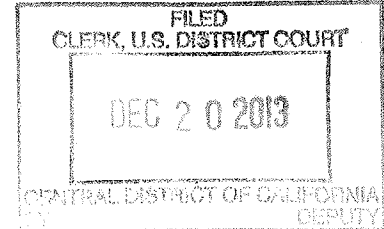


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FLOWERS, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED

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

THOMAS FLOWERS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SCHIFF NUTRITION, SCHIFF
NUTRITION INTERNATIONAL,
INC., SCHIFF NUTRITION GROUP,
INC., RECKITT BENCKISER
PHARMACEUTICALS INC., and
RECKITT BENCKISER NORTH
AMERICA, LLC,

Defendants.

Case No.

CV13-9406 MWF-MRW

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff Thomas Flowers, by and through his attorneys, brings this class action on behalf of himself and similarly-situated others who purchased health supplements containing glucosamine and/or chondroitin manufactured and marketed by Defendants Schiff Nutrition, Schiff Nutrition International, Inc., Schiff Nutrition Group, Inc., Reckitt Benckiser Pharmaceuticals Inc., and Reckitt Benckiser North America, LLC (collectively, "Schiff" or "Defendant") and sold under the brand name "Move Free", and states as follows:

INTRODUCTION AND NATURE OF ACTION

2. Schiff is a manufacturer and marketer of supplements for humans and animals.

3. Schiff sells its products nationally in retail stores (including, for example, Costco, Walmart, Target and Rite Aid) and, online via its website. Schiff sells and ships a significant amount of products to residents of California.

4. Schiff markets, sells and distributes a line of joint health dietary supplements under the label "Move Free" (collectively referred to as the "Supplements").¹ According to the labels on these products, the purported active ingredients are, among others, glucosamine sulfate, chondroitin sulfate.

5. In its uniform, nationwide marketing of the Supplements, Schiff promises that they will help protect cartilage, stimulate cartilage production, improve joint comfort, and improve joint function. Schiff has promoted its products claiming that the Supplements contain both glucosamine and chondroitin, which it claims "help by lubricating, cushioning, strengthening, protecting and rebuilding joints."

6. While Schiff's claims regarding the improved joint function associated

¹ The Supplements include, but are not necessarily limited to 1) Move Free Advanced Triple Strength; and 2) Move Free Advanced Plus MSM.

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1 with the Supplements are directed at anyone seeking to alleviate joint pain or
 2 stiffness, they are particularly directed at people suffering from osteoarthritis.
 3 Indeed, the most common symptoms of osteoarthritis include joint pain and
 4 stiffness—the very symptoms the Supplements claim to remedy.²

5 7. Despite Schiff's claims regarding the benefits and efficacy of
 6 glucosamine and chondroitin, however, the bulk, if not all, of the reliable and
 7 published scientific studies demonstrate that Schiff's claims are false and
 8 misleading.

9 8. Most damning to Schiff's claims is a large scale study sponsored and
 10 conducted by the National Institute of Health ("NIH") called the
 11 Glucosamine/chondroitin Arthritis Intervention Trial ("GAIT"), which concluded, in
 12 a report published in the New England Journal of Medicine, that "[glucosamine and
 13 chondroitin], alone or in combination, was not efficacious. . . ." Clegg, D., et al.,
 14 Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee
 15 Osteoarthritis, 354 New England J. of Med. 795, 806 (2006).³

16 9. Thus, in addition to affirmatively misrepresenting the joint health
 17 benefits of the Supplements, Schiff's failure to disclose facts regarding this and
 18 other similar studies also constitutes deception by omission or concealment. As a
 19 result, Defendants' joint health benefit representations and omissions are false,
 20 misleading and reasonably likely to deceive the public.

21 10. The misleading representations and omissions by Schiff are conveyed
 22 to the consuming public uniformly and through a variety of media including its
 23 website and online promotional materials and the labeling/packaging of the
 24

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

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

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1 supplements themselves. In short, Defendants' uniform advertising and marketing
 2 virtually ensure that the only reason a consumer would purchase the Supplements is
 3 to obtain the advertised joint health benefits—benefits that Schiff knows the
 4 Supplements fail to provide.

5 11. As a result of Defendants' deceptive joint health benefit
 6 representations, consumers – including Plaintiff and members of the proposed Class
 7 (defined herein) – have purchased products that do not perform as advertised.

8 12. Plaintiff brings this action on behalf of himself and all other similarly
 9 situated consumers in California to halt the dissemination of this false and
 10 misleading advertising message, correct the false and misleading perception it has
 11 created in the minds of consumers, and obtain redress for those who have purchased
 12 the Supplements based on violations of California unfair competition laws and
 13 breach of express warranties. Plaintiff seeks injunctive and monetary relief for all
 14 consumers who purchased the Supplements.

15 JURISDICTION AND VENUE

16 13. This Court has original jurisdiction pursuant to 28 U.S.C. §
 17 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the
 18 sum or value of \$5,000,000 and is a class action in which there are in excess of 100
 19 class members and many members of the Class are citizens of a state different from
 20 Defendant. Plaintiff Flowers is a citizen of California, and Defendants are citizens
 21 of Delaware, the state of incorporation and New Jersey, the state where the principal
 22 place of business is located.

23 14. This Court has personal jurisdiction because Defendant is authorized to
 24 conduct and does conduct business in the State of California. Defendant has
 25 marketed, promoted, distributed and sold the Supplements in California and
 26 Defendant has sufficient minimum contacts with this State and/or sufficiently avails
 27 itself of the markets in this State through its promotion, sales, distribution and
 28 marketing within this State to render the exercise of jurisdiction by this Court

1 permissible.

2 15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
3 because a substantial part of the events or omissions giving rise to Plaintiff's claims
4 occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a)
5 because Defendant transacts substantial business in this District. Venue is further
6 proper in this District pursuant to 28 U.S.C. §1391(b)(2) because Plaintiff Flowers
7 and numerous Class Members reside in this District, were subjected to Defendant's
8 misleading advertisements in this District, were induced through Defendant's
9 advertisements to purchase the Supplements in this District, and sustained damages
10 in this District.

11 PARTIES

12 16. Plaintiff Thomas Flowers is a California citizen residing in Goleta,
13 California. Plaintiff Flowers suffers from chronic joint pain in his fingers, hands,
14 knees, elbows, and shoulders. Plaintiff Flower's ailments exist on a daily basis and
15 have progressively worsened over time. In an effort to remediate such pain and
16 discomfort and to improve his joint health, Plaintiff purchased Schiff brand
17 Supplements on several occasions. In particular, during the Class Period Plaintiff
18 Flowers repeatedly purchased Schiff brand Supplements at retail stores located in
19 the Santa Barbara and Goleta area in reliance on Schiff's claims that the products
20 would rebuild cartilage and provide joint health benefits. Plaintiff Flowers
21 purchased Schiff brand Supplements to combat and prevent further cartilage damage
22 and joint pain. Plaintiff Flowers paid approximately \$20 per 120 tablet bottle of
23 Move Free Advanced Plus MSM, and approximately \$20 per 80 tablet bottle of
24 Move Free Advanced Triple Strength. If Plaintiff Flowers was aware that Schiff
25 had both misrepresented the benefits of the Supplements he would not have
26 purchased Schiff brand Supplements. Plaintiff Flowers used Schiff brand
27 Supplements as directed and did not receive any of the promised benefits. As a
28 result, Plaintiff Flowers suffered an injury in fact and lost the money associated with

1 his purchase.

2 17. Defendant Schiff Nutrition is, on information and belief, a wholly-
3 owned subsidiary of Reckitt Benckiser North America, LLC, a New Jersey company
4 with its principal place of business at 399 Interpace Parkway; Parsippany, NJ 07054.
5 At all relevant times, Schiff has advertised, marketed, provided, offered, distributed,
6 and/or sold the Supplements throughout the United States including to individuals in
7 California such as Plaintiff and the Class.

8 ALLEGATIONS

9 The False and Misleading Marketing Claims

10 18. This lawsuit concerns the products marketed and sold by Schiff
11 including, but not limited to: 1) Move Free Advanced Triple Strength; and 2) Move
12 Free Advanced Plus MSM (all listed and unlisted products referred to herein,
13 collectively, as the "Supplements").⁴ These products frequently come in a variety of
14 dosages and sizes, so the total number of relevant products sold by Schiff may
15 exceed those listed above.

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

18 20. According to Defendant's website, the Supplements works as follows:
19 Our original Triple Strength product was the first with the powerful Advantage of 4
20 – Uniflex to protect your joints, Joint Fluid to replenish your joints and Glucosamine
21 and Chondroitin help to rebuild your joints.

22 See <http://www.schiffvitamins.com/move-free-advanced-triple-strength-80-count>
23 (last accessed October 13, 2013).

24 21. The primary active ingredient in the Supplements is glucosamine
25 hydrochloride. Glucosamine is an amino sugar that the body produces and
26 distributes in cartilage and other connective tissue. The Supplements also contain
27 _____

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

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1 chondroitin sulfate. Chondroitin sulfate is a complex carbohydrate found in the
 2 body's connective tissues.

3 22. There is no competent scientific evidence that taking glucosamine
 4 hydrochloride chondroitin sulfate results in the body metabolizing it into something
 5 that provides the advertised joint health and cartilage benefits, including relieving
 6 the major symptoms of arthritis.

7 23. Contrary to the representations on all of the Supplements' packaