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15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **GUY KOCHLANI, Individually**
 18 **and On Behalf of All Others**
 19 **Similarly Situated,**

20 **Plaintiff,**

21 **v.**

22 **BLUEBONNET NUTRITION**
 23 **CORPORATION. a/k/a**
 24 **BLUEBONNET,**

25 **Defendant.**

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES,
 INJUNCTIVE RELIEF, AND
 RESTITUTION FOR VIOLATIONS
 OF CALIFORNIA’S BUS. & PROF.
 CODE §§ 17200 ET SEQ.; BUS. &
 PROF. CODE §§ 17500 ET SEQ.;
 CALIFORNIA CIVIL CODE §
 110660; NEGLIGENT
 MISREPRESENTATION AND
 INTENTIONAL
 MISREPRESENTATION.**

JURY TRIAL DEMANDED

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 27
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CLASS ACTION COMPLAINT

INTRODUCTION

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

NATURE OF ACTION

4. At all times relevant, Bluebonnet has made, and continues to make, affirmative misrepresentations and/or omissions regarding its Betaine product. Specifically, the Betaine product, which has been advertised, marketed, promoted and sold by Defendant to Plaintiff and other consumers similarly situated, was represented by Defendant to contain betaine

1 hydrochloride from beets knowing that betaine hydrochloride can only be
 2 created synthetically and is not naturally derived. In fact, the betaine
 3 hydrochloride in Defendant's Betaine product is not derived from beets,
 4 contrary to Defendant's claims, which is a fact that Defendant knew and
 5 purposely failed to disclose to consumers, including Plaintiff.

- 6 5. This product, Betaine, consists of betaine hydrochloride that is synthetically
 7 created and is not derived from natural sources such as sugar beets.¹ On the
 8 other hand, betaine anhydrous may be derived from natural food sources of
 9 such as beets, broccoli, grains, shellfish, and spinach, though commercially
 10 it is only available from a chemical synthesis or from sugar beets.²
- 11 6. "Large amounts of betaine hydrochloride can burn the lining of the
 12 stomach."³ The website for eVitamins.com advises that "People should not
 13 take more than 10 grains (650 mg) of betaine HCl without the
 14 recommendation of a physician," even though Bluebonnet recommends on
 15 its product label that consumers should ingest one of the 650 mg capsules
 16 with a meal as a dietary supplement. Assuming the consumer follows this
 17 advice for each major meal (breakfast, lunch and dinner), the consumer
 18 would be exposed to 1,950 mg of betaine hydrochloride per day.
- 19 7. To this day, Defendant has taken few, if any meaningful steps to clear up
 20 consumers' misconceptions regarding the Betaine product. In fact,
 21 Defendant continues to advertise and describe the Betaine product on its
 22 website as "An excellent natural vegetarian source of HCl, *derived from*
 23

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

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

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

1 *beets,...*⁴

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

9 9. Each consumer, including Plaintiff, was exposed to virtually the same
10 material misrepresentations and/or omissions, which are prominently
11 displayed on Defendant’s website for Betaine – as well as on Defendant’s
12 resellers’ websites – prior to purchasing the product.

13 10. Additionally, Defendant completely omitted from its advertising the fact that
14 betaine hydrochloride is synthetically created rather than derived from beets,
15 which means that the main ingredient in Betaine is not natural, may be
16 harmful in the recommended dosage, and is therefore not as healthful as
17 beet-derived betaine anhydrous.

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

26 12. As a result of Defendant’s false and misleading statements and failures to
27 disclose, as well as Defendant’s other conduct described herein, Plaintiff and
28

⁴ See http://www.bluebonnetnutrition.com/products/digestive_aids

1 other consumers similarly situated purchased tens of thousands of units of
2 Betaine and have suffered, and continue to suffer, injury in fact.

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

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

8 **JURISDICTION AND VENUE**

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

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

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

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

26 (b) does substantial business in this district;

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

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

PARTIES

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

19. Plaintiff is informed and believes, and thereon alleges, that Defendant’s principal place of business is in Texas, is incorporated under the laws of the State of Texas, and does business within the State of California and within this district.

GENERAL ALLEGATIONS

20. Bluebonnet, is a manufacturer and retailer of a variety of dietary supplements in the United States. Defendant sells Betaine in 90 or 180 capsule count bottles where each capsule purports to contain 650 mg of betaine hydrochloride, throughout the United States, including in California.

