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CHRISTOPHER L. NELSON, on behalf of
themselves and all others similarly situated

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

THOMAS FLOWERS, an individual,
CHRISTOPHER L. NELSON, an
individual, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

DOCTOR'S BEST, INC., a corporation,
Defendant.

Case No. CV13-8174

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Trial Date: None set

AMENDED CLASS ACTION COMPLAINT

Plaintiffs' Thomas Flowers and Christopher L. Nelson (collectively,
"Plaintiffs"), by and through their attorneys, brings this class action on behalf of
themselves and similarly-situated others who purchased
Glucosamine/Chondroitin/MSM health supplements manufactured and marketed by

1 Doctor's Best, Inc. (collectively, "Doctor's Best" or "Defendant"), and state as
2 follows:

3 INTRODUCTION AND NATURE OF ACTION

4 1. Doctor's Best is a manufacturer and marketer of supplements for
5 humans and animals.

6 2. Doctor's Best sells its products nationally through various online and
7 brick-and-mortar retailers. In addition to the substantial amount of the Supplements
8 sold in California retail stores, online retailers ship significant quantities of its
9 products to California residents who purchased those products on various websites.

10 3. Doctor's Best markets, sells and distributes a line of joint health dietary
11 supplements under its brand name (collectively referred to as the "Supplements").¹
12 According to the labels on these products, the purported active ingredients are
13 glucosamine sulfate, chondroitin sulfate, and methylsulfonylmethane.

14 4. In its uniform, nationwide marketing of the Supplements, Doctor's Best
15 promises that its product will help protect cartilage, stimulate cartilage production,
16 improve joint comfort, and improve joint function. Doctor's Best has promoted its
17 products claiming that the Supplements are "science-based nutrition" that
18 "maintains healthy joints and connective tissue" and will both protect and help
19 stimulate the growth of cartilage in the body's joints.

20 5. While Doctor's Best's claims regarding the improved joint function
21 associated with the Supplements are directed at anyone seeking to alleviate joint
22 pain or stiffness, it is particularly directed at people suffering from osteoarthritis.
23 Indeed, the most common symptoms of osteoarthritis include joint pain and
24 stiffness—the very symptoms the Supplements claim to remedy.²

25 _____
26 ¹ The Supplements include (but are not necessarily limited to): 1) Glucosamine Chondroitin MSM
27 120C; 2) Glucosamine Chondroitin MSM 240C; and 3) Glucosamine Chondroitin MSM +
28 Hyaluronic Acid.

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

6. In its advertising and promotion of the Supplements, Doctor's Best makes numerous references to scientific studies that, it claims, demonstrate the efficacy of the Supplements. In fact, its website has a section entitled "Scientific References" that cite to the allegedly supportive science.

7. Defendant's appeal to science, however, is misleading at best and, at worst, a total fiction. Most damning to Doctor's Best'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, 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 Supplements, Doctor's Best's failure to disclose facts regarding this and other similar studies also constitutes deception by omission or concealment. As a result, Defendant's joint health benefit representations and omissions are false, misleading and reasonably likely to deceive the public.

9. The misleading representations and omissions by Doctor's Best 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. In short, Defendant's uniform labeling and marketing virtually ensure that the only reason a consumer would purchase the Supplements is to obtain the

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."

1 advertised joint health benefits—benefits that Doctor’s Best knows the Supplements
2 fail to provide.

3 10. As a result of Defendant’s deceptive joint health benefit
4 representations, consumers – including Plaintiffs and members of the proposed
5 Class – have purchased products that do not perform as advertised.

6 11. Plaintiffs bring this action on behalf of themselves and all other
7 similarly situated consumers to halt the dissemination of this false and misleading
8 advertising message, correct the false and misleading perception it has created in the
9 minds of consumers, and obtain redress for those who have purchased the
10 Supplements based on violations of California’s false advertising and unfair
11 competition laws and breach of express warranties. Plaintiffs seek injunctive and
12 monetary relief for all consumers who purchased the Supplements.

13 JURISDICTION AND VENUE

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

19 13. This Court has jurisdiction because Plaintiff Thomas Flowers is a
20 resident of California, and Plaintiff Christopher L. Nelson is a resident of
21 Pennsylvania, and Defendant does business in California.

