 “Maintains & Repairs more cartilage” simply by taking the recommended number of
18 tablets each day. Defendants further warrant that the Move Free products are
19 “scientifically formulated solutions to help ease discomfort, solutions to help maintain
20 strength and flexibility, as well as solutions to help repair and rebuild cartilage,” and at
21 some point during the Class Period, Defendants warranted that the Move Free products
22 will “START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS.” *See*
23 *generally* Exhibit A, Product Labels.

24 2. The statements represented on the Move Free products’ packaging and on
25 Defendants’ website are “structure-function” claims which must be limited to a
26

27 ¹ The Move Free[®] line includes: (1) Move Free[®] Double Strength; (2) Move Free[®] Advanced Triple
28 Strength; (3) Move Free[®] Advanced Plus MSM; (4) Move Free[®] Advanced Plus MSM & Vitamin D3;
(collectively, “Move Free”).

1 description of the role that a dietary ingredient is “intended to affect the structure or
2 function in humans.” 21 U.S.C. § 343(r)(6). In order to make a structure-function claim,
3 the dietary supplement manufacturer is required to have substantiation that such
4 statements are truthful and not misleading. *Id.*

5 3. Defendants do not have any competent, reliable scientific evidence that
6 substantiates their representations about the health benefits of consuming the Move Free
7 products. In fact, all available scientific evidence demonstrates that the Move Free
8 products have no efficacy at all, are ineffective in the improvement of joint health, and
9 provide no benefits related to increasing the mobility, flexibility, or lubrication of human
10 joints. Numerous scientifically valid studies have been conducted on the ingredients,
11 including the core or primary ingredients in the Move Free products, glucosamine and
12 chondroitin, and they have universally demonstrated that glucosamine and chondroitin,
13 alone or in combination with other ingredients, have absolutely no scientific value in the
14 treatment of joint pain or discomfort.

15 4. Further, pursuant to 21 C.F.R. § 101.93, Defendants are prohibited from
16 making “disease claims” about their product. Disease claims are generally described as
17 statements which claim to diagnose, mitigate, treat, cure or prevent disease where the
18 statements claim “explicitly or implicitly, that the product [h]as an effect on the
19 characteristic signs or symptoms of a specific disease or class of diseases, using scientific
20 or lay terminology.” 21 C.F.R. § 101.93(g)(2)(ii). Defendants make representations on
21 the Move Free products’ labels and on their website that directly relate to the treatment of
22 Osteoarthritis. The Mayo Clinic defines symptoms of osteoarthritis as follows:

- 23 • ***Pain.*** Your joint may hurt during or after movement.
- 24 • ***Tenderness.*** Your joint may feel tender when you apply light pressure to it.
- 25 • ***Stiffness.*** Joint stiffness may be most noticeable when you wake up in the morning
26 or after a period of inactivity.
- 27 • ***Loss of flexibility.*** You may not be able to move your joint through its full range of
28 motion.

- 1 • **Grating sensation.** You may hear or feel a grating sensation when you use the joint.
- 2 • **Bone spurs.** These extra bits of bone, which feel like hard lumps, may form around
- 3 the affected joint.

4 See <http://www.mayoclinic.com/health/osteoarthritis/DS00019/DSECTION=symptoms>
5 (last viewed February 11, 2014).

6 5. Defendants represent that the active ingredients in the Move Free products
7 provide relief for nearly all of these symptoms. The product labeling states the following:
8 “Total Joint Health,” “Promotes the health of joints,” “Joint Strengthener,” “with Joint
9 Fluid,” and “Maintain and repair more cartilage.” See Exhibit A, Product Labels. The
10 product label further warranted at some point during the Class Period that the Move Free
11 products would “Start[] comforting sore joints in less than 7 days.” These bold claims are
12 in addition to other misrepresentations claiming: “Move Free gives you comfort,
13 flexibility, lubrication, and protection,” “Move Free Maintains & Repairs joint cartilage
14 and is specially formulated . . . [to] preserve and repair cartilage, support normal cartilage
15 thickness, and comfort joints to support joint movement,” “Move Free gives you[r joints]
16 comfort, lubrication, and protection,” “Move Free Double Strength supports the health of
17 your joints [w]ith continued use now and down the road.” Taken together, these
18 statements explicitly and implicitly represent that the Move Free products are intended to
19 prevent, treat, or otherwise cure symptoms associated with Osteoarthritis.

20 6. Defendants did not obtain the requisite New Drug Application prior to
21 marketing and selling its Move Free products. As such, making these statements and
22 representations without a New Drug Application approval from the FDA constitute
23 misbranding and false and misleading conduct pursuant to 21 C.F.R. § 101.93(a).

24 7. Defendants convey their uniform, deceptive message to consumers through a
25 variety of media including their website and online promotional materials, and, most
26 important, at the point of purchase, on the front of the Move Free products’
27 packaging/labeling where it cannot be missed by consumers. The only reason a consumer
28

1 would purchase the Move Free products is to obtain the advertised joint-health benefits,
2 which the Move Free products do not provide.

3 8. As a result of Defendants' deceptive advertising and false claims regarding
4 the efficacy of the Move Free products, Plaintiff and the proposed Class have purchased a
5 product which does not perform as represented and they have been harmed in the amount
6 they paid for the product, which, in the case of Plaintiff Mitchell is approximately \$20.00
7 per bottle.

8 9. Plaintiff brings this action on behalf of herself and other similarly situated
9 consumers who have purchased Defendants' Move Free products to halt the dissemination
10 of this false, misleading, and deceptive advertising message, correct the false and
11 misleading perception it has created in the minds of consumers, and obtain redress for
12 those who have purchased the Move Free products. Based on violations of state unfair
13 competition and elder-protection laws and Defendants' breach of express warranty,
14 Plaintiff seeks injunctive and monetary relief for consumers who purchased the Move
15 Free products.

16 **JURISDICTION AND VENUE**

17 10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The
18 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
19 \$5,000,000 and is a class action in which there are in excess of 100 class members and
20 many members of the Class are citizens of a state different from Defendants.

21 11. This Court has personal jurisdiction over Defendants because Defendants are
22 authorized to conduct and do conduct business in California. Defendants have marketed,
23 promoted, distributed, and sold the Move Free products in California, and Defendants
24 have sufficient minimum contacts with this State and/or sufficiently avail themselves of
25 the markets in this State through their promotion, sales, distribution, and marketing within
26 this State to render the exercise of jurisdiction by this Court permissible.

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

1 occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C.
2 § 1965(a) because Defendants transact substantial business in this District.

3 **PARTIES**

4 13. Plaintiff Elizabeth Mitchell resided in San Diego County, California at all
5 times relevant to this action, including when she purchased the Move Free Product. In or
6 around July of 2012, Plaintiff was exposed to and saw Defendants' representations
7 regarding the joint-health benefits of the Move Free products by reading the Move Free
8 product label in a Walgreen's retail store near her home in downtown San Diego and by
9 reading the representations made by Defendants on their website. In reliance on the
10 claims listed on the product label and on Defendants' website described herein and above,
11 and particularly those claims that the Move Free products would "promote the health of
12 your joints," "comfort[], protect[] and lubricate[] joints," and "protect joint tissue and
13 cartilage." Plaintiff purchased the Move Free product at a Walgreen retail store located at
14 3005 Midway Drive, San Diego, California 92110. She paid approximately \$20.00 for
15 the product. At the time, Elizabeth Mitchell was experiencing pain and stiffness in her
16 joints. She purchased the product believing it would provide the advertised joint-health
17 benefits and improve her joint soreness and comfort. As a result, Plaintiff suffered injury
18 in fact and lost money. Had Plaintiff known the truth about Defendants'
19 misrepresentations and omissions, she would not have purchased the Move Free product.
20 Plaintiff was over the age of 65 at the time she started purchasing and using the product.

21 14. Defendant Schiff Nutrition International, Inc. ("Schiff Nutrition Int'l") is a
22 corporation organized and existing under the laws of the state of Utah. Schiff Nutrition
23 Int'l has its principal place of business at 2002 South 5070 West, Salt Lake City, Utah
24 84104. Schiff Nutrition Int'l manufactures, advertises, markets, distributes, and/or sells
25 the Move Free products to tens of thousands of consumers in California and throughout
26 the United States.

27 15. Defendant Schiff Nutrition Group, Inc. ("Schiff Nutrition Group") is a
28 corporation organized and existing under the laws of the state of Utah. Schiff Nutrition

1 Group has its principal place of business at 2002 South 5070 West, Salt Lake City, Utah
2 84104. Schiff Nutrition Group manufactures, advertises markets, distributes, and/or sells
3 the Move Free products to tens of thousands of consumers in California and throughout
4 the United States.

5 16. Plaintiff is informed and believes, and thus alleges, that at all times herein
6 mentioned, each of the Defendants was the agent, employee, representative, partner, joint
7 venturer, and/or alter ego of the other Defendant, and, in doing the things alleged herein,
8 was acting within the course and scope of such agency, employment, representation, on
9 behalf of such partnership or joint venture, and/or as such alter ego, with the authority,
10 permission, consent, and/or ratification of the other Defendant.

11 **FACTUAL ALLEGATIONS**

12 17. Defendants began manufacturing, marketing, and selling the Move Free
13 Advanced products nationwide in 1996 on a nationwide basis.² The Move Free products
14 are sold at a variety of national retail stores and websites, including Walmart, Costco,
15 Walgreens and Target, and a variety of grocery stores, including Safeway and Trader
16 Joe's. The Move Free products are available in a tablet form in 40-, 60-, 80-, or 120-
17 count bottles. Plaintiff purchased a 40 count bottle for approximately \$20.00. Almost all
18 of the Move Free products contain 1.5 g (1500 mg) of glucosamine hydrochloride and 200
19 mg of chondroitin sulfate.³ Defendants prominently promote that "[g]lucosamine and
20 chondroitin comforts [sic], protects [sic] and lubricates [sic] joints." Any variances of the
21 products are indistinguishable from an "efficacy" standpoint as Plaintiff alleges that the
22 core ingredients in the products are virtually identical and that the products are each
23 completely inefficacious.

24 18. Since the inception of the Move Free product line, Defendants have
25 consistently advertised that Move Free "gives you[r joints] comfort, flexibility,

26 _____
27 ² In 2000, Defendants rebranded their joint dietary supplements as "Move Free."

28 ³ The Move Free[®] Double Strength product contains 1500 mg of glucosamine hydrochloride and 1200 mg of chondroitin sulfate. The Move Free[®] Maintains & Repairs product contains 800 mg of chondroitin sulfate and no glucosamine hydrochloride.

1 lubrication, and protection” and “[m]aintains & [r]epairs joint cartilage.” Defendants
2 further warranted that the claimed benefits can be received in less than seven days (“Starts
3 comforting sore joints in less than 7 days”). The product labeling represents that the
4 Move Free products provide “Total Joint Health,” “Promote[] the health of joints,” act as
5 a “Joint Strengthener,” and “Maintain and repair more cartilage.” See Exhibit A. As
6 more fully set forth herein, the scientific evidence regarding the use of glucosamine
7 and/or chondroitin, taken alone or in combination with other ingredients, does not provide
8 any of the joint-health benefits represented by Defendants.

9 19. Also since launching the Move Free products, Defendants have consistently
10 conveyed the message to consumers throughout the United States, including California,
11 that the Move Free products provide superior joint comfort on an expedited basis—within
12 seven days compared to other glucosamine products. They do not. Defendants’ superior
13 joint-comfort claims are false, misleading, and deceptive; not only do they not provide the
14 advertised benefit within seven days, they provide no benefit at all.

15 20. In addition to the primary ingredients which Defendants prominently
16 promote as providing the purported joint-health benefits, Defendants’ Move Free products
17 contain amounts of other purported ingredients, including: Vitamin D3,
18 methylsulfonylmethane, calcium fructoborate, hyaluronic acid, and lesser composition
19 and coloring ingredients. These ingredients are also not effective in providing the joint-
20 health benefits represented by Defendants, but in any event the focus of this action is on
21 the uniform false and deceptive representations and omissions that Defendants makes
22 about glucosamine and/or chondroitin on the package labeling of each of the Move Free
23 products and on Defendants’ website.

24 21. Even though numerous clinical studies have found that glucosamine, alone,
25 or in combination with chondroitin and other supplements, is ineffective, Defendants
26 continue to state on the Move Free products’ packaging and labeling and on their website
27 that Move Free helps to improve joint health, provide joint comfort and flexibility, and
28 protect and rebuild cartilage tissue.

1 22. Plaintiff and Class members have been and will continue to be deceived or
2 misled by Defendants’ deceptive joint-health benefit claims. Each plaintiff purchased and
3 consumed Move Free during the Class Period and in doing so, read and considered the
4 joint-health benefit representations on the Move Free products’ labels and based their
5 decisions to purchase the Move Free product on the joint-health benefit claims. Elizabeth
6 Mitchell based her purchase decision in large part on the representation that it would
7 provide benefits faster than other brands—in less than seven 7 days. Plaintiff initially
8 started using the product at some point in 2009 or 2010. Defendants’ joint-health benefit
9 claims were a material factor in influencing Plaintiff’s decision to purchase and use the
10 Move Free products. Plaintiff would not have purchased Move Free had she known that
11 the Move Free products do not provide the represented joint comfort. *See* Exhibit A.

12 23. Independent scientific studies confirm that the representations made on the
13 Move Free products’ labels, relied upon by Plaintiff in making her purchase, are false and
14 misleading. Despite knowledge of these studies, Defendants continued to make the
15 described representations, misleading Plaintiff and members of the Class into believing
16 the Move Free products had actual efficacy and would provide the benefits described in
17 Defendants’ advertising.

18 24. Defendants knew or should have known that glucosamine alone or taken in
19 combination with the other ingredients present in the Move Free products have no actual
20 medicinal value and do not provide any of the warranted benefits as represented by
21 Defendants’ Move Free products’ labels. In fact, there is no scientific study
22 demonstrating that any glucosamine product can “rebuild cartilage” as claimed by
23 Defendants. To the contrary, as numerous studies have confirmed, neither glucosamine,
24 chondroitin, or any other supplements or ingredients actually regenerate cartilage or
25 provide joint comfort or relief from pain.

26 25. For example, a 1999 study involving 100 subjects by Houpt et al., entitled
27 *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*,

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1 26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed
2 no better than placebo at reducing pain at the conclusion of the eight-week trial.

3 26. In February 2004, a Supplement to the American Journal of Orthopedics
4 published an article entitled “*Restoring Articular Cartilage in the Knee.*” The authors
5 concluded that adult cartilage cannot be regenerated because it is not vascularized,
6 meaning that blood does not flow to damaged cartilage which prevents any mechanism for
7 regeneration.

8 27. Likewise, a 2004 study by McAlindon, et al., entitled, *Effectiveness of*
9 *Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based*
10 *Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649-9 (Nov. 2004),
11 concluded that “glucosamine was no more effective than placebo in treating symptoms of
12 knee osteoarthritis”—in short, that glucosamine is ineffective. *Id.* at 646 (“we found no
13 difference between the glucosamine and placebo groups in any of the outcome measures,
14 at any of the assessment time points”).

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

1 result, the efficacy of glucosamine as a symptom-modifying drug in knee OA is not
2 supported by our study.”).

3 29. A large (1,583 subjects), 24-week, multi-center RCT study sponsored by the
4 National Institute of Health, published in the New England Journal of Medicine (the
5 “2006 GAIT Study”), concluded: “[t]he analysis of the primary outcome measure did not
6 show that either [glucosamine or chondroitin], alone or in combination, was efficacious . .
7 . .” Clegg, D., et al., *Glucosamine, Chondroitin Sulfate, and the Two in Combination for*
8 *Painful Knee Osteoarthritis*, 354 New England J. of Med. 795, 806 (2006).

9 30. The 2006 GAIT Study authors rigorously evaluated the effectiveness of
10 glucosamine hydrochloride and chondroitin, alone and in combination, on osteoarthritis
11 for six months. According to the study’s authors, “[t]he analysis of the primary outcome
12 measure did not show that either supplement, alone or in combination, was efficacious . . .
13 .” 2006 GAIT Study at 806.

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

22 32. The GAIT studies are consistent with the reported results of prior and
23 subsequent studies. For example, the National Collaborating Centre for Chronic
24 Conditions (“NCCCC”) reported “the evidence to support the efficacy of glucosamine
25 hydrochloride as a symptom modifier is poor” and the “evidence for efficacy of
26 chondroitin was less convincing.” NCCCC, *Osteoarthritis National Clinical Guideline for*
27 *Care and Management of Adults*, Royal College of Physicians, London 2008. Consistent
28

1 with its lack of efficacy findings, the NCCCC Guideline did not recommend the use of
2 glucosamine or chondroitin for treating osteoarthritis. *Id.* at 33.

3 33. In a 2007 report, the authors reviewed all studies involving glucosamine
4 hydrochloride and concluded that “[g]lucosamine hydrochloride is not effective.” Vlad, et
5 al., *Glucosamine for Pain in Osteoarthritis*, 56:7 *Arthritis Rheum.* 2267-77 (2007); *see*
6 *also id.* at 2275 (“we believe that there is sufficient information to conclude that
7 glucosamine hydrochloride lacks efficacy for pain in OA”).

8 34. In October 2008, the American College of Rheumatology’s Journal, *Arthritis*
9 *& Rheumatism*, published a report on a double-blind study conducted at multiple centers
10 in the United States examining joint space width loss with radiograph films in patients
11 who were treated with glucosamine hydrochloride. The authors concluded that after two
12 years of treatment with this supplement, the treatment did not demonstrate a clinically
13 important difference in joint space width loss. Sawitzke et al., *Glucosamine for Pain in*
14 *Osteoarthritis: Why do Trial Results Differ?*, *Arthritis Rheum.*, 58:3183-3191 (2008).

15 35. In December 2008, the American Academy of Orthopaedic Surgeons
16 published clinical practice guidelines for the “Treatment of Osteoarthritis of the Knee
17 (Non-Arthroplasty),” and recommended that “glucosamine and sulfate or hydrochloride
18 should not be prescribed for patients with symptomatic OA of the knee.” Richmond et al.,
19 *Treatment of osteoarthritis of the knee (Nonarthroplasty)*, *J. Am. Acad. Orthop. Surg.*
20 Vol. 17 No. 9 591-600 (2009). This recommendation was based on a 2007 report from
21 the Agency for Healthcare Research and Quality, which states that “the best available
22 evidence found that glucosamine hydrochloride, chondroitin sulfate, or their combination
23 did not have any clinical benefit in patients with primary OA of the knee.” Samson, et al.,
24 *Treatment of Primary and Secondary Osteoarthritis of the Knee*, Agency for Healthcare
25 Research and Quality, 2007 Sep 1. Report No. 157.

26 36. Even studies not concerning the type of glucosamine in the Move Free
27 products (glucosamine hydrochloride) demonstrate that glucosamine does not provide the
28 joint health benefits that Defendants represent. For example, a study entitled “*Effect of*

1 *Glucosamine Sulfate on Hip Osteoarthritis*,” assessed the effectiveness of glucosamine
2 sulfate on the symptoms and structural progression of hip osteoarthritis during two years
3 of treatment, concluded that glucosamine was no better than placebo in reducing
4 symptoms and progression of hip osteoarthritis. Rozendaal, et al., *Effect of Glucosamine*
5 *Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008)

6 37. In March 2009, Harvard Medical School published a study conclusively
7 proving that the ingestion of glucosamine could not affect the growth of cartilage. The
8 study took note of the foregoing 2006 and 2008 studies, which “cast considerable doubt”
9 upon the value of glucosamine. The authors went on to conduct an independent study of
10 subjects ingesting 1500 mg of glucosamine, and proved that ***only trace amounts of***
11 ***glucosamine*** entered the human serum, far below any amount that could possibly affect
12 cartilage. Moreover, even those trace amounts were present only for a few hours after
13 ingestion. The authors noted that a 1986 study had found no glucosamine in human
14 plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or sulfate.
15 Silbert, *Dietary Glucosamine Under Question*, Glycobiology 19(6):564-567 (2009).

16 38. In April 2009, the Journal of Orthopedic Surgery published an article entitled
17 “*Review Article: Glucosamine*.” The article’s authors concluded that, based on their
18 literature review, there was “little or no evidence” to suggest that glucosamine was
19 superior to a placebo even in slowing down cartilage deterioration, much less regenerating
20 it. Kirkham, et al., *Review Article: Glucosamine*, Journal of Orthopedic Surgery, 17(1):
21 72-6 (2009).

22 39. In 2009, a panel of scientists from the European Food Safety Authority
23 (“EFSA”) (a panel established by the European Union to provide independent scientific
24 advice to improve food safety and consumer protection), reviewed nineteen studies
25 submitted by an applicant, and concluded that “a cause and effect relationship has not
26 been established between the consumption of glucosamine hydrochloride and a reduced
27 rate of cartilage degeneration in individuals without osteoarthritis.” EFSA Panel on
28 Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a*

1 *health claim related to glucosamine hydrochloride and reduced rate of cartilage*
2 *degeneration and reduced risk of osteoarthritis*, EFSA Journal (2009), 7(10):1358.

3 40. In a separate opinion from 2009, an EFSA panel examined the evidence for
4 glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin
5 sulfate and maintenance of joints. The claimed effect was “joint health,” and the
6 proposed claims included “helps to maintain healthy joint,” “supports mobility,” and
7 “helps to keep joints supple and flexible.” Based on its review of eleven human
8 intervention studies, three meta-analyses, twenty-one reviews and background papers, two
9 animal studies, one in vitro study, one short report, and one case report, the EFSA panel
10 concluded that “a cause and effect relationship has not been established between the
11 consumption of glucosamine (either as glucosamine hydrochloride or as glucosamine
12 sulphate), either alone or in combination with chondroitin sulphate, and the maintenance
13 of normal joints.” EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific*
14 *Opinion on the substantiation of health claims related to glucosamine alone or in*
15 *combination with chondroitin sulphate and maintenance of joints and reduction of*
16 *inflammation*, EFSA Journal (2009), 7(9):1264.

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

1 42. On July 7, 2010, Wilkens, et al., reported that there was no difference
2 between placebo and glucosamine for the treatment of low back pain and lumbar
3 osteoarthritis and that neither glucosamine, nor a placebo, were effective in reducing pain
4 related disability. The researchers also concluded that, “[b]ased on our results, it seems
5 unwise to recommend glucosamine to all patients” with low back pain and lumbar
6 osteoarthritis. Wilkens, et al., *Effect of Glucosamine on Pain-Related Disability in*
7 *Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1)
8 JAMA 45-52 (July 7, 2010).

9 43. In 2011, Miller and Clegg, after surveying the clinical study history of
10 glucosamine and chondroitin, concluded that, “[t]he cost-effectiveness of these dietary
11 supplements alone or in combination in the treatment of OA has not been demonstrated in
12 North America.” Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*,
13 *Rheum. Dis. Clin. N. Am.* 37 103-118 (2011).

14 44. In June 2011, the Journal of Pharmacy & Pharmaceutical Sciences published
15 an article entitled “*The Glucosamine Controversy; A Pharmacokinetic Issue.*” The
16 authors concluded that regardless of the formulation used, no or marginal beneficial
17 effects were observed as a result of low glucosamine bioavailability. Aghazadeh-Habashi
18 and Jamali, *The Glucosamine Controversy; A Pharmacokinetic Issue*, *Journal of*
19 *Pharmacy & Pharmaceutical Sciences* 14(2): 264-273 (2011).

20 45. In 2012, a report by Rovati, et al. entitled “*Crystalline glucosamine sulfate in*
21 *the management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties,*”
22 *Ther Adv Muskoloskel Dis* 4(3) 167-180, noted that glucosamine hydrochloride “ha[s]
23 never been shown to be effective.”

24 46. In 2012, the EFSA panel examined the evidence to determine if glucosamine
25 sulfate or glucosamine hydrochloride, could substantiate a claimed effect of “contributes
26 to the maintenance of normal joint cartilage.” Based on its review of sixty-one references
27 provided by Merck Consumer Healthcare, the EFSA panel concluded that “a cause and
28 effect relationship has not been established between the consumption of glucosamine and

1 maintenance of normal joint cartilage in individuals without osteoarthritis.” EFSA Panel
2 on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a*
3 *health claim related to glucosamine and maintenance of normal joint cartilage*, EFSA
4 Journal 10(5): 2691 (2012).

5 47. To date, there are only two studies, both of which are more than a decade old,
6 purporting to claim that the ingestion of glucosamine can affect the growth or
7 deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer:
8 Pavelka et al., *Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis*,
9 Arch. Intern. Med., 162: 2113-2123 (2002); and Reginster et al. *Long-term Effects of*
10 *Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled*
11 *Clinical Trial*, Lancet 357: 251-6 (2001). As noted in the April 2009 Journal of
12 Orthopedic Surgery article, the methodologies in those studies had “inherently poor
13 reproducibility,” and even minor changes in posture by the subjects during scans could
14 cause false apparent changes in cartilage. The authors of the Journal of Orthopedic
15 Surgery article explained the manufacturer-sponsored studies’ findings by noting that
16 “industry-sponsored trials report positive effects more often than do non-sponsored trials
17 and more find pro-industry results.” No reliable scientific medical study has shown that
18 glucosamine and chondroitin, alone or in combination, have a structure modifying effect
19 that will regenerate cartilage that has broken down or worn away.

20 48. As a result, Plaintiff and the Class members have been damaged by their
21 purchases of the Move Free products and have been deceived into purchasing products
22 that they believed, based on Defendants’ representations, provided joint-health benefits
23 and overall joint comfort when, in fact, they do not.

24 49. Defendants have reaped enormous profits from their false marketing and sale
25 of the Move Free products.

26 CLASS DEFINITION AND ALLEGATIONS

27 50. Plaintiff bring this action on behalf of herself and all other similarly situated
28 Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil

1 Procedure and seeks certification of the following Class and Subclass against Defendants
2 for violations of California state laws:

3
4 **California-Only Elders-Only Class**

5 All California consumers who are 65 years of age or older and
6 who purchased a Move Free product, within the applicable
7 statute of limitations, for personal use until the date notice is
8 disseminated.

9 Excluded from the Class and the Subclass (together, the
10 “Class”) are Defendants and their officers, directors, and
11 employees, and those who purchased a Move Free product for
12 the purpose of resale.

13 51. **Numerosity.** The members of the Class are so numerous that joinder of all
14 members of the Class is impracticable. Plaintiff is informed and believes that the
15 proposed Class contains thousands of purchasers of the Move Free products who have
16 been damaged by Defendants’ conduct as alleged herein. The precise number of Class
17 members is unknown to Plaintiff.

18 52. **Existence and Predominance of Common Questions of Law and Fact.** This
19 action involves common questions of law and fact, which predominate over any questions
20 affecting individual Class members. These common legal and factual questions include,
21 but are not limited to, the following:

- 22 (a) whether Defendants’ claims regarding the Move Free products,
23 discussed above, are true, or are misleading or objectively reasonably
24 likely to deceive;
- 25 (b) whether Defendants’ alleged conduct violates public policy;
- 26 (c) whether the alleged conduct constitutes violations of the laws asserted;
- 27 (d) whether Defendants engaged in false or misleading advertising;
- 28 (e) whether Defendants knew or should have known that their conduct is
likely to be harmful to an elder;
- (f) whether Defendants knew or should have known that their deceptive
conduct was directed to senior citizens;

- 1 (g) whether senior citizens are substantially more vulnerable than other
- 2 members of the public to Defendants' conduct because of age, poor
- 3 health or infirmity, impaired understanding, restricted mobility, or
- 4 disability;
- 5 (h) whether senior citizens actually suffered substantial damage resulting
- 6 from Defendants' conduct;
- 7 (i) whether Plaintiff and Class members have sustained monetary loss and
- 8 the proper measure of that loss; and
- 9 (j) whether Plaintiff and Class members are entitled to other appropriate
- 10 remedies, including corrective advertising and injunctive relief.

11 53. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
12 Class because all Class members were injured through the uniform misconduct described
13 above and were subject to Defendants' deceptive joint-health benefit claims that
14 accompanied each and every Move Free product Defendants sold. Plaintiff is advancing
15 the same claims and legal theories on behalf of herself and all members of the Class.

16 54. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
17 interests of the members of the Class. Plaintiff has retained counsel experienced in
18 complex consumer class action litigation, and Plaintiff intends to prosecute this action
19 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

20 55. **Superiority.** A class action is superior to all other available means for the
21 fair and efficient adjudication of this controversy. The damages or other financial
22 detriment suffered by individual Class members is relatively small compared to the
23 burden and expense that would be entailed by individual litigation of their claims against
24 Defendants. Thus, it would be virtually impossible for Plaintiff and Class members, on an
25 individual basis, to obtain effective redress for the wrongs done to them. Furthermore,
26 even if Class members could afford such individualized litigation, the court system could
27 not. Individualized litigation would create the danger of inconsistent or contradictory
28 judgments arising from the same set of facts. Individualized litigation would also increase

1 the delay and expense to all parties and the court system from the issues raised by this
2 action. By contrast, the class action device provides the benefits of adjudication of these
3 issues in a single proceeding, economies of scale, and comprehensive supervision by a
4 single court, and presents no unusual management difficulties under the circumstances
5 here.

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

9 57. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
10 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
11 and prevent Defendants from engaging in the acts described, and requiring Defendants to
12 provide full restitution to Plaintiff and Class members.

13 58. Unless a Class is certified, Defendants will retain monies received as a result
14 of their conduct that were taken from Plaintiff and Class members. Unless a Class-wide
15 injunction is issued, Defendants will continue to commit the violations alleged, and the
16 members of the Class and the general public will continue to be misled.

17 **COUNT I**
18 **Violation of the Consumers Legal Remedies Act**
19 **(California Civil Code §§ 1750, *et seq.*)**

20 59. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
21 above, as if fully set forth herein.

22 60. Plaintiff brings this claim individually and on behalf of the Class.

23 61. This cause of action is brought pursuant to the Consumers Legal Remedies
24 Act, California Civil Code §§ 1750, *et seq.* (the “Act”). Plaintiff is a “consumer” as
25 defined by California Civil Code § 1761(d). The Move Free products are “goods” within
26 the meaning of Section 1761(a) of the Act.

27 62. Defendants violated and continue to violate the Act by engaging in the
28 following practices proscribed by California Civil Code § 1770(a) in transactions with

1 Plaintiff and the Class which were intended to result in, and did result in, the sale of the
2 Move Free products:

3 (5) Representing that [the Move Free products] . . . have . . . approval,
4 characteristics, . . . uses, [and] benefits . . . which they do not have

5 * * *

6 (7) Representing that [the Move Free products] . . . are of a particular standard,
7 quality or grade . . . if they are of another.

8 * * *

9 (9) Advertising [the Move Free products] . . . with intent not to sell them as
10 advertised.

11 * * *

12 (16) Representing that [the Move Free products have] been supplied in
13 accordance with a previous representation when [they have] not.

14 63. Defendants violated the Act by representing and failing to disclose material
15 facts on the Move Free products' labeling and packaging and associated advertising, as
16 described above, when they knew, or should have known, that the representations were
17 false and misleading and that the omissions were of material facts they were obligated to
18 disclose.

19 64. Pursuant to § 1782(d) of the Act, Plaintiff and the Class seek a court order
20 enjoining the above-described wrongful acts and practices of Defendants and for
21 restitution and disgorgement.

22 65. Pursuant to § 1782 of the Act, Plaintiff notified Defendants Schiff Nutrition
23 Int'l and Schiff Nutrition Group in writing by certified mail of the particular violations of
24 §1770 of the Act and demanded that they rectify the problems associated with the actions
25 detailed above and give notice to all affected consumers of their intent to so act. Copies of
26 the letters are attached hereto as Exhibit B.

27 66. If Defendants fail to rectify or agree to rectify the problems associated with
28 the actions detailed above and give notice to all affected consumers within thirty days of

1 the date of written notice pursuant to § 1782 of the Act, Plaintiff will amend this
2 complaint to add claims for actual, punitive, and statutory damages, as appropriate.

3 67. Defendants' conduct is fraudulent, wanton, and malicious.

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

6
7 **COUNT II**
8 **Violation of the Elder Abuse and Dependent Adult Civil Protection Act**
9 **(California Welfare and Institutions Code §§ 15600, *et seq.* ("Elder Abuse Act"))**

10 69. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
11 above, as if fully set forth herein.

12 70. Financial abuse of an elder is prohibited by the Elder Abuse Act. *See* Cal.
13 Wel. & Inst. Code § 15610.07. An "elder" means any person residing in California who
14 is 65 years of age or older. *Id.* § 15610.27.

15 71. Financial abuse of an elder occurs when a person or entity "takes, secretes,
16 appropriates, obtains, or retains real or personal property of an elder or dependent adult
17 for a wrongful use or with intent to defraud, or both." *Id.* § 15610.30(a)(1).

18 72. A person or entity shall be deemed to have taken property of an elder for a
19 "wrongful use" if "the person or entity knew or should have known that this conduct is
20 likely to be harmful to the elder or dependent adult." *Id.* § 15610.30(b). And a "taking"
21 is defined as depriving an elder of any property right. *Id.* § 15610.30(c).

22 73. There is no mental suffering requirement for financial abuse, and a plaintiff
23 who proves by a preponderance of the evidence that a defendant is liable for elder
24 financial abuse shall be awarded compensatory damages, all other remedies otherwise
25 provided by law, and reasonable attorney's fees and costs. Cal. Wel. & Instit. Code
26 § 15657.5(a).

27 74. Here, Defendants deprived elders of their property rights in the amount of
28 money they spent on the Move Free products.

1 restricted mobility, or disability, and actually suffered substantial physical, emotional, or
2 economic damage resulting from the defendant’s conduct.” *See* Cal. Civ. Code § 3345(b).

3 80. If the Court makes an affirmative finding regarding one or more of these
4 factors, it may impose a fine, civil penalty or other penalty, or other remedy in an amount
5 up to three times greater than the amount that would have been imposed in the absence of
6 that affirmative finding. *Id.*

7 81. Here, Defendants knew or should have known that their deceptive conduct
8 was directed to senior citizens, because Defendants tailor the misrepresentations regarding
9 the Move Free products specifically toward senior citizens. *See* Cal. Civ. Code §
10 3345(b)(1). For example, Defendants repeatedly use the phrases “[a]s we get older” and
11 “[a]s we age” on their website regarding the Move Free products. Defendants’ Move Free
12 products are marketed to that segment of the population most likely to experience joint
13 discomfort and pain –senior citizens.

14 82. Additionally, senior citizens are substantially more vulnerable than other
15 members of the public to Defendants’ conduct because of “age, poor health or infirmity,
16 impaired understanding, restricted mobility, or disability,” and here, they actually suffered
17 substantial damage resulting from Defendants’ conduct. Cal. Civ. Code § 3345(b)(3).
18 The senior citizens to whom Defendants advertised their products suffer from joint-health
19 issues, and due to their infirmity and impaired understanding, they believed Defendants’
20 misrepresentations that their joint health would be improved.

21 83. Therefore, the Court should make an affirmative finding regarding the two
22 factors described above and treble the amount of the fine, civil penalty or other penalty, or
23 other remedy awarded to Plaintiff and the Class.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for a judgment:

- 26 A. Certifying the Class as requested herein;
27 B. Awarding Plaintiff and the proposed Class members damages;

- 1 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff
2 and the proposed Class members;
- 3 D. Awarding declaratory and injunctive relief as permitted by law or equity,
4 including: enjoining Defendants from continuing the unlawful practices as
5 set forth herein, and directing Defendants to identify, with Court
6 supervision, victims of their conduct and pay them all money they are
7 required to pay;
- 8 E. Ordering Defendants to engage in a corrective advertising campaign;
- 9 F. Awarding attorneys' fees and costs;
- 10 G. Providing such further relief as may be just and proper.

11 **DEMAND FOR JURY TRIAL**

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

14 Dated: February 20, 2014

PATTERSON LAW GROUP

15 By: /s/ James R. Patterson

16 James R. Patterson (CA 211102)
17 402 West Broadway, 29th Floor
18 San Diego, California 92101
19 Telephone: 619.756.6990
20 Facsimile: 619.756.6991
jim@pattersonlawgroup.com

21 **CARPENTER LAW GROUP**
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26 Facsimile: 619.756.6991
todd@carpenterlawyers.com

27 Attorneys for Plaintiffs

CIVIL COVER SHEET

14CV0387 JAH RBB

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.)

<p>I. (a) PLAINTIFFS ELIZABETH MITCHELL on behalf of herself and all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) James R. Patterson Patterson Law Group 402 West Broadway, 29th Floor San Diego, Ca 92101 Tel: (619) 756-6990 / Fax: (619) 756-6991</p>	<p>DEFENDANTS SCHIFF NUTRITION INTERNATIONAL, INC., a Utah corporation; SCHIFF NUTRITION GROUP, INC., a Utah corporation; and DOES 1-20,</p> <p>County of Residence of First Listed Defendant <u>Salt Lake City</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> 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
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IV. NATURE OF SUIT (Place an "X" in One Box Only)												
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<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table style="width:100%;"> <tr> <th style="width:50%;">PERSONAL INJURY</th> <th style="width:50%;">PERSONAL INJURY</th> </tr> <tr> <td> <input type="checkbox"/> 310 Airplane Liability <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine Liability <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability </td> </tr> <tr> <th colspan="2" style="text-align: center;">PERSONAL PROPERTY</th> </tr> <tr> <td colspan="2"> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane Liability <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine Liability <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability 	PERSONAL PROPERTY		<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609								

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Civil Code §§ 1750, Welfare and Institutions Code §§ 15600, Civil Code § 3345

Brief description of cause:
 Consumers Legal Remedies Act, Elder Abuse and Dependent Adult Civil Protection Act, Acts Against Senior Citizens 28:1331 Fed. Question (cxl)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: February 20, 2014 SIGNATURE OF ATTORNEY OF RECORD: /s/ James R. Patterson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

American LegalNet, Inc.
www.FormsWorkflow.com

Exhibit “A”

Current Product Labels





Exhibit “B”



JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

February 20, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Schiff Nutrition Group, Inc.
2002 South 5070 West
Salt Lake City, Utah 84104

Re: Mitchell, et al. v. Schiff Nutrition Group, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Elizabeth Mitchell and all other similarly situated California Residents in an action against Schiff Nutrition Group, Inc., ("Schiff") arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Move Free¹ line of joint dietary supplements provides, "Total Joint Health," "Promotes the health of joints," is a "Joint Strengtheners," has "Joint Fluid," "comforts, protects and lubricates joints," "Supports joint health and flexibility," provides joint "cushioning," "protect[s] joint tissue and cartilage from breakdown," "support[s] joint comfort and soothes joints," "helps your overall bone health and joint movement," and "Maintains & Repairs more cartilage" simply by taking the recommended number of tablets each day.

Schiff further warrants that the Move Free products are "scientifically formulated solutions to help ease discomfort, solutions to help maintain strength and flexibility, as well as solutions to help repair and rebuild cartilage," and at some point during the proposed Class Period, Schiff warranted that the Move Free products will "START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS."

Ms. Mitchell and others similarly situated consumers purchased the Move Free products unaware that the representations found on the products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Schiff Move Free products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of

¹ The Move Free[®] line includes: (1) Move Free[®] Double Strength; (2) Move Free[®] Advanced Triple Strength; (3) Move Free[®] Advanced Plus MSM; (4) Move Free[®] Advanced Plus MSM & Vitamin D3; (collectively, "Move Free").

which is enclosed and incorporated by this reference.

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

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

- (5) Representing that [the Move Free products have] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [the Move Free products are] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

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

* * *

- (16) Representing that [the Move Free products have] been supplied in accordance with a previous representation when [they has] not.

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

Schiff's representations also constitute violations of the California Elder Abuse and Dependent Adult Civil Protection Act, Welfare and Institutions Code Section 15600, et seq. and the California Acts Against Senior Citizens Civil Code Section 3345.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Schiff immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Schiff should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees and possibly make some effort to compensate the elder abuse class in relation to the potential statutory penalties available pursuant to California Civil Code §1770.

Schiff Nutrition Group, Inc.

February 20, 2014

Page Three

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

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

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California over the age of 65;
2. Notify all such purchasers so identified that upon their request, Schiff will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Move Free purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

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

James R. Patterson

Enclosure

CC: Todd D. Carpenter



PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

February 20, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Schiff Nutrition International, Inc.
2002 South 5070 West
Salt Lake City, Utah 84104

Re: Mitchell, et al. v. Schiff Nutrition International, Inc.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents Elizabeth Mitchell and all other similarly situated California Residents in an action against Schiff Nutrition International, Inc., (“Schiff”) arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Move Free¹ line of joint dietary supplements provides, “Total Joint Health,” “Promotes the health of joints,” is a “Joint Strengtheners,” has “Joint Fluid,” “comforts, protects and lubricates joints,” “Supports joint health and flexibility,” provides joint “cushioning,” “protect[s] joint tissue and cartilage from breakdown,” “support[s] joint comfort and soothes joints,” “helps your overall bone health and joint movement,” and “Maintains & Repairs more cartilage” simply by taking the recommended number of tablets each day.

Schiff further warrants that the Move Free products are “scientifically formulated solutions to help ease discomfort, solutions to help maintain strength and flexibility, as well as solutions to help repair and rebuild cartilage,” and at some point during the proposed Class Period, Schiff warranted that the Move Free products will “START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS.”

Ms. Mitchell and others similarly situated consumers purchased the Move Free products unaware that the representations found on the products’ labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Schiff Move Free products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of

¹ The Move Free[®] line includes: (1) Move Free[®] Double Strength; (2) Move Free[®] Advanced Triple Strength; (3) Move Free[®] Advanced Plus MSM; (4) Move Free[®] Advanced Plus MSM & Vitamin D3; (collectively, “Move Free”).

Schiff Nutrition International, Inc.
February 20, 2014
Page Two

which is enclosed and incorporated by this reference.

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

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

- (5) Representing that [the Move Free products have] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [the Move Free products are] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

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

* * *

- (16) Representing that [the Move Free products have] been supplied in accordance with a previous representation when [they has] not.

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

Schiff's representations also constitute violations of the California Elder Abuse and Dependent Adult Civil Protection Act, Welfare and Institutions Code Section 15600, et seq. and the California Acts Against Senior Citizens Civil Code Section 3345.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Schiff immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Schiff should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees and possibly make some effort to compensate the elder abuse class in relation to the potential statutory penalties available pursuant to California Civil Code §1770.

Schiff Nutrition International, Inc.

February 20, 2014

Page Three

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

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

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California over the age of 65;
2. Notify all such purchasers so identified that upon their request, Schiff will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Move Free purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

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

James R. Patterson

Enclosure

CC: Todd D. Carpenter

Exhibit “C”

PATTERSON LAW GROUP

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Facsimile: 619.756.6991
todd@carpenterlawyers.com

Attorneys for Plaintiffs

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

ELIZABETH MITCHELL on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

SCHIFF NUTRITION INTERNATIONAL,
INC., a Utah corporation; SCHIFF
NUTRITION GROUP, INC., a Utah
corporation; and DOES 1-20,

Defendants.

Case No. '14CV0387 JAH RBB

**DECLARATION OF JAMES R.
PATTERSON IN SUPPORT OF
JURISDICTION**

1 I, JAMES R. PATTERSON, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State
3 of California. I am the principle and owner of the Patterson Law Group, APC and the
4 counsel of record for plaintiff in the above-entitled action

5 2. Defendant Schiff Nutrition International, Inc. has done and is doing business
6 in the Southern District of California. Such business includes the marketing, distributing
7 and sale of its Move Free joint supplement products.

8 3. Defendant Schiff Nutrition Group, Inc. has done and is doing business in the
9 Southern District of California. Such business includes the marketing, distributing and
10 sale of its Move Free joint supplement products.

11 4. Furthermore, Plaintiff Elizabeth Mitchell purchased the Move Free products
12 in San Diego, California.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed this 20th Day of February, 2014 in San Diego, California.

16
17 /s/ James R. Patterson

18 James R. Patterson
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