21. It has become recently well known that betaine anhydrous, as opposed to betaine hydrochloride, may produce certain health benefits such as lowering levels of homocysteine. High levels of homocysteine are associated with increased risk of heart disease and stroke. Also, “[r]esearch has demonstrated additional health benefits for skin care, immune health, brain health, prenatal nutrition, and kidney and liver health.” <http://www.purebeets.com/>.

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

23. During the “Class Period” as defined below, Plaintiff was exposed to and saw Defendant’s advertising, marketing and promotional claims, purchased

1 Betaine in reliance on these claims, and suffered injury in fact and lost
2 money as a result of Defendant's unfair, misleading and unlawful conduct
3 described herein.

4 24. In making Plaintiff's decision to purchase Betaine, Plaintiff relied upon,
5 *inter alia*, the advertising and/or other promotional materials prepared and
6 approved by Defendant, and its agents, and disseminated through its
7 advertising, marketing, promotion, and/or through local and national
8 advertising media, including Defendant's internet website/s, media and in-
9 store advertisement, containing the misrepresentations and/or omissions
10 alleged herein.

11 25. With the possible nutritional and health benefits of betaine from natural
12 sources becoming more widely known, consumers' demand for betaine has
13 increased over the past several years. Defendant hoped to profit from this
14 research by falsely selling its Betaine product as derived from beets. The
15 words "derived from beets" are used with respect to Betaine prominently on
16 the Defendant's website, the websites of its resellers and may have appeared
17 on Defendant's social media presence, among other places.

18 26. Defendant seeks to capitalize on consumers' preference for natural health
19 supplements with the association between such foods and supplements and a
20 wholesome and healthy way of life. Defendant is aware that consumers are
21 willing to pay more for natural supplements because of this association, as
22 well as the perceived higher quality, health and safety benefits with products
23 marketed as derived from natural sources such as beets.

24 27. The scope of Defendant's advertising of Betaine is wide-spread. Betaine is
25 marketed in California and throughout the nation. Defendant has advertised
26 its Betaine product continuously during the Class Period.

27 28. On their website, Bluebonnet advertises and describes the Betaine product as
28 follows:

Feature Summary

Digestive aids – such as enzymes and betaine hydrochloric acid (HCl) – guarantee the complete breakdown of the foods we eat, so the body can fully absorb the nutrients it needs to maintain optimal health and wellness. Others, like probiotics, help maintain the healthy environment of the digestive tract. Digestion starts the moment food enters the mouth and mixes with salivary enzymes. The more you chew, the more food particles are coated with digestive enzymes. As the food particles make their way through the digestive tract, digestive enzymes continue to break them down into the important nutrients the body needs.

Unfortunately, as humans get older, particularly after age 50, they tend to have decreased enzyme secretion and lower levels of HCl. In addition, inadequate diet and past infections can impair the stomach’s ability to produce the acids required for optimal digestion. Digestive aids can help these individuals better digest foods to acquire the nutrients they need.

...

Hydrochloric Acid (HCl) is produced by the stomach and utilized to convert some inactive proteolytic enzymes into their active forms. This helps break down proteins so the body can utilize the resulting amino acids for a wide range of critical roles from rebuilding and repairing muscle to serving as an intermediate in metabolism. HCl also lowers the pH (level of acidity) in the gut. ***An excellent natural vegetarian source of HCl, derived from beets,*** is Betaine HCl.⁵ [Emphasis added].

Thus, the Defendant’s website clearly states that Betaine is “an excellent natural vegetarian source of HCl, derived from beets.” However, betaine hydrochloride is not naturally derived from sugar beets and in fact can only be synthetically created. Defendant’s mislabeling further misleads consumers into believing they are receiving health benefit associated with a natural sourced betaine rather than a synthetically created betaine.

⁵ This “Feature Summary” is located on Defendant’s website at http://www.bluebonnetnutrition.com/products/digestive_aids

1 29. Even though Betaine does not contain betaine from beets, Defendant made a
 2 tactical marketing and/or advertising decision to create a deceptive and
 3 misleading description for Betaine, which falsely states that betaine
 4 hydrochloride is derived from beets when Defendant, a sophisticated
 5 company with significant scientific and quality assurance resources⁶ and
 6 means, knows or should have known that betaine hydrochloride can only be
 7 synthetically created, and that it is betaine anhydrous which is derived from
 8 natural food sources such as sugar beets.

9 30. Defendant could have easily omitted “derived from beets” from Betaine’s
 10 advertising and marketing, but Defendant deliberately chose to represent to
 11 consumers that Betaine contained betaine hydrochloride from beets when
 12 this is in fact not true. Alternatively, Defendant could have chosen to sell its
 13 product containing betaine anhydrous, which may be derived from natural
 14 food sources such as sugar beets.

15 31. The effect of Defendant’s advertising is to communicate that Betaine is
 16 composed of betaine hydrochloride from beets, not betaine hydrochloride

17 _____
 18 ⁶ Defendant describes its resources by stating: “Our product development team – which has more than
 19 100 years of collective experience in nutritional science – not only monitors research studies to ensure
 Bluebonnet supplements are safe and efficacious, they are committed to developing “cleaner,” more
 effective formulas.”

20 “Quality may be the most overused word in the world today. Nonetheless, for nutritional supplements,
 21 what could be more important? That is why we built our own 100,000 sq ft, state-of-the-art kosher
 manufacturing and distribution facility with earth-friendly, pharmaceutical-grade systems that are setting
 22 new standards for quality assurance. We have also invested in the arduous process of kosher certifying
 our products. Keeping kosher has become synonymous with eating foods that have been manufactured at
 23 a higher standard. That means every Bluebonnet product bearing the KOF-K emblem has been carefully
 supervised with each ingredient tracked to its origin and strict rules imposed on hygienic processes.

24 In addition to applying kosher quality standards to our operation, our cGMP manufacturing process
 25 meets the rigorous model established by the Farm Service Agency (FSA) and U.S. Pharmacopoeia. By
 the time a Bluebonnet supplement appears on a store shelf, it has been subjected to stringent
 26 examinations for potency, purity, uniformity, hardness, disintegration and dissolution. And not just by
 in-house quality control technicians, but by respected independent laboratories. That is quality that will
 27 last even after you have opened the bottle.”

28 Defendant’s description of its capabilities can be found at
<http://www.bluebonnetnutrition.com/about/science> and
<http://www.bluebonnetnutrition.com/about/quality> [Emphasis added]

1 that is synthetically created in a lab. As a result, purchasers are likely
2 mislead and deceived by Betaine’s marketing and advertising, and
3 reasonably expect that Betaine actually consists primarily of betaine
4 hydrochloride from beets, when, in fact, this is not the case.

5 32. Plaintiff’s claim that Betaine’s advertising and marketing is misleading and
6 deceptive does not seek to challenge Betaine’s formal name and labeling in
7 areas for which the Food and Drug Administration (“FDA”) has
8 promulgated regulations implementing the Federal Food and Drug and
9 Cosmetic Act (“FFDCA”). Plaintiff’s claim is, instead, predicated on the fact
10 that the advertising and marketing, an extension of the label, is misleading
11 and deceptive even if in compliance with the minimum requirements set
12 forth by the FDA, as the FDA regulations set the floor or minimum
13 requirements. Indeed, compliance with the minimum requirements is
14 necessary, but it is not sufficient to determine whether a product’s label is
15 false and misleading, and simply does not provide a shield from liability. *See*
16 *e.g., Wyeth v. Levine*, 129 S. Ct 1187, 12012 (2009).

17 33. Plaintiff’s state law claims are aimed at the advertising and marketing of
18 Betaine that are voluntary, and not required by the FDA and other
19 regulations, which Defendant selected in order to maximize Betaine’s
20 deceptive impact upon Plaintiff and other consumers similarly situated.
21 Defendant made the decision to advertise and describe Betaine in such
22 manner because of its marketing strategy. The FDA and other regulations do
23 not require that Defendant state that betaine hydrochloride is “derived from
24 beets.” Indeed, Defendant’s strategy misleads consumers to buy Betaine as a
25 result of this deceptive message, and Defendant has been successful thus far.

26 34. In addition to the deceptive advertising on its website, Defendant may have
27 deceptively labeled Betaine in the past and currently allows its resellers to
28

1 use the deceptive description with respect to Betaine⁷. Defendant's
 2 interactive website is accessible to the general public. As explained below,
 3 Defendant's website conveys the marketing and/or advertising message in a
 4 calculated way to lead consumers to believe that Betaine primarily contains
 5 betaine hydrochloride "derived from beets" when in fact it does not.

6 35. Plaintiff's claim that Betaine's website is misleading and deceptive is based
 7 on specific marketing and/or advertising content, which Defendant displays
 8 on its website.

9 36. On Defendant's website, Defendant holds itself out as "more than 100 years
 10 of collective experience in nutritional science ..."⁸ and that "...[b]y the time
 11 a Bluebonnet supplement appears on a store shelf, it has been subjected to
 12 stringent examinations"⁹ Defendant goes on to make other claims about
 13 its scientific capabilities. Capabilities with which Defendant would have
 14 known the primary ingredient in Betaine was not betaine hydrochloride
 15 "derived from beets."

