

JUDGE RAKOFF



IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF NEW YORK

MATTHEW BOORMAN, on behalf of
himself and all others similarly situated,

Plaintiff,

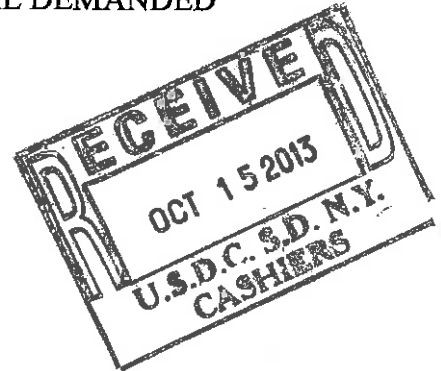
v.

NUTRAMAX LABORATORIES, INC., and
NUTRAMAX MANUFACTURING, INC.,

Defendants.

Case No. **13 CV 7251**

JURY TRIAL DEMANDED



CLASS ACTION COMPLAINT

Plaintiff Matthew Boorman, by and through his attorneys, brings this class action on behalf of himself and similarly-situated others who purchased “Cosamin” health supplements manufactured and marketed by Nutramax Laboratories and Nutramax Manufacturing (collectively, “Nutramax” or “Defendants”), and states as follows:

INTRODUCTION AND NATURE OF ACTION

1. Nutramax is a manufacturer and marketer of supplements for humans and animals.

2. Nutramax sells its products nationally through various online and brick-and-mortar retailers, including Costco.com, drugstore.com, vitacost.com, CVS, Rite Aid, Vitamin World, Walgreens, Publix, and others. In addition to the substantial amount of Nutramax products sold in New York retail stores, Nutramax ships significant quantities of its products to New York residents who purchased those products on various websites.

3. Nutramax markets, sells and distributes a line of joint health dietary supplements under its “Cosamin” brand name (collectively referred to as the “Cosamin Products”).¹

According to the labels on these products, the purported active ingredients are glucosamine hydrochloride and chondroitin sulfate.

4. In its uniform, nationwide marketing of the Cosamin Products, Nutramax promises that its maximum, clinical strength Cosamin Products will help protect cartilage, stimulate cartilage production, improve joint comfort, and improve joint function. Nutramax has produced advertisements claiming that the Cosamin Products are “proven to reduce joint pain.”

5. While Nutramax’s claims regarding the improved joint function associated with its Cosamin Products are directed at anyone seeking to alleviate joint pain or stiffness, it is particularly directed at people suffering from osteoarthritis. Indeed, the most common symptoms of osteoarthritis include joint pain and stiffness—the very symptoms the Cosamin Products claim to remedy.²

6. In its advertising of the Cosamin Products, Nutramax makes numerous references to “clinical studies” showing the “proven” effectiveness of the Products.

7. Most damning to Nutramax’s science-based appeal is a large scale study sponsored and conducted by the National Institute of Health (“NIH”) called the Glucosamine/chondroitin Arthritis Intervention Trial (“GAIT”), which concluded, in a report published in the New England Journal of Medicine, that “[glucosamine and chondroitin], alone or in combination, was not efficacious. . . .” Clegg, D., et al., *Glucosamine, Chondroitin Sulfate*,

¹ The Cosamin Products include, but are not limited to: (1) Cosamin DS and (2) Cosamin ASU (collectively, “the Cosamin Products” or “the Products”). Plaintiffs reserve the right to include other Products upon completion of discovery.

² See <http://www.webmd.com/osteoarthritis/guide/osteoarthritis-basics> (noting that the symptoms of osteoarthritis include “joint aching and soreness,” “pain,” and “stiffness”).

and the Two in Combination for Painful Knee Osteoarthritis, 354 New England J. of Med. 795, 806 (2006).³

8. Thus, in addition to affirmatively misrepresenting the joint health benefits of the Cosamin Products, Nutramax's failure to disclose facts regarding these studies also constitutes deception by omission or concealment. As a result, Nutramax's joint health benefit representations and omissions are false, misleading and reasonably likely to deceive the public.

9. The misleading representations and omissions by Nutramax are conveyed to the consuming public uniformly and through a variety of media including its website and online promotional materials, and also at the point of purchase, where Nutramax ensures that the false claims are prominently made on the Cosamin Products' packaging and labeling. In short, Nutramax's uniform labeling and marketing virtually ensure that the only reason a consumer would purchase the Cosamin Products is to obtain the advertised joint health benefits—benefits that Nutramax knows the Cosamin Products fail to provide.

10. As a result of Nutramax's deceptive joint health benefit representations, consumers – including Plaintiff and members of the proposed Class – have purchased Products that do not perform as advertised.

11. Plaintiff brings this action on behalf of himself and all other similarly situated consumers to halt the dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Cosamin Products based on violations of New York unfair

³ The GAIT Study was conducted by the National Center for Complementary and Alternative Medicine, which is, according to its website "is the Federal Government's lead agency for scientific research on the diverse medical and health care systems, practices, and products that are not generally considered part of conventional medicine."

competition laws and breach of express warranties. Plaintiff seeks injunctive and monetary relief for all consumers who purchased the Products.

JURISDICTION AND VENUE

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

13. This Court has jurisdiction because Plaintiff is a resident of New York and because Defendants are Maryland corporations with their principal places of business in Maryland (diversity jurisdiction).

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

PARTIES

15. Plaintiff Matthew Boorman resides in Nassau County, New York. During the class period, Plaintiff Boorman purchased Cosamin DS at a Vitamin Shoppe store in New York City in reliance on Nutramax's claims on the label and packaging that the products would provide joint health benefits. Plaintiff Boorman paid approximately \$19.99 for his purchase. If Plaintiff Boorman was aware that Nutramax had both misrepresented the benefits of the Cosamin Products and, in addition, concealed its knowledge of studies demonstrating the lack of efficacy of those products, he would not have purchased Cosamin. Plaintiff Boorman used Cosamin DS as directed and did not receive any of the promised benefits. As a result, Plaintiff Boorman suffered an injury in fact and lost the money associated with his purchase.

16. Defendant Nutramax Laboratories, Inc. is a Maryland corporation with its principal place of business at 2208 Lakeside Blvd., Edgewood, Maryland 21236, and can be served through its registered agent, Mark T. Jensen, Esq., at 29 W. Susquehanna Ave., 6th Floor, Towson, Maryland 21204. At all relevant times, Nutramax Laboratories, Inc. has advertised, marketed, provided, offered, distributed, and/or sold Cosamin DS and Cosamin ASU (collectively, “Cosamin”) throughout the United States including to individuals in New York such as Plaintiff and the Class.

17. Defendant Nutramax Manufacturing, Inc. is a Maryland corporation with its principal place of business at 2208 Lakeside Blvd., Edgewood, Maryland 21236, and can be served through its registered agent, Mark T. Jensen, Esq., at 29 W. Susquehanna Ave., 6th Floor, Towson, Maryland 21204. At all relevant times, Nutramax Manufacturing, Inc. has advertised, marketed, provided, offered, distributed, and/or sold Cosamin throughout the United States including to individuals in New York such as Plaintiff and the Class.

ALLEGATIONS

The Cosamin Products and Nutramax’s Marketing Claims

18. This lawsuit concerns the products marketed and sold by Nutramax under the “Cosamin” product brand including, but not limited to: (1) Coasmin DS and (2) Cosamin ASU; (all listed and unlisted products referred to herein, collectively, as the “Cosamin Products”).⁴ These products come in a variety of dosages and sizes, so the total number of glucosamine/chondroitin products sold by Nutramax may exceed these two.

19. Marketed as a joint health dietary supplement, the Cosamin Products purportedly relieve joint pain through the combination of their two main ingredients: glucosamine and

⁴ Plaintiff reserves the right to include other products upon completion of discovery.

chondroitin sulfate.

20. According to Nutramax's website, Cosamin DS works as follows:

The two main ingredients in Cosamin DS, FCHG49® glucosamine and TRH122® chondroitin sulfate, stimulate the production of cartilage. In younger, healthier individuals cartilage cells would normally accomplish this task. However, as one ages, cartilage cells die off and are not replaced. This starts a cycle of destruction in the cartilage. There are also enzymes present that degrade cartilage. Glucosamine hydrochloride stimulates cartilage production while chondroitin sulfate inhibits enzymes that break down cartilage. Chondroitin sulfate has been shown in clinical trials to slow the progression of cartilage deterioration as well as reduce joint pain.

See <http://www.nutramaxlabs.com/index.php/your-health-home/joint-health/cosamin-ds>

(last accessed October 8, 2010).

21. As its product packaging demonstrates, Cosamin DS lures consumers to “[p]rotect your cartilage” with “the ONLY BRAND proven to reduce joint pain” (emphasis in original).

22. In its product packaging and elsewhere, Nutramax engages in a pervasive marketing scheme to not only tout the purported benefits of Cosamin, but the existence of scientific proof backing Nutramax's claims. Among Nutramax's claims are that Cosamin:

- a. “protect[s] your cartilage”;
- b. is “the ONLY BRAND proven to reduce joint pain”;
- c. has been “proven effective in controlled published U.S. studies to reduce joint pain”;
- d. has been “shown in laboratory tests to protect cartilage cells from breakdown”;
- e. is “THE BEST” product for treating joint pain; and
- f. when “compare[d] to other brands”, “[c]ontains the FULL CLINICAL STRENGTH of active ingredients”.

23. The product packaging further contains an image of a glowing knee joint, further leading consumers to believe that Cosamin will relieve joint pain.

24. Nutramax's television advertising campaign further claims that Cosamin is "the only glucosamine chondroitin brand proven to reduce joint pain" and that "anything less just isn't the best."

25. Meanwhile, Cosamin ASU is essentially Cosamin DS with the addition of avocado/soybean unsaponifiables. Cosamin ASU makes the same or substantially similar deceptive claims regarding the efficacy and scientific substantiation of glucosamine and chondroitin sulfate as does Cosamin DS.

26. In short, Nutramax engages in a pervasive and widespread marketing campaign to drive sales of its product, luring consumers into purchasing Cosamin by making not only claims as to product efficacy but scientific substantiation as well.

**The Small Scale Tests Conducted On Cosamin Fail
To Provide Clinically Significant Evidence of Joint Pain Relief**

27. In a document on its official website entitled "Cosamin® Clinical and Experimental Studies," Nutramax cites to two studies which purportedly substantiate its claim that Cosamin DS is "the ONLY BRAND proven to reduce joint pain."⁵

28. These studies are the perfect example of the difference between "statistical significance" and "clinical significance." A determination of statistical significance indicates to investigators the probability that an apparent difference between two or more treatment groups in a study is real and did not occur merely by chance. Accordingly, statistical significance has nothing at all to do with whether or not the hypothesis being tested in a study is true or false, and,

⁵ Das AK, Hammad TA. Efficacy of a combination of FCHG49® glucosamine hydrochloride, TRH122® low molecular weight sodium chondroitin sulfate and manganese ascorbate in the management of knee osteoarthritis. *Osteoarthritis and Cartilage* 2000;8(5):343-350; Leffler CT, Philippi AF, Leffler SG, et al. Glucosamine, chondroitin and manganese ascorbate for degenerative joint disease of the knee or low back: a randomized, doubleblind, placebo-controlled pilot study. *Military Medicine* 1999;164(2):85-91.

thus, it cannot “prove” one’s hypothesis. Clinical significance, by comparison, is defined in the scientific community as denoting whether or not an observed treatment effect is of therapeutic importance. Clinical investigators who understand the definition of statistical significance also understand that just because a treatment effect may have attained statistical significance, it does not necessarily mean that clinical significance has been attained.

29. In both of the studies referenced on Nutramax’s website, the effects detected as *statistically* significant were, in fact, marginal and barely distinguishable from the response to placebo. For instance, the study conducted by Das and Hammad, the improved pain scores of nearly 5 of every 6 subjects could be accounted for entirely by the placebo response.

30. Accordingly, the findings of these small-scale studies fall well short of *clinical* relevance, and, thus, cannot possibly “prove” that Cosamin reduces joint pain.

31. Along these lines, any purported “clinical trials” demonstrating the efficacy of glucosamine and chondroitin have been rejected by the medical community. Independent studies evaluating these so-called clinical trials “have shown that trials with methodological flaws, especially inadequate allocation concealment and absence of intent-to-treat approaches are associated with exaggerated estimates of benefit.”⁶

32. In truth, however, scientific support for the efficacy of the Cosamin Products is utterly lacking. Study after study has shown that the “active” ingredients in the Cosamin Products are ineffective at treating the symptoms of osteoarthritis, whether taken alone or in combination with the other ingredients in Cosamin Products.⁷

⁶ McAlindon TE *et al.*, *Glucosamine and chondroitin for treatment of osteoarthritis: a systematic quality assessment and meta-analysis*, *JAMA* 283(11): 1469–75 (Mar. 2000).

⁷ While most of the clinical studies finding a lack of efficacy were conducted on arthritic patients, others were not. Nonetheless, experts in the field deem the arthritis clinical studies as proxies for efficacy for all patients.

Multiple Clinical Studies Demonstrate That the Cosamin Products Are Ineffective

33. Nutramax's representations about the efficacy of the ingredients in the Cosamin products are totally contradicted by all credible scientific evidence. Indeed, since 2004, multiple clinical studies have found that glucosamine and chondroitin, alone or in combination, are not effective in providing the represented joint health benefits.

34. In 2004, one study concluded that glucosamine was no more effective than a placebo in treating the symptoms of knee osteoarthritis. McAlindon et al., *Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649 (Nov. 2004).

35. Indeed, as early as 2004, other clinical studies indicated a significant "placebo" effect when patients consumed products they were told had the potential to cure joint aches and pains. For example, one 2004 study involved a six-month study of the effects of glucosamine compared with placebo and concluded that there was no difference in primary or secondary outcomes between the two. Cibere et al., *Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004). The authors concluded that the study provided *no evidence* of symptomatic benefit from continued use of glucosamine and that perceived benefits were, in fact, due to the placebo effect and not any real benefit provided by glucosamine. *Id.*

36. In 2006, the first GAIT study concluded that "[t]he analysis of the primary outcome measure did not show that either supplement, alone or in combination, was efficacious." 2006 GAIT Study at 806. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage⁸ and were otherwise ineffective – even in patients with

⁸ To a similar effect, a study by Kwok, et al., entitled *The Joints On Glucosamine (JOG)*

moderate to severe knee pain for which the 2006 GAIT study reported results were inconclusive. See Sawitzke, A.D., et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum. 3183–91 (Oct. 2008); Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT*, 69(8) Ann Rheum. Dis. 1459-64 (Aug. 2010).

37. The GAIT studies are consistent with the reported results of other studies that have demonstrated the ineffectiveness of both glucosamine and chondroitin.

- In 2008, a study concluded that glucosamine was no better than a placebo in reducing either the symptoms or progression of hip osteoarthritis. Rozendaal et al., *Effect of Glucosamine Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008)
- A 2010 a meta-analysis examined prior studies involving glucosamine and chondroitin, alone or in combination, and reported that the collection of studies supported a conclusion that those compounds neither reduced joint pain nor had an impact on the narrowing of joint space. Wandel et al., *Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis*, BMJ 341:c4675 (2010).
- Another 2010 study concluded that there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that there was no data recommending the use of glucosamine. Wilkens et al., *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI, 60 Arthritis Rheum 725 (2009), concluded that glucosamine was not effective in preventing the worsening of cartilage damage.

- In 2011, a summary article reviewed the available literature and concluded that “[t]he cost-effectiveness of these dietary supplements alone or in combination in the treatment of OA has not been demonstrated in North America.” Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*, *Rheum. Dis. Clin. N. Am.* 37 (2011) 103-118.

- Most recently, a meta-analysis synthesized all available studies evaluating the efficacy of glucosamine for treating osteoarthritis and concluded that glucosamine showed *no pain reduction benefits* for osteoarthritis. Wu D. et al., *Efficacies of different preparations of glucosamine for the treatment of osteoarthritis: a meta-analysis of randomised, double-blind, placebo-controlled trials*, 67(6) *Int. J. Clin. Pract.* 585-94 (June 2013).

38. Scientific studies have also shown that the other ingredients in the Cosamin Products are similarly ineffective. *See, e.g., S. Brien, et. al., Systematic Review Of The Nutritional Supplements (DMSO) And Methylsulfonylmethane (MSM) In The Treatment Of Osteoarthritis*, 16 *Osteoarthritis and Cartilage*, 1277 (Nov. 2008); Usha PR and Naidu MU, *Randomised, Double-Blind, Parallel, Placebo-Controlled Study of Oral Glucosamine, Methylsulfonylmethane and their Combination in Osteoarthritis*, 24 *Clinical Drug Investigation* 353-63 (2004); *see also* Biegert C et al., *Efficacy and Safety of Willow Bark Extract in the Treatment of Osteoarthritis and Rheumatoid Arthritis: Results of 2 Randomized Double-Blind Controlled Trials*, *Journal of Rheumatology* 31.11 (2004): 2121-30 (no efficacy for willow bark as compared with placebo and willow bark less effective than low dosages of non-steroidal anti-inflammatory); *see also* Abdel-Tawb, M., et al., *Boswellia Serrata: An Overall Assessment Of In Vitro, Preclinical, Pharmacokinetic And Clinical Data*, 50 *Clin Pharmacokinet.* 349-69 (2011).

39. Nutramax’s claims that the Cosamin Products “stimulate” cartilage are also totally belied by the available scientific evidence:

- In October 2008, the GAIT Study also concluded that glucosamine and/or chondroitin, alone or in combination, did not demonstrate a clinically important difference in joint space loss, indicating that they were ineffective in rebuilding or regenerating cartilage. Sawitzke et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis, A Report from the Glucosamine/Chondroitin Arthritis Intervention Trial*, 58 Arthritis Rheum. 3183-3191 (2008).

- In April 2009, the Journal of Orthopaedic Surgery published an article that concluded that there was scant evidence to support a claim that glucosamine was superior to placebo in even arresting the deterioration of cartilage, to say nothing of arresting that process and promoting regeneration or rebuilding. Kirkham, et al., *Review Article: Glucosamine*, 17(1) Journal of Orthopaedic Surgery 72-6 (2009).

Nutramax Harms Consumers By Continuing To Market And Sell the Cosamin Products

40. Undeterred by the weight of scientific evidence demonstrating that the ingredients in Cosamin Products are wholly ineffective, Nutramax conveyed and continues to convey one uniform message: Cosamin Products, with their “maximum,” “clinical” strength formulas help to promote mobility and flexibility, improve “joint comfort,” and cushion joints.

41. As the manufacturer and/or distributor of the Cosamin Products, Nutramax possesses specialized knowledge regarding the efficacy of the ingredients contained in its Products and, moreover, is in a superior position to, and has, learned of the lack of efficacy for all of the key ingredients in the Cosamin Products.

42. Specifically, Nutramax knew, but failed to disclose, that the Cosamin Products do not provide the joint health benefits represented and that well-conducted, clinical studies have

found the ingredients in the Cosamin Products to be ineffective in providing the joint health benefits represented by Nutramax.

43. Plaintiff and Class members have been and will continue to be deceived or misled by Nutramax's deceptive joint health benefit representations. Plaintiff purchased and consumed Cosamin Products during the Class period and in doing so, read and considered the Products' label and based his decision to purchase the Products on the joint health benefit representations on the Products' packaging. Nutramax's joint health benefit representations and omissions were a material factor in influencing Plaintiff's decision to purchase and consume the Cosamin Products.

44. Other than obtaining the benefits that the Cosamin Products promise but do not deliver, there is no other reason for Plaintiff and the Class to have purchased the Products as the Products are not represented to provide any other benefits and Plaintiff and the Class would not have purchased the Products had they known Nutramax's joint health benefit statements were false and misleading and that clinical cause and effect studies have found the ingredients to be ineffective for the represented joint health benefits.

45. As a result, Plaintiff and the Class members have been injured in fact in their purchases of the Cosamin Products in that they were deceived into purchasing Products that do not perform as advertised.

46. Nutramax, by contrast, reaped enormous profit from its false marketing and sale of the Cosamin Products.

CLASS DEFINITION AND ALLEGATIONS

47. Plaintiff Matthew Boorman brings this action on behalf of himself and all other similarly situated New York residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

All consumers who, within the applicable statute of limitations period, purchased Nutramax's Cosamin Products in New York.

Excluded from the Class are Nutramax, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Cosamin Products for resale.

48. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Cosamin Products who have been damaged by Nutramax's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

49. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (1) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (2) whether Nutramax's alleged conduct violates public policy;
- (3) whether the alleged conduct constitutes violations of the laws asserted;
- (4) whether Nutramax engaged in false or misleading advertising;
- (5) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and

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

50. Plaintiff's claims are typical of the claims of the members of the Class because, inter alia, all Class members were injured through the uniform misconduct described above having been exposed to Nutramax's false representations regarding the efficacy of the Cosamin Products. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

51. Plaintiff will fairly and adequately protect the interests of the members of the Class, has retained counsel experienced in complex consumer class action litigation, and intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

52. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Nutramax. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts and would also increase the delay and expense to all parties and the courts. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, ensures economies of scale and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

53. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, preventing Nutramax from further engaging in the acts described and requiring Nutramax to provide full restitution to Plaintiff and Class members.

54. Unless a Class is certified, Nutramax will retain monies received as a result of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Nutramax will continue to commit the violations alleged, and the members of the Class and the general public will continue to be deceived.

55. Nutramax has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

COUNT I
New York Gen Bus. Law § 349
(New York Class)

56. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

57. Plaintiff Matthew Boorman brings this Count on behalf of himself and the members of the Class against Nutramax.

58. By the acts and conduct alleged herein, Nutramax committed unfair or deceptive acts and practices by making the Misrepresentations.

59. The foregoing deceptive acts and practices were directed at consumers.

60. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and efficacy of the Cosamin Products to induce consumers to purchase same.

61. Plaintiff Matthew Boorman and members of the Class were injured because they paid for Cosamin Products, which they would not have done had they known the truth about the Cosamin Products.

62. On behalf of himself and other members of the Class, Plaintiff Matthew Boorman seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT II
(False Advertising, New York Gen Bus. Law § 350)
(New York Class)

63. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

64. Plaintiff Matthew Boorman brings this Count individually and on behalf of the members of the Class against Nutramax.

65. Based on the foregoing, Nutramax has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of Section 350 of the New York General Business Law.

66. Nutramax's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are directed to consumers.

67. Nutramax's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

68. Nutramax's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, have resulted in consumer injury or harm to the public interest.

69. As a result of Nutramax's false, misleading and deceptive statements and representations of fact, including but not limited to the Misrepresentations, Plaintiff has suffered and continues to suffer economic injury.

70. Plaintiff and the Class members suffered an ascertainable loss caused by Nutramax's misrepresentations because they paid for the Cosamin Products, which they would not have done had they known the truth about the Cosamin Products.

71. On behalf of himself and other members of the Class, Plaintiff Matthew Boorman seeks to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT III
(Breach of Express Warranty, N.Y. U.C.C. § 2-313)
(New York Class)

72. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

73. Plaintiff Matthew Boorman brings this Count individually and on behalf of the members of the Class against Nutramax.

74. Nutramax is and was at all relevant times a merchant under N.Y. U.C.C. § 2-313.

75. Nutramax, as the manufacturer, marketer, distributor, and/or seller expressly warranted that the Cosamin Products were fit for their intended purpose by making the Express Warranties.

76. In fact, the Cosamin Products are not fit for such purpose because each of the Express Warranties is false and misleading.

77. Plaintiff Matthew Boorman and the Class members were injured as a direct and proximate result of Nutramax's breach because they would not have purchased the Cosamin Products if they knew the truth about the product.

78. Nutramax was provided notice of these issues by the letter sent by FedEx to Nutramax on behalf of Plaintiff Matthew Boorman in advance of the filing of this Complaint.

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 Nutramax's revenues to Plaintiff and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including enjoining Nutramax from continuing the unlawful practices as set forth herein, and directing Nutramax to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- E. Ordering Nutramax to engage in a corrective advertising campaign;
- F. Awarding statutory and punitive damages, as appropriate;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

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

Dated: October 10, 2013

Respectfully submitted,



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