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CENTRAL DISTRICT OF CALIFORNIA
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8 *Attorneys for Plaintiff and the Proposed Class*

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

CV13-6591 RSWL (MARRON)

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

14 Plaintiff,

15 v.

16 NATURE'S WAY PRODUCTS,
17 INC., a Utah corporation;
18 NATURE'S WAY PRODUCTS,
19 LLC, a Wisconsin limited liability
20 company; SCHWABE, NORTH
21 AMERICA, INC., a Wisconsin
22 corporation, and NATURE'S WAY
23 HOLDING COMPANY, LLC, a Utah
24 limited liability company,

25 Defendants.

Case No..

CLASS ACTION

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 WARRANTY OF MERCHANTABILITY
6. VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT [15 U.S.C. §§ 2301, *et. seq.*]

DEMAND FOR JURY TRIAL

1 Plaintiff, on behalf of himself, all others similarly situated, and the general
2 public (“Plaintiff”), alleges against Defendants Nature’s Way Products, Inc.,
3 Nature’s Way Products LLC, Schwabe North America Inc., Nature’s Way Holding
4 Company, LLC and (collectively “Defendants”) the following upon his own
5 knowledge, or where there is no personal knowledge, upon information and belief
6 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
12 a different state than Defendants. Further, all other members of the class are
13 citizens of 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
18 and 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
27 sale of their products in this district;

- (ii) do substantial business in this district;
- (iii) advertise to consumers residing in this district; and,
- (iv) are subject to personal jurisdiction in this district.

THE PARTIES

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

7 6. On information and belief, at all times relevant to this matter,
8 Defendant Nature’s Way Products, Inc. was a Wisconsin corporation and the
9 “Labeler” of the products at issue in this action, as listed on the National Drug
10 Code Directory.

11 7. On information and belief, at all times relevant to this matter,
12 Defendant Nature’s Way Holding Company, LLC was a Utah limited liability
13 company and the “Labeler” of the products at issue in this action, as listed on the
14 National Drug Code Directory.

15 8. On information and belief, at all times relevant to this matter,
16 Defendant Nature’s Way Products, LLC was a Wisconsin limited liability
17 company that maintains its principal place of business, corporate headquarters, and
18 residence in Green Bay, Wisconsin. (The Nature’s Way Defendants listed above
19 are hereafter collectively referred to as “Nature’s Way.”)

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

23 10. On information and belief, at all times relevant to this matter,
24 Defendant Schwabe was a Wisconsin corporation, with its principal place of
25 business in Green Bay, Wisconsin.

26 11. Members of the putative class are citizens of California.

1 12. Defendants are the manufacturers and sellers of products under the
2 (“B&T”) name brand.

3 13. Defendants produce, market, and sell the B&T brand products
4 throughout the United States, including California. Until 2004, B&T’s
5 headquarters were in Santa Rosa, California.

6 14. Plaintiff is informed and believes and thereon alleges that at all times
7 herein mentioned the Defendants and Defendants’ employees were the agents,
8 servants and employees of the Defendants, acting within the purpose and scope of
9 that agency and employment.

10 15. Defendants advertise, market, distribute and sell homeopathic
11 products throughout California and the United States. This complaint concerns
12 Defendants’ sales of B&T homeopathic products known as Cough & Bronchial
13 Daytime Syrup and Children’s Cough & Bronchial Syrup (collectively, the
14 “Products”). Exhibit 1 to this Complaint has a more through description of the
15 Products, including pictures.

16 16. During the class period, Defendants regularly and continually targeted
17 California consumers for sales of its Products, and derived substantial sales
18 revenue from doing business within the forum and throughout this state. For
19 example, the Products are available for sale to California consumers through their
20 significant on-the-shelf presence in numerous stores in this forum and throughout
21 this state.

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

1 18. Defendants' packaging and labeling of the B&T Products are uniform
2 throughout the United States.

3 19. Based on all facts available to Plaintiff at this time, personal
4 jurisdiction is present over Defendants in this forum. *See Snowey v. Harrah's*
5 *Entm't*, 35 Cal. 4th 1054, 1065-66 (2005) (defendants' purposeful and successful
6 solicitation of business within California, including their extensive promotional
7 efforts to advertise Nevada hotels in California through billboards, newspapers,
8 mailings and radio and television stations located in California, coupled with
9 defendants' web site that specifically targeted California residents, was sufficient
10 to establish purposeful availment); *see also Coremetrics, Inc. v. Atomic Park.com,*
11 *LLC*, 370 F. Supp. 2d 1013, 1017 (N.D. Cal. 2005) (economic reality of
12 defendant's conduct within forum state should be focus of analysis for general
13 jurisdiction, which includes consideration of factors such as defendant's
14 solicitation of business aimed at forum state, the percentage of revenue the non-
15 resident defendant derived from sales within the forum, the number of sales made
16 by the non-resident defendant in the forum, and whether the solicitation is
17 regularly conducted and specifically targeted the forum market).

18 **BACKGROUND FACTS**

19 20. Homeopathy seeks to stimulate the body's ability to heal itself by
20 giving very small doses of highly diluted substances. However, there is "little
21 evidence" that homeopathy is effective, much less that people understand
22 homeopathic dilution principles. *See* [nccam.nih.gov/sites/nccam.nih.gov/files/](http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf)
23 [homeopathy.pdf](http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf).

24 21. Homeopathy is premised on two main principles; the principle of
25 similars and the principle of dilutions. Under the "principle of similars" a disease
26 can be cured by a substance that produces similar symptoms in healthy people. *Id.*
27 Thus, homeopathic drugs are intended to work by causing "aggravation," or a
28

1 temporary worsening of symptoms initially, a fact that is not communicated to
2 consumers. *See id.*

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

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

13 24. Homeopathic remedies are not marketed and sold in the United States
14 in the same manner as when they first originated, approximately 200 years ago.
15 When homeopathic drugs first originated, people would typically consult with a
16 licensed homeopathic practitioner, who would compound his or her own
17 homeopathic remedy, or provide a prescription to the patient. Food and Drug
18 Administration (“FDA”) Compliance Policy Guide (“CPG”) § 400.400.

19 25. Also, historically, homeopathic drugs were not labeled and there was
20 no direct-to-consumer advertising. *Id.* Instead, homeopathic remedies were
21 primarily marketed to licensed homeopathic practitioners. *Id.*

22 26. There was good reason for this historical practice: Homeopathic
23 drugs are intended to be “‘individualized’ or tailored to each person—it is not
24 uncommon for different people with the same condition to receive different
25 treatments.” nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf.

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

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

7 29. Health care costs in the United States reached almost \$2.6 trillion in
8 2010, with 10% of that amount spent on retail and prescription drugs.
9 www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx.

10 But unless drug manufacturers disclose the complete truth to consumers,
11 consumers are unable to make informed decisions about where to spend their
12 limited healthcare dollars. *See id.*

13 30. Most consumers who purchase homeopathic drugs in the OTC aisles
14 of retail stores are unaware of homeopathic dilution principles, and are merely
15 seeking a natural alternative to prescription or other OTC non-homeopathic (i.e.,
16 allopathic) drugs.

17 31. Accordingly, the homeopathic drug industry, including Defendants,
18 strives to market its wares as natural, safe, and effective alternatives to prescription
19 and non-homeopathic OTC drugs. But this latter category of drugs, which are all
20 allopathic, have undergone rigorous scrutiny by the FDA and its appointed
21 scientific committees.

22 32. In contrast, homeopathic drugs, including the Products, undergo no
23 FDA approval of efficacy or labeling claims, a material fact that is not
24 communicated to the Products’ purchasers. *See labels.fda.gov/*.

25 33. Indeed, the FDA, itself, has publicly stated it is aware of no scientific
26 evidence that homeopathy is effective, another material fact that is not disclosed to
27 purchasers of Defendants’ Products. *See id.*

28

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

11 35. Defendants’ changed marketing strategy of downplaying the true
12 nature of homeopathy is in direct contrast to how B&T formerly marketed its drugs
13 – by using an insert with each drug package that explained the principles of
14 dilution and Law of Similars observed by homeopathy and homeopathic drugs.
15 *See id.* (June 7, 1999 Chain Drug Review article, *Boericke & Tafel Goes Mass*,
16 quoting President and CEO, Phil Maez, stating that first line of B&T products for
17 the mass drug market would “come with a brochure explaining homeopathy and
18 how it can work in conjunction with allopathic (traditional) medications”).
19 Defendants abandoned use of this informational brochure once they determined it
20 was negatively impacting sales and heightened consumer awareness of the
21 difference between homeopathic drugs and allopathic drugs, something Defendants
22 admittedly no longer wanted. *See id.* (March 4, 2002 Chain Drug Review Article).

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

28

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

7 38. As a result of other class action litigation, such as the *Gallucci* case,
8 *supra*, other homeopathic drug manufacturers have voluntarily agreed to
9 implement a FDA disclaimer similar to the one noted above, along with additional
10 injunctive relief, such as a dilution disclaimer and explanation of homeopathic
11 dilution for consumers. *See, e.g., Gallucci*, Dkt. No. 105 at pp. 13-15; Dkt. No.
12 125 at pp. 9-10. Thus, even those in the industry recognize a need to more
13 truthfully label homeopathic drugs for the average consumer. *See id.*

14 **FACTS**

15 39. This is a consumer protection class action lawsuit on behalf of
16 purchasers of Defendants’ “homeopathic” B&T products, which include products
17 within Defendants’ B&T Cough & Bronchial product line.

18 40. Defendants’ B&T Cough & Bronchial line comes in five (5) variants:
19 **Cough & Bronchial Syrup Daytime, Cough & Bronchial Syrup Nighttime,**
20 **Children’s Cough & Bronchial Syrup, Cough & Bronchial Syrup Zinc**
21 **Formula, and Cough & Bronchial Syrup 99% Alcohol Free** (collectively
22 **“Products” or “B&T Cough & Bronchial”**).

23 41. Defendants manufacture, advertise, distribute and sell their Products
24 in over-the-counter (“OTC”) aisles in major retail stores throughout California and
25 the United States.

26 42. Defendants primarily advertise and promote their Products through
27 uniform labeling claims on the front of the Products’ package. Label descriptions
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1 on the Products’ packaging, taken as a whole, represent there are various benefits
2 and characteristics to the Products. *See* Ex. 2-4.

3 43. Defendants’ Products are also the subject of an extensive and
4 comprehensive advertising and marketing campaign in various media including the
5 Internet. *See* www.naturesway.com/Products/Our-Brands/Boericke-Tafel.aspx
6 (last visited June 12, 2013).

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

14 45. During the class period, Plaintiff and putative Class members were
15 exposed to and saw Defendants’ claims about B&T Cough & Bronchial, which
16 claimed, *inter alia*, that the Products were a natural remedy for colds and/or colds
17 and flus.

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



15 46. In or around January or February 2012, Plaintiff Wood purchased
16 Defendants' Cough & Bronchial Daytime Syrup at Walgreens, located at 1401
17 Broadway in Sacramento, California for approximately \$13.49. Plaintiff is a
18 consumer as described herein.

19 47. In purchasing Defendants' Cough & Bronchial Daytime Syrup,
20 Plaintiff relied upon various representations Defendants made on the Product's
21 label, including but not limited to: "Cough & Bronchial," "Natural," "Cough
22 Suppressant/Expectorant," "Maximum Strength," "Fast Relief," "Homeopathic,"
23 "Relieves coughs," "Helps clear bronchial congestion," "Clears bronchial
24 congestion," "Fast, Natural Relief," "Effective," "Relieves coughs due to colds or
25 inhaled irritants," "Helps clear bronchial congestion," "clinically proven,"
26 "Relieves Coughs & Congestion," "Temporarily relieves cough due to minor throat
27 and bronchial irritation as may occur with a cold," "Helps loosen phlegm (mucus)

1 and thin bronchial secretions to drain bronchial tubes,” “Helps to loosen phlegm
2 (mucus) and thin bronchial secretions to rid the bronchial passageways of
3 bothersome mucus & drain bronchial tubes” and “Soothes the throat,” among other
4 representations. *See* Ex. 4 (Product Labels). The Product was not as represented,
5 however.

6 48. The purportedly “active ingredients” in Cough & Bronchial Daytime
7 Syrup include: *Aconitum napellus*, *Bryonia alba*, *Hepar sulphuris calcareum*,
8 *Spongia tosta* and *Stannum metallicum*.

9 49. The “active ingredients”, however, even if they were otherwise
10 effective, are so greatly diluted as to be effectively non-existent in Cough &
11 Bronchial Daytime Syrup.

12 50. Defendants know, or reasonably should know, there are no or just
13 trace amounts of “active ingredients” present in Cough & Bronchial Daytime
14 Syrup and that consumers are unaware of this high level of dilution. Defendants
15 further know that Plaintiff and similarly situated reasonable consumers are
16 unaware of the true nature of homeopathic drugs.

17 51. Further, the “active ingredients” used in Cough & Bronchial Daytime
18 Syrup provide no health benefits. At the stupendously high dilutions used to
19 prepare the product, the odds are astronomically high that even a single molecule
20 derived from the original “extract” of the “active ingredients” could be present in
21 the Product sold to consumers.

22 52. Cough & Bronchial Daytime Syrup is nothing more than a placebo,
23 with trace amounts of the claimed “active ingredients”, and consumers are not
24 made aware of this fact. It is sold in 8 oz. bottles and is priced at approximately
25 \$10.00-\$15.00 per unit, well beyond the cost of an actual placebo. Thus,
26 Defendants’ unfair and deceptive practices have enriched them by hundreds of
27 thousands of dollars, at the expense of Plaintiff and unsuspecting consumers.

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

9 54. Cough & Bronchial Daytime Syrup also contains contain *Hepar*
10 *sulphuris calcareum* and *Stannum metallicum* as ingredients, which were not
11 recognized by the official HPUS until 2010, more than one year into the Class
12 Period. *See* Ex. 3. By containing even one non-HPUS ingredient, the Products are
13 not official homeopathic drugs, CPG § 400.400, but are unapproved new drugs and
14 are accordingly misbranded under the California Sherman Law. *See* CPG
15 §400.400 ("Drug products containing homeopathic ingredients in combination with
16 non-homeopathic active ingredients are not homeopathic drug products"); Cal.
17 Health & Safety Code §§ 110100, 110105, 110110, 110111. Thus, Defendants
18 advertising that Cough is "homeopathic" during this timeframe is false, deceptive
19 and unlawful.

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

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

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

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

4 **Cough & Bronchial Nighttime Syrup**



18 59. In or around January or February 2012, Plaintiff Wood purchased
19 Defendants' Cough & Bronchial Nighttime Syrup at Walgreens, located at 1401
20 Broadway in Sacramento, California for approximately \$13.49. Plaintiff is a
21 consumer as described herein.

22 60. In purchasing Defendants' Cough & Bronchial Nighttime Syrup,
23 Plaintiff relied upon various representations Defendants made on the Product's
24 label, including but not limited to: "Cough & Bronchial," "Maximum Strength,"
25 "Cough Suppressant & Expectorant," "Fast, Natural Relief," "Fast relief," "Helps
26 clear bronchial congestion," "Temporarily relieves cough due to minor throat and
27 bronchial irritations as may occur with a cold," "Helps loosen phlegm (mucus) and
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1 thin bronchial secretions to drain bronchial tubes,” “Helps loosen phlegm (mucus)
2 and thin bronchial secretions to rid the bronchial passageways of bothersome
3 mucus & drain bronchial tubes,” “Relieves difficulty sleeping associated with
4 cough & bronchial conditions,” “Promotes Sleep,” “Relieves coughs,” “Clears
5 bronchial congestion,” “Promotes restful sleep,” “Effective,” “Natural,” and
6 “Homeopathic” among other representations. *See also* Exs. 2-4. The Product was
7 not as represented, however.

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

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

15 63. Defendants know, or reasonably should know, there are no or just
16 trace amounts of “active ingredients” present in Cough & Bronchial Nighttime
17 Syrup 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
20 drugs.

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

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

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

11 67. Cough & Bronchial Nighttime Syrup also contains contain Alfalfa,
12 *Avena sativa*, *Hepar sulphuris calcareum* and *Stannum metallicum* as ingredients,
13 which were not recognized by the official HPUS until 2010, more than one year
14 into the Class Period. *See* Ex. 3. By containing even one non-HPUS ingredient,
15 the Products are not official homeopathic drugs, CPG § 400.400, but are
16 unapproved new drugs and are accordingly misbranded under the California
17 Sherman Law. *See* CPG §400.400 ("Drug products containing homeopathic
18 ingredients in combination with non-homeopathic active ingredients are not
19 homeopathic drug products"); Cal. Health & Safety Code §§ 110100, 110105,
20 110110, 110111. Thus, Defendants' advertising that Cough is "homeopathic"
21 during this timeframe is false, deceptive and unlawful.

22 68. This Product did not provide the characteristics, benefits,
23 endorsements, and proof of efficacy to Plaintiff and consumers as advertised.

24 69. Plaintiff and consumers paid more for this Product than they would
25 have absent the package and labeling misrepresentations described herein.
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27
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1 70. Absent the misrepresentations and omissions described herein, which
2 are material to an average consumer, Plaintiff and other consumers would not have
3 purchased this Product.

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

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



22 72. In or around October or November 2012, Plaintiff Wood purchased
23 Defendants' Children's Cough & Bronchial Syrup at Walgreens, located at 1401
24 Broadway in Sacramento, California for approximately \$13.49. Plaintiff is a
25 consumer as described herein.

26 73. In purchasing Defendants' Children's Cough & Bronchial Syrup,
27 Plaintiff relied upon various representations Defendants made on the Product's
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1 label, including but not limited to: “Cough & Bronchial,” “Natural,” “Cough
2 Suppressant/Expectorant,” “Maximum Strength,” “Fast Relief,” “Homeopathic,”
3 “Effective,” “Relieves Coughs & Congestion,” “Soothes irritated throat
4 membranes,” “Relieves coughs due to colds and inhaled irritants (air pollution),”
5 “Helps clear congested bronchial tubes of stubborn mucus,” “Helps clear bronchial
6 congestion,” “Temporarily relieves cough due to minor throat and bronchial
7 irritation as may occur with a cold,” “Helps to loosen phlegm (mucus) and thin
8 bronchial secretions to drain bronchial tubes” and “Soothes the throat,” among
9 other representations. *See* Ex. 4 (Product Labels). The Product was not as
10 represented, however.

11 74. The purportedly “active ingredients” in Children’s Cough &
12 Bronchial Syrup include: *Antimonium sulphuratum aureum*, *Bryonia alba*, *Drosera*
13 *rotundifolia*, *Eucalyptus globulus*, *Illicium anisatum* and *Ipecacuanha*.

14 75. The “active ingredients”, however, even if they were otherwise
15 effective, are so greatly diluted as to be effectively non-existent in Children’s
16 Cough & Bronchial Syrup such that the Product is ineffective for its intended uses.

17 76. Defendants know, or reasonably should know, there are no or just
18 trace amounts of “active ingredients” present in Children’s Cough & Bronchial
19 Syrup and therefore must be aware that it cannot relieve any symptoms for which
20 Defendants advertise them. Defendants further know that Plaintiff and similarly
21 situated reasonable consumers are unaware of the true nature of homeopathic
22 drugs.

23 77. Further “active ingredients” used in Children’s Cough & Bronchial
24 Syrup provide no health benefits. Moreover, at the stupendously high dilutions
25 used to prepare the product, the odds are astronomically high that even a single
26 molecule derived from the original “extract” of the “active ingredients” could be
27 present in the Product sold to consumers.

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1 78. Children’s Cough & Bronchial Syrup is nothing more than a placebo,
2 with trace amounts of the claimed “active ingredients”. It is sold in 8 oz. bottles
3 and is priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants’ unfair
4 and deceptive practices have enriched them by hundreds of thousands of dollars, at
5 the expense of Plaintiff and unsuspecting consumers.

6 79. Defendants’ Product also contains synthetic ingredients, and therefore
7 does not provide “Natural” relief. For example, it contains citric acid and
8 Potassium sorbate as inactive ingredients. Citric acid is chemically reduced, and
9 Potassium sorbate, is a synthetic preservative. As constituents of Children’s
10 Cough & Bronchial Syrup, their presence means this Product is not “Natural.” *See*
11 *Ex. 3*. As such, because the packaging and labeling of Children’s Cough &
12 Bronchial Syrup represents it is “Natural,” it is falsely and/or deceptively
13 advertised to consumers.

14 80. This Product did not provide the characteristics, benefits,
15 endorsements, and proof of efficacy to Plaintiff and consumers as advertised.

16 81. Plaintiff and consumers paid more for this Product than they would
17 have absent the package and labeling misrepresentations described herein.

18 82. Absent the misrepresentations and omissions described herein, which
19 are material to an average consumer, Plaintiff and other consumers would not have
20 purchased this Product.

21 83. Plaintiff seeks justice for himself and similarly-situated consumers of
22 Children’s Cough & Bronchial Syrup by means of this action to enjoin the ongoing
23 deceptive practices described herein.

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1 Cough & Bronchial Syrup—Zinc Formula



15 84. In or around January or February 2012, Plaintiff Wood purchased
16 Defendants’ Cough & Bronchial Syrup—Zinc Formula at Walgreens, located at
17 1401 Broadway in Sacramento, California for approximately \$13.49. Plaintiff is a
18 consumer as described herein.

19 85. In purchasing Defendants’ Cough & Bronchial Syrup—Zinc Formula,
20 Plaintiff relied upon various representations Defendants made on the Product’s
21 label, including but not limited to: “Maximum Strength,” “Cough Suppressant &
22 Expectorant,” “Fast, Natural Relief,” “Soothes the throat,” “Helps clear bronchial
23 congestion,” “Temporarily relieves cough due to minor throat and bronchial
24 irritations as may occur with a cold,” “Helps to loosen phlegm (mucus) and thin
25 bronchial secretions to drain bronchial tubes,” “Soothe[s] the throat,” “Effective,”
26 “Natural,” and “Homeopathic,” among other representations. See Ex. 4. The
27 Product was not as represented, however.

1 86. The purportedly “active ingredients” in Cough & Bronchial Syrup—
2 Zinc Formula are: *Antimonium sulphuratum aureum*, *Bryonia alba*, *Drosera*
3 *rotundifolia*, *Eucalyptus globulus*, *Ipecacuanha* and *Spongia tosta*.

4 87. The “active ingredients”, however, even if they were otherwise
5 effective, are so greatly diluted as to be effectively non-existent in Cough &
6 Bronchial Syrup—Zinc Formula such that the Product is ineffective for its
7 intended uses.

8 88. Defendants know, or reasonably should know, there are no or just
9 trace amounts of “active ingredients” present in Cough & Bronchial Syrup—Zinc
10 Formula and therefore must be aware that it cannot relieve any symptoms for
11 which Defendants advertise them. Defendants further know that Plaintiff and
12 similarly situated reasonable consumers are unaware of the true nature of
13 homeopathic drugs.

14 89. Further, the “active ingredients” used in Cough & Bronchial Syrup—
15 Zinc Formula provide no health benefits. Moreover, at the stupendously high
16 dilutions used to prepare the product, the odds are astronomically high that even a
17 single molecule derived from the original “extract” of the “active ingredients”
18 could be present in the Product sold to consumers.

19 90. Cough & Bronchial Syrup—Zinc Formula is nothing more than a
20 placebo, with trace amounts of the claimed “active ingredients”. It is sold in 8 oz.
21 bottles and is priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants’
22 unfair and deceptive practices have enriched them by hundreds of thousands of
23 dollars, at the expense of unsuspecting consumers.

24 91. This Product did not provide the characteristics, benefits,
25 endorsements, and proof of efficacy to Plaintiff and consumers as advertised.

26 92. Plaintiff and consumers paid more for this Product than they would
27 have absent the package and labeling misrepresentations described herein.
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1 93. Absent the misrepresentations and omissions described herein, which
2 are material to an average consumer, Plaintiff and other consumers would not have
3 purchased this Product.

4 94. Plaintiff seeks justice for himself and similarly-situated consumers of
5 Cough & Bronchial Syrup—Zinc Formula by means of this action to enjoin the
6 ongoing deceptive practices described herein.

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



24 95. Through its packaging, Defendants advertise that Cough & Bronchial
25 Syrup—99% Alcohol Free is a “Cough & Bronchial” “Maximum Strength”
26 “Cough Suppressant & Expectorant” that provides “Fast, Natural Relief,” “Helps
27 clear bronchial congestion,” “Temporarily relieves cough due to minor throat and
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1 bronchial irritations as may occur with a cold,” “Helps loosen phlegm (mucus) and
2 thin bronchial secretions to rid the bronchial passageways of bothersome mucus &
3 drain bronchial tubes,” “Temporarily relieves cough due to minor throat and
4 bronchial irritations occurring with a cold or inhaled irritants,” “Helps to loosen
5 phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of
6 bothersome mucus & drain bronchial tubes,” “Soothes the throat,” and is
7 “Effective,” “Natural,” and “Homeopathic,” among other representations. *See Ex.*
8 4. The Product is not as represented, however.

9 96. In purchasing Cough & Bronchial Syrup—99% Alcohol Free,
10 consumers reasonably relied upon the various representations Defendants makes
11 on the Product’s packaging label and its prevalent advertising campaign.

12 97. The purportedly “active ingredients” in Cough & Bronchial Syrup—
13 99% Alcohol Free include: *Antimonium sulphuratum aureum*, *Bryonia alba*,
14 *Drosera rotundifolia*, *Eucalyptus globulus*, *Ipecacuanha* and *Spongia tosta*.

15 98. The “active ingredients”, however, even if they were otherwise
16 effective, are so greatly diluted as to be effectively non-existent in Cough &
17 Bronchial Syrup—99% Alcohol Free such that the Product is ineffective for its
18 intended uses.

19 99. Defendants know, or reasonably should know, there are no or just
20 trace amounts of “active ingredients” present in Cough & Bronchial Syrup—99%
21 Alcohol Free and therefore must be aware that it cannot relieve any symptoms for
22 which Defendants advertise them. Defendants further know that Plaintiff and
23 similarly situated reasonable consumers are unaware of the true nature of
24 homeopathic drugs.

25 100. Further, the “active ingredients” used in Cough & Bronchial Syrup—
26 99% Alcohol Free provide no health benefits. Moreover, at the stupendously high
27 dilutions used to prepare the product, the odds are astronomically high that even a
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1 single molecule derived from the original “extract” of the “active ingredients”
2 could be present in the Product sold to consumers.

3 101. Cough & Bronchial Syrup—99% Alcohol Free is nothing more than a
4 placebo, with trace amounts of the claimed “active ingredients”. It is sold in 8 oz.
5 bottles and is priced at approximately \$10.00-\$15.00 per unit. Thus, Defendants’
6 unfair and deceptive practices have enriched them by hundreds of thousands of
7 dollars, at the expense of unsuspecting consumers.

8 102. This Product did not provide the characteristics, benefits,
9 endorsements, and proof of efficacy to consumers as advertised.

10 103. Purchasers of Cough & Bronchial Syrup—99% Alcohol Free paid
11 more for this Product than they would have absent the package and labeling
12 misrepresentations described herein.

13 104. Absent the misrepresentations and omissions described herein, which
14 are material to an average consumer, purchasers of Cough & Bronchial Syrup—
15 99% Alcohol Free would not have purchased this Product.

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

19 **MISREPRESENTATIONS AND OMISSION AS TO ALL COUGH &**
20 **BRONCHIAL PRODUCTS**

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

3 107. Defendants primarily advertise and promote the Products through the
4 labeling claims and images on the front of the Products’ packages. Among other
5 things, the Products’ names clearly state what ailments and symptoms the Products
6 are designed for. Label descriptions on the Products’ packaging, taken as a whole
7 and in context, further clarify what each Product is supposed to do. As would any
8 reasonable consumer, Plaintiff and the Class relied on the Products’ packaging
9 claims, taken as a whole and in context, in purchasing the Products.

10 108. Defendants’ marketing and promotion of the Products was supported
11 by false and misleading claims containing material omissions and
12 misrepresentations, which Plaintiff and Class members relied upon in making their
13 decision to purchase the Products.

14 109. The “active ingredients” used in the Products provide no health
15 benefits. Moreover, at the stupendously high dilutions used to prepare the
16 Products, the odds are astronomically high that even a single molecule derived
17 from the original “extract” of the active ingredient could be present in the Products
18 sold to consumers.

19 110. Defendants know, or reasonably should know, there are no or just
20 trace amounts of “active ingredients” present in their Cough & Bronchial Products,
21 and therefore must be aware the Products cannot relieve the symptoms for which
22 the Defendants advertise them.

23 111. Defendants’ misleading and deceptive business activity also includes
24 encouraging retailers to sell the Products in the OTC aisle of retail chain drug
25 stores next to allopathic, FDA monograph-approved OTC drugs, thus enhancing
26 consumer confusion as to the true nature of the Products.

1 112. Defendants also do not explain the “homeopathic” principle of
2 dilutions to consumers, such as by informing consumers what the dilution levels of
3 X on the Products’ packaging means, in a language understandable to an average
4 consumer.

5 113. Defendants are free to label Indications of Use, meaning what the
6 Products are “effective” for, without any regulatory oversight, a material fact that
7 is not disclosed to consumers.

8 114. Defendants are required to observe Good Manufacturing Practices
9 (GMPs) under section 501(a)(2)(B) of the federal Food, Drug and Cosmetic Act,
10 and its implementing regulation located at 21 C.F.R. § 211. This standard is
11 mirrored under the California Sherman Law. Cal. Health & Safety Code § 110105.
12 On information and belief, Defendants did not observe GMPs in manufacturing the
13 Products.

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

18 116. Plaintiff and Class members purchased the Products believing they
19 had the qualities represented on the Products’ labeling, but the Products were
20 actually unacceptable to them, as they did not possess the characteristics, benefits,
21 endorsements, and proof of efficacy to consumers as advertised.

22 117. Moreover, like all reasonable consumers and members of the Class,
23 Plaintiff considers a label’s compliance with federal law a material factor in his
24 purchasing decisions. Plaintiff is generally aware the federal government carefully
25 regulates OTC products and therefore has come to trust that information conveyed
26 on packaged OTC product labels is truthful, accurate, complete, and fully in
27 accordance and compliance with the law. As a result, Plaintiff trusts he can
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1 compare competing products on the basis of their labeling claims, to make a
2 purchasing decision.

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

9 119. In light of the foregoing, reasonable consumers, including Plaintiff
10 and other Class members, were and are likely to be deceived by Defendants'
11 advertising and marketing practices as detailed herein.

12 120. Instead of receiving a product that had the benefits, advantages,
13 endorsements, proof, and characteristics as advertised, Plaintiff and Class members
14 received a product worth much less, or which was worthless, since the Products do
15 not work; cause no effect or effects reverse of that advertised; and did not possess
16 the characteristics, benefits, endorsements, and proof of efficacy, as advertised by
17 Defendants.

18 121. At all times relevant herein, Defendants had a duty to disclose
19 additional information to purchasing consumers, to correct all misunderstandings
20 their omissions and misrepresentations created in the minds of those consumers;
21 and had a duty to disclose because the omissions constituted information within
22 Defendants' knowledge alone.

23 122. Plaintiff and the Class purchased the Products instead of competing
24 products based on the false statements and misrepresentations described herein,
25 suffering economic injury.

26 123. The Products did not provide the characteristics, benefits,
27 endorsements, and proof of efficacy to Plaintiff and consumers as advertised.
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1 124. Absent the misrepresentations and omissions described herein, which
2 are material to an average consumer, Plaintiff and consumers would not have
3 purchased this Product.

4 125. Absent the misrepresentations and omissions described herein, which
5 were and are material to an average consumer, Plaintiff and other consumers would
6 not have paid the amount they did for the Products.

7 126. In purchasing Defendants' Products that were falsely or deceptively
8 advertised, Plaintiff and other consumers suffered injury in fact in the form of the
9 lost purchase price of the Products.

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

12 128. Plaintiff and the Class altered their position to their detriment and
13 suffered damages in an amount equal to the amount they paid for the Products over
14 the class period.

15 129. Plaintiff seeks justice for himself and similarly-situated consumers of
16 the Products by means of this action to enjoin the ongoing deceptive practices
17 described herein.

18 130. Defendants' conduct caused and continues to cause substantial injury
19 to Plaintiff and the other members of the Class. Plaintiff and class members will
20 continue to be exposed to Defendants' false and/or misleading advertising every
21 time they shop for a cold remedy and see Defendants' false or deceptive
22 advertising on store shelves. Defendants' continued business conduct as described
23 herein violates Plaintiff's substantive right to be free from false advertising in the
24 marketplace. Defendants' continued business conduct as described herein
25 interferes with Plaintiff's ability to compare only truthful product labeling in the
26 marketplace, and also discourages Plaintiff from believing that any cough or cold
27 or flu product in the OTC aisles of major retail stores is effective, when some are
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1 effective as advertised. Defendants’ competitors will also continue to suffer from
2 Defendants’ unfair or deceptive business conduct if injunctive relief is not
3 afforded. Moreover, backward-reaching injunctive relief is necessary to remedy
4 the past effects of Defendants’ conduct, such as a recall and restitution program, or
5 imposition of a constructive trust onto funds that may have been unlawfully,
6 unfairly, or fraudulently obtained by Defendants.

7 **CLASS ACTION ALLEGATIONS**

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

11 All purchasers of Defendants’ B&T Cough & Bronchial products, including
12 Cough & Bronchial Syrup Daytime, Cough & Bronchial Syrup Nighttime,
13 Children’s Cough & Bronchial Syrup, Cough & Bronchial Syrup Zinc
14 Formula, and Cough & Bronchial Syrup 99% Alcohol Free (collectively
15 “Products”), and all iterations/variations of the aforementioned Products, for
16 personal or household use and not for resale, in California from September
17 6, 2009 to the present (the “Class Period”). Excluded from the consumer
18 class are governmental entities, the Defendants, any entity in which the
19 Defendants have a controlling interest, their employees, officers, directors,
20 legal representatives, heirs, successors and wholly or partly owned
21 subsidiaries or affiliated companies, including parent corporations, class
22 counsel and their employees; and the judicial officers and their immediate
23 family members and associated court staff assigned to this case.

24 132. The proposed Class is so numerous that individual joinder of all its
25 members is impracticable. Due to the nature of the trade and commerce involved,
26 however, Plaintiff believes the total number of Class members is at least in the tens
27 of thousands of persons in the State of California. While the exact number and
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1 identities of the Class members are unknown at this time, such information can be
2 ascertained through appropriate investigation, discovery or Class definition. The
3 disposition of the claims of the Class members in a single class action will provide
4 substantial benefits to all parties and to the Court.

5 133. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on
6 grounds generally applicable to the Class, thereby making final injunctive relief or
7 corresponding declaratory relief and damages as to their Products appropriate with
8 respect to the Class as a whole. In particular, Defendants have misrepresented or
9 failed to disclose the true nature of the Products being marketed and distributed, as
10 detailed herein.

11 134. There is a well-defined community of interest in the questions of law
12 and fact involved affecting Plaintiff and the Class and these common questions of
13 fact and law include, but are not limited to, the following:

- 14 a. Whether the claims discussed above are true, misleading, or
15 reasonably likely to deceive an average consumer;
- 16 b. Whether Defendants' alleged conduct violates public policy;
- 17 c. Whether the alleged conduct constitutes violations of the laws
18 asserted herein;
- 19 d. Whether Defendants engaged in false or misleading advertising;
- 20 e. Whether Plaintiff and Class members are entitled to declaratory
21 and injunctive relief; and
- 22 f. The method of calculation and amount of restitution or damages
23 to the Class.

24 135. Plaintiff's claims are typical of the claims of the members of the
25 Class. Plaintiff and all members of the Class have been similarly affected by the
26 Defendants' common course of conduct because they all relied on Defendants'
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1 representations concerning their Products and purchased the Products based on
2 those representations.

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

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

24 138. Adjudication of individual Class members' claims with respect to the
25 Defendants would, as a practical matter, be dispositive of the interests of other
26 members not parties to the adjudication, and could substantially impair or impede
27 the ability of other class members to protect their interests.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES**
3 **ACT**

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

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

6 139. Plaintiff repeats, realleges and incorporates by reference each and
7 every allegation contained above as if fully set forth herein.

8 140. This cause of action is brought pursuant to the Consumers Legal
9 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”). Plaintiff and the
10 members of the Class are consumers as defined by California Civil Code §
11 1761(d). The Products are goods within the meaning of the Act.

12 141. Defendants violated and continue to violate the Act by engaging in the
13 following practices proscribed by California Civil Code §1770(a) in transactions
14 with Plaintiff and the Class which were intended to result in, and did result in, the
15 sale of the Products:

16 • Representing that [the Products have]...characteristics, ingredients,
17 uses, benefits or quantities which [the Products] do not have. (Civ. Code, § 1770,
18 subd. (a) (5).)

19 • Representing that [the Products] are of a particular standard, quality or
20 grade... if they are of another. (Civ. Code, § 1770, subd. (a) (7).)

21 • Advertising [Products] ...with intent not to sell them as advertised.
22 (Civ. Code, § 1770, subd. (a) (9).)

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

25 142. Defendants violated the Act by representing through advertising of the
26 Products as described above, when they knew, or should have known, the
27 representations and advertisements were false or misleading.

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1 143. Plaintiff and members of the Class reasonably relied upon the
2 Defendants' representations as to the quality and attributes of the Products.

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

10 145. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified the
11 Defendants in writing by certified mail of the particular violations of § 1770 of the
12 CLRA as to their Products and demanded the Defendants rectify the problems
13 associated with the actions detailed above and give notice to all affected consumers
14 of their intent to so act. Defendants' wrongful business practices regarding the
15 Products constituted, and constitute, a continuing course of conduct in violation of
16 the California's Consumers Legal Remedies Act because Defendants are still
17 representing that the Products have characteristics, uses, benefits, endorsements,
18 proof and abilities which are false and misleading, and have injured Plaintiff and
19 the Class. A copy of Plaintiff's letter is attached as Exhibit 5 hereto.

20 146. Defendants have refused or failed to timely respond to Plaintiff's
21 CLRA demand notice.

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

1 148. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class
2 seek a Court order enjoining the above-described wrongful acts and practices of
3 the Defendants with respect to all of the Products.

4 149. Plaintiff and the Class also seek a backward-reaching injunction, to
5 remedy in order to remedy the past effects of Defendants' improper activities and
6 practices as described herein.

7 150. Pursuant to California Civil Code §§ 1780 and 1782(b), Plaintiff and
8 the Class are entitled to recover and hereby seek actual damages, punitive
9 damages, attorney's fees and costs, and any other relief the Court deems proper.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

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

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

14 151. Plaintiff repeats, realleges and incorporates by reference each and
15 every allegation contained above as if fully set forth herein.

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

21 153. California's Unfair Competition Law, Business and Professions Code
22 § 17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading
23 advertising." For the reasons discussed above, Defendants have engaged in unfair,
24 deceptive, untrue and misleading advertising in violation of the UCL.

25 154. The UCL also prohibits any "unlawful... business act or practice."
26 Defendants violated the UCL's prohibition against engaging in unlawful acts and
27 practices by, *inter alia*, making the representations and omissions of material facts,
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1 as set forth more fully herein, and by violating among others, California Civil Code
2 §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§
3 109875, *et seq.* (“Sherman Law”), including but not limited to Cal. Health &
4 Safety Code §§ 110100, 110290, 110390; Cal. Bus. & Prof. Code §§ 12601, *et seq.*
5 (“Fair Packaging and Labeling Act”), California Commercial Code § 2313(1), and
6 the common law; *see also* Cal. Health & Safety Code § 110105 (incorporating all
7 FDCA laws and implementing regulations as the laws of this State). Such conduct
8 is ongoing and continues to this date. *See also* Ex. 1.

9 155. Plaintiff and the Class reserve the right to allege other violations of
10 law which constitute other unlawful business acts or practices.

11 156. California Business and Professions Code § 17200 also prohibits any
12 “unfair... business act or practice.”

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

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

26 159. There were reasonably available alternatives to further Defendants’
27 legitimate business interests, other than the conduct described herein.

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1 160. The UCL also prohibits any “fraudulent business act or practice.”

2 161. Defendants’ claims, nondisclosures (i.e., omissions), and misleading
3 statements, as more fully set forth above, were false, misleading and/or likely to
4 deceive the consuming public within the meaning of the UCL. Such conduct is
5 ongoing and continues to this date.

6 162. Defendants’ conduct caused and continues to cause substantial injury
7 to Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact
8 as a result of Defendants’ unfair conduct.

9 163. Defendants have thus engaged in unlawful, unfair and fraudulent
10 business acts and practices and false advertising, entitling Plaintiff to injunctive
11 relief against Defendants, as set forth in the Prayer for Relief.

12 164. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an
13 order requiring Defendants to immediately cease such acts of unlawful, unfair and
14 fraudulent business practices and requiring Defendants to engage in a corrective
15 advertising campaign.

16 165. Plaintiff and the Class also seek a backward-reaching injunction, to
17 remedy in order to remedy the past effects of Defendants’ improper activities and
18 practices as described herein.

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

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

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

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

5 167. Plaintiff repeats, realleges and incorporates by reference each and
6 every allegation contained above as if fully set forth herein.

7 168. Plaintiff has standing to pursue this claim as Plaintiff has suffered
8 injury in fact as a result of Defendants' actions as set forth herein. Specifically,
9 prior to the filing of this action, Plaintiff purchased the Products in reliance upon
10 Defendants' marketing claims. Plaintiff used the Products as directed, but the
11 Products did not work as advertised, nor provided any of the promised benefits.

12 169. Defendants' business practices as alleged herein constitute unfair,
13 deceptive, untrue, and misleading advertising pursuant to California Business and
14 Professions Code §§ 17500, *et seq.* because Defendants have advertised their
15 Products in a manner they know is untrue or misleading, or that reasonably should
16 have been known to Defendants to be untrue or misleading.

17 170. Defendants' wrongful business practices have caused injury to
18 Plaintiff and the Class.

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

23 172. Plaintiff and the Class also seek a backward-reaching injunction, to
24 remedy in order to remedy the past effects of Defendants' improper activities and
25 practices as described herein.

26 173. Plaintiff and the Class also seek an order for the disgorgement and
27 restitution of all monies from the sale of Defendants' Products, which were
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1 unjustly acquired through acts of unlawful, unfair, deceptive and/or fraudulent
2 competition.

3 **FOURTH CAUSE OF ACTION**
4 **BREACH OF EXPRESS WARRANTY**

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

6 174. Plaintiff repeats, realleges and incorporates by reference each and
7 every allegation contained above as if fully set forth herein.

8 175. On the Products' labels and through their marketing campaign as
9 described above, Defendants made affirmations of fact or promises about the
10 Products' effectiveness, or description of goods, which formed "part of the basis of
11 the bargain" at the time of purchase. *See* Ex. 2 (containing statements alleged to be
12 warranties).

13 176. The warranties were breached because the Products did not live up to
14 their warranties, and that breach caused injury in the form of the lost purchase
15 price for the Products. *See* Cal. Com. Code § 2313(1); *see also Zwart v. Hewlett-*
16 *Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online
17 assertions can create warranties).

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

21 **FIFTH CAUSE OF ACTION**
22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

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

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

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

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

3 180. Plaintiff and the Class bought the Products manufactured, advertised
4 and sold by Defendants.

5 181. Defendants are merchants with respect to the goods of this kind which
6 were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other
7 members of the Class an implied warranty that those goods were merchantable for
8 their intended use.

9 182. Defendants, however, breached that warranty implied in the sale of
10 goods in that their Products do not provide the claimed health benefits, as set forth
11 in detail herein.

12 183. As a result of Defendants' conduct, Plaintiff and the Class did not
13 receive goods as impliedly warranted by Defendants to be merchantable in that
14 they did not conform to the promises and affirmations made on the container or
15 label of the goods.

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

18 **SIXTH CAUSE OF ACTION**

19 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,**

20 **15 U.S.C. §§ 2301, *et. seq.***

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

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

24 186. Plaintiff brings his claim individually and on behalf of the members of
25 the Class.

26 187. Plaintiff alleges implied warranties under the common and statutory
27 laws of California, and Defendants' breach of those warranties as set forth herein.

28

1 See Fourth and Fifth Causes of Action, *supra*. Plaintiff brings this suit on those
2 claims under the MMWA as expressly allowed by federal law. See 15 U.S.C. §
3 2301(7).

4 **PRAYER FOR RELIEF**

5 188. Wherefore, Plaintiff, on behalf of himself, all others similarly situated
6 and the general public, pray for judgment against the Defendants as to each and
7 every cause of action, including:

- 8 A. For all of the claims for relief, an order certifying this action as a
9 proper Class Action, that Plaintiff be appointed Class
10 Representative and his counsel Class Counsel, and requiring
11 Defendants to bear the costs of Class notice;
- 12 B. For the CLRA and breach of warranty claims, a judgment
13 awarding Plaintiff and the proposed Class members actual
14 damages and punitive damages in amounts to be determined at
15 trial;
- 16 C. For the UCL, FAL and CLRA, an order awarding declaratory and
17 injunctive relief as permitted by law or equity, including enjoining
18 Defendants from continuing the unlawful practices as set forth
19 herein;
- 20 D. For all of the claims for relief, a judgment awarding restitution of
21 the full purchase price of the Products to Plaintiff and the
22 proposed Class members;
- 23 E. For the CLRA, UCL and FAL, an order for backward-reaching
24 injunctive relief, to remedy the past effects of Defendants'
25 activities and practices as complained of herein;
- 26
27
28

1 F. For the CLRA, UCL and FAL, an order compelling Defendants to
2 engage in a corrective advertising campaign to inform the public
3 concerning the true nature of their Products;

4 G. For all the claims for relief, an order awarding reasonable
5 attorneys' fees and costs to Plaintiff and the Class, as allowed by
6 California Civil Code § 1780(d), Code of Civil Procedure §
7 1021.5 and as otherwise permitted by statute or law, and pre- and
8 post-judgment interest;

9 H. For all the claims for relief, an order providing for all other such
10 equitable relief as may be just and proper.

11 **JURY DEMAND**

12 Plaintiff hereby demands a trial by jury on all issues so triable.

13
14 Dated: September 6, 2013 /s/ Ronald A. Marron

Ronald A. Marron

ron@consumersadvocates.com

LAW OFFICES OF RONALD A.

MARRON, APLC

RONALD A. MARRON

SKYE RESENDES

ALEXIS WOOD

ERIN MINELLI

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

*Attorneys for Plaintiff and the Proposed
Class*

1 I, Woodson Wood, Jr., declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by
3 California Civil Code Section 1780(d).

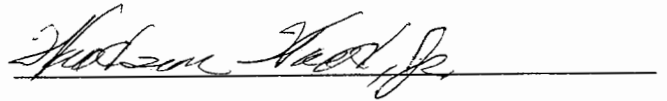
4 2. The Complaint in this action is filed in a proper place for the trial of
5 this action because Defendant is doing business in this county.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

8

9 Dated: *09-03*, 2013

10



11

Woodson Wood, Jr.

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Table of Exhibits

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EXHIBIT 1

THE AMERICAN ASSOCIATION OF HOMEOPATHIC PHARMACISTS



MEMBER COMPANIES

Boericke & Tafel

2381 Circadian Way
Santa Rosa, CA 95407
Contact: Andy Bormeth
P: 707-571-8202
F: 707-571-8237

Boericke & Tafel's roots go back to 1835 when Constantine Hering, the father of American homeopathy, persuaded Francis Boericke and Adolph Tafel to manufacture and sell homeopathic medicines. B&T established itself as the primary publisher of homeopathic books as well, issuing over 100 titles in the U.S. Dr. William Boericke's *Materia Medica* is still the standard reference book for homeopaths and an integral part of most homeopathic computer repertory programs.

In 1987, B&T was acquired by a leading German pharmaceutical company, Dr. Willmar Schwabe, which has manufactured homeopathic and herbal medicines since 1866. With a \$100 million Research and Development budget, and six research centers worldwide, Schwabe has completed over 2,000 clinical studies in natural products.

As a strong supporter of science-backed medicines, B&T has introduced many products that are clinically proven effective. These include Florasone™ Cream for Eczema, Allergiemittel AllerAide™ for Allergies, and Alpha CF™ for Colds & Flu.

B&T offers America's best selling line of creams and gels, including Arniflora® Arnica Gel for muscle pain and stiffness, Triflora® Arthritis Gel, Ssusting Stop® Insect Gel, and Psoriaflora™ Cream for Psoriasis. The company also offers the most complete line of natural cold, flu and cough remedies, such as Alpha CF for Colds and Flu, EchinaSpray™ Throat Spray, and five varieties of top-selling Cough & Bronchial Syrups.

Innovative new products and indication/benefit driven packaging are a trademark of B&T. Natural Relief Chewable tablets for Insomnia, Headache and Indigestion, pleasant orange flavored tablets packaged in a handy tin, are examples of top-selling products with unique characteristics.

Boericke & Tafel manufactures homeopathic medicines in strict accordance with the FDA's current Good Manufacturing Practices (GMPs), and is a major supplier to private label brands. We are proud of our reputation of excellence as we maintain the highest standards of quality control in achieving our goal of providing people with a better way to heal themselves.

→ [Back to member list](#)



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

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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

Nature’s Way Boericke & Tafel Challenged Advertising Claims Chart

Product	Challenged Statements
<p>Cough & Bronchial Syrup - Daytime</p>	<p>“Cough & Bronchial”</p> <p>“Natural”</p> <p>“Cough Suppressant/Expectorant,” “Maximum Strength”</p> <p>“Fast Relief”</p> <p>“Homeopathic”</p> <p>“Relieves coughs”</p> <p>“Helps clear bronchial congestion”</p> <p>“Clears bronchial congestion”</p> <p>“Fast, Natural Relief” “Effective”</p> <p>“Relieves coughs due to colds or inhaled irritants”</p> <p>“Helps clear bronchial congestion”</p> <p>“Clinically Proven”</p> <p>“Relieves Coughs & Congestion”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritation as may occur with a cold”</p> <p>“Helps loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes”</p> <p>“Helps to loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes”</p> <p>“Soothes the throat”</p>

Nature’s Way Boericke & Tafel Challenged Advertising Claims Chart

Product	Challenged Statements
<p>Cough & Bronchial Syrup - Nighttime</p>	<p>“Cough & Bronchial”</p> <p>“Maximum Strength” “Cough Suppressant & Expectorant”</p> <p>“Fast, Natural Relief”</p> <p>“Fast relief”</p> <p>“Helps clear bronchial congestion”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritations as may occur with a cold”</p> <p>“Helps loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes”</p> <p>“Helps loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes”</p> <p>“Relieves difficulty sleeping associated with cough & bronchial conditions”</p> <p>“Promotes Sleep” “Relieves coughs”</p> <p>“Clears bronchial congestion”</p> <p>“Promotes restful sleep”</p> <p>“Effective”</p> <p>“Natural”</p> <p>“Homeopathic”</p>
<p>Cough & Bronchial Syrup – 99% Alcohol</p>	<p>“Cough & Bronchial”</p>

Nature’s Way Boericke & Tafel Challenged Advertising Claims Chart

Product	Challenged Statements
Free	<p>“Maximum Strength”</p> <p>“Cough Suppressant & Expectorant”</p> <p>“Fast, Natural Relief”</p> <p>“Helps clear bronchial congestion”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritations as may occur with a cold”</p> <p>“Helps loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritations occurring with a cold or inhaled irritants”</p> <p>“Helps to loosen phlegm (mucus) and thin bronchial secretions to rid the bronchial passageways of bothersome mucus & drain bronchial tubes”</p> <p>“Soothes the throat”</p> <p>“Effective”</p> <p>“Natural”</p> <p>“Homeopathic”</p>
Cough & Bronchial Syrup (Zinc Formula)	<p>“Maximum Strength”</p> <p>“Cough Suppressant & Expectorant”</p> <p>“Fast, Natural Relief”</p>

Nature’s Way Boericke & Tafel Challenged Advertising Claims Chart

Product	Challenged Statements
	<p>“Soothes the throat”</p> <p>“Helps clear bronchial congestion”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritations as may occur with a cold”</p> <p>“Helps to loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes”</p> <p>“Soothe[s] the throat”</p> <p>“Effective”</p> <p>“Natural”</p> <p>“Homeopathic”</p>
Children’s Cough & Bronchial Syrup	<p>“Cough & Bronchial”</p> <p>“Natural”</p> <p>“Cough Suppressant/Expectorant”</p> <p>“Maximum Strength”</p> <p>“Fast Relief”</p> <p>“Homeopathic”</p> <p>“Effective”</p> <p>“Relieves Coughs & Congestion”</p> <p>“Soothes irritated throat membranes”</p>

Nature's Way Boericke & Tafel Challenged Advertising Claims Chart

Product	Challenged Statements
	<p>“Relieves coughs due to colds and inhaled irritants (air pollution)”</p> <p>“Helps clear congested bronchial tubes of stubborn mucus”</p> <p>“Helps clear bronchial congestion”</p> <p>“Temporarily relieves cough due to minor throat and bronchial irritation as may occur with a cold”</p> <p>“Helps to loosen phlegm (mucus) and thin bronchial secretions to drain bronchial tubes”</p> <p>“Soothes the throat”</p>

EXHIBIT 3

Nature's Way Boericke & Tafel Product	"Active" Ingredient	Date Ingredient Added to HPUS	Dilution	Inactive Ingredients
Cough & Bronchial Syrup - Daytime	Aconitum napellus	2004	3X (= 1/1,000 dilution)	Citric acid Gum arabic Malt extract Water Sodium benzoate 0.1% Sucrose
	Bryonia	8/2008	3X (= 1/1,000 dilution)	
	Hepar sulphuris calcareum	8/2010	6C (1/1,000,000,000,000 dilution)	
	Spongia tosta	9/2008	3X (= 1/1,000 dilution)	
	Stannum metallicum	6/2010	6C (1/1,000,000,000,000 dilution)	
Cough & Bronchial Syrup - Nighttime	Aconitum napellus	2004	3X (= 1/1,000 dilution)	Citric acid Malt extract Water Sodium benzoate Sucrose
	Alfalfa	6/2010	1X (= 1/10 dilution)	
	Coffea cruda	2006	6X (= 1/1,000,000 dilution)	
	Avena sativa	11/2010	1X (= 1/10 dilution)	
	Bryonia alba	8/2008	3X (= 1/1,000 dilution)	
	Hepar sulphuris calcareum	8/2010	6C (1/1,000,000,000,000 dilution)	
	Spongia tosta	9/2008	3X (= 1/1,000 dilution)	
	Stannum metallicum	6/2010	6C (1/1,000,000,000,000 dilution)	

Cough & Bronchial Syrup – 99% Alcohol Free	Antimonium sulphuratum aureum	1991	8X (=1/100,000,000 dilution)	
	Bryonia alba	8/2008	3X (= 1/1,000 dilution)	
	Drosera rotundifolia	7/2008	3X (= 1/1,000 dilution)	
	Eucalyptus globulus	12/2006	3X (= 1/1,000 dilution)	
	Ipecauanha	9/2004	4X (= 1/10,000 dilution)	
	Spongia tosta	9/2008	3X (= 1/1,000 dilution)	
Cough & Bronchial Syrup (Zinc Formula)	Antimonium sulphuratum aureum	12/1991	8X (=1/100,000,000 dilution)	Fructose Glycerin Water
	Bryonia alba	8/2008	3X (= 1/1,000 dilution)	
	Drosera rotundifolia	7/2008	3X (= 1/1,000 dilution)	
	Eucalyptus globulus	12/2006	3X (= 1/1,000 dilution)	
	Ipecauanha	9/2004	4X (= 1/10,000 dilution)	
	Spongia tosta	9/2008	3X (= 1/1,000 dilution)	
	Zincum gluconicum	6/2010	1X (= 1/10 dilution)	
Children’s Cough & Bronchial Syrup	Antimonium sulphuratum aureum	12/1991	6X (=1/100,000,000 dilution)	Aronia juice Cherry flavor Citric acid Fructose
	Bryonia alba	8/2008	3X (= 1/1,000 dilution)	

Drosera rotundifolia	7/2008	3X (= 1/1,000 dilution)	Water Potassium sorbate 0.135%
Eucalyptus globulus	12/2006	3X (= 1/1,000 dilution)	
Illicium anisatum	12/1991	3X (= 1/1,000 dilution)	
Ipecacuanha	9/2004	4X (= 1/10,000 dilution)	

EXHIBIT 4

B&T Cough & Bronchial Daytime Syrup



Cough & Bronchial Nighttime Syrup



Children's Cough & Bronchial Syrup



Cough & Bronchial Syrup—Zinc Formula



Cough & Bronchial Syrup—99% Alcohol Free

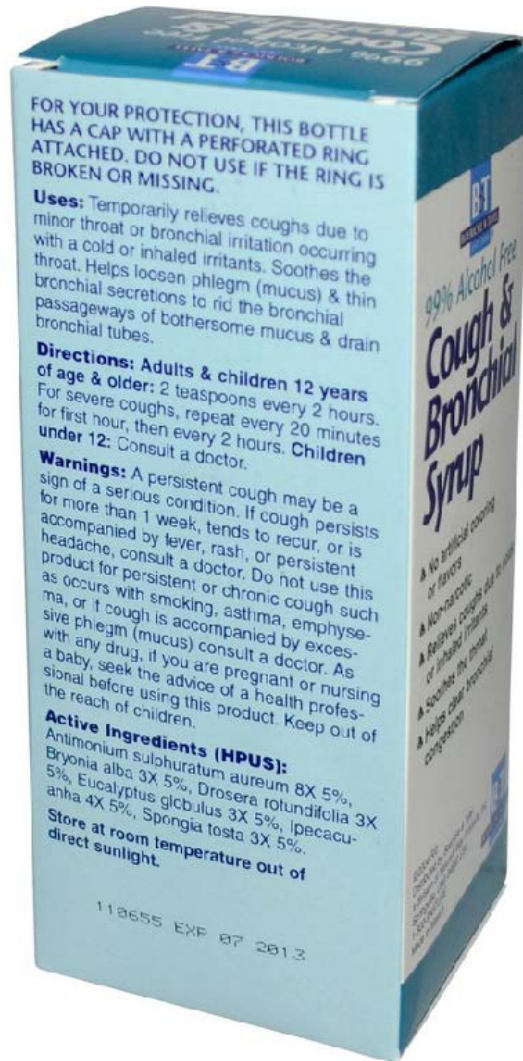


EXHIBIT 5

Law Offices of

Ronald A. Marron

A Professional Law Corporation

651 Arroyo Drive
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

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.

July 18, 2013

Page 2

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

July 18, 2013

Page 3

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.

July 18, 2013

Page 4

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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OFFICIAL USE

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"> 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. 	<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 7009 1680 0001 2316 8707 (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)		
Total Postage & Fees	\$	

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"> ■ 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. 	<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;">7012 2920 0001 0982 5088</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.
 Street, Apt. No., or PO Box No.: Attn: Legal Department
 City, State, ZIP+4: 825 Challenger Drive
 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"> ■ 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. 	<p>A. Signature X <i>Andre Montgomery</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): <i>Lendon M</i></p> <p>C. Date of Delivery: <i>7-22</i></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:</p> <p><i>Schwabe, North American, Inc.</i> <i>Attn: Legal Department</i> <i>825 Challenger Drive</i> <i>Green Bay, Wisconsin 54311</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 No: 7009 1680 0001 2361 3320 (Transfer from service label)</p>	

7012 2920 0001 0982 5095

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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.25	Postmark Here
Certified Fee	3.00	
Return Receipt Fee (Endorsement Required)	2.00	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.25	

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"> ■ 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. 	<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>9/9/13</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>2. Article Number</p> <p><i>(Transfer from service lab)</i></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

7012 2920 0001 0982 5095

7009 1680 0001 2361 3344

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
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For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 46
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.55
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.11
Postmark Here	
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 THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ 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. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ Date of Delivery _____ <i>Steve Lally 7/22/13</i></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:</p> <p style="margin-left: 40px;">Amy P Lally Sidley Austin LLP 555 West Fifth Street Los Angeles, CA 90013</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;">7009 1680 0001 2361 3344</p>
PS Form 3811, February 2004	Domestic Return Receipt
	102595-02-M-1540

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Ronald S.W. Lew and the assigned Magistrate Judge is Margaret A. Nagle.

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

CV13-6591-RSWL(MANx)

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

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

Clerk, U. S. District Court

September 9, 2013

Date

By C. Sawyer

Deputy Clerk

NOTICE TO COUNSEL

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

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

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

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

I. (a) PLAINTIFFS (Check box if you are representing yourself)

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

DEFENDANTS (Check box if you are representing yourself)

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

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive
San Diego, CA 92103
Telephone: (619) 696-9006

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

1. U.S. Government Plaintiff
 2. U.S. Government Defendant
 3. Federal Question (U.S. Government Not a Party)
 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multi-District Litigation

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

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

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violation of CLRA, UCL, FAL, Breaches of Express Warranties, Implied Merchantability, and Magnuson-Moss Warranty.

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

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input checked="" type="checkbox"/> 370 Other Fraud	Other: <input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	LABOR	
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 199 Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 369 Personal Injury Product Liability	<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number:

CV13-6591

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

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

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

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

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

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

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

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

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

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

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

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

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):

Ronald A. [Signature]

DATE: 09/06/2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

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