16 37. In addition, Plaintiff is informed and believes, and thereupon alleges, that
 17 Defendant has also engaged in other forms of advertising and/or marketing
 18 of Betaine, including print advertisements, point-of-purchase displays, and
 19 national in-store programs. Through the uniform deceptive and misleading
 20 advertising and marketing campaigns, Bluebonnet leads consumers to
 21 believe that the primary ingredient in the product is betaine hydrochloride is
 22 "derived from beets", not betaine hydrochloride from synthetic sources. As a
 23 result of this campaign, the average consumer, unaware that the product does
 24 not actually contain betaine hydrochloride from natural sugar beets.

25 38. Moreover, consumers' confusion is reasonable, given that Defendant's

26 ⁷ For Example, see "Supplemental Facts" at <http://www.healthdesigns.com/bluebonnet-betaine-hcl-plus-pepsin-90-vcaps> or <http://www.iherb.com/Bluebonnet-Nutrition-Betaine-HCl-Plus-Pepsin-180-Vcaps/9082>

27 ⁸ See <http://www.bluebonnetnutrition.com/about/science> (emphasis added)

28 ⁹ See <http://www.bluebonnetnutrition.com/about/quality> (emphasis added)

1 product should contain primarily betaine hydrochloride from beets, because
2 Defendant represents as much on its website and in its marketing campaign.
3 Defendant should have used betaine anhydrous rather than betaine
4 hydrochloride if it wanted to represent that Betaine is natural and derived
5 from beets, but Defendant made a tactical marketing decision to do
6 otherwise.

7 39. Accordingly, Defendant's representations regarding Betaine are false,
8 misleading and/or fail to disclose material facts. Defendant knew or should
9 have known and/or was reckless in not knowing and adequately disclosing
10 that Betaine did not contain betaine primarily from beets. Defendant knew or
11 should have known that its representations concerning Betaine were likely to
12 deceive consumers into believing that they were purchasing primarily
13 betaine hydrochloride from beets when that was not the case. Further,
14 reasonable consumers do not expect to be ingesting synthetic betaine when
15 the advertising and marketing indicates betaine hydrochloride "derived from
16 beets."

17 40. As a result of Defendant's representations and/or omissions, Plaintiff
18 overpaid for Betaine that Plaintiff purchased because the value of the
19 supplement was diminished at the time of the sale. Had Plaintiff been aware
20 that Betaine included betaine hydrochloride from synthetic sources rather
21 than betaine hydrochloride from beets, Plaintiff would not have purchased it,
22 would have paid less for it, or would have purchased a different betaine
23 supplement. For all the reasons stated herein, Plaintiff suffered injury in fact
24 and has lost monies as a result of Defendant's actions.

25 41. Plaintiff is a generally health conscientious person who often shops at health
26 foods stores and online in search of health supplements. Purity of health
27 supplements and accuracy of a product's advertising is important to Plaintiff.

28 42. Health conscientious people will rely on a company's representations

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(including representations found on a company’s website) that its products are healthy when purchasing that company’s products, such as the representations made by Bluebonnet that its product Betaine is a health supplement, with ingredients derived from natural sources, such as beets.

43. Health conscientious people, like Plaintiff, also typically rely on the packaging and labeling of consumable products from retail stores or internet sites.

44. On or about January 28, 2014, Plaintiff purchased a bottle of Betaine (180 Vcaps) from the iHerb.com, a website that sells vitamins, supplements and natural health products, because Plaintiff had been exposed to representations by Defendant on its label, that it was betaine from “beet.” Plaintiff paid \$32.76 before tax for the Betaine product.



1 45. Plaintiff was seeking dietary health supplements that contained betaine
2 hydrochloride because Plaintiff believed that such substance would likely
3 result in health benefits. Plaintiff reasonably relied upon the representations
4 on Betaine’s various forms of advertisement that the primary ingredient was
5 derived from “beet.”

6 46. Sometime after purchasing and consuming Betaine, Plaintiff learned that
7 that the betaine hydrochloride in Betaine was not from beets.

8 47. Defendant’s many representations concerning the Betaine product led
9 Plaintiff to believe that Betaine contained betaine hydrochloride from beets
10 rather than synthetic sources, as explained in detail above. Plaintiff was
11 shocked to learn that Betaine is primarily betaine hydrochloride from
12 synthetic sources, rather than betaine hydrochloride from beets as
13 represented by Defendant.

14 48. Betaine is therefore a deceptively advertised product designed to induce the
15 purchase of Betaine as containing betaine from beets, although betaine
16 hydrochloride is less expensive than betaine anhydrous (which may be
17 derived from sugar beets) and may be harmful in the dosage recommended
18 by Defendant.

19
20 **I. FIRST CAUSE OF ACTION FOR VIOALTION OF**
21 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**
22 **(California’s Unfair Competition Law)**

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

25 50. “Unfair competition” is defined in Business and Professions Code Section §
26 17200 as encompassing any one of the five types of business “wrongs,”
27 three of which are at issue here: (1) an “unlawful” business act or practice;
28 (2) an “unfair” business act or practice; and (3) a “fraudulent” business act

1 or practice. The definitions in § 17200 are disjunctive, meaning that each of
 2 these five “wrongs,” of which Plaintiff alleges three of them, operates
 3 independently from the others.

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

7 **a. “Unlawful” Prong**

8 52. Because Defendant has violated California’s False Advertising Law,
 9 Business & Professions Code §§ 17500 *et seq.*, as well as California’s
 10 Health and Safety Code § 110660, Defendant has violated California’s
 11 Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*,
 12 which provides a cause of action for an “unlawful” business act or practice
 13 perpetrated on members of the California public.

14 53. State law claims based on a food product’s misleading and deceptive label
 15 are expressly permitted when they impose legal obligations identical to the
 16 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing
 17 FDA regulations, including FDA regulations concerning naming and
 18 labeling. *See e.g., In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077, 1094-
 19 95 (2008). The Sherman Food, Drug and Cosmetic law (“Sherman law”)
 20 expressly incorporates into California law all of the food labeling regulations
 21 adopted pursuant to the FFDCA. Plaintiff’s § 17200 claim that the label of
 22 the Betaine product violates California Health & Safety Code § 110660
 23 imposes legal obligations identical to 21 U.S.C. § 343(a) of the FFDCA.
 24 Since § 110660 and poses the identical legal obligation that “any food is
 25 misbranded if its labeling is false or misleading in any particular,” point of
 26 section 17200 claim, which is based in part on § 110660, is expressly
 27 permitted and not preempted by the FFDCA. Further, § 343(a) of the
 28 FFDCA is not subject to express preemption provision set forth in 21 U.S.C.

1 § 343-1 of the FFDCA.

2 54. Section 110660 states, “any food is misbranded if its labeling is false or
3 misleading in any particular.” Section 110660 is part of California’s
4 Sherman law (California Health & Safety Code § 109875, et seq.).
5 Defendant has violated § 110660 because Betaine’s advertising (an
6 extension of the label), misleads and deceives consumers into believing that
7 the primary ingredient in Betaine is betaine hydrochloride from beets, when
8 in fact, the product contains betaine hydrochloride that is synthetically
9 created. Betaine’s advertising misleads and deceives consumers into
10 believing that Betaine is more healthful than it actually is because it
11 purportedly primarily contains betaine hydrochloride from natural sources
12 such as beets.

13 55. There were reasonably available alternatives to further Defendant’s
14 legitimate business interest, other than the conduct described herein, such as
15 using betaine anhydrous or not stating that the betaine hydrochloride used in
16 Betaine comes from beets.

17 56. Plaintiff and the putative class reserve the right to allege other violations of
18 law, which constitute other unlawful business practices or acts, as such
19 conduct is ongoing and continues to this date.

20 **b. “Unfair” Prong**

21 57. Defendant’s actions and representations constitute “unfair” business acts or
22 practices under § 17200, in that Defendant’s conduct is substantially
23 injurious to consumers, offends public policy, and is immoral, unethical,
24 oppressive, and unscrupulous as the gravity of the conduct outweighs any
25 alleged benefits attributable to such conduct. Without limitation, it is an
26 unfair business act or practice for Defendant to knowingly and negligently
27 represent to the consuming public, including Plaintiff, that Betaine is
28 primarily composed of betaine hydrochloride from beets when it is in fact

1 primarily composed of a synthetic source of betaine hydrochloride, which
 2 conduct by Defendant is "unfair" because it offends established public
 3 policy and/or are in moral, unethical, oppressive, unscrupulous and/or
 4 substantially injurious to consumers in that consumers are led to believe that
 5 Betaine has qualities and benefits, including quantities of betaine from
 6 natural sources such as beets that it does not have. Betaine's advertising
 7 misleads and deceives consumers into believing that Betaine contains
 8 betaine hydrochloride from natural sources when it actually contains betaine
 9 hydrochloride from synthetic sources.

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

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

19 60. Defendant could have and should have furthered its legitimate business
 20 interests by expressly indicating on its packaging and website/s that betaine
 21 hydrochloride is from synthetic sources rather than from natural food
 22 sources such as beets. Alternatively, Defendant could have refrained from
 23 misstating that the betaine in Betaine is "derived from beets."

24 **c. "Fraudulent" Prong**

25 61. Defendant's claims and misleading statements were false, misleading and/or
 26 likely to deceive the consuming public within the meaning of § 17200.
 27 Without limitation, it is a fraudulent act or business act or practice for
 28 Defendant to knowingly or negligently represent to Plaintiff, whether by

1 conduct, orally or in writing by:

2 (a) intentionally and misleadingly by stating that betaine
3 hydrochloride is derived from beets, without accurately
4 identifying that the primary ingredient is actually betaine
5 hydrochloride from synthetic sources, which is a less expensive
6 source of betaine, and may be harmful in the dosage
7 recommended by Defendant; and

8 (b) intentionally creating Defendant's website to mislead and deceive
9 consumers into believing that Betaine primarily contains betaine
10 hydrochloride from beets, without accurately identifying that the
11 primary ingredient is actually betaine hydrochloride from
12 synthetic sources, which is a less expensive source of betaine, and
13 may be harmful in the dosage recommended by Defendant.

14 62. Plaintiff reserves the right to allege further conduct that constitutes other
15 fraudulent business acts or practices. Such conduct is ongoing and continues
16 to this date.

17 63. The fraudulent, unlawful and unfair business practices and false and
18 misleading advertising of Defendant, as described above, presents a
19 continuing threat to consumers in that they will continue to be misled into
20 purchasing Betaine, and likely consuming it, on false premises.

21 64. As a direct and proximate result of the aforementioned acts and
22 representations of Defendant, Defendant received and continues to hold
23 monies rightfully belonging to Plaintiff and other similarly situated
24 consumers who were led to purchase, purchase more of, or pay more for, the
25 Betaine product, due to the unlawful acts of Defendant.

26 65. Thus, Defendant caused Plaintiff and other members of the Class to
27 purchase Betaine on false premises during the Class Period.

28 66. Defendant has engaged in unlawful, unfair and fraudulent business acts or

1 practices, entitling Plaintiff to judgment and equitable relief against
2 Defendant, as set forth in the Prayer for Relief. Pursuant to Business &
3 Professions Code § 17203, as result of each and every violation of the UCL,
4 which are continuing, Plaintiff is entitled to restitution and injunctive relief
5 against Defendant, as set forth in the Prayer for Relief.

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

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

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

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

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

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

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

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

11 74. Plaintiff brings this cause of action on behalf of himself and on behalf of the
12 putative Class.

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

16 76. At all times relevant, Defendant's advertising and promotion regarding
17 Betaine was untrue, misleading and likely to deceive the public and/or has
18 deceived the Plaintiff and California consumers similarly situated by
19 representing that Betaine contained primarily betaine hydrochloride from
20 beets when in fact Defendant knew and failed to disclose that the product
21 contained primarily betaine hydrochloride from synthetic sources.

22 77. State law claims based on a food products' misleading and deceptive labels
23 are expressly permitted when they impose legal obligations identical to those
24 of the FFDCA and its implementing FDA regulations, including FDA
25 regulations concerning naming and labeling. *See e.g., In re Farm Raised*
26 *Salmon Cases*, 22 Cal. 4th 1077, 1094-95 (2008). Plaintiff's Business &
27 Professions Code § 17500 claim that the advertising (which is an extension
28 of the label) of the Betaine product is false or misleading imposes legal

1 obligations identical to 21 U.S.C. § 343(a) of the FFDCFA, which states that,
2 “a food shall be deemed to be misbranded...[i]f (1) its labeling is false or
3 misleading in any particular[.]” Further, section 343(a) of the FFDCFA is not
4 subject to the express preemption provision set forth in 21 U.S.C. § 343-1 of
5 the FFDCFA.

6 78. Defendant engaged in the false and/or misleading advertising and marketing
7 alleged herein with the intent to directly or indirectly induce the purchase of
8 Betaine.

9 79. In making and disseminating the statements and/or omissions alleged herein,
10 Defendant knew or should have known that the statements and/or omissions
11 were untrue or misleading, and acted in violation of California Business &
12 Professions Code §§ 17500 *et seq.*

13 80. Plaintiff and members of the putative class have suffered injury in fact and
14 have lost money or property as a result of Defendant’s False Advertising, as
15 more fully set forth herein. Plaintiff and members of the class have been
16 injured because they overpaid for Betaine, since the value of the supplement
17 was diminished at the time of sale. Plaintiff and members of the putative
18 class have been injured because had they been made aware that the Betaine
19 product contains primarily betaine hydrochloride from synthetic sources
20 rather than betaine from natural sources such as beets, they would have not
21 purchased the supplement, would have paid less for it, or would purchased
22 different betaine supplement.

23 81. At a date presently unknown to Plaintiff, but at least four years prior to the
24 filing of this action, and as set forth above, Defendant has committed acts of
25 untrue and misleading advertising and promotion of Betaine, as defined by
26 Business & Professions Code §§ 17500 *et seq.*, by engaging in the false
27 advertising and promotion of Betaine as betaine hydrochloride “derived
28 from beets” on Defendant’s website, as described above.

1 82. The fraudulent, unlawful and unfair business practices and false and
2 misleading advertising of Defendant, as described above, presents a
3 continuing threat to consumers in that they will continue to mislead
4 consumers to purchase Betaine on false premises.

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

11 **III. THIRD CAUSE OF ACTION**
12 **FOR NEGLIGENT MISREPRESENTATION**

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

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

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

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

25 88. At all times relevant, Defendant made the misrepresentations herein alleged,
26 Defendant had no reasonable ground/s for believing the representations to be
27 true.

28 89. As a proximate result of Defendant's negligent misrepresentations, Plaintiff

1 and other consumers similarly situated were induced to purchase, purchase
2 more of, or pay more for, the Betaine product, due to the unlawful acts of
3 Defendant, in an amount to be determined at trial, during the Class Period.

4 **IV. FOURTH CAUSE OF ACTION**
5 **FOR INTENTIONAL MISREPRESENTATION**

6 90. Plaintiff repeats, re-alleges and incorporates herein by reference the above
7 allegations.

8 91. At a date presently unknown to Plaintiff, but at least four years prior to the
9 filing of this action, and as set forth above, Defendant intentionally
10 represented to the public, including Plaintiff, by advertising and other
11 means, such as betaine hydrochloride “derived from beets” on Defendant’s
12 website, as described above. Defendant’s representations were untrue.

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

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

18 94. At all times relevant, when Defendant made the misrepresentations herein
19 alleged, Defendant knew the representations to be false.

20 95. As a proximate result of Defendant’s intentional misrepresentations, Plaintiff
21 and other consumers similarly situated were induced to spend an amount of
22 money to be determined at trial on Defendant’s product Betaine.

23 96. Plaintiff is informed, and believes, and thereupon alleges, that Defendant
24 knew that Betaine was not as healthy or natural as promoted, as it does in
25 fact not contain primarily betaine from beets but rather betaine
26 hydrochloride from synthetic sources, and intended that consumers and the
27 unknowing public should rely on their representations. Plaintiff and other
28 consumers similarly situated, in purchasing and using the products as herein

1 alleged, did rely on Defendant's representations, all to their damage and/or
 2 detriment as herein alleged. By engaging in said acts, Defendant is guilty of
 3 malice, oppression, and fraud, and each Plaintiff is therefore entitled to
 4 recover exemplary or punitive damages.

5 CLASS ACTION ALLEGATIONS

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

8 98. The "Class Period" means four years prior to filing of the Complaint in this
 9 action.

10 99. Plaintiff brings this lawsuit on behalf of himself and the other California
 11 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal
 12 Rules of Civil Procedure. Subject to additional information obtained
 13 through further investigation and/or discovery, the proposed "Class" consists
 14 of:

15 "All persons in California who purchased Betaine from
 16 Defendant within four years prior to the filing of the
 17 Complaint in this action."

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

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

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

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

1 Common questions of law and fact exist as to all members of the Class
2 predominate over any questions affecting only individual Class members.
3 All members of the Class have been subject to the same conduct and their
4 claims are based on the standardized marketing, advertisements and
5 promotions. The common legal and factual questions include, but are not
6 limited to, the following:

- 7 (a) Whether Betaine contains primarily betaine from synthetic
8 sources;
- 9 (b) Whether Betaine contains any amount of betaine from sugar
10 beets;
- 11 (c) Whether Defendant's claims and representations above are
12 untrue, or are misleading, or reasonably likely to deceive;
- 13 (d) Whether Defendant's conduct is an unlawful act or practice
14 within the meaning of California Business & Professions Code
15 § 17200;
- 16 (e) Whether Defendant's conduct is a deceptive act or practice
17 within the meaning of California Business & Professions Code
18 § 17200;
- 19 (f) Whether Defendant's conduct is an unfair act or practice within
20 the meaning of California Business & Professions Code §
21 17200;
- 22 (g) Whether Defendant's advertising is untrue or misleading with
23 the meaning of California Business & Professions Code §
24 17500;
- 25 (h) Whether Defendant's advertising is untrue or misleading in
26 violation of California Civil Code § 110660;
- 27 (i) Whether Defendant, through its conduct, received money that,
28 in equity and good conscience, belongs to Plaintiff and

1 members of the Class;

2 (j) Whether Plaintiff and proposed members of the Class are
3 entitled to equitable relief, including but not limited to
4 restitution and/or disgorgement; and

5 (k) Whether Plaintiff and proposed members of the Class are
6 entitled to injunctive relief sought herein.

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

16 104. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
17 interests of the members of the Class. Plaintiff has retained counsel
18 experienced in consumer protection law, including class actions. Plaintiff
19 has no adverse or antagonistic interest to those in the Class, and will fairly
20 and adequately protect the interests of the Class. Plaintiff's attorneys are
21 aware of no interests adverse or antagonistic to those of the Plaintiff and
22 proposed Class.

23 105. **Superiority.** A class-action is superior to all other available means for the
24 fair and efficient adjudication of this controversy. Individualized litigation
25 would create the danger inconsistent or contradictory judgments arising from
26 the same set of facts. Individualized litigation would also increase the delay
27 and expense to all parties and court system and the issues raised by this
28 action. The damages or other financial detriment suffered by individual

1 Class members may be relatively small compared to the burden and expense
 2 that would be entailed by individual litigation of the claims against the
 3 Defendant. The injury suffered by each individual member of the proposed
 4 class is relatively small in comparison to the burden and expense of
 5 individual prosecution of the complex and extensive litigation necessitated
 6 by Defendant's conduct. It would be virtually impossible for members of the
 7 proposed Class to individually redress effectively the wrongs to them. Even
 8 if the members of the proposed Class could afford such litigation, the court
 9 system could not. Individualized litigation increases the delay and expense
 10 to all parties, and to the court system, presented by the complex legal and
 11 factual issues of the case. By contrast, the class action device presents far
 12 fewer management difficulties, and provides the benefits of single
 13 adjudication, economy of scale, and comprehensive supervision by a single
 14 court. Therefore, a class action is maintainable pursuant to Fed. R. Civ. P.
 15 23(b)(3).

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

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

26 **PRAYER FOR RELIEF**

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

- 1 a. Certifying the Class as requested herein;
- 2 b. A temporary, preliminary and/or permanent order for injunctive relief
3 requiring Defendant to: (i) discontinue advertising, marketing, packaging
4 and otherwise representing its Betaine as composed primarily betaine
5 hydrochloride from beets; (ii) disclose how much, if any, betaine is
6 actually from beets in each capsule; (iii) disclose the presence of betaine
7 hydrochloride from synthetic sources and how much synthetic betaine
8 hydrochloride is in each capsule; (iv) undertake an immediate public
9 information campaign to inform members of the proposed class as to
10 their prior practices; and (v) correct any erroneous impression consumers
11 may have derived concerning the nature, characteristics, or qualities and
12 quantities of its Betaine product, including without limitation, the
13 placement of corrective advertising and providing written notice to the
14 public;
- 15 c. An order requiring imposition of a constructive trust and and/or
16 disgorgement of Defendant's ill-gotten gains and to pay restitution to
17 Plaintiff and all members of the Class and to restore to the Plaintiff and
18 members of the class all funds acquired by means of any act or practice
19 declared by this court to be an unlawful, fraudulent or unfair business act
20 or practice, in violation of laws, statutes or regulations, or constituting
21 unfair competition;
- 22 d. Distribution of any monies recovered on behalf of members of the Class
23 via fluid recovery or *cy pres* recovery were necessary and as applicable, to
24 prevent Defendant from retaining the benefits of their wrongful conduct;
- 25 e. Statutory prejudgment and post judgment interest;
- 26 f. Special, general, and compensatory damages to Plaintiff and the Class;
- 27 g. Exemplary and/or punitive damages for intentional misrepresentations
28 pursuant to, *inter alia*, Cal. Civ. Code § 3294;

Kazerouni Law Group, APC

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- h. Costs of this suit;
- i. Reasonable attorneys’ fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and
- j. Awarding any and all other relief that this Court deems necessary or appropriate.

Dated: February 28, 2014

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

Trial By Jury

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

Dated: February 28, 2014

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF