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15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

17 LEONIDAS JOVEL, On Behalf of
18 Himself and All Others Similarly Situated,

19 Plaintiff,

20 v.

21 BOIRON, INC.; BOIRON USA, INC.;
22 LABORATORIES BOIRON,

23 Defendants.

Case No. **CV 11-10803 SVW (SHX)**
CLASS ACTION COMPLAINT FOR:

- 24 1. VIOLATION OF THE UNFAIR
25 COMPETITION LAW, BUSINESS &
26 PROFESSIONS CODE §17200 *et seq.*;
27 2. VIOLATION OF THE CONSUMERS
28 LEGAL REMEDIES ACT,
CIVIL CODE §1750 *et seq.*; AND
3. BREACH OF EXPRESS
WARRANTY.

DEMAND FOR JURY TRIAL

26 Plaintiff Leonidas Jovel ("Plaintiff"), by and through his attorneys, brings this
27 action on behalf of himself and all other similarly situated California residents against
28

1 Defendants Boiron Inc., Boiron USA, Inc. and Laboratories Boiron (collectively "Boiron"
2 or "Defendants"), and alleges as follows:

3 **NATURE OF ACTION**

4 1. Defendants manufacture, market, sell and distribute Oscillococcinum and
5 Children's Oscillococcinum (the "Products" or "Oscillo"). Through uniform nationwide
6 representations made on the packaging of the Products, Defendants urge consumers to
7 "Take Oscillo at the First Sign of Flu-Symptoms!" that the Products "Temporarily
8 relieves flu-like symptoms such as run-down feeling, headache, body aches, chills and
9 fever" (hereafter "flu-symptoms"), and that its sole active ingredient reduces "the
10 duration and severity of flu-like symptoms". The Products' packaging states that it is for
11 "Adults" and for "children 2 years of age and older."

12 2. Defendants' Oscillo does not provide relief from flu-symptoms. Clinical
13 cause and effect studies have shown that the sole "active" ingredient in Oscillo, Anas
14 Barbariae Hepatis et Cordis extractum 200K ("Anas Barbariae"), does not work as
15 represented by Defendants and, in particular, it does not temporarily relieve flu-
16 symptoms. Furthermore, as discussed herein, the process by which Defendants make
17 Oscillo results in the Anas Barbariae being diluted to such a degree that even if it were
18 effective in relieving flu symptoms – which it is not – the odds of even a molecule of
19 Anas Barbariae extract being in a dose of Oscillo is mathematically impossible. Thus,
20 Oscillo is, unbeknownst to consumers, essentially water and sugar.

21 3. In addition, Defendants do not have competent and reliable scientific
22 evidence to support their representations.

23 4. As a result of either or all of the foregoing, Defendants' representations are
24 false, misleading, and reasonably likely to deceive the public.

25 5. Despite the deceptive nature of Defendants' representations, Defendants
26 conveyed and continue to convey their deceptive temporary relief of flu-symptoms
27 representations through a variety of media (including their website and online
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1 promotional materials) and, most important, uniformly at the point of purchase on their
2 Products packages and labeling. Further, the only reason that any consumer would
3 purchase Oscillo is to obtain flu-relief health benefits, which Oscillo does not provide.

4 6. As a result of Defendants' deceptive representations, consumers - including
5 Plaintiff and other members of the proposed Class - have purchased products that do not
6 perform as advertised.

7 7. Plaintiff brings this action on behalf of himself and other similarly situated
8 California consumers who have purchased the Products to halt the dissemination of this
9 false, misleading and deceptive advertising message, correct the false and misleading
10 perception it has created in the minds of consumers, and obtain redress for those who
11 have purchased the Oscillo products. Plaintiff alleges violations of the Consumers Legal
12 Remedies Act, the Unfair Competition Law, and Breach of Express Warranty created by
13 Defendants' advertising, including false labeling.

14 JURISDICTION AND VENUE

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

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

25 10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
26 because a substantial part of the events or omissions giving rise to Plaintiff's claims
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1 occurred while she 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 11. Plaintiff Leonidas Jovel resides in Los Angeles, California. In or around
5 November 2011, Plaintiff Jovel was exposed to and saw Defendants' representations by
6 reading the packaging of Defendants' Oscillo product. Plaintiff Jovel purchased one box
7 of the Product in reliance on Defendants' flu-symptoms representations from a third-
8 party retailer in Los Angeles. He paid approximately \$20 for the Product. The Oscillo
9 product Plaintiff purchased did not reduce or relieve his flu-symptoms as represented.
10 As a result, Plaintiff Jovel suffered injury in fact and lost money.

11 12. Defendant Boiron, Inc. is a corporation organized and existing under the
12 laws of the state of Pennsylvania. Defendant Boiron Inc.'s headquarters is at 6 Campus
13 Boulevard, Newtown Square, Pennsylvania. Boiron Inc. is the United States subsidiary
14 of Defendant Laboratories Boiron.

15 13. Defendant Boiron USA, Inc. is a corporation organized and existing under
16 the laws of the state of Pennsylvania. Defendant Boiron USA, Inc.'s headquarters is at 6
17 Campus Boulevard, Newtown Square, Pennsylvania. Boiron USA, Inc. is the United
18 States subsidiary of Defendant Laboratories Boiron.

19 14. Defendant Laboratories Boiron is a French Company that does business in
20 California and throughout the United States through and with its United States
21 subsidiaries. For example, the packaging of Oscillo states that the Products are: "made
22 in France by Boiron." Likewise, on its "shareholders'" website
23 [http://www.boiron.com/en/Shareholders-and-investors-area/Group-information/Boiron-](http://www.boiron.com/en/Shareholders-and-investors-area/Group-information/Boiron-worldwide)
24 [worldwide](http://www.boiron.com/en/Shareholders-and-investors-area/Group-information/Boiron-worldwide), Boiron includes its North American sales revenue as part of the company's
25 overall performance for shareholder review and indentifies itself as the 100% owner of
26 the United States subsidiaries.

27 15. Defendants Boiron Inc., Boiron USA, Inc. and Laboratories Boiron have
28

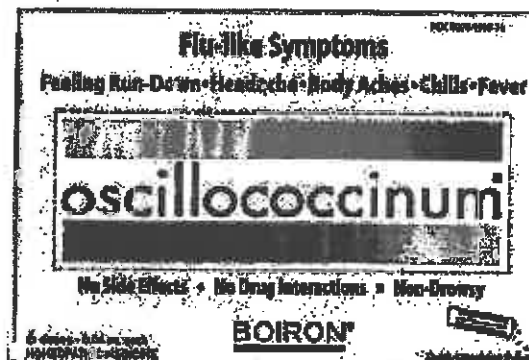
1 manufactured, advertised, marketed, distributed, or sold, the Oscillo products to tens of
2 thousands of consumers in California and throughout the United States.

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

9 FACTUAL ALLEGATIONS

10 17. Defendants have and continue to manufacture, distribute, market, and sell
11 Oscillo for the relief of flu-symptoms.

12 18. Oscillo is sold nationwide throughout a variety of retail outlets ranging
13 from drugstores such as the CVS chain to grocery stores such as Whole Foods. Oscillo is
14 is available in 6, 12 or 30 dosages and sell for between \$12 and \$20. The following is a
15 screen shot of an exemplar of an Oscillo package:



19. Throughout the class period and to the present, Defendants have consistently conveyed the message to consumers throughout California and the United States that Oscillo will temporarily relieve flu-symptoms and reduce the duration and severity of flu-like symptoms simply by taking the recommended doses of Oscillo every twenty-four hours. Defendants' representations are false, misleading and deceptive.

1 20. Defendants represent on the Oscillo packaging that the claimed health
2 benefits are achieved through the one purported active ingredient – Anas Barbariae. For
3 example, directly to the right of Anas Barbariae being listed a column on the packaging
4 states, “PURPOSE – To reduce the duration and severity of flu-like symptoms.” Anas
5 Barbariae is an extract taken from the heart and liver of a duck. Apart from the fact that
6 the clinical research and analysis demonstrates that Oscillo and its sole active ingredient,
7 Anas Barbariae, does not work as Defendants represent and there is no clinically based
8 reason to recommend the use of these Products for the relief of flu-symptoms.
9 Defendants know, but fail to disclose to consumers, that a dose of Oscillo is in reality a
10 dose of sugar and nothing else.

11 21. In the process of making Oscillo, Defendants subject this extract through a
12 series of 200 dilutions such that even if Anas Barbariae were proven to be effective in the
13 treatment of flu-symptoms – which it is not – the Anas Barbariae in Oscillo is so diluted
14 that the odds of even one molecule of the original Anas Barbariae extract being in a dose
15 of Oscillo is a mathematical impossibility.

16 22. Thus, Defendants essentially drop a solution of water on lactose and
17 sucrose (the two listed inactive ingredients) and market and sell it as a flu remedy. In
18 short, Defendants manufacture, market and sell sugar as a flu-remedy.

19 23. Furthermore, as a result, there is and can be no competent and reliable
20 scientific evidence that taking Oscillo can provide relief of flu-symptoms - it is sugar and
21 water. Thus, it comes as no surprise that clinical cause and effect studies have found that
22 Oscillo does not work as Defendants represent.

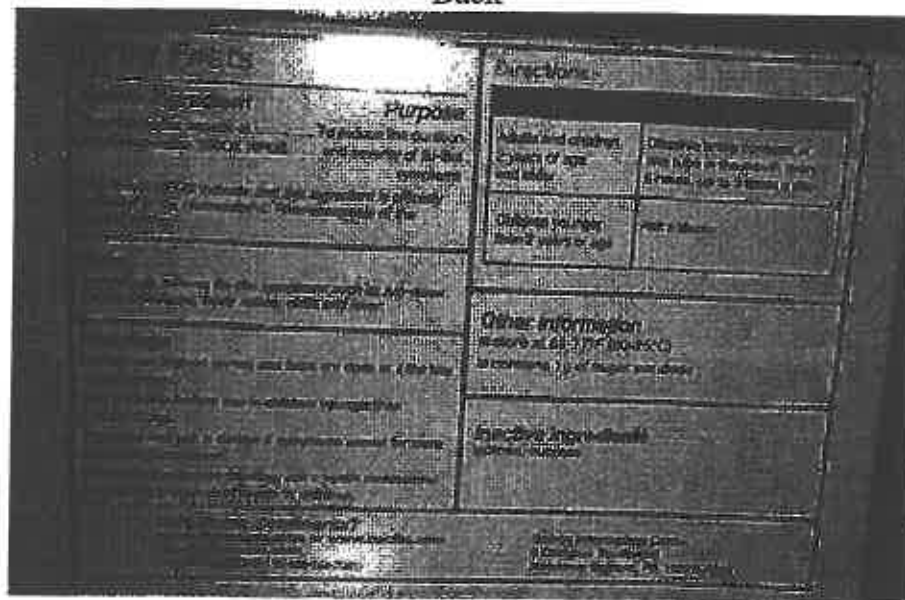
23 24. Nevertheless, Defendants, with full knowledge of the dilution process that
24 they use to prepare the Anas Barbariae in their Oscillo products and in the face of the
25 negative studies and scientific analyses indicating that Oscillo does not work as
26 Defendants represent, and without any scientifically valid confirmation that Oscillo is
27 effective in relieving flu-symptoms for both adults and children over the age of 2,
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Defendants prominently represent on the Products' packaging and labeling that Oscillo temporarily relieves and reduces the duration and severity of flu-symptoms. Front, back and top shots of a representative Oscillo product label appears as follows:

Front



Back



Top



1 ***The impact of Defendants' wrongful conduct***

2 25. Despite the fact that Oscillo is nothing more than sugar and water and
3 despite the existence of clinical studies and scientific analyses that have concluded that
4 there is no causative link between Oscillo or its active ingredient in relieving flu-
5 symptoms, Defendants continue to unequivocally claim that Oscillo temporarily relieves
6 flu-symptoms and reduces the duration and severity of flu-symptoms for adults and
7 children above the age of 2.

8 26. As the manufacturers and distributors of Oscillo, Defendants possess
9 specialized knowledge regarding the content and effects of the ingredients contained in
10 Oscillo and are in a superior position to learn of the composition of Oscillo and the
11 effects or lack thereof Oscillo has on consumers.

12 27. Specifically, Defendants affirmatively misrepresented that Oscillo relieves
13 flu-symptoms. Having made these affirmative misrepresentations, Defendants failed to
14 disclose what they knew: (1) Oscillo is essentially water and sugar; (2) clinical cause-
15 and-effect studies have shown that neither Oscillo nor its sole active ingredient provide
16 the health benefits represented by Defendants; and (3) Defendants have no competent and
17 reliable scientific evidence that Oscillo nor its sole active ingredient provide relief of flu-
18 symptoms.

19 28. Notwithstanding these deceptive representations and material omissions,
20 Defendants conveyed and continue to convey a uniform message: Oscillo provides relief
21 of flu-symptoms.

22 29. Plaintiff and Class members have been and will continue to be deceived or
23 misled by Defendants' deceptive representations. The Products' sole purported purpose is
24 to provide relief of flu-symptoms. Thus, the only purpose behind purchasing said
25 Products would be to obtain relief of flu-symptoms. There is no other reason for Plaintiff
26 or the Class to have purchased the Products and Plaintiff and the Class would not have
27 purchased the Products had they known Defendants' representations were false and
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1 misleading and, in addition, that Defendants did not possess competent and reliable
2 scientific evidence to support their relief of flu-symptoms representations. Thus,
3 Defendants' representations and omissions necessarily deceived Plaintiff and the Class in
4 some manner and said deception was a proximate cause of Plaintiff and the Class'
5 injuries.

6 30. As a result, Plaintiff and the Class members have been damaged in their
7 purchases of Oscillo in that they were deceived in some manner into purchasing
8 Defendants' Products.

9 31. Defendants, by contrast, reaped enormous profits from their false
10 marketing and sale of these Products.

11 CLASS DEFINITION AND ALLEGATIONS

12
13 32. Pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure,
14 Plaintiff Leonidas Jovel brings this action on behalf of himself and members of a Class defined
15 as:

16 All California residents who, within the applicable statute of
17 limitations period, purchased Oscillococcinum and/or Children's
18 Oscillococcinum. Excluded from the Class are Defendants and their
officers, directors and employees and those who purchased
Oscillococcinum and/or Children's Oscillococcinum for the purpose
of resale.

19 33. *Numerosity.* The members of the Class are so numerous that joinder of all
20 members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class
21 contains thousands of purchasers of the Oscillo products who have been damaged by
22 Defendants' conduct as alleged herein. The precise number of Class members is unknown to
23 Plaintiff.

24 34. *Existence and Predominance of Common Questions of Law and Fact.* This
25 action involves common questions of law and fact, which predominate over any questions
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1 affecting individual Class members. These common legal and factual questions include, but
2 are not limited to, the following:

3 (a) whether the claims discussed above are true, or are misleading, or objectively
4 reasonably likely to deceive;

5 (b) whether Defendants' alleged conduct violates public policy;

6 (c) whether the alleged conduct constitutes violations of the laws asserted;

7 (d) whether Defendants engaged in false or misleading advertising;

8 (e) whether Plaintiff and Class members have sustained monetary loss and the proper
9 measure of that loss; and

10 (f) whether Plaintiff and Class members are entitled to other appropriate remedies,
11 including corrective advertising and injunctive relief.

12 35. **Typicality.** Plaintiff's claims are typical of the claims of the members of the
13 Class because, *inter alia*, all Class members were injured through the uniform misconduct
14 described above and were subject to Defendants' deceptive flu relief statements that
15 accompanied each and every box of the Oscillo products. Plaintiff is advancing the same claims
16 and legal theories on behalf of himself and all members of the Class.

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

21 37. **Superiority.** A class action is superior to all other available means for the fair and
22 efficient adjudication of this controversy. The damages or other financial detriment suffered by
23 individual Class members is relatively small compared to the burden and expense that would be
24 entailed by individual litigation of their claims against the Defendants. It would thus be virtually
25 impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done
26 to them. Furthermore, even if Class members could afford such individualized litigation, the
27 court system could not. Individualized litigation would create the danger of inconsistent or
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1 contradictory judgments arising from the same set of facts. Individualized litigation would also
2 increase the delay and expense to all parties and the court system from the issues raised by this
3 action. By contrast, the class action device provides the benefits of adjudication of these issues
4 in a single proceeding, economies of scale, and comprehensive supervision by a single court, and
5 presents no unusual management difficulties under the circumstances here.

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

10 39. Unless a Class is certified, Defendants will retain monies received as a result of
11 their conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction
12 is issued, Defendants will continue to commit the violations alleged, and the members of the
13 Class and the general public will continue to be deceived.

14 40. Defendants have acted and refused to act on grounds generally applicable to the
15 Class, making appropriate final injunctive relief with respect to the Class as a whole.

16 **COUNT I**

17 **Violation of Business & Professions Code §17200, *et seq.***

18 41. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
19 as if fully set forth herein.

20 42. Plaintiff Leonidas Jovel brings this claim individually and on behalf of the Class.

21 43. As alleged herein, Plaintiff has suffered injury in fact and lost money or property
22 as a result of Defendants' conduct because he purchased Oscillo in reliance on Defendants' flu-
23 symptoms representations detailed above, but did not receive a product that relieves or reduces
24 the duration of flu-like symptoms.

25 44. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
26 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any
27 false or misleading advertising. In the course of conducting business, Defendants committed
28

1 unlawful business practices by, *inter alia*, making the representations (which also constitutes
2 advertising within the meaning of §17200) and omissions of material facts, as set forth more
3 fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business &
4 Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

5 45. Plaintiff and the Class reserve the right to allege other violations of law, which
6 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
7 this date.

8 46. Defendants' actions also constitute "unfair" business acts or practices because, as
9 alleged above, *inter alia*, Defendants engaged in false advertising, misrepresented and omitted
10 material facts regarding their Oscillo products, and thereby offended an established public
11 policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are
12 substantially injurious to consumers.

13 47. As stated in this Complaint, Plaintiff alleges violations of consumer protection,
14 unfair competition and truth in advertising laws, resulting in harm to consumers. Defendants'
15 acts and omissions also violate and offend the public policy against engaging in false and
16 misleading advertising, unfair competition and deceptive conduct towards consumers. This
17 conduct constitutes violations of the unfair prong of Business & Professions Code §17200, *et*
18 *seq.*

19 48. There were reasonably available alternatives to further Defendants' legitimate
20 business interests, other than the conduct described herein.

21 49. Business & Professions Code §17200, *et seq.*, also prohibits any "fraudulent
22 business act or practice."

23 50. Defendants' actions, claims, nondisclosures and misleading statements, as more
24 fully set forth above, were also false, misleading and/or likely to deceive the consuming public
25 within the meaning of Business & Professions Code §17200, *et seq.*

26 51. Plaintiff and other members of the Class have in fact been deceived as a result of
27 their reliance on Defendants' material representations and omissions, which are described above.
28

1 This reliance has caused harm to Plaintiff and other members of the Class who each purchased
 2 Defendants' Oscillo products. Plaintiff and the other Class members have suffered injury in fact
 3 and lost money as a result of these unlawful, unfair, and fraudulent practices.

4 52. As a result of their deception, Defendants have been able to reap unjust revenue
 5 and profit.

6 53. Unless restrained and enjoined, Defendants will continue to engage in the above-
 7 described conduct. Accordingly, injunctive relief is appropriate.

8 54. Plaintiff, on behalf of himself, all others similarly situated, and the general public,
 9 seeks restitution and disgorgement of all money obtained from Plaintiff and the members of the
 10 Class collected as a result of unfair competition, an injunction prohibiting Defendants from
 11 continuing such practices, corrective advertising and all other relief this Court deems
 12 appropriate, consistent with Business & Professions Code §17203.

13 **COUNT II**
 14 **Violations of the Consumers Legal Remedies Act –**
 15 **Civil Code §1750 *et seq.***

16 55. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
 17 as if fully set forth herein.

18 56. Plaintiff Leonidas Jovel brings this claim individually and on behalf of the Class.

19 57. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
 20 California Civil Code §1750, *et seq.* (the "Act"). Plaintiff is a consumer as defined by California
 21 Civil Code §1761(d). Defendants' Oscillo products are "goods" within the meaning of the Act.

22 58. Defendants violated and continue to violate the Act by engaging in the following
 23 practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the
 24 Class which were intended to result in, and did result in, the sale of the Oscillo products:

- 25 (5) Representing that [the Oscillo products have] . . . approval, characteristics, . . .
 26 uses [and] benefits . . . which [they do] not have

27 * * *

1 (7) Representing that [the Oscillo products are] of a particular standard, quality or
2 grade . . . if [they are] of another.

3 * * *

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

5 * * *

6 (16) Representing that [the Oscillo products have] been supplied in accordance with a
7 previous representation when [they have] not.

8 59. Defendants violated the Act by representing and failing to disclose material facts
9 on the product labels and associated advertising, as described above, when they knew, or should
10 have known, that the representations were unsubstantiated, false and misleading and that the
11 omissions were of material facts they were obligated to disclose.

12 60. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek a Court
13 order enjoining the above-described wrongful acts and practices of Defendants and for
14 restitution and disgorgement.

15 61. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by certified
16 mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the
17 problems associated with the actions detailed above and give notice to all affected consumers of
18 Defendants' intent to so act. Copies of the letters are attached hereto as Exhibit A.

19 62. If Defendants fail to rectify or agree to rectify the problems associated with the
20 actions detailed above and give notice to all affected consumers within 30 days of the date of
21 written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add claims for
22 actual, punitive and statutory damages, as appropriate.

23 63. Defendants' conduct is fraudulent, wanton and malicious.

24 64. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidavit
25 showing that this action has been commenced in the proper forum.

26 ///

27 ///

COUNT III
Breach of Express Warranty

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

66. Plaintiff Leonidas Jovel brings this claim individually and on behalf of the Class.

67. Defendants expressly warranted on each and every box of their Oscillo products that the Product "Temporarily relieves flu-like symptoms such as run-down feeling, headache, body aches, chills and fever" and the Product's sole active ingredient reduces "the duration and severity of flu-like symptoms". The flu-symptoms statements made by Defendants are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promise. Plaintiff placed importance on Defendants' flu-symptoms representations.

68. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiff and the Class.

69. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a Product that would provide flu-symptom relief as represented.

70. As a result of Defendants' breach of their contract, Plaintiff and the Class have been damaged in the amount of the price of the products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants

1 to identify, with Court supervision, victims of their conduct and pay them all money they are
2 required to pay;

3 E. Ordering Defendants to engage in a corrective advertising campaign;

4 F. Awarding attorneys' fees and costs; and

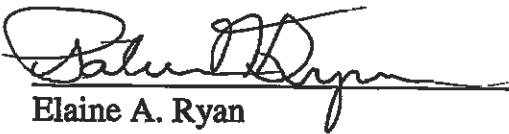
5 G. Providing such further relief as may be just and proper.

6 **DEMAND FOR JURY TRIAL**

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

8 Dated: December 29, 2011

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

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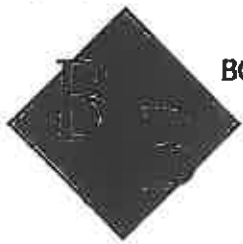
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27 *Attorneys for Plaintiff*
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EXHIBIT A



BONNETT, FAIRBOURN,
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LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

¹ Admitted Only in California
² Admitted Only in California, Missouri
and Kansas
³ Admitted Only in Pennsylvania

December 29, 2011

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7011 0470 0002 5152 4973)

Boiron USA, Inc.
General Counsel
6 Campus Blvd, Building A
Newton Square, PA 19073

Re: Jovel v. Boiron, Inc., et al.

Dear Sir or Madam:

Our law firm together with the Futterman, Howard, Ashley & Weltman law firm represent Leonidas Jovel and all other similarly situated California residents in an action against Boiron Inc., Boiron USA, Inc. and Laboratories Boiron (collectively "Boiron" or "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Boiron to consumers that their Oscilloccinum and Children's Oscilloccinum products ("Oscillo" or "the Products") provide relief from the flu and flu-like symptoms.

Mr. Jovel and others similarly situated purchased Oscillo unaware that Boiron's representations that Oscillo "reduces the duration and severity of flu-like symptoms" such as run down feeling, headache, body aches, chills and fever, are false. Several well-conducted clinical studies have found no causative link between Anas Barbariae, the primary active ingredient in Oscillo, and relief from the flu and flu like symptoms. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Boiron's flu relief representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Boiron with the intent to induce the consuming public to purchase Oscillo. The flu relief representations do not assist consumers; they simply mislead them.

Boiron's flu relief representations violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

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

* * *

(7) Representing that [Oscillo is] of a particular standard, quality or grade, ... if [they are] of another.

* * *

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

* * *

(16) Representing that [Oscillo has] been supplied in accordance with a previous representation when [it has] not.

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

Boiron's flu-relief representations also constitutes violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Boiron 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, Boiron should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff 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 breach of warranty theories, 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 Boiron address these violations immediately.

Boiron 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;
2. Notify all such purchasers so identified that upon their request, Boiron will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase

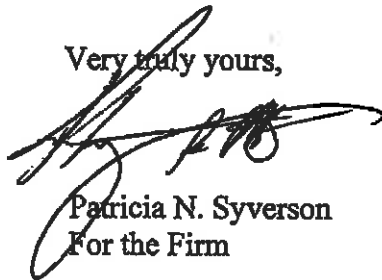
price paid for such Products, plus interest, costs and fees;

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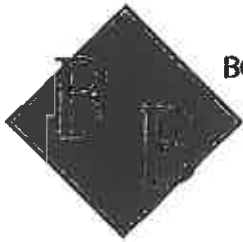
We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Patricia N. Syverson', is written over the typed name and title.

Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures



BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, PC

JERRY C. BONNETT
FRANCIS J. BALINT, JR.
C. KEVIN DYKSTRA
ANDREW Q. EVERROAD
JONATHAN S. WALLACK
CHRISTINA L. BANNON
WILLIAM F. KING
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PATRICIA N. SYVERSON
KIMBERLY C. PAGE
TODD D. CARPENTER¹
T. BRENT JORDAN³
LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

¹ Admitted Only in California
² Admitted Only in California, Missouri
and Kansas
³ Admitted Only in Pennsylvania

December 29, 2011

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7011 0470 0002 5152 4966)

Boiron, Inc.
General Counsel
6 Campus Blvd, Building A
Newton Square, PA 19073

Re: Jovel v. Boiron, Inc., et al.

Dear Sir or Madam:

Our law firm together with the Futterman, Howard, Ashley & Weltman law firm represent Leonidas Jovel and all other similarly situated California residents in an action against Boiron Inc., Boiron USA, Inc. and Laboratories Boiron (collectively "Boiron" or "Defendants"), arising out of, *inter alia*, misrepresentations, either express or implied, by Boiron to consumers that their Oscilloccinum and Children's Oscilloccinum products ("Oscillo" or "the Products") provide relief from the flu and flu-like symptoms.

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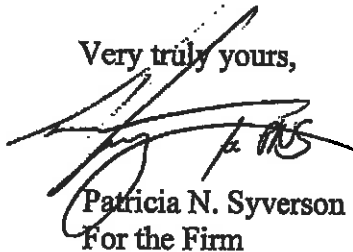
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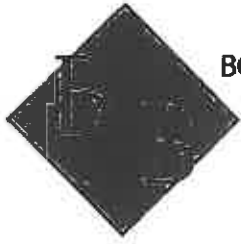
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Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures



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¹Admitted Only in California
²Admitted Only in California, Missouri
and Kansas
³Admitted Only in Pennsylvania

December 29, 2011

Laboratories Boiron
General Counsel
20, rue de la Liberation
69110 Sainte-Foy-les-Lyon
FRANCE

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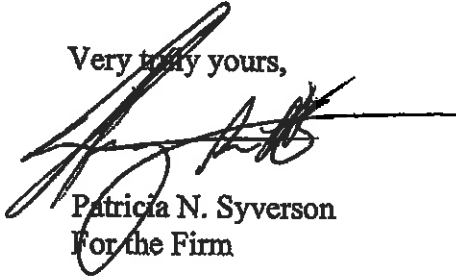
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We await your response.

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Patricia N. Syverson
For the Firm

PNS:lmg
Enclosures

EXHIBIT B

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

ELAINE A. RYAN (*To be admitted Pro Hac Vice*)

PATRICIA N. SYVERSON (203111)

2901 N. Central Ave., Suite 1000

Phoenix, AZ 85012

eryan@bffb.com

psyverson@bffb.com

Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

TODD D. CARPENTER (234464)

600 W. Broadway, Suite 900

San Diego, California 92101

tcarpenter@bffb.com

Telephone: (619) 756-6978

FUTTERMAN HOWARD ASHLEY
& WELTMAN, P.C.

STEWART WELTMAN (*To be admitted Pro Hac Vice*)

122 S. Michigan Avenue, Suite 1850

Chicago, Illinois 60603

sweltman@futtermanhoward.com

Telephone: (312) 427-3600

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LEONIDAS JOVEL, On Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

v.

BOIRON, INC.; BOIRON USA, INC.;
LABORATORIES BOIRON,

Defendants.

Case No.:

CLASS ACTION:

DECLARATION OF PATRICIA N.
SYVERSON PURSUANT TO
CALIFORNIA CIVIL CODE §1780(d)

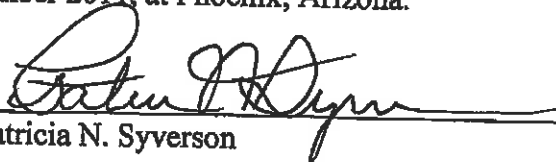
1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C.,
4 the counsel of record for plaintiff in the above-entitled action.

5 2. Defendants Boiron Inc., Boiron USA, Inc. and Laboratories Boiron have done
6 and are doing business in the Central District of California. Such business includes the
7 marketing, distributing and sale of their Oscillococcinum and Children's Oscillococcinum
8 (collectively "Oscillo") products. Furthermore, Plaintiff Jovel purchased Oscillo in Los
9 Angeles, California.

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

12 Executed this 29th day of December 2011, at Phoenix, Arizona.

13 
14 Patricia N. Syverson
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Stephen J. Hillman.

The case number on all documents filed with the Court should read as follows:

CV11- 10803 SVW (SHx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Bonnett, Fairbourn, Friedman & Balint, P.C.
 Patricia N. Syverson (203111)
 2901 N. Central Ave. Suite 1000
 Phoenix, Arizona 85012
 (602) 274-1100
 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

LEONIDAS JOVEL, On Behalf of Himself and All
 Other Similarly Situated,

PLAINTIFF(S)

v.

BOIRON, INC.; BOIRON USA, INC.;
 LABORATORIES BOIRON,

DEFENDANT(S).

CASE NUMBER

CV11-10803 SVW (SHa)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Patricia N. Syverson, whose address is 2901 N. Central Ave., Suite 1000, Phoenix, Arizona 85012. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DEC 29 2011

Clerk, U.S. District Court

Dated: _____

By: JULIE PRADO

Deputy Clerk

(Seal of the Court)

SEAL

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself) <input type="checkbox"/> LEONIDAS JOVEL, On Behalf of Himself and All Other Similarly Situated,		DEFENDANTS Boiron, Inc., Boiron USA, Inc., Laboratories Boiron	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Patricia N. Syverson/Bonnett, Fairbourn, Friedman & Balint, P.C. 2901 N. Central Ave., Suite 1000 Phoenix, AZ 85012		Attorneys (If Known)	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:50%;">Citizen of This State</td> <td style="width:10%;">PTF DEF</td> <td style="width:10%;">#1 #1</td> <td style="width:10%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF DEF</td> <td style="width:10%;">#4 #4</td> </tr> <tr> <td>Citizen of Another State</td> <td></td> <td>#2 #2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td></td> <td>#5 #5</td> </tr> <tr> <td>Chizen or Subject of a Foreign Country</td> <td></td> <td>#3 #3</td> <td>Foreign Nation</td> <td></td> <td>#6 #6</td> </tr> </table>	Citizen of This State	PTF DEF	#1 #1	Incorporated or Principal Place of Business in this State	PTF DEF	#4 #4	Citizen of Another State		#2 #2	Incorporated and Principal Place of Business in Another State		#5 #5	Chizen or Subject of a Foreign Country		#3 #3	Foreign Nation		#6 #6
Citizen of This State	PTF DEF	#1 #1	Incorporated or Principal Place of Business in this State	PTF DEF	#4 #4														
Citizen of Another State		#2 #2	Incorporated and Principal Place of Business in Another State		#5 #5														
Chizen or Subject of a Foreign Country		#3 #3	Foreign Nation		#6 #6														

IV. 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 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Calif. Bus. & Prof. Code § 17200 Violation of the Unfair Competition Law, Civil Code § 1750 Violation of Consumer Legal Remedies Act, Breach of Express Warranty

VII. NATURE OF SUIT (Place an X in one box only.)

<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/KC Rates/etc. <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 Act <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 Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statute	<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 Loan (Ecol. 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 <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rept Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <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"/> 363 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 482 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence/Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 623 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 Rags <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395a) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 S&TD Title XVI (405(g)) <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
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CV 11-10803

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Pennsylvania France

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date 12-29-11

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))