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

25 PARTIES

26 15. Plaintiff Thomas Flowers resides in Goleta, California. Plaintiff
27 Flowers suffers from joint issues. Plaintiff Flowers’ ailments exist on a daily basis
28 and have progressively worsened over time. In an effort to remediate such pain and

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1 discomfort and to improve his joint health and rebuild cartilage, Plaintiff Flowers
2 purchased Doctor's Best brand Supplements on several occasions. In particular,
3 during the Class Period Plaintiff Flowers repeatedly purchased Doctor's Best brand
4 Supplements at stores located in California in reliance on Doctor's Best's claims
5 that the products would rebuild cartilage and provide joint health benefits. Plaintiff
6 Flowers purchased Doctor's Best brand Supplements to combat and prevent further
7 cartilage damage and joint pain. Plaintiff Flowers paid approximately \$20 per 120
8 tablet bottle and \$40 per 240 table bottle for his purchases. If Plaintiff Flowers was
9 aware that Doctor's Best had both misrepresented the benefits of the Supplements
10 he would not have purchased Doctor's Best brand Supplements. Plaintiff Flowers
11 used Doctor's Best brand Supplements as directed and did not receive any of the
12 promised benefits. As a result, Plaintiff Flowers suffered an injury in fact and lost
13 the money associated with his purchase.

14 16. Plaintiff Christopher L. Nelson resides in Landenberg, Pennsylvania.
15 Plaintiff Nelson suffers from joint issues. Plaintiff Nelson's ailments exist on a daily
16 basis and have progressively worsened over time. In an effort to remediate such pain
17 and discomfort and to improve his joint health and rebuild cartilage, Plaintiff Nelson
18 purchased Doctor's Best brand Supplements on several occasions. In particular,
19 during the Class Period Plaintiff Nelson repeatedly purchased Doctor's Best brand
20 Supplements at stores located in Pennsylvania in reliance on Doctor's Best's claims
21 that the products would rebuild cartilage and provide joint health benefits. Plaintiff
22 Nelson purchased Doctor's Best brand Supplements to combat and prevent further
23 cartilage damage and joint pain. Plaintiff Nelson paid approximately \$20 per 120
24 tablet bottle and \$40 per 240 table bottle for his purchases. If Plaintiff Nelson was
25 aware that Doctor's Best had both misrepresented the benefits of the Supplements
26 he would not have purchased Doctor's Best brand Supplements. Plaintiff Nelson
27 used Doctor's Best brand Supplements as directed and did not receive any of the
28

1 promised benefits. As a result, Plaintiff Nelson suffered an injury in fact and lost
2 the money associated with his purchase.

3 17. Defendant Doctor's Best is a Delaware corporation. At all relevant
4 times, Doctor's Best has advertised, marketed, provided, offered, distributed, and/or
5 sold the Supplements throughout the United States including to individuals in
6 California and Pennsylvania such as Plaintiffs and the Class.

7 **ALLEGATIONS**

8 **The False and Misleading Marketing Claims**

9 18. This lawsuit concerns the products marketed and sold by Doctor's Best
10 including, but not limited to: (1) Glucosamine Chondroitin MSM 120C; (2)
11 Glucosamine Chondroitin MSM 240C, and; (3) Glucosamine Chondroitin MSM +
12 Hyaluronic Acid (all listed and unlisted products referred to herein, collectively, as
13 the "Supplements").⁴ These products frequently come in a variety of dosages and
14 sizes, so the total number of relevant products sold by Doctor's Best may exceed
15 those listed above.

16 19. Marketed as joint health dietary supplements, the Supplements
17 purportedly relieve joint pain through the combination of their ingredients.

18 20. According to Defendant's website, the Supplements works as follows:

19 Glucosamine is a fundamental building block for
20 proteoglycans and glycosaminoglycans. Glucosamine
21 sulfate (GS) helps to maintain joint health through its
22 ability to both act as a component of and stimulate
formation of cartilage glycosaminoglycans and the
hyaluronic acid backbone essential for the formation of
cartilage proteoglycans.

23 See http://www.drbitamins.com/products/Glucosamine_Chondroitin
24 [MSM_240C.html](http://www.drbitamins.com/products/Glucosamine_Chondroitin_MSM_240C.html) (last accessed October 13, 2013)

25 21. As their product packaging demonstrates, Doctor's Best lures
26 consumers with promises that Defendant's "Science-Based Nutrition" will assist in
27

28 ⁴ Plaintiffs reserve the right to include other products upon completion of discovery.

1 “Maintin[ing] Healthy Joints & Connective Tissue.”

2 22. In short, Doctor’s Best engages in a pervasive and widespread
3 marketing campaign to drive sales of its product, luring consumers into purchasing
4 the Supplements by making not only claims as to product efficacy but scientific
5 substantiation as well.

6 **Doctor’s Best Claims Scientific Support For The Supplements**

7 23. In a document on its official website entitled “Benefits,” Doctor’s Best
8 cites to several studies which purportedly demonstrate the “abundant evidence
9 behind Glucosamine and Chondroitin Sulfate.”

10 24. Specifically, Doctor’s Best claims that the scientific community has
11 concluded that the efficacy of glucosamine and chondroitin sulfate is beyond
12 question:

13 Extensive joint health research over the past few decades
14 has investigated the effects of glucosamine sulfate,
15 chondroitin sulfate, or a combination of the two. A 2009
16 meta-analysis summarized results from 6 well-designed
17 studies involving a total of 1,502 research participants.
18 The authors of this meta-analysis were able to make some
19 conclusions about the apparent effectiveness of long-term
20 oral supplementation with CS or GS. Glucosamine sulfate
21 at 1,500 mg daily over a period of at least 3 years and
22 chondroitin sulfate at 800 mg daily over a period of at
23 least 2 years both helped subjects maintain healthy knee
24 cartilage structure.³ In a 2008 review of GS & CS used for
25 joint support, the London physician who wrote it
26 concludes that, “Glucosamine, chondroitin, and the
27 combination of these two agents have stood the test of
28 time.

29 25. In truth, however, scientific support for the efficacy of the Supplements
30 is utterly lacking. Study after study has shown that the “active” ingredients in the
31 Supplements are ineffective at treating the symptoms of osteoarthritis, whether
32 taken alone or in combination with the other ingredients in the Supplements.⁵

33 _____
34
35 ⁵ While most of the clinical studies finding a lack of efficacy were conducted on arthritic patients,
36 others were not. Nonetheless, experts in the field deem the arthritis clinical studies as proxies for
37 efficacy for all patients.

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Multiple Clinical Studies Demonstrate That the Supplements Are Ineffective

26. Doctor's Best's representations about the efficacy of the ingredients in the Supplements 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.

27. 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).

28. 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.*

29. 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 cartilage⁶ and were otherwise ineffective – even in patients with moderate to severe

⁶ To a similar effect, a study by Kwok, et al., entitled *The Joints On Glucosamine (JOG)*

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1 knee pain for which the 2006 GAIT study reported results were inconclusive. See
2 Sawitzke, A.D., et al., the Effect of Glucosamine and/or Chondroitin Sulfate on the
3 Progression of Knee Osteoarthritis: A GAIT Report, 58(10) *J. Arthritis Rheum.*
4 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of
5 Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo
6 Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) *Ann*
7 *Rhem. Dis.* 1459-64 (Aug. 2010).

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

11 31. In 2008, a study concluded that glucosamine was no better than a
12 placebo in reducing either the symptoms or progression of hip osteoarthritis.
13 Rozendaal et al., Effect of Glucosamine Sulfate on Hip Osteoarthritis, 148 *Ann. of*
14 *Intern. Med.* 268-77 (2008).

15 32. A 2010 meta-analysis examined prior studies involving glucosamine
16 and chondroitin, alone or in combination, and reported that the collection of studies
17 supported a conclusion that those compounds neither reduced joint pain nor had an
18 impact on the narrowing of joint space. Wandel et al., Effects of Glucosamine,
19 Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network
20 Meta-Analysis, *BMJ* 341:c4675 (2010).

21 33. Another 2010 study concluded that there was no difference between
22 placebo and glucosamine for the treatment of low back pain and lumbar
23 osteoarthritis and that there was no data recommending the use of glucosamine.
24 Wilkens et al., Effect of Glucosamine on Pain-Related Disability in Patients With
25 Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1) *JAMA* 45-

26
27 *Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural*
28 *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.

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52 (July 7, 2010).

34. 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.

35. 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).

36. Scientific studies have also shown that the other ingredients in the Supplements 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).

37. Doctor’s Best’s claims that the Supplements Products “stimulate” cartilage are also totally belied by the available scientific evidence:

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38. 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).

39. 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).

Doctor's Best Harms Consumers By Continuing To Market

And Sell the Supplements

40. Undeterred by the weight of scientific evidence demonstrating that the ingredients in the Supplements are wholly ineffective, Doctor's Best conveyed and continues to convey one uniform message: the Supplements have a "science-based" claim to maintain joints and promote growth of cartilage.

41. As the manufacturer and/or distributor of the Supplements, Doctor's Best 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 Supplements.

42. Specifically, Doctor's Best knew, but failed to disclose, that the Supplements do not provide the joint health benefits represented and that well-conducted, clinical studies have found the ingredients in the Supplements to be ineffective in providing the joint health benefits represented by Doctor's Best.

43. Plaintiffs and Class members have been and will continue to be deceived or misled by Defendant's deceptive joint health benefit representations.

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1 Plaintiffs purchased and consumed one of the Supplements during the Class period
2 and in doing so, read and considered the advertising and marketing by Doctor's Best
3 and based his decision to purchase the Products on the joint health benefit
4 representations on the packaging and on Defendant's website. Doctor's Best's joint
5 health benefit representations and omissions were a material factor in influencing
6 Plaintiffs' decision to purchase and consume the product he purchased.

7 44. Other than obtaining the benefits that the Supplements promise but do
8 not deliver, there is no other reason for Plaintiffs and the Class to have purchased
9 the Products as the Products are not represented to provide any other benefits and
10 Plaintiffs and the Class would not have purchased the Products had they known
11 Doctor's Best's joint health benefit statements were false and misleading and that
12 clinical cause and effect studies have found the ingredients to be ineffective for the
13 represented joint health benefits.

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

17 46. Doctor's Best, by contrast, reaped enormous profit from its false
18 marketing and sale of the Supplements.

19 **CLASS DEFINITION AND ALLEGATIONS**

20 47. Plaintiffs bring this action on behalf of themselves and all other
21 similarly situated persons pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
22 Rules of Civil Procedure and seeks certification of the following Class:

23 All consumers who, within the applicable statute of
24 limitations period, purchased the Supplements.

25 Excluded from the Class are Doctor's Best, its parents,
26 subsidiaries, affiliates, officers and directors, and those
27 who purchased the Supplements for resale.

28 48. The members of the Class are so numerous that joinder of all members
of the Class is impracticable. Plaintiffs are informed and believe that the proposed

1 Class contains thousands of purchasers of the Supplements who have been damaged
 2 by Doctor's Best's conduct as alleged herein. The precise number of Class members
 3 is unknown to Plaintiffs.

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

- 7 (1) whether the claims discussed above are true, or are misleading,
 8 or objectively reasonably likely to deceive;
- 9 (2) whether Doctor's Best's alleged conduct violates public policy;
- 10 (3) whether the alleged conduct constitutes violations of the laws
 11 asserted;
- 12 (4) whether Doctor's Best engaged in false or misleading
 13 advertising;
- 14 (5) whether Plaintiffs and Class members have sustained monetary
 15 loss and the proper measure of that loss; and
- 16 (6) whether Plaintiffs and Class members are entitled to other
 17 appropriate remedies, including corrective advertising and
 18 injunctive relief.

19 50. Plaintiffs' claims are typical of the claims of the members of the Class
 20 because, inter alia, all Class members were injured through the uniform misconduct
 21 described above having been exposed to Doctor's Best's false representations
 22 regarding the efficacy of the Supplements. Plaintiffs are advancing the same claims
 23 and legal theories on behalf of himself and all members of the Class.

24 51. Plaintiffs will fairly and adequately protect the interests of the members
 25 of the Class, have retained counsel experienced in complex consumer class action
 26 litigation, and intend to prosecute this action vigorously. Plaintiffs have no adverse
 27 or antagonistic interests to those of the Class.

28 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

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1 Doctor's Best. It would thus be virtually impossible for the Class, on an individual
2 basis, to obtain effective redress for the wrongs done to them. Individualized
3 litigation would create the danger of inconsistent or contradictory judgments arising
4 from the same set of facts and would also increase the delay and expense to all
5 parties and the courts. By contrast, the class action device provides the benefits of
6 adjudication of these issues in a single proceeding, ensures economies of scale and
7 comprehensive supervision by a single court, and presents no unusual management
8 difficulties under the circumstances here.

9 53. Plaintiffs seek preliminary and permanent injunctive and equitable
10 relief on behalf of the entire Class, preventing Doctor's Best from further engaging
11 in the acts described and requiring Doctor's Best to provide full restitution to
12 Plaintiffs and Class members.

13 54. Unless a Class is certified, Doctor's Best will retain monies received as
14 a result of its conduct that were taken from Plaintiffs and Class members. Unless a
15 Class-wide injunction is issued, Doctor's Best will continue to commit the violations
16 alleged, and the members of the Class and the general public will continue to be
17 deceived.

18 55. Doctor's Best has acted and refused to act on grounds generally
19 applicable to the Class, making appropriate final injunctive relief with respect to the
20 Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **(California False Advertising Law –**

23 **Cal. Bus. & Prof. Code § 17500, et seq.)**

24 56. Plaintiffs incorporate by reference and reassert all previous paragraphs.

25 57. Defendant engaged in unlawful conduct under California Business &
26 Professions Code § 17500, et seq., by marketing the Supplements in a manner
27 suggesting that there was a scientific basis upon which its claims regarding efficacy
28 were based when, in fact, there was no scientific basis for any of Defendant's

1 claims. Plaintiffs and the Class reasonably relied upon Defendant's representations
 2 and/or omissions made in violation of California Business & Professions Code §
 3 17500, et seq.

4 58. As a direct and proximate result of Defendant's violations, Plaintiffs
 5 and the Class would not have otherwise purchased the Supplements and, therefore,
 6 suffered injury in fact and lost money.

7 59. Plaintiffs' are informed and believes, and on that basis alleges, that as a
 8 further direct and proximate result of the marketing described above, Defendant has
 9 received from members of the general public, including the Class, money Defendant
 10 obtained through its violation of California Business & Professions Code § 17500,
 11 et seq., which Defendant continues to hold for its sole benefit.

12 60. Accordingly, Plaintiffs, on behalf of themselves and all others similarly
 13 situated, seek equitable relief in the form of an order requiring Defendant to refund
 14 to Plaintiffs and the Class members all monies they paid for the Supplements and, in
 15 addition, an order requiring Defendant to both inform the consuming public that
 16 there is no scientific basis for its claims regarding the efficacy of the Supplements.

17 **SECOND CAUSE OF ACTION**

18 **(California Unfair Competition Law –** 19 **Cal. Bus. & Prof. Code § 17200, et seq.)**

20 61. Plaintiffs incorporate by reference and reassert all previous paragraphs.

21 62. Defendant engaged in unlawful conduct under California Business &
 22 Professions Code § 17200, et seq., by marketing the Supplements in a manner
 23 suggesting that there was a scientific basis upon which its claims regarding efficacy
 24 were based when, in fact, there was no scientific basis for any of Defendant's claims

25 63. Defendant's conduct is unlawful in that it violates the False Advertising
 26 Law, California Business & Professions Code § 17500, et seq.

27 64. Defendant's conduct is unfair in that it offends established public
 28 policy or is immoral, unethical, oppressive, unscrupulous, unconscionable or

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1 substantially injurious to Plaintiffs and the Class members. The harm to Plaintiffs
 2 and the Class members arising from Defendant's conduct outweighs any legitimate
 3 benefit Defendant has derived from the conduct.

4 65. Defendant's misrepresentations and omissions are likely to mislead a
 5 reasonable consumer.

6 66. Plaintiffs relied on Defendant's misrepresentations and omissions.

7 67. As a direct and proximate result of Defendant's violations, Plaintiffs
 8 would not have otherwise purchased the Supplements and, therefore, suffered injury
 9 in fact and lost money.

10 68. Plaintiffs, on behalf of themselves and the Class members, seek
 11 restitution of monies they paid for the Supplements. Additionally, Plaintiffs seek
 12 equitable and injunctive relief on behalf of themselves and the Class members
 13 pursuant to Cal. Business & Professions Code § 17203.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of California Consumer Legal Remedies Act, California Civil Code §** 16 **1750, et seq.)**

17 69. Plaintiffs incorporate by reference and reassert all previous paragraphs.

18 70. Plaintiffs bring this cause of action on behalf of themselves and on
 19 behalf of all members of the Class.

20 71. Defendant is a "person" as defined by California Civil Code § 1761(c).

21 72. Plaintiffs and members of the Class are "consumers" within the
 22 meaning of California Civil Code § 1761(d).

23 73. Plaintiffs have complied with the notice provisions of the California
 24 Legal Remedies Action ("CLRA") and are therefore entitled to seek damages.
 25 Defendant failed to provide appropriate relief for its violations of the CLRA.
 26 Therefore, Plaintiffs now seek monetary, compensatory and punitive damages, in
 27 addition to the injunctive and equitable relief they previously sought.

28 74. Defendant's conduct with respect to the promotion and marketing of its

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1 glucosamine and chondroitin product and affirmatively misrepresenting the joint
2 health benefits of the supplements, Doctor's Best's failure to disclose facts
3 regarding this and other similar studies also constitutes deception by omission or
4 concealment. As a result, Doctor's Best's joint health benefit representations and
5 omissions are false, misleading and reasonably likely to deceive the public in
6 violation of California Civil Code §§ 1770(a)(5) and 1770(a)(7).

7 75. Defendant's unfair and deceptive acts occurred repeatedly and were
8 capable of deceiving a substantial portion of the purchasing public.

9 76. Defendant's misrepresentations and omissions are material and likely
10 to mislead a reasonable consumer.

11 77. Plaintiffs relied on Defendant's misrepresentations and omissions.

12 78. As a direct and proximate result of Defendant's unfair or deceptive acts
13 or practices, Plaintiffs and members of the Class have suffered and will continue to
14 suffer actual damages.

15 79. Plaintiffs and members of the Class are entitled to equitable relief.
16 Plaintiffs seek an order requiring Defendant to (a) pay damages according to proof
17 (b) immediately cease to conduct the alleged herein; (c) make full restitution of all
18 monies wrongfully obtained; and (d) disgorge all ill-gotten venues and/or profits.

19 20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiffs pray for a judgment:

- 22 1. Certifying the Class as requested herein;
- 23 2. Awarding Plaintiffs and the proposed Class members damages;
- 24 3. Awarding restitution and disgorgement of Doctor's Best's revenues to
25 Plaintiffs and the proposed Class members;
- 26 4. Awarding injunctive relief as permitted by law or equity, including
27 enjoining;
- 28 a. Doctor's Best from continuing the unlawful practices as set forth

herein, and directing Doctor's Best to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;

b. Ordering Doctor's Best to engage in a corrective advertising campaign;

5. Awarding statutory and punitive damages, as appropriate;

6. Awarding attorneys' fees and costs; and

7. Providing such further relief as may be just and proper.

DATED: February 12, 2013.

Respectfully submitted,

By: 

Jonathan D. Miller

Jennifer M. Miller

**NYE, PEABODY, STIRLING, HALE, &
MILLER, LLP**

By: ____/s/____

Benjamin J. Sweet (*Pro Hac Pending*)

Edwin J. Kilpela, Jr (*Pro Hac Pending*)

**DEL SOLE CAVANAUGH STROYD
LLC**

Proposed Lead Counsel

Attorneys for Plaintiffs THOMAS

FLOWERS and CHRISTOPHER L.

NELSON, on behalf of themselves and all others similarly situated.

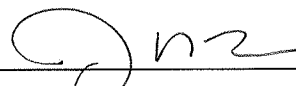
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

DATED: February 12, 2013.

Respectfully submitted,

By: 

Jonathan D. Miller
Jennifer M. Miller
**NYE, PEABODY, STIRLING, HALE, &
MILLER, LLP**

By: _____/s/_____

Benjamin J. Sweet (*Pro Hac Pending*)
Edwin J. Kilpela, Jr (*Pro Hac Pending*)
**DEL SOLE CAVANAUGH STROYD
LLC**

Proposed Lead Counsel

Attorneys for Plaintiffs THOMAS FLOWERS
and CHRISTOPHER L. NELSON, on behalf
of themselves and all others similarly
situated.

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Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. CV13-8174

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: