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

WOODSON WOOD, JR., on behalf of  
himself, all others similarly situated and  
the general public,

Plaintiff,

vs.

NATURE’S WAY PRODUCTS, INC.,  
a Utah corporation; NATURE’S WAY  
PRODUCTS, LLC, a Wisconsin limited  
liability company; SCHWABE NORTH  
AMERICA, INC., a Wisconsin  
corporation, and NATURE’S WAY  
HOLDING COMPANY, LLC, a Utah  
limited liability company,

Defendants.

Case No. 2:13-cv-06591-TJH(OPx)

CLASS ACTION

**SECOND AMENDED COMPLAINT  
FOR:**

**1. VIOLATION OF CALIFORNIA  
CONSUMERS LEGAL REMEDIES  
ACT [CIV. CODE §§ 1750, et seq.]**

**2. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW  
[BUS. & PROF. CODE §§ 17200, et  
seq.]**

**3. VIOLATION OF CALIFORNIA  
FALSE ADVERTISING LAW [BUS  
& PROF. CODE §§ 17500, et seq]**

**4. BREACH OF EXPRESS  
WARRANTY**

**5. BREACH OF IMPLIED  
WARARANTY OF  
MERCHANTABILITY**

DEMAND FOR JURY TRIAL

1 Plaintiff Woodson Wood, Jr., on behalf of himself, all others similarly situated,  
2 and the general public (“Plaintiff”), alleges against homeopathic drug manufacturers,  
3 Defendants Schwabe North America, Inc., f/k/a Nature’s Way Holding Company and  
4 Nature’s Way Products, LLC, f/k/a Nature’s Way Products, Inc. (collectively,  
5 Defendants), the following upon his own knowledge, or where there is no personal  
6 knowledge, upon information and belief and the investigation of counsel:

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction pursuant to 28 U.S.C. §  
9 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005, because the  
10 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
11 \$5,000,000.00 and is a class action where Plaintiff, members of the class, are from a  
12 different state than Defendants. Further, all other members of the class are citizens of  
13 a state different from the Defendants.

14 2. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §  
15 1332(a)(1) because Plaintiff and the putative class are citizens of the State of  
16 California, Defendants are residents of the States of Utah and Wisconsin, and the  
17 amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and  
18 costs.

19 3. Personal jurisdiction is derived from the fact that Defendants conduct  
20 business within the State of California and within this judicial district.

21 4. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2)  
22 because many of the acts and transactions, occurred in this district and because  
23 Defendants:

- 24 (i) are authorized to conduct business in this district and have  
25 intentionally availed themselves of the laws and markets within  
26 this district through the promotion, marketing, distribution and sale  
27 of their products in this district;  
28 (ii) do substantial business in this district;

- 1 (iii) advertise to consumers residing in this district; and,
- 2 (iv) are subject to personal jurisdiction in this district.

3 **THE PARTIES**

4 5. At all times relevant to this matter, Plaintiff Wood was a resident of  
5 Sacramento, California.

6 6. On information and belief, at all times relevant to this matter, Defendant  
7 Nature’s Way Products, LLC, f/k/a Nature’s Way Products, Inc., was a Wisconsin  
8 limited liability company that maintains its principal place of business, corporate  
9 headquarters, and residence in Green Bay, Wisconsin. On December 31, 2011,  
10 Nature’s Way Products, Inc., a Utah corporation, was converted into Nature’s Way  
11 Products, LLC. Nature’s Way Products, LLC assumed all assets and liabilities of  
12 Nature’s Way Products, Inc. upon said conversion. (The Nature’s Way entities are  
13 hereafter collectively referred to as “Nature’s Way.”)

14 7. On information and belief, at all times relevant to this matter, Nature’s  
15 Way was the wholly owned subsidiary of Defendant Schwabe, North America, Inc.  
16 (“Schwabe”).

17 8. On information and belief, at all times relevant to this matter, Defendant  
18 Schwabe, f/k/a Nature’s Way Holding Company, were Utah corporations with their  
19 principal place of business in Green Bay, Wisconsin. In September 2009, Nature’s  
20 Way Holding Company changed its name to Schwabe North America, Inc.

21 9. Members of the putative class are citizens of California.

22 10. Defendants are the manufacturers and sellers of products under the  
23 (“B&T”) name brand.

24 11. Defendants produce, market, and sell the B&T brand products throughout  
25 the United States, including California. Until 2004, B&T’s headquarters were in  
26 Santa Rosa, California.

27 12. Plaintiff is informed and believes and thereon alleges that at all times  
28 herein mentioned the Defendants and Defendants’ employees were the agents,

1 servants and employees of the Defendants, acting within the purpose and scope of that  
2 agency and employment.

3 13. Defendants advertise, market, distribute and sell homeopathic products  
4 throughout California and the United States. This complaint concerns Defendants'  
5 sales of B&T homeopathic products known as: **Cough & Bronchial Syrup Daytime,**  
6 **Cough & Bronchial Syrup Nighttime, Children's Cough & Bronchial Syrup,**  
7 **Cough & Bronchial Syrup Zinc Formula, and Cough & Bronchial Syrup 99%**  
8 **Alcohol Free** (collectively "**Products**" or "**B&T Cough & Bronchial**"). *See* Ex. 2.

9 14. During the class period, Defendants regularly and continually targeted  
10 California consumers for sales of its Products, and derived substantial sales revenue  
11 from doing business within the forum and throughout this state. For example, the  
12 Products are available for sale to California consumers through their significant on-  
13 the-shelf presence in numerous stores in this forum and throughout this state.

14 15. Defendants' website is also aimed at a California audience, and offers  
15 consumers who input their zip code direct links to stores within this State that sell the  
16 Products, with the goal of exploiting California's substantial customer base for  
17 purposes of financial gain. *See* [www.naturesway.com/Products/Our-Brands/Boericke-](http://www.naturesway.com/Products/Our-Brands/Boericke-Tafel.aspx)  
18 [Tafel.aspx](http://www.naturesway.com/Products/Our-Brands/Boericke-Tafel.aspx) (last visited July 16, 2013).

19 16. Defendants' packaging and labeling of the B&T Products are uniform  
20 throughout the United States.

21 17. Based on all facts available to Plaintiff at this time, personal jurisdiction  
22 is present over Defendants in this forum. *See* *Snowey v. Harrah's Entm't*, 35 Cal. 4th  
23 1054, 1065-66 (2005) (defendants' purposeful and successful solicitation of business  
24 within California, including their extensive promotional efforts to advertise Nevada  
25 hotels in California through billboards, newspapers, mailings and radio and television  
26 stations located in California, coupled with defendants' web site that specifically  
27 targeted California residents, was sufficient to establish purposeful availment); *see*  
28 *also* *Coremetrics, Inc. v. Atomic Park.com, LLC*, 370 F. Supp. 2d 1013, 1017 (N.D.

1 Cal. 2005) (economic reality of defendant’s conduct within forum state should be  
2 focus of analysis for general jurisdiction, which includes consideration of factors such  
3 as defendant’s solicitation of business aimed at forum state, the percentage of revenue  
4 the nonresident defendant derived from sales within the forum, the number of sales  
5 made by the non-resident defendant in the forum, and whether the solicitation is  
6 regularly conducted and specifically targeted the forum market).

7 **BACKGROUND FACTS**

8 18. Homeopathy seeks to stimulate the body’s ability to heal itself by giving  
9 very small doses of highly diluted substances. However, there is “little evidence” that  
10 homeopathy is effective, much less that people understand homeopathic dilution  
11 principles. *See* [nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf](http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf).

12 19. Homeopathy is premised on two main principles; the principle of similars  
13 and the principle of dilutions. Under the “principle of similars” a disease can be cured  
14 by a substance that produces similar symptoms in healthy people. *Id.* Thus,  
15 homeopathic drugs are intended to work by causing “aggravation,” or a temporary  
16 worsening of symptoms initially, a fact that is not communicated to consumers. *See*  
17 *id.*

18 20. Under the “principle of dilutions” the more diluted an ingredient is, the  
19 more effective it becomes. *Id.* This is paradoxical, however, and contrary to scientific  
20 principles, notably chemistry and physics. *Id.*

21 21. Further, in highly diluted remedies, there is a very low probability that  
22 even a single molecule of the original substance is present in the product. For  
23 example, the potency of the “active ingredients” in the Products, or dilution levels, are  
24 marked by “X”. The dilution ratio of 1X is one part of the original mother tincture to  
25 one million parts of the diluting material or 1 to 1,000. Accordingly, 6X is three parts  
26 to 1,000,000. “C” potencies are even more diluted than “X” potencies.

27 22. Homeopathic remedies are not marketed and sold in the United States in  
28 the same manner as when they first originated, approximately 200 years ago. When

1 homeopathic drugs first originated, people would typically consult with a licensed  
2 homeopathic practitioner, who would compound his or her own homeopathic remedy,  
3 or provide a prescription to the patient. Food and Drug Administration (“FDA”)  
4 Compliance Policy Guide (“CPG”) § 400.400.

5 23. Also, historically, homeopathic drugs were not labeled and there was no  
6 direct-to-consumer advertising. *Id.* Instead, homeopathic remedies were primarily  
7 marketed to licensed homeopathic practitioners. *Id.*

8 24. There was good reason for this historical practice: Homeopathic drugs  
9 are intended to be “‘individualized’ or tailored to each person—it is not uncommon  
10 for different people with the same condition to receive different treatments.”  
11 [nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf](http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf).

12 25. Now, however, a one-size-fits-all combination homeopathic remedies are  
13 marketed directly to consumers in the over-the-counter (“OTC”) aisles of major retail  
14 stores. CPG § 400.400.

15 26. “Today the homeopathic drug market has grown to become a  
16 multimillion dollar industry in the United States, with a significant increase shown in  
17 the importation and domestic marketing of homeopathic drug products.” *Id.*

18 27. Health care costs in the United States reached almost \$2.6 trillion in  
19 2010, with 10% of that amount spent on retail and prescription drugs.  
20 [www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx](http://www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx). But  
21 unless drug manufacturers disclose the complete truth to consumers, consumers are  
22 unable to make informed decisions about where to spend their limited healthcare  
23 dollars. *See id.*

24 28. Most consumers who purchase homeopathic drugs in the OTC aisles of  
25 retail stores are unaware of homeopathic dilution principles, and are merely seeking a  
26 natural alternative to prescription or other OTC non-homeopathic (i.e., allopathic)  
27 drugs.

28

1           29. Accordingly, the homeopathic drug industry, including Defendants,  
2 strives to market its wares as natural, safe, and effective alternatives to prescription  
3 and non-homeopathic OTC drugs. But this latter category of drugs, which are all  
4 allopathic, have undergone rigorous scrutiny by the FDA and its appointed scientific  
5 committees.

6           30. In contrast, homeopathic drugs, including the Products, undergo no FDA  
7 approval of efficacy or labeling claims, a material fact that is not communicated to the  
8 Products' purchasers. *See* labels.fda.gov/.

9           31. Indeed, the FDA, itself, has publicly stated it is aware of no scientific  
10 evidence that homeopathy is effective, another material fact that is not disclosed to  
11 purchasers of Defendants' Products. *See id*

12           32. Defendants have sought to capitalize on consumer confusion of the true  
13 nature of homeopathic drugs, by not mentioning how hyper-diluted their drugs are,  
14 and attempting to portray the products as science backed products similar to the OTC  
15 allopathic drugs next to which they are now marketed in chain retail stores. *See* Ex. 1  
16 (March 4, 2002 Chain Drug Review article, *Key to Driving Sales: Location, Location,*  
17 *Location*, quoting B&T executive, marketing director Susan Backer, stating "We find  
18 the most effective way to reach people is not by getting into the cumbersome ins and  
19 outs of how homeopathy functions, but by conveying the message that it truly works -  
20 - that they are getting effective medications backed by science.").

21           33. Defendants' changed marketing strategy of downplaying the true nature  
22 of homeopathy is in direct contrast to how B&T formerly marketed its drugs – by  
23 using an insert with each drug package that explained the principles of dilution and  
24 Law of Similars observed by homeopathy and homeopathic drugs. *See id.* (June 7,  
25 1999 Chain Drug Review article, *Boericke & Tafel Goes Mass*, quoting President and  
26 CEO, Phil Maez, stating that first line of B&T products for the mass drug market  
27 would "come with a brochure explaining homeopathy and how it can work in  
28 conjunction with allopathic (traditional) medications"). Defendants abandoned use of

1 this informational brochure once they determined it was negatively impacting sales  
2 and heightened consumer awareness of the difference between homeopathic drugs and  
3 allopathic drugs, something Defendants admittedly no longer wanted. *See id.* (March  
4 4, 2002 Chain Drug Review Article).

5 34. Homeopathic drugs must comply with minimal labeling requirements set  
6 forth in the CPG. But, the FDA has cautioned that compliance with the CPG, “the  
7 HPUS, USP, or NF does not establish that [a homeopathic drug] has been shown by  
8 appropriate means to be safe, effective, and not misbranded for its intended use.” CPG  
9 § 400.400.

10 35. On August 26, 2011, the non-profit group, Center for Public Inquiry,  
11 petitioned the FDA to require homeopathic drug manufacturers to undergo the same  
12 efficacy requirements as other OTC products, and to label their drugs with a  
13 disclaimer that states: “The FDA has not determined that this product is safe,  
14 effective, and not misbranded for its intended use.” *See Gallucci v. Boiron, Inc.*, Case  
15 No. 3:11-CV-2039 JAH (S.D. Cal.), Dkt. No. 93-1 at p. 18.

16 36. As a result of other class action litigation, such as the *Gallucci* case,  
17 *supra*, other homeopathic drug manufacturers have voluntarily agreed to implement a  
18 FDA disclaimer similar to the one noted above, along with additional injunctive relief,  
19 such as a dilution disclaimer and explanation of homeopathic dilution for consumers.  
20 *See, e.g., Gallucci*, Dkt. No. 105 at pp. 13-15; Dkt. No. 125 at pp. 9-10. Thus, even  
21 those in the industry recognize a need to more truthfully label homeopathic drugs for  
22 the average consumer. *See id.*

23 **FACTS**

24 37. This is a consumer protection class action lawsuit on behalf of purchasers  
25 of Defendants’ “homeopathic” B&T products, which include products within  
26 Defendants’ B&T Cough & Bronchial product line.

27 38. Defendants’ B&T Cough & Bronchial line comes in five (5) variants:  
28 Cough & Bronchial Syrup Daytime, Cough & Bronchial Syrup Nighttime, Children’s



1 Cough & Bronchial Syrup, Cough & Bronchial Syrup Zinc Formula, and Cough &  
2 Bronchial Syrup 99% Alcohol Free.

3 39. Defendants manufacture, advertise, distribute and sell their Products in  
4 over-the-counter (“OTC”) aisles in major retail stores throughout California and the  
5 United States.

6 40. Defendants primarily advertise and promote their Products through  
7 uniform labeling claims on the front of the Products’ package. Label descriptions on  
8 the Products’ packaging, taken as a whole, represent there are various benefits and  
9 characteristics to the Products. *See* Ex. 2 (Products’ labels).

10 41. Defendants’ Products are also the subject of an extensive and  
11 comprehensive advertising and marketing campaign in various media including the  
12 Internet. *See* [www.naturesway.com/Products/Our-Brands/Boericke-Tafel.aspx](http://www.naturesway.com/Products/Our-Brands/Boericke-Tafel.aspx) (last  
13 visited June 12, 2013).

14 42. All Products share several purported “active ingredients” (Antimonium  
15 sulphuratum and Bryonia alba); claim to be “natural” and “homeopathic;” use the  
16 same “X” homeopathic dilution designation that is not understandable to the average  
17 consumer; are sold in the OTC aisles with other non-homeopathic OTC products that  
18 are subject to other regulations; use efficacy statements that are entirely within the  
19 Defendants’ discretion; and bear the same or substantially similar advertising claims.  
20 *See* Exs. 2-4.

21 43. During the class period, Plaintiff and putative Class members were  
22 exposed to and saw Defendants’ claims about B&T Cough & Bronchial, which  
23 claimed, *inter alia*, that the Products were a natural remedy for colds and/or colds and  
24 flus.

25 **B&T Cough & Bronchial Daytime Syrup**

1  
2  
3 44. In or around January or February 2012, Plaintiff Wood purchased  
4 Defendants' Cough & Bronchial Daytime Syrup at the Vitamin Shoppe in  
5 Sacramento, California for approximately \$13.49. Plaintiff is a consumer as described  
6 herein.

7 45. In purchasing Defendants' Cough & Bronchial Daytime Syrup, Plaintiff  
8 relied upon various representations Defendants made on the Product's label:  
9 "Natural," "Maximum Strength," "Fast Relief," "Fast, Natural Relief," and "Safe &  
10 Effective." See Ex. 2 (Product Labels). The Product was not as represented, however.

11 46. The purportedly "active ingredients" in Cough & Bronchial Daytime  
12 Syrup include: *Aconitum napellus*, *Bryonia alba*, *Hepar sulphuris calcareum*,  
13 *Spongia tosta* and *Stannum metallicum*.

14 47. The "active ingredients", however, even if they were otherwise effective,  
15 are so greatly diluted as to be effectively non-existent in Cough & Bronchial Daytime  
16 Syrup.

17 48. Defendants know, or reasonably should know, there are no or just trace  
18 amounts of "active ingredients" present in Cough & Bronchial Daytime Syrup and  
19 that consumers are unaware of this high level of dilution. Defendants further know  
20 that Plaintiff and similarly situated reasonable consumers are unaware of the true  
21 nature of homeopathic drugs.

22 49. Further, the "active ingredients" used in Cough & Bronchial Daytime  
23 Syrup provide no health benefits. At the stupendously high dilutions used to prepare  
24 the product, the odds are astronomically high that even a single molecule derived from  
25 the original "extract" of the "active ingredients" could be present in the Product sold  
26 to consumers.

27 50. Cough & Bronchial Daytime Syrup is nothing more than a placebo, with  
28 trace amounts of the claimed "active ingredients", and consumers are not made aware

1 of this fact. It is sold in 8 oz. bottles and is priced at approximately \$10.00-\$15.00 per  
2 unit, well beyond the cost of an actual placebo. Thus, Defendants' unfair and  
3 deceptive practices have enriched them by hundreds of thousands of dollars, at the  
4 expense of Plaintiff and unsuspecting consumers.

5 51. Defendants' Product also contains synthetic ingredients, and therefore  
6 does not provide "Natural" relief. For example, Sodium Benzoate is a synthetic  
7 chemical preservative, and man-made chemical. As an inactive ingredient of Cough &  
8 Bronchial Daytime Syrup, its presence means this Product is not "Natural." As such,  
9 because the packaging and labeling of Cough & Bronchial Daytime Syrup represents  
10 it is "Natural," in bold type splashed in white eye-catching lettering across the top of  
11 the Product package, it is falsely and/or deceptively advertised to consumers.

12 52. Cough & Bronchial Daytime Syrup also contains contain *Hepar*  
13 *sulphuris calcareum* and *Stannum metallicum* as ingredients, which were not  
14 recognized by the official HPUS until 2010, more than one year into the Class Period.  
15 By containing even one non-HPUS ingredient, the Products are not official  
16 homeopathic drugs, CPG § 400.400, but are unapproved new drugs and are  
17 accordingly misbranded under the California Sherman Law. See CPG §400.400  
18 ("Drug products containing homeopathic ingredients in combination with non-  
19 homeopathic active ingredients are not homeopathic drug products"); Cal. Health &  
20 Safety Code §§ 110100, 110105, 110110, 110111. Thus, Defendants advertising that  
21 Cough is "homeopathic" during this timeframe is false, deceptive and unlawful.

22 53. Defendants' claims are also misleading because the side panel of Cough  
23 & Bronchial Daytime Syrup states "Clinically Proven" but an average consumer  
24 would not notice that the "Clinically Proven" claim does not refer to this Product but  
25 actually refers to other of Defendants' products, Alpha CF and B&T Echina-Spray.

26 54. Further, Alpha CF and B&T Echina-Spray are not "Clinically Proven" by  
27 credible scientific evidence suitable to meet relevant, federal agency advertising  
28

1 standards, *see*, 15 U.S.C. §§ 45(a), 52, and the claim is therefore false as it appears on  
2 the Cough & Bronchial Daytime Syrup.

3 55. This Product did not provide the characteristics, benefits, endorsements,  
4 and proof of efficacy to Plaintiff and consumers as advertised.

5 56. Plaintiff and consumers paid more for this Product than they would have  
6 absent the package and labeling misrepresentations described herein.

7 57. Absent the misrepresentations and omissions described herein, which are  
8 material to an average consumer, Plaintiff and other consumers would not have  
9 purchased this Product.

10 58. Plaintiff seeks justice for himself and similarly-situated consumers of  
11 Cough & Bronchial Daytime Syrup by means of this action to enjoin the ongoing  
12 deceptive practices described herein.

13 **Cough & Bronchial Nighttime Syrup**



27 59. In or around January or February 2012, Plaintiff Wood purchased  
28 Defendants' Cough & Bronchial Nighttime Syrup at the Vitamin Shoppe, in

1 Sacramento, California for approximately \$13.49. Plaintiff is a consumer as described  
2 herein.

3 60. In purchasing Defendants' Cough & Bronchial Nighttime Syrup, Plaintiff  
4 relied upon various representations Defendants made on the Product's label:  
5 "Maximum Strength," "Fast, Natural Relief," "Fast relief," "Safe & Effective," and  
6 "Natural." *See also* Exs. 2-4. The Product was not as represented, however.

7 61. The purportedly "active ingredients" in Cough & Bronchial Nighttime  
8 Syrup include: Aconitum napellus, Alfalfa, Coffea cruda, Avena sativa, Bryonia alba,  
9 Hepar sulphuris calcareum, Spongia tosta and Stannum metallicum.

10 62. The "active ingredients", however, even if they were otherwise effective,  
11 are so greatly diluted as to be effectively non-existent in Cough & Bronchial  
12 Nighttime Syrup such that the Product is ineffective for its intended uses.

13 63. Defendants know, or reasonably should know, there are no or just trace  
14 amounts of "active ingredients" present in Cough & Bronchial Nighttime Syrup and  
15 therefore must be aware that it cannot relieve any symptoms for which Defendants  
16 advertise them. Defendants further know that Plaintiff and similarly situated  
17 reasonable consumers are unaware of the true nature of homeopathic drugs.

18 64. Further, the "active ingredients" used in Cough & Bronchial Nighttime  
19 Syrup provide no health benefits. Moreover, at the stupendously high dilutions used to  
20 prepare the product, the odds are astronomically high that even a single molecule  
21 derived from the original "extract" of the "active ingredients" could be present in the  
22 Product sold to consumers.

23 65. Cough & Bronchial Nighttime Syrup is nothing more than a placebo,  
24 with trace amounts of the claimed "active ingredients". It is sold in 8 oz. bottles and is  
25 priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants' unfair and  
26 deceptive practices have enriched them by hundreds of thousands of dollars, at the  
27 expense of unsuspecting consumers.

28

1           66. Defendants' Product also contains synthetic ingredients, and therefore  
2 does not provide "Natural" relief, as advertised twice on the front of the Products'  
3 packaging and elsewhere on the label. For example, Sodium Benzoate is a man-made  
4 synthetic chemical preservative. As a constituent of Cough & Bronchial Nighttime  
5 Syrup, its presence means this Product is not "Natural." As such, because the  
6 packaging and labeling of Cough & Bronchial Nighttime Syrup represents it is  
7 "Natural," it is falsely and/or deceptively advertised to consumers.

8           67. Cough & Bronchial Nighttime Syrup also contains contain Alfalfa,  
9 Avena sativa, Hepar sulphuris calcareum and Stannum metallicum as ingredients,  
10 which were not recognized by the official HPUS until 2010, more than one year into  
11 the Class Period. By containing even one non-HPUS ingredient, the Products are not  
12 official homeopathic drugs, CPG § 400.400, but are unapproved new drugs and are  
13 accordingly misbranded under the California Sherman Law. See CPG §400.400  
14 ("Drug products containing homeopathic ingredients in combination with non-  
15 homeopathic active ingredients are not homeopathic drug products"); Cal. Health &  
16 Safety Code § § 110100, 110105, 110110, 110111. Thus, Defendants' advertising that  
17 Cough is "homeopathic" during this timeframe is false, deceptive and unlawful.

18           68. Defendants' claims are also misleading because the side panel of Cough  
19 & Bronchial Nighttime Syrup states "Clinically Proven" but an average consumer  
20 would not notice that the "Clinically Proven" claim does not refer to this Product but  
21 actually refers to other of Defendants' products, Alpha CF and B&T Echina-Spray.

22           69. Further, Alpha CF and B&T Echina-Spray are not "Clinically Proven" by  
23 credible scientific evidence suitable to meet relevant, federal agency advertising  
24 standards, see, 15 U.S.C. §§ 45(a), 52, and the claim is therefore false as it appears on  
25 the Cough & Bronchial Nighttime Syrup.

26           70. This Product did not provide the characteristics, benefits, endorsements,  
27 and proof of efficacy to Plaintiff and consumers as advertised.

28

1 71. Plaintiff and consumers paid more for this Product than they would have  
2 absent the package and labeling misrepresentations described herein.

3 72. Absent the misrepresentations and omissions described herein, which are  
4 material to an average consumer, Plaintiff and other consumers would not have  
5 purchased this Product.

6 73. Plaintiff seeks justice for himself and similarly-situated consumers of  
7 Cough & Bronchial Nighttime Syrup by means of this action to enjoin the ongoing  
8 deceptive practices described herein.

9 **Children's Cough & Bronchial Syrup**



23 74. In or around October or November 2012, Plaintiff Wood purchased  
24 Defendants' Children's Cough & Bronchial Syrup at the Vitamin Shoppe in  
25 Sacramento, California for approximately \$13.49. Plaintiff is a consumer as described  
26 herein.

1 75. In purchasing Defendants' Children's Cough & Bronchial Syrup,  
2 Plaintiff relied upon various representations Defendants made on the Product's label :  
3 "Natural," "Maximum Strength," "Fast Relief," "Safe & Effective," *See* Ex. 2  
4 (Product Labels). The Product was not as represented, however.

5 76. The purportedly "active ingredients" in Children's Cough & Bronchial  
6 Syrup include: Antimonium sulphuratum aureum, Bryonia alba, Drosera rotundifolia,  
7 Eucalyptus globulus, Illicium anisatum and Ipecacuanha.

8 77. The "active ingredients," however, even if they were otherwise effective,  
9 are so greatly diluted as to be effectively non-existent in Children's Cough &  
10 Bronchial Syrup such that the Product is ineffective for its intended uses.

11 78. Defendants know, or reasonably should know, there are no or just trace  
12 amounts of "active ingredients" present in Children's Cough & Bronchial Syrup and  
13 therefore must be aware that it cannot relieve any symptoms for which Defendants  
14 advertise them. Defendants further know that Plaintiff and similarly situated  
15 reasonable consumers are unaware of the true nature of homeopathic drugs.

16 79. Further "active ingredients" used in Children's Cough & Bronchial Syrup  
17 provide no health benefits. Moreover, at the stupendously high dilutions used to  
18 prepare the product, the odds are astronomically high that even a single molecule  
19 derived from the original "extract" of the "active ingredients" could be present in the  
20 Product sold to consumers.

21 80. Children's Cough & Bronchial Syrup is nothing more than a placebo,  
22 with trace amounts of the claimed "active ingredients". It is sold in 8 oz. bottles and is  
23 priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants' unfair and  
24 deceptive practices have enriched them by hundreds of thousands of dollars, at the  
25 expense of Plaintiff and unsuspecting consumers.

26 81. Defendants' Product also contains synthetic ingredients, and therefore  
27 does not provide "Natural" relief. For example, it contains citric acid and Potassium  
28 sorbate as inactive ingredients. Citric acid is chemically reduced, and Potassium



1 sorbate, is a synthetic preservative. As constituents of Children’s Cough & Bronchial  
2 Syrup, their presence means this Product is not “Natural.” As such, because the  
3 packaging and labeling of Children’s Cough & Bronchial Syrup represents it is  
4 “Natural,” it is falsely and/or deceptively advertised to consumers.

5 82. This Product did not provide the characteristics, benefits, endorsements,  
6 and proof of efficacy to Plaintiff and consumers as advertised.

7 83. Plaintiff and consumers paid more for this Product than they would have  
8 absent the package and labeling misrepresentations described herein.

9 84. Absent the misrepresentations and omissions described herein, which are  
10 material to an average consumer, Plaintiff and other consumers would not have  
11 purchased this Product.

12 85. Plaintiff seeks justice for himself and similarly-situated consumers of  
13 Children’s Cough & Bronchial Syrup by means of this action to enjoin the ongoing  
14 deceptive practices described herein.

15 **Cough & Bronchial Syrup—Zinc Formula**



1 86. In or around January or February 2012, Plaintiff Wood purchased  
2 Defendants' Cough & Bronchial Syrup—Zinc Formula at the Vitamin Shoppe in  
3 Sacramento, California for approximately \$13.49. Plaintiff is a consumer as described  
4 herein.

5 87. In purchasing Defendants' Cough & Bronchial Syrup—Zinc Formula,  
6 Plaintiff relied upon various representations Defendants made on the Product's label:  
7 "Maximum Strength," "Fast, Natural Relief," "Safe & Effective," and "Natural," See  
8 Ex. 2. The Product was not as represented, however.

9 88. The purportedly "active ingredients" in Cough & Bronchial Syrup—  
10 Zinc Formula are: Antimonium sulphuratum aureum, Bryonia alba, Drosera  
11 rotundifolia, Eucalyptus globulus, Ipecacuanha and Spongia tosta.

12 89. The "active ingredients", however, even if they were otherwise effective,  
13 are so greatly diluted as to be effectively non-existent in Cough & Bronchial Syrup—  
14 Zinc Formula such that the Product is ineffective for its intended uses.

15 90. Defendants know, or reasonably should know, there are no or just trace  
16 amounts of "active ingredients" present in Cough & Bronchial Syrup—Zinc Formula  
17 and therefore must be aware that it cannot relieve any symptoms for which  
18 Defendants advertise them. Defendants further know that Plaintiff and similarly  
19 situated reasonable consumers are unaware of the true nature of homeopathic drugs.

20 91. Further, the "active ingredients" used in Cough & Bronchial Syrup—  
21 Zinc Formula provide no health benefits. Moreover, at the stupendously high dilutions  
22 used to prepare the product, the odds are astronomically high that even a single  
23 molecule derived from the original "extract" of the "active ingredients" could be  
24 present in the Product sold to consumers.

25 92. Cough & Bronchial Syrup —Zinc Formula is nothing more than a  
26 placebo, with trace amounts of the claimed "active ingredients". It is sold in 8 oz.  
27 bottles and is priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants'  
28

1 unfair and deceptive practices have enriched them by hundreds of thousands of  
2 dollars, at the expense of unsuspecting consumers.

3 93. This Product did not provide the characteristics, benefits, endorsements,  
4 and proof of efficacy to Plaintiff and consumers as advertised.

5 94. Plaintiff and consumers paid more for this Product than they would have  
6 absent the package and labeling misrepresentations described herein.

7 95. Absent the misrepresentations and omissions described herein, which are  
8 material to an average consumer, Plaintiff and other consumers would not have  
9 purchased this Product.

10 96. Plaintiff seeks justice for himself and similarly-situated consumers of  
11 Cough & Bronchial Syrup—Zinc Formula by means of this action to enjoin the  
12 ongoing deceptive practices described herein.

13 **Cough & Bronchial Syrup—99% Alcohol Free**



1 97. In purchasing Defendants' Cough & Bronchial Daytime Syrup, Plaintiff  
2 relied upon various representations Defendants made on the Product's label:  
3 "Maximum Strength" "Fast, Natural Relief," "Safe & Effective," and "Natural." See  
4 Ex. 2. The Product is not as represented, however.

5 98. In purchasing Cough & Bronchial Syrup—99% Alcohol Free, consumers  
6 reasonably relied upon the various representations Defendants makes on the Product's  
7 packaging label and its prevalent advertising campaign.

8 99. The purportedly "active ingredients" in Cough & Bronchial Syrup—  
9 99% Alcohol Free include: Antimonium sulphuratum aureum, Bryonia alba, Drosera  
10 rotundifolia, Eucalyptus globulus, Ipecacuanha and Spongia tosta.

11 100. The "active ingredients", however, even if they were otherwise effective,  
12 are so greatly diluted as to be effectively non-existent in Cough & Bronchial Syrup—  
13 99% Alcohol Free such that the Product is ineffective for its intended uses.

14 101. Defendants know, or reasonably should know, there are no or just trace  
15 amounts of "active ingredients" present in Cough & Bronchial Syrup—99% Alcohol  
16 Free and therefore must be aware that it cannot relieve any symptoms for which  
17 Defendants advertise them. Defendants further know that Plaintiff and similarly  
18 situated reasonable consumers are unaware of the true nature of homeopathic drugs.

19 102. Further, the "active ingredients" used in Cough & Bronchial Syrup—  
20 99% Alcohol Free provide no health benefits. Moreover, at the stupendously high  
21 dilutions used to prepare the product, the odds are astronomically high that even a  
22 single molecule derived from the original "extract" of the "active ingredients" could  
23 be present in the Product sold to consumers.

24 103. Cough & Bronchial Syrup—99% Alcohol Free is nothing more than a  
25 placebo, with trace amounts of the claimed "active ingredients". It is sold in 8 oz.  
26 bottles and is priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants'  
27 unfair and deceptive practices have enriched them by hundreds of thousands of  
28 dollars, at the expense of unsuspecting consumers.

1 104. This Product did not provide the characteristics, benefits, endorsements,  
2 and proof of efficacy to consumers as advertised.

3 105. Purchasers of Cough & Bronchial Syrup—99% Alcohol Free paid more  
4 for this Product than they would have absent the package and labeling  
5 misrepresentations described herein.

6 106. Absent the misrepresentations and omissions described herein, which are  
7 material to an average consumer, purchasers of Cough & Bronchial Syrup— 99%  
8 Alcohol Free would not have purchased this Product.

9 107. Plaintiff seeks justice for himself and similarly-situated consumers of  
10 Cough & Bronchial Syrup—99% Alcohol Free by means of this action to enjoin the  
11 ongoing deceptive practices described herein.

12 **MISREPRESENTATIONS AND OMISSION AS TO ALL COUGH &**  
13 **BRONCHIAL PRODUCTS**

14 108. The Federal Trade Commission (“FTC”) enforces OTC drug advertising  
15 and applies the same “reasonable consumer” standard for any consumer product. The  
16 FTC requires OTC drug advertising to be truthful, non-deceptive, fair, and for  
17 manufacturers to contain evidence that backs up their claims. *See* 15 U.S.C. § 45(a)(1)  
18 (“Unfair methods of competition in commerce, and unfair or deceptive acts or  
19 practices in commerce, are declared unlawful”); *see also* 15 U.S.C. § 52(a) *et seq.* (“It  
20 shall be unlawful for any person, partnership, or corporation to disseminate, or cause  
21 to be disseminated, any false advertisement”).

22 109. Defendants primarily advertise and promote the Products through the  
23 labeling claims and images on the front of the Products’ packages. Among other  
24 things, the Products’ names clearly state what ailments and symptoms the Products are  
25 designed for. Label descriptions on the Products’ packaging, taken as a whole and in  
26 context, further clarify what each Product is supposed to do. As would any reasonable  
27 consumer, Plaintiff and the Class relied on the Products’ packaging claims, taken as a  
28 whole and in context, in purchasing the Products.

1 110. Defendants’ marketing and promotion of the Products was supported by  
2 false and misleading claims containing material omissions and misrepresentations,  
3 which Plaintiff and Class members relied upon in making their decision to purchase  
4 the Products.

5 111. The “active ingredients” used in the Products provide no health benefits.  
6 Moreover, at the stupendously high dilutions used to prepare the Products, the odds  
7 are astronomically high that even a single molecule derived from the original “extract”  
8 of the active ingredient could be present in the Products sold to consumers.

9 112. Defendants know, or reasonably should know, there are no or just trace  
10 amounts of “active ingredients” present in their Cough & Bronchial Products, and  
11 therefore must be aware the Products cannot relieve the symptoms for which the  
12 Defendants advertise them.

13 113. Defendants’ misleading and deceptive business activity also includes  
14 encouraging retailers to sell the Products in the OTC aisle of retail chain drug stores  
15 next to allopathic, FDA monograph-approved OTC drugs, thus enhancing consumer  
16 confusion as to the true nature of the Products. *See* Ex. 1.

17 114. When purchasing the Products, Plaintiff and Class members were seeking  
18 cough and cold or flu remedies that would provide the benefits and had the  
19 endorsements, proof of efficacy, and characteristics that Defendants marketed,  
20 promised, represented and warranted.

21 115. Plaintiff and Class members purchased the Products believing they had  
22 the qualities represented on the Products’ labeling, but the Products were actually  
23 unacceptable to them, as they did not possess the benefits, endorsements, proof, and  
24 characteristics as advertised.

25 116. Moreover, like all reasonable consumers and members of the Class,  
26 Plaintiff considers a label’s compliance with federal law a material factor in his  
27 purchasing decisions. Plaintiff is generally aware the federal government carefully  
28 regulates OTC products and therefore has come to trust that information conveyed on

1 packaged OTC product labels is truthful, accurate, complete, and fully in accordance  
2 and compliance with the law. As a result, Plaintiff trusts he can compare competing  
3 products on the basis of their labeling claims, to make a purchasing decision.

4 117. Yet Defendants marketed several of the Products to the public before all  
5 of the ingredients contained within them were approved for listing in the HPUS, the  
6 official drug compendium for homeopathic drugs in the United States. By containing  
7 even one non-HPUS ingredient, the Products are not official homeopathic drugs, CPG  
8 § 400.400, but are unapproved new drugs and are accordingly misbranded under the  
9 California Sherman Law. *See, e.g.*, Cal. Health & Safety Code §§ 110100, 110110,  
10 110111.

11 118. Like all reasonable consumers and members of the Class, Plaintiff would  
12 not purchase an OTC product he knew was misbranded under federal law, *see* 21  
13 U.S.C. § 352, which the federal government prohibits selling, *id.* § 331, and which  
14 carries with its sale criminal penalties, *id.* § 333. *See also* Cal. Health & Safety Code  
15 §§ 110100, 110105, 110110, 110111. Plaintiff could not trust that the label of a  
16 product misbranded under federal law is truthful, accurate and complete.

17 119. Similarly, like all reasonable consumers and Class members, Plaintiff  
18 would not purchase an OTC product he knew was an illegally marketed new drug for  
19 which the FDA has not determined its safety and efficacy.

20 120. In light of the foregoing, reasonable consumers, including Plaintiff and  
21 other Class members, were and are likely to be deceived by Defendants' advertising  
22 and marketing practices as detailed herein.

23 121. Plaintiff and the Class will be exposed to the Products' false, deceptive,  
24 and unlawful labeling claims in the future when they visit a drug store for a cold, flu  
25 or cough product because Defendants have refused to change the Products labeling in  
26 response to Plaintiffs' claims and CLRA notice letters. See Ex. 3.

1 122. Plaintiff and other Class members purchased the Products instead of  
2 competing products based on the false statements, misrepresentations and omissions  
3 described herein.

4 123. Instead of receiving a product that had the benefits, advantages,  
5 endorsements, proof, and characteristics as advertised, Plaintiff and other Class  
6 members received a product worth much less, or which was worthless, since the  
7 Products do not work; cause no effect or effects reverse of that advertised; and did not  
8 possess the characteristics, benefits, endorsements, and proof of efficacy, as advertised  
9 by Defendants.

10 124. Absent the misrepresentations ion described herein, which were and are  
11 material to an average consumer, Plaintiff and other consumers would not have paid  
12 what they did for the Products.

13 125. Plaintiff and the Class lost money as a result of Defendants' deception in  
14 that Plaintiff and the Class did not receive what they had paid for.

15 126. Plaintiff and the Class altered their position to their detriment and  
16 suffered damages in an amount equal to the amount they paid for the Products over  
17 the class period.

18 127. Moreover, backward-reaching injunctive relief is necessary to remedy  
19 the past effects of Defendants' conduct, such as a recall and restitution program, or  
20 imposition of a constructive trust onto funds that may have been unlawfully, unfairly,  
21 or fraudulently obtained by Defendants.

22 **CLASS ACTION ALLEGATIONS**

23 128. Pursuant to Rules 23(a), (b)(3) and/or (b)(2) of the Federal Rules of Civil  
24 Procedure, Plaintiff brings this action on behalf of themselves and a California  
25 consumer class, initially defined as follows:

26 All purchasers of Defendants' B&T Cough & Bronchial products, including  
27 Cough & Bronchial Syrup Daytime, Cough & Bronchial Syrup Nighttime,  
28 Children's Cough & Bronchial Syrup, Cough & Bronchial Syrup Zinc Formula,



1 and Cough & Bronchial Syrup 99% Alcohol Free (collectively “Products”), and  
2 all iterations/variations of the aforementioned Products, for personal or  
3 household use and not for resale, in California from September 9, 2009 to the  
4 present (the “Class Period”). Excluded from the consumer class are  
5 governmental entities, the Defendants, any entity in which the Defendants have  
6 a controlling interest, their employees, officers, directors, legal representatives,  
7 heirs, successors and wholly or partly owned subsidiaries or affiliated  
8 companies, including parent corporations, class counsel and their employees;  
9 and the judicial officers and their immediate family members and associated  
10 court staff assigned to this case.

11 129. The proposed Class is so numerous that individual joinder of all its  
12 members is impracticable. Due to the nature of the trade and commerce involved,  
13 however, Plaintiff believes the total number of Class members is at least in the tens of  
14 thousands of persons in the State of California. While the exact number and identities  
15 of the Class members are unknown at this time, such information can be ascertained  
16 through appropriate investigation, discovery or Class definition. The disposition of the  
17 claims of the Class members in a single class action will provide substantial benefits  
18 to all parties and to the Court.

19 130. There is a well-defined community of interest in the questions of law and  
20 fact involved affecting Plaintiff and the Class and these common questions of fact and  
21 law include, but are not limited to, the following:

- 22 a. Whether the claims discussed above are true, misleading, or  
23 reasonably likely to deceive an average consumer;
- 24 b. Whether Defendants’ alleged conduct violates public policy;
- 25 c. Whether the alleged conduct constitutes violations of the  
26 laws asserted herein;
- 27 d. Whether Defendants engaged in false or misleading  
28 advertising; and

1 e. The method of calculation and amount of restitution or  
2 damages to the Class.

3 131. Plaintiff's claims are typical of the claims of the members of the Class.  
4 Plaintiff and all members of the Class have been similarly affected by the Defendants'  
5 common course of conduct because they all relied on Defendants' representations  
6 concerning their Products and purchased the Products based on those representations.

7 132. Plaintiff will fairly and adequately represent and protect the interests of  
8 the Class. Plaintiff has retained counsel with substantial experience in handling  
9 complex class action litigation in general and scientific claims, including for  
10 homeopathic drugs, in particular. Plaintiff and his counsel are committed to  
11 vigorously prosecuting this action on behalf of the Class and have the financial  
12 resources to do so.

13 133. Plaintiff and the members of the Class suffered and will continue to  
14 suffer harm as a result of the Defendants' unlawful and wrongful conduct. A class  
15 action is superior to other available methods for the fair and efficient adjudication of  
16 the present controversy. Individual joinder of all members of the Class is  
17 impracticable. Even if individual Class members had the resources to pursue  
18 individual litigation, it would be unduly burdensome to the courts in which the  
19 individual litigation would proceed. Individual litigation magnifies the delay and  
20 expense to all parties in the court system of resolving the controversies engendered by  
21 Defendants' course of conduct. The class action device allows a single court to  
22 provide the benefits of unitary adjudication, judicial economy, and the fair and  
23 efficient handling of all Class members' claims in a single forum. The conduct of this  
24 action as a class action conserves the resources of the parties and of the judicial  
25 system and protects the rights of Class members. Furthermore, for many, if not most,  
26 a class action is the only feasible mechanism that allows an opportunity for legal  
27 redress and justice.

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1 134. Adjudication of individual Class members' claims with respect to the  
2 Defendants would, as a practical matter, be dispositive of the interests of other  
3 members not parties to the adjudication, and could substantially impair or impede the  
4 ability of other class members to protect their interests.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES**

7 **ACT**

8 ***California Civil Code §§ 1750, et seq.***

9 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

10 135. Plaintiff repeats, realleges and incorporates by reference each and every  
11 allegation contained above as if fully set forth herein.

12 136. This cause of action is brought pursuant to the Consumers Legal  
13 Remedies Act, California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff and the  
14 members of the Class are consumers as defined by California Civil Code § 1761(d).  
15 The Products are goods within the meaning of the Act.

16 137. Defendants violated and continue to violate the Act by engaging in the  
17 following practices proscribed by California Civil Code § 1770(a) in transactions with  
18 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
19 the Products:

- 20 • Representing that [the Products have] ... characteristics, ingredients,  
21 uses, benefits or quantities which [the Products] do not have. (Civ. Code, § 1770,  
22 subd. (a) (5).)
- 23 • Representing that [the Products] are of a particular standard, quality or  
24 grade... if they are of another. (Civ. Code, § 1770, subd. (a) (7).)
- 25 • Advertising [Products] ...with intent not to sell them as advertised. (Civ.  
26 Code, § 1770, subd. (a) (9).)

1 • Representing that [the Products] have been supplied in accordance with  
2 a previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

3 138. Defendants violated the Act by representing through advertising of the  
4 Products as described above, when they knew, or should have known, the  
5 representations and advertisements were false or misleading.

6 139. Plaintiff and members of the Class reasonably relied upon the  
7 Defendants' representations as to the quality and attributes of the Products.

8 140. Plaintiff and other members of the Class were deceived by Defendants'  
9 representations about the quality and attributes of the Products, including but not  
10 limited to the purported benefits of the Products, taken as a whole, that their Products  
11 are effective in relieving various symptoms and ailments. *See also* Exs. 1-3. Plaintiff  
12 and other Class members would not have purchased the Products had they known the  
13 Defendants' claims were untrue, and had they known the true nature of the Products.

14 141. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified the  
15 Defendants in writing by certified mail of the particular violations of § 1770 of the  
16 CLRA as to their Products and demanded the Defendants rectify the problems  
17 associated with the actions detailed above and give notice to all affected consumers of  
18 their intent to so act. Defendants' wrongful business practices regarding the Products  
19 constituted, and constitute, a continuing course of conduct in violation of the  
20 California's Consumers Legal Remedies Act because Defendants are still representing  
21 that the Products have characteristics, uses, benefits, endorsements, proof and abilities  
22 which are false and misleading, and have injured Plaintiff and the Class. A copy of  
23 Plaintiff's letter is attached as Exhibit 3 hereto.

24 142. Defendants have refused or failed to timely respond to Plaintiff's CLRA  
25 demand notice.

26 143. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek  
27 an order of this Court enjoining the Defendants from continuing to engage in  
28 unlawful, unfair, or deceptive business practices and any other act prohibited by law.

1 144. Plaintiff and the Class also seek a backward-reaching injunction, to  
2 remedy in order to remedy the past effects of Defendants’ improper activities and  
3 practices as described herein.

4 145. Pursuant to California Civil Code §§ 1780 and 1782(b), Plaintiff and the  
5 Class are entitled to recover and hereby seek actual damages, punitive damages,  
6 attorney’s fees and costs, and any other relief the Court deems proper.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

9 ***California Business and Professions Code §§ 17200, et seq.***

10 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

11 146. Plaintiff repeats, realleges and incorporates by reference each and every  
12 allegation contained above as if fully set forth herein.

13 147. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury  
14 in fact as a result of Defendants’ actions as set forth herein. Specifically, prior to the  
15 filing of this action, Plaintiff purchased the Products in reliance upon Defendants’  
16 marketing claims. Plaintiff used the Products as directed, but the Products did not  
17 work as advertised, nor provided any of the promised benefits.

18 148. California’s Unfair Competition Law, Business and Professions Code §  
19 17200 (the “UCL”) prohibits any “unfair, deceptive, untrue or misleading  
20 advertising.” For the reasons discussed above, Defendants have engaged in unfair,  
21 deceptive, untrue and misleading advertising in violation of the UCL.

22 149. The UCL also prohibits any “unlawful... business act or practice.”  
23 Defendants violated the UCL’s prohibition against engaging in unlawful acts and  
24 practices by, *inter alia*, making the representations and omissions of material facts, as  
25 set forth more fully herein, and by violating among others, California Civil Code §§  
26 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§ 109875, *et*  
27 *seq.* (“Sherman Law”), including but not limited to Cal. Health & Safety Code §§  
28 110100, 110290, 110390; Cal. Bus. & Prof. Code §§ 12601, *et seq.* (“Fair Packaging

1 and Labeling Act”), California Commercial Code § 2313(1), and the common law; *see*  
2 *also* Cal. Health & Safety Code § 110105 (incorporating all FDCA laws and  
3 implementing regulations as the laws of this State). Such conduct is ongoing and  
4 continues to this date.

5 150. Plaintiff and the Class reserve the right to allege other violations of law  
6 which constitute other unlawful business acts or practices.

7 151. California Business and Professions Code § 17200 also prohibits any  
8 “unfair... business act or practice.”

9 152. Defendants’ acts, misrepresentations, and practices as alleged herein also  
10 constitute “unfair” business acts and practices within the meaning of the UCL in that  
11 their conduct is substantially injurious to consumers, offends public policy, and is  
12 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct  
13 outweighs any alleged benefits attributable to such conduct. *See also id.* Such conduct  
14 is ongoing and continues to this date.

15 153. Plaintiff alleges violations of consumer protection, unfair competition  
16 and truth in advertising laws in California and other states resulting in harm to  
17 consumers. Plaintiff asserts violation of the public policy of engaging in false and  
18 misleading advertising, unfair competition and deceptive conduct towards consumers.  
19 *See also id.* This conduct constitutes violations of the unfair prong of the UCL. Such  
20 conduct is ongoing and continues to this date.

21 154. There were reasonably available alternatives to further Defendants’  
22 legitimate business interests, other than the conduct described herein.

23 155. The UCL also prohibits any “fraudulent business act or practice.”

24 156. Defendants’ claims, and misleading statements, as more fully set forth  
25 above, were false, misleading and/or likely to deceive the consuming public within the  
26 meaning of the UCL. Such conduct is ongoing and continues to this date.

1 157. Defendants’ conduct caused and continues to cause substantial injury to  
2 Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact as a  
3 result of Defendants’ unfair conduct.

4 158. Defendants have thus engaged in unlawful, unfair and fraudulent  
5 business acts and practices and false advertising..

6 159. Plaintiff and the Class also seek a backward-reaching injunction, to  
7 remedy in order to remedy the past effects of Defendants’ improper activities and  
8 practices as described herein.

9 160. Plaintiff also seeks an order for the disgorgement and restitution of all  
10 monies from the sale of Defendants’ Products, which were unjustly acquired through  
11 acts of unlawful, unfair, and/or fraudulent competition.

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18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

20 *California Business and Professions Code §§ 17500, et seq.*

21 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

22 161. Plaintiff repeats, realleges and incorporates by reference each and every  
23 allegation contained above as if fully set forth herein.

24 162. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury  
25 in fact as a result of Defendants’ actions as set forth herein. Specifically, prior to the  
26 filing of this action, Plaintiff purchased the Products in reliance upon Defendants’  
27 marketing claims. Plaintiff used the Products as directed, but the Products did not  
28 work as advertised, nor provided any of the promised benefits.

1 163. Defendants’ business practices as alleged herein constitute unfair,  
2 deceptive, untrue, and misleading advertising pursuant to California Business and  
3 Professions Code §§ 17500, *et seq.* because Defendants have advertised their Products  
4 in a manner they know is untrue or misleading, or that reasonably should have been  
5 known to Defendants to be untrue or misleading.

6 164. Defendants’ wrongful business practices have caused injury to Plaintiff  
7 and the Class.

8 165. Pursuant to section 17535 of the California Business and Professions  
9 Code, Plaintiff and the Class seek an order of this court enjoining the Defendants from  
10 continuing to engage in deceptive business practices, false advertising, and any other  
11 act prohibited by law, including those set forth in the complaint.

12 166. Plaintiff and the Class also seek a backward-reaching injunction, to  
13 remedy in order to remedy the past effects of Defendants’ improper activities and  
14 practices as described herein.

15 167. Plaintiff and the Class also seek an order for the disgorgement and  
16 restitution of all monies from the sale of Defendants’ Products, which were unjustly  
17 acquired through acts of unlawful, unfair, deceptive and/or fraudulent competition.

18 **FOURTH CAUSE OF ACTION**

19 **BREACH OF EXPRESS WARRANTY**

20 **(On Behalf of Plaintiff and all Class Members, as Against All Defendants)**

21 168. Plaintiff repeats, realleges and incorporates by reference each and every  
22 allegation contained above as if fully set forth herein.

23 169. On the Products’ labels and through their marketing campaign as  
24 described above, Defendants made affirmations of fact or promises about the  
25 Products’ effectiveness, or description of goods, which formed “part of the basis of  
26 the bargain” at the time of purchase.

27 170. These affirmations of fact or promises included:  
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- “Cough & Bronchial”
- “Cough Suppressant/Expectorant”
- “Maximum Strength”
- “Fast Relief”
- “Natural”
- “Homeopathic”
- “Relieves coughs”
- “Helps clear bronchial congestion”
- “Clears bronchial congestion”
- “Effective”
- “Relieves coughs due to colds or inhaled irritants”
- “clinically proven”
- “Relieves Coughs & Congestion”
- “Temporarily relieves cough due to minor throat and bronchial irritation as may occur with a cold”
- “Helps loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes”

- 1 • “Helps to loosen phlegm (mucus) and thin bronchial secretions to
- 2 rid the bronchial passageways of bothersome mucus to drain
- 3 bronchial tubes”
- 4 • “Soothes the throat”
- 5 • “Relieves difficulty sleeping associated with cough & bronchial
- 6 conditions”
- 7 • “Promotes Sleep”
- 8 • “Promotes restful sleep”
- 9 • “Soothes irritated throat membranes”
- “Relieves coughs due to colds and inhaled irritants (air pollution)”
- “Helps clear congested bronchial tubes of stubborn mucus”
- “Temporarily relieves cough due to minor throat and bronchial
- irritations occurring with a cold or inhaled irritants”

10 among other representations. *See* Ex. 2 (Product Labels).

11 171. The warranties were breached, as the Products did not live up to their  
12 warranties because they did not provide the characteristics, benefits, endorsements,  
13 and proof of efficacy to Plaintiff and consumers as advertised, and that breach caused  
14 injury in the form of the lost purchase price for the Products. *See* Cal. Com. Code §  
15 2313(1); *see also* *Zwart v. Hewlett-Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug.  
16 23, 2011) (holding that online assertions can create warranties).

17 172. As a result of Defendants’ breach of their warranties, Plaintiff and the  
18 Class have been damaged in the amount of the purchase price of the Products they  
19 purchased.

## 20 **FIFTH CAUSE OF ACTION**

### 21 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

#### 22 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

23 173. Plaintiff repeats, realleges and incorporates by reference each and every  
24 allegation contained above as if fully set forth herein.

25 174. Defendants, through their acts and omissions as set forth herein, in their  
26 sale, marketing and promotion of their Products, made affirmations of fact or promises  
27  
28

1 to Plaintiff and the members of the Class that their Products provide the claimed  
2 health benefits as discussed herein.

3 175. These affirmations of fact or promises included:

- 4 • “Cough & Bronchial”
- 5 • “Cough Suppressant/Expectorant”
- 6 • “Maximum Strength”
- 7 • “Fast Relief”
- 8 • “Natural”
- 9 • “Homeopathic”
- 10 • “Relieves coughs”
- 11 • “Helps clear bronchial congestion”
- 12 • “Clears bronchial congestion”
- 13 • “Effective”
- 14 • “Relieves coughs due to colds or inhaled irritants”
- 15 • “clinically proven”
- 16 • “Relieves Coughs & Congestion”
- 17 • “Temporarily relieves cough due to minor throat and bronchial  
18 irritation as may occur with a cold”
- 19 • “Helps loosen phlegm (mucus) and thin bronchial secretions to  
20 drain bronchial tubes”
- 21 • “Helps to loosen phlegm (mucus) and thin bronchial secretions to  
22 rid the bronchial passageways of bothersome mucus to drain  
23 bronchial tubes”
- 24 • “Soothes the throat”
- 25 • “Relieves difficulty sleeping associated with cough & bronchial  
26 conditions”
- 27 • “Promotes Sleep”
- 28 • “Promotes restful sleep”
- “Soothes irritated throat membranes”
- “Relieves coughs due to colds and inhaled irritants (air pollution)”
- “Helps clear congested bronchial tubes of stubborn mucus”
- “Temporarily relieves cough due to minor throat and bronchial  
irritations occurring with a cold or inhaled irritants”

among other representations. *See* Ex. 2 (Product Labels).

176. Plaintiff and the Class bought the Products manufactured, advertised and  
sold by Defendants.

1 177. Defendants are merchants with respect to the goods of this kind which  
2 were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other  
3 members of the Class an implied warranty that those goods were merchantable for  
4 their intended use.

5 178. Defendants, however, breached that warranty implied in the sale of goods  
6 in that their Products do not provide the claimed health benefits, as set forth in detail  
7 herein.

8 179. As a result of Defendants' conduct, Plaintiff and the Class did not receive  
9 goods as impliedly warranted by Defendants to be merchantable in that they did not  
10 conform to the promises and affirmations made on the container or label of the goods.

11 180. Plaintiff and the Class have sustained damages as a proximate result of  
12 the foregoing breach of implied warranty in an amount to be determined at trial.

13 **PRAYER FOR RELIEF**

14 181. Wherefore, Plaintiff, on behalf of himself, all others similarly situated  
15 and the general public, pray for judgment against the Defendants as to each and every  
16 cause of action, including:

- 17 A. For all of the claims for relief, an order certifying this action as a  
18 proper Class Action, that Plaintiff be appointed Class  
19 Representative and his counsel Class Counsel, and requiring  
20 Defendants to bear the costs of Class notice;
- 21 B. For the CLRA and breach of warranty claims, a judgment  
22 awarding Plaintiff and the proposed Class members actual  
23 damages and punitive damages in amounts to be determined at  
24 trial;
- 25 C. For all of the claims for relief, a judgment awarding restitution of  
26 the full purchase price of the Products to Plaintiff and the proposed  
27 Class members;  
28

- 1 D. For the CLRA, UCL and FAL, an order for backward-reaching  
2 injunctive relief, to remedy the past effects of Defendants’  
3 activities and practices as complained of herein;
- 4 E. For the CLRA, UCL and FAL, an order compelling Defendants to  
5 engage in a corrective advertising campaign to inform the public  
6 concerning the true nature of their Products;
- 7 F. For all the claims for relief, an order awarding reasonable  
8 attorneys’ fees and costs to Plaintiff and the Class, as allowed by  
9 California Civil Code § 1780(d), Code of Civil Procedure § 1021.5  
10 and as otherwise permitted by statute or law, and pre- and post  
11 judgment interest;
- 12 G. For all the claims for relief, an order providing for all other such  
13 equitable relief as may be just and proper.  
14

15 **JURY DEMAND**

16 Plaintiff hereby demands a trial by jury on all issues so triable.  
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1 Dated: November 5, 2015

/s/ Ronald A. Marron  
Ronald A. Marron  
ron@consumersadvocates.com

2  
3  
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17 *Attorneys for Plaintiff and the Proposed  
18 Class*

# **EXHIBIT 1**



1 of 10 DOCUMENTS

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Chain Drug Review

June 7, 1999

**SECTION:** Pg. 306 Vol. 21 No. 10 ISSN: 0164-9914

**ACC-NO:** 54982656

**LENGTH:** 718 words

**HEADLINE:** Boericke & Tafel goes mass.

**BODY:**

SANTA ROSA, Calif. -- With the popularity of alternative medicine steadily increasing among consumers in the United States, executives at Boericke & Tafel, a 164-year-old manufacturer of homeopathic remedies, feel that now is the time to bring their products to the mass market.

"Through the years homeopathy has been a back-and-forth business, losing popularity and gaining it back again," comments president and chief executive officer Phil Maez. "Today it is rapidly gaining popularity as more people are turning to self-medication."

In 1998 homeopathic medicines were the second-fastest-growing category of over-the-counter health care products, expanding 47.7% over the 1997 level.

At the National Association of Chain Drug Stores Marketplace Conference Boericke & Tafel will introduce its first products for the chain drug industry -- the five-item Boericke & Tafel Natural Relief line of chewable homeopathic remedies. Maez says the products target the most common conditions for which people turn to self-medication.

The items in the line, which are formulated from a mixture of herbs, plants and minerals, and packaged in small tins containing 24 doses apiece, are aimed at treating insomnia, colds and flu, coughs, indigestion, and headaches.

As with all of the company's products, the items in the new line come with a brochure explaining homeopathy and how it can work in conjunction with allopathic (traditional) medications.

"Evidence indicates they are effective medicines," Maez says about Boericke & Tafel's offerings and homeopathic remedies in general. "Homeopathic medicines have no known side effects or contraindications. They are among the safest preparations known to medical science."

Homeopathy, which was created in the late 18th century by the German physician and pharmacist Samuel Hahnemann, works on the principle that like cures like. In other words, Maez explains, substances that cause certain symptoms in a healthy person can be used in small doses to relieve those same symptoms in a sick person.

Boericke & Tafel got its start in 1835 when Frances Boericke and Rudolph Tafel began manufacturing and selling homeopathic medicines in New York City and Philadelphia. Over the years the two opened homeopathic pharmacies in those two cities as well as in New Orleans, San Francisco, Pittsburgh, Washington, D.C., Minneapolis, Chicago and Cincinnati.



Boericke & Tafel goes mass. Chain Drug Review June 7, 1999

As Americans began to lose interest in homeopathy in the early part of the 20th century Boericke and Tafel stepped up their exporting business around the world, supplying doctors in Europe and Asia, where homeopathy remained popular. The company continues to be a major exporter of homeopathic products around the globe.

As homeopathy began to prosper again in the late 1970s and early 1980s, Boericke & Tafel's Philadelphia facility, where the supplier had been operating since its inception, was purchased by the homeopathy company owned by the family of Willmar Schwabe, a German physician, and its headquarters were moved to California. That same year, the company became part of Hom-Int, or Homeopathy International, a federation of homeopathic firms doing business throughout the world.

Because of homeopathy's growing popularity Maez says that now is the time for drug chains to start thinking seriously about adding such products to their assortments.

"Homeopathy is probably the fastest-growing area of O-T-C medication," he notes. "These medicines are natural, holistic, safe and effective. When a retailer stocks them, it performs a valuable service for its customers who are interested in natural products and taps an additional source of income for the store."

And, he adds, the typical homeopathy user is the kind of person drug stores are trying to attract.

"There are actually two typical homeopathic customers," says Maez. "The first is a married woman with children. The second is an older woman. Both attended college and are above average in income. They are health-conscious, interested in natural foods and medicines, environmentally concerned, and wary of a medicine's possible side effects. They are ideal drug store customers."

Boericke & Tafel

2381 Circadian Way Santa Rosa, Calif. 95407

Key contact: Phil Maez President and chief executive officer

E-mail: Phil@Boericke.com

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**LOAD-DATE:** April 2, 2008



2 of 100 DOCUMENTS

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Chain Drug Review

March 4, 2002

**SECTION:** Pg. 45(I) Vol. 24 No. 5 ISSN: 0164-9914

**ACC-NO:** 83521131

**LENGTH:** 613 words

**HEADLINE:** Key to driving sales: Location, location, location.;  
Homeopathy;  
**homeopathic** remedies need to be displayed with other products in drug stores, not in separate section;  
Brief Article

**BODY:**

NEW YORK -- Location is the key to the successful merchandising of homeopathic remedies in chain drug stores, according to the leading suppliers in the category.

"The more savvy retailers slot **homeopathic** items next to their regular allopathic products in the sets and soon discover that they are garnering incremental sales," comments Jay Borneman, president of Hyland's Inc.

**Homeopathic** medications are reasonable alternatives to their allopathic counterparts, he asserts, and need to be considered on the basis of the condition they treat.

"For example, the main competition for our Hyland's teething tablets are other teething preparations -- not other **homeopathic** preparations," says Borneman.

Executives at other leading suppliers in the category, including Boericke & Tafel Inc.'s (B&T's) director of marketing, Susan Backer, concur.

"It is wrong to make homeopathy a separate section, because that is not the way people shop," she notes. If they have a cold or flu, they will visit the cough/cold section."

Retail pharmacies that lump **homeopathic** products in a "natural" section are missing out on substantial profits, according to Backer.

To counter that, buyers must not look at the **homeopathic** consumer as monolithic, Borneman says. "What we need to be talking to buyers about is which products can be integrated into specific O-T-C sections to boost the chances of their customers finding a truly useful product," he remarks.

A number of Hyland's products are among the leaders in their respective product segments. For example, Hyland's teething tablets is the No. 2 brand in unit sales, while Hyland's Leg Cramps with Quinine, a product that has proven effective in alleviating leg pain, tops the category with a 70% market share.

Another popular **homeopathic** product in drug stores is B&T's Arniflora amica gel, a natural botanical remedy widely used to relieve pain, muscle ache and stiffness, bruising and swelling.

Key to driving sales: Location, location, location.; Homeopathy; homeopathic remedies need to be displayed with other products in drug stores, not in separate section; Brief Article Chain Drug Review

In addition, the company recently launched Allergiemittel AllerAide, a natural homeopathic remedy for allergy relief.

The cough/cold/allergy category is a natural for homeopathic medications. One product designed to give fast multi-symptom relief for the common cold and influenza is BioRight International Inc.'s Arizona Sun natural cold medicine.

Parents are particularly interested in finding remedies to treat their children's ailments without creating other problems, and homeopathic remedies often provide a welcome answer, according to suppliers.

For example, Hyland's earache tablets have been clinically shown to reduce earache symptoms in the first 48 hours of each episode, and they work without side effects. In addition, each package contains a reference booklet written by a physician and a pharmacist.

Young mothers and other consumers in chain drug outlets are different than shoppers in natural food stores, notes Dale Nepesa, Hyland's vice president.

"The chain drug channel is basically a self-service environment," he observes, "and consumers are generally not as conversant in the category. What they seek is a product that will truly help their or their child's affliction, one that's not invasive and won't contraindicate with other medications."

Backer agrees. "We find the most effective way to reach people is not by getting into the cumbersome ins and outs of how homeopathy functions, but by conveying the message that it truly works -- that they are getting effective medications backed by science."

Suppliers in the category agree that chain drug stores have a built-in advantage in the homeopathy business because of the trade class' reputation as a health care provider as well as the presence and availability of knowledgeable pharmacists.

**LOAD-DATE:** February 20, 2008

# **EXHIBIT 2**

**B&T Cough & Bronchial Daytime Syrup**



**B&T**  
BOERICKE & TAFEL  
EST. 1835

# Cough & Bronchial Syrup

M511

*Natural*

**B&T® Cold & Flu Products**

FOR YOUR PROTECTION, THIS BOTTLE HAS A CAP WITH A PERFORATED RING ATTACHED. DO NOT USE IF THE RING IS BROKEN OR MISSING.

**Uses:** Temporarily relieves coughs due to minor throat & bronchial irritation occurring with a cold or inhaled irritants. Soothes the throat. Helps loosen phlegm (mucus) & thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes.

**Directions: Adults & children 12 years of age & older:** 2 teaspoons every 2 hours. For severe coughs, repeat every 20 minutes for first hour, then every 2 hours. **Children under 12:** Consult a doctor.

**Warnings:** A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor. Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor. As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product. Keep out of the reach of children.

**Active Ingredients (HPUS):** Aconitum napellus 3X, Bryonia alba 3X, Hepar sulphuris calcareum 6C, Spongia tosta 3X, Stannum metallicum 6C.

Contains sugar.

Store at room temperature out of direct sunlight.

06 12 10

**B&T**  
BOERICKE & TAFEL  
EST. 1835

# Cough & Bronchial Syrup

- No artificial coloring or flavors
- Non-narcotic
- Relieves coughs due to colds or inhaled irritants
- Soothes the throat
- Helps clear bronchial congestion

©2004 R/O  
Distributed by: Boericke & Tafel  
a division of Nature's Way Products, Inc.  
Springville, Utah 84663 USA  
1-800-9NATURE  
Made in Mexico



**B&T**  
BOERICKE & TAFEL  
EST. 1835

# Cough & Bronchial Syrup

*Cough Suppressant & Expectorant*

- Maximum Strength
- Fast, Natural Relief
- Non-Drowsy Formula

NATURAL HOMEOPATHIC  
*Safe and Effective*  
4 fl. oz. 9.8% Alcohol

**Daytime**

NDC 53489-0293-5

**Cough & Bronchial Syrups:**

**Daytime Formula**

- non-drowsy formula
- non-narcotic

**Nighttime Formula**

- relieves difficulty sleeping associated with cough & bronchial conditions
- non-narcotic

**99% Alcohol Free Formula**

- less than 1% alcohol
- non-narcotic

**Zinc Formula**

- contains zinc
- less than 1% alcohol
- non-narcotic

**Children's Formula**

- less than 1% alcohol
- honey base
- non-narcotic

**Cold & Flu Products:**

**Alpha® CF Tablets for Cold and Flu**

- clinically proven effective
- complete relief formula: fever, chills, body aches & pains, runny nose, stuffy nose, headache
- also available in liquid and Children's formula tablets

**B&T Echina-Spray™ Sore Throat Spray**

- clinically proven effective
- temporarily relieves minor irritation and pain associated with sore throat, itchy throat, hoarseness, laryngitis and difficulty swallowing
- contains echinacea
- unique, easy-to-use spray mechanism directs medicine to targeted area



4

## Cough & Bronchial Nighttime Syrup



M518

FOR YOUR PROTECTION, THIS BOTTLE HAS A CAP WITH A PERFORATED RING ATTACHED. DO NOT USE IF THE RING IS BROKEN OR MISSING.

**Don't let a cough keep you awake!** B&T® Nighttime Cough & Bronchial Syrup combines an all-natural, non-narcotic sleep aid with America's favorite homeopathic cough medicine.

**Uses:** Temporarily relieves coughs due to minor throat & bronchial irritation occurring with a cold or inhaled irritants. Soothes the throat. Helps loosen phlegm (mucus) & thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes. Relieves difficulty sleeping associated with cough & bronchial conditions.

**Directions:** Adults & children 12 years of age & older: 2 teaspoons 1/2 hour before bedtime. Dosage may be repeated if necessary. Children under 12: Consult a doctor.

**Warnings:** A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor. If sleeplessness persists continuously for more than 2 weeks, consult a doctor. Insomnia may be a symptom of a serious underlying medical illness. Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor. As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product. Keep out of the reach of children.

**Active Ingredients (HPUS):** Aconitum napellus 3X, Bryonia alba 3X, Hepar sulphuris calcareum 6C, Spongia tosta 3X, Stannum metallicum 6C, Alifolia 1X, Avena sativa 1X, Coffea cruda 6X.

Contains sugar.  
Store at room temperature out of direct sunlight.

**Nighttime Cough & Bronchial Syrup**

- ❖ No artificial coloring or flavors
- ❖ Non-narcotic
- ❖ Relieves coughs due to colds or inhaled irritants
- ❖ Soothes the throat
- ❖ Helps clear bronchial congestion

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Distributed by: Boericke & Tafel  
a division of Nature's Way Products, Inc.  
Springville, Utah 84663 USA  
1-800-SNATURE  
Made in Mexico



**Nighttime Cough & Bronchial Syrup**

**Natural**

**Nighttime Cough & Bronchial Syrup**

*Cough Suppressant & Expectorant*

- ❖ Maximum Strength
- ❖ Fast, Natural Relief
- ❖ Promotes Sound Sleep

NATURAL HOMEOPATHIC  
**Safe and Effective**  
8 fl. oz. 9.8% Alcohol

**Nighttime**

**B&T® Cold & Flu Products**

**Cough & Bronchial Syrups:**

**Daytime Formula**

- ❖ non-drowsy formula
- ❖ non-narcotic

**Nighttime Formula**

- ❖ relieves difficulty sleeping associated with cough & bronchial conditions
- ❖ non-narcotic

**99% Alcohol Free Formula**

- ❖ less than 1% alcohol
- ❖ non-narcotic

**Zinc Formula**

- ❖ contains zinc
- ❖ less than 1% alcohol
- ❖ non-narcotic

**Children's Formula**

- ❖ less than 1% alcohol
- ❖ honey base
- ❖ non-narcotic

**Cold & Flu Products:**

**Alpha® CF Tablets for Cold and Flu**

- ❖ clinically proven effective
- ❖ complete relief formula: fever, chills, body aches & pains, runny nose, stuffy nose, headache
- ❖ also available in liquid and Children's formula tablets

**B&T Echina-Spray™ Sore Throat Spray**

- ❖ clinically proven effective
- ❖ temporarily relieves minor irritation and pain associated with sore throat, itchy throat, hoarseness, laryngitis and difficulty swallowing
- ❖ contains echinacea
- ❖ unique, easy-to-use spray mechanism directs medicine to targeted area



3 08079 00694 8





**Children's Cough & Bronchial Syrup**



Less than  
1% Alcohol



NDC 53499-0393-9

**FOR YOUR PROTECTION, THIS BOTTLE HAS A CAP WITH A PERFORATED RING ATTACHED. DO NOT USE IF THE RING IS BROKEN OR MISSING.**

**Uses:** Temporarily relieves coughs due to minor throat & bronchial irritation occurring with a cold or inhaled irritants. Helps loosen phlegm (mucus) & thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes.

**Directions:** **Children 6 to 12 years of age:** 2 teaspoons every 2 hours. For severe coughs, repeat every 20 minutes for first hour, then every 2 hours. **Children 2 to 5:** 1 teaspoon every 2 hours. **Children under 2:** Consult a doctor.

**Active ingredients** (HPUS): Antimonium sulphuratum aureum 6X 5%; Bryonia alba 3X 5%; Drosera rotundifolia 3X 5%; Eucalyptus globulus 3X 5%; Ipecacuanha 4X 5%; Illicium anisatum 1X 0.75%.

Potassium sorbate 0.135%, as preservative. Contains honey.

**Store at room temperature out of direct sunlight.**

Made in the Mexico  
M536

# Children's Cough & Bronchial Syrup



**Relieves**

**COUGHS & CONGESTION**

**NATURAL HOMEOPATHIC**

**Sugar Free • Honey Base**

**8 fl OZ Alcohol 0.74%**

**Ideal for Children!** Sugar free. No artificial flavoring. No artificial coloring. Less than 1% alcohol. Natural cherry flavor. Honey base. Soothes irritated throat membranes. Relieves coughs due to colds and inhaled irritants (air pollution). Helps clear congested bronchial tubes of stubborn mucus.

**Warnings:** A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor. Do not give this product for persistent or chronic cough such as occurs with asthma or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor. Keep out of the reach of children.



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a division of Nature's Way Products, Inc.  
Springville, Utah 84663 USA  
1-800-9NATURE

**Cough & Bronchial Syrup—Zinc Formula**



Cough & Bronchial Syrup—99% Alcohol Free



# **EXHIBIT 3**

July 18, 2013

**Via: Certified Mail, (receipt acknowledgment with signature requested)**

Nature's Way Products, LLC  
ATTN: Legal Department  
825 Challenger Drive  
Green Bay, Wisconsin 54311

Nature's Way Holding Company, LLC  
ATTN: Legal Department  
825 Challenger Drive  
Greenbay, Wisconsin 54311-8312

Nature's Way Products, Inc.  
ATTN: Legal Department  
3051 West Maple Loop Drive, Suite 125  
Lehi, Utah 84043

Schwabe, North America, Inc.  
ATTN: Legal Department  
825 Challenger Drive  
Green Bay, Wisconsin 54311

***RE: NOTICE: Violations of the California Consumers Legal Remedies Act and  
Duty to Preserve Evidence***

Dear Sir or Madam,

**PLEASE TAKE NOTICE** that this letter constitutes notice under the California Consumers Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant to Civil Code Section 1782 — notifying **NATURE'S WAY PRODUCTS, LLC, SCHWABE, NORTH AMERICA, INC., NATURE'S WAY HOLDING COMPANY, LLC, and NATURE'S WAY PRODUCTS, INC.** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Woodson Wood, Jr., who purchased YOUR homeopathic B&T Cough and Bronchial Daytime Syrup, Cough & Bronchial Nighttime Syrup, Children's Cough and Bronchial Syrup, and Cough & Bronchial Syrup Zinc Formula from Walgreens, located in Sacramento, California. Mr. Wood and other consumers similarly situated were exposed to and saw YOUR claims about the B&T Cough & Bronchial products, purchased the products in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

As you know, YOUR homeopathic B&T Cough & Bronchial product line comes in five (5) varieties: Cough & Bronchial Daytime Syrup, Cough & Bronchial Nighttime Syrup, Cough & Bronchial Syrup 99% Alcohol Free, Cough & Bronchial Syrup Zinc Formula, and Children's Cough & Bronchial Syrup (collectively "PRODUCTS"). In purchasing YOUR PRODUCTS, Mr. Wood and other consumers similarly situated relied upon various representations and omissions YOU made on the PRODUCTS' labels and elsewhere. Examples of such representations and omissions are, including but not limited to, the following.

First, YOU falsely market YOUR PRODUCTS by putting false and misleading claims on the labels. For example, YOU market YOUR PRODUCTS as "Cough & Bronchial" syrups that are "Natural," "Cough Suppressant/Expectorant[s]," "Homeopathic," "Effective," "clinically proven," "Maximum Strength," and provide "Fast Relief," "Fast, Natural Relief."

Other misleading representations on the PRODUCTS' labels and packaging include: "Relieves coughs," "Relieves Coughs & Congestion," "Helps clear bronchial congestion," "Clears bronchial congestion," "Relieves coughs due to colds or inhaled irritants," "Relieves coughs due to colds and inhaled irritants (air pollution)," "Helps clear bronchial congestion," "Relieves Coughs & Congestion," "Temporarily relieves cough due to minor throat and bronchial irritation as may occur with a cold," "Temporarily relieves cough due to minor throat and bronchial irritations occurring with a cold or inhaled irritants," "Helps loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes," "Helps to loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes," "Helps clear congested bronchial tubes of stubborn mucus," "Relieves difficulty sleeping associated with cough & bronchial conditions," "Promotes Sleep," "Promotes restful sleep," "Soothes irritated throat membranes," and "Soothes the throat," among other representations.

Second, In addition, PRODUCTS within the B&T Cough & Bronchial line (including, Cough & Bronchial Daytime Syrup, Cough & Bronchial Nighttime Syrup, Children's Cough & Bronchial Syrup, Cough & Bronchial Syrup Zinc Formula, and Cough & Bronchial Syrup 99% Alcohol Free) provide a clear representation to consumers that the PRODUCTS are designed to alleviate the symptoms identified in their respective names. Label descriptions on the PRODUCTS' packaging, taken as a whole, further clarify the purported benefits of YOUR PRODUCTS. Moreover, YOU falsely advertise YOUR PRODUCTS online.

Third, YOUR advertising that YOUR homeopathic PRODUCTS contain 1X, 2X, etc. of active ingredients is false and deceptive because the average consumer is unaware

that these quantity designations indicate dilution of the mother tincture by 1,000 times, 10,000 times, etc. YOU also encourage the sale of YOUR PRODUCTS next to other, non-homeopathic over-the-counter (“OTC”) drugs in retail stores, adding to consumer deception that YOUR homeopathic PRODUCTS are similar to allopathic, FDA approved OTC drugs.

Fourth, the purported active ingredients in B&T Cough & Bronchial PRODUCTS are *Aconitum napellus*, *Alfalfa*, *Antimonium sulphuratum aureum*, *Avena sativa*, *Bryonia alba*, *Coffea cruda*, *Drosera rotundifolia*, *Eucalyptus globulus*, *Hepar sulphuris calcareum*, *Illicium anisatum*, *Ipecacuanha*, *Spongia tosta*, *Stannum metallicum* and *Zincum gluconicum*. The dilution levels of these ingredients, however, is undisclosed to Plaintiff and other unsuspecting consumers.

Fifth, YOU also advertise YOUR PRODUCTS as being “Natural.” Average consumers, however, understand this to mean all-natural, which YOUR products are not, as they contain synthetic and/or chemically reduced ingredients.

Sixth, several of YOUR PRODUCTS were improperly marketed as homeopathic drugs between 2009 and 2013, as not all of their respective ingredients were recognized by the Homeopathic Pharmacopeia of the United States (“HPUS”) during that timeframe. By containing even *one* non-HPUS ingredient, the Products are not official homeopathic drugs, CPG § 400.400, but are unapproved new drugs and are accordingly misbranded under the California Sherman Law. *See* CPG §400.400 (“Drug products containing homeopathic ingredients in combination with non-homeopathic active ingredients are not homeopathic drug products”); Cal. Health & Safety Code §§ 110100, 110105, 110110, 110111. Thus, Defendants advertising its PRODUCTS are “homeopathic” is false, deceptive and unlawful.

Seventh, any clinical proof YOU have for YOUR PRODUCTS does not meet the standard required for a new drug under the Food, Drug and Cosmetic Act; therefore, the phrase “Clinically Proven,” on any of YOUR PRODUCTS so labeled, is false and misleading.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR PRODUCTS or services.

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR PRODUCTS under the representation that they provide significant health benefits, when in fact they do not. YOUR PRODUCTS did not live up to their warranties, and that breach caused injury in the form of the lost purchase price of the PRODUCTS.



Based upon the above, a demand is hereby made that YOU cure this breach, conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and PRODUCTS.

Further, on behalf of our client, Mr. Wood, and all other similarly-situated U.S. consumers of YOUR B&T Cough & Bronchial PRODUCTS, we demand:

- (1) The actual damages suffered;
- (2) A stipulation enjoining YOU for such methods, acts or practices;
- (3) Restitution of monies paid;
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind YOU of YOUR legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR PRODUCTS will be sought in the forthcoming discovery process. YOU therefore must inform any employees, contractors, and third-party agents (for example PRODUCT consultants and advertising agencies handling YOUR PRODUCT account(s)) to preserve all such relevant information.

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Woodson Wood, Jr.,

and all others similarly situated

cc: Amy Lally, Esq.

7009 1680 0001 2316 8707

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Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: Nature's Way Products, LLC  
 Attn: Legal Department  
 Street, Apt. No., or PO Box No.: 825 Challenger Drive  
 City, State, ZIP+4: Green Bay, Wisconsin 54311

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature                  x <i>Linda Matzorny</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Linda Matzorny</i> C. Date of Delivery <i>7-22</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No                  If YES, enter delivery address below:</p>
<p>1. Article Addressed to:                  Nature's Way Products, LLC                  Attn: Legal Department                  825 Challenger Drive                  Green Bay, Wisconsin 54311</p>	<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number <b>7009 1680 0001 2316 8707</b>                  (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

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**OFFICIAL USE**

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	<b>\$</b>	

Postmark Here

Sent To *Nature's Way Holding Company, LLC*  
*Attn: Legal Department*  
 Street, Apt. No. or PO Box No. *925 Challenger Drive*  
 City, State, ZIP+4 *Green Bay, Wisconsin 54311-9312*

PS Form 3800, August 2006 See Reverse for Instructions

7012 2920 0001 0982 5088

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <i>X Linda Montgomery</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Linda Montgomery</i> C. Date of Delivery <i>7-22</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No                      If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><i>Nature's Way Holding Company, LLC</i>  <i>Attn: Legal Department</i>  <i>925 Challenger Drive</i>  <i>Green Bay, Wisconsin 54311-9312</i></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number                      (Transfer from service label)</p>	<p style="text-align: center; font-size: 1.2em;"><b>7012 2920 0001 0982 5088</b></p>

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Postage	\$ 7.76	Postmark Here
Certified Fee	3.10	
Return Receipt Fee (Endorsement Required)	2.55	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 13.41	

7009 1680 0001 2361 3320

Sent To Schwabe, North American, Inc.  
Attn: Legal Department  
 Street, Apt. No.,  
 or PO Box No. 825 Challenger Drive  
 City, State, ZIP+4  
Green Bay Wisconsin 54311

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature                  X <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Linda M</u> C. Date of Delivery <u>7-22</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  if YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:  <u>Schwabe, North American, Inc.</u>  <u>Attn: Legal Department</u>  <u>825 Challenger Drive</u>  <u>Green Bay, Wisconsin 54311</u></p>	<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

2. Article No. 7009 1680 0001 2361 3320  
 (Transfer from service label)

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Postage	\$ 1.25	Postmark Here
Certified Fee	3.00	
Return Receipt Fee (Endorsement Required)	2.00	
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>	<b>\$ 6.25</b>	

7012 2920 0001 0982 5095

Sent To: *Nature's Way Products, Inc.*  
*Legal Department*  
 Street, Apt. No. or PO Box No. *3051 West Maple Loop, Dr., Ste. 125*  
 City, State, ZIP+4 *Lehi, Utah 84043*

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>[Signature]</i> <i>5/22/15</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                      If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><i>Nature's Way Products, Inc.</i>  <i>Attn: Legal Department</i>  <i>3051 West Maple Loop Dr., Ste. 125</i>  <i>Lehi, Utah 84043</i></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number</p> <p><i>(Transfer from service lab)</i></p>	<p style="text-align: center; font-size: large;">7012 2920 0001 0982 5095</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

7009 1680 0001 2361 3344

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**OFFICIAL USE**

Postage	\$ 46	Postmark Here
Certified Fee	2.10	
Return Receipt Fee (Endorsement Required)	1.55	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.11	

Sent To Amy P Lally  
 Sidley Austin LLP  
 Street, Apt. No. or PO Box No. 555 West Fifth Street  
 City, State, ZIP+4 Los Angeles CA 90013

PS Form 3800, August 2006 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Amy P Lally  
 Sidley Austin LLP  
 555 West Fifth Street  
 Los Angeles, CA 90013

2. Article Number (Transfer from service label): 7009 1680 0001 2361 3344

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
 X Steve Isely  
 B. Received by (Printed Name) Steve Isely Date of Delivery 7/22/13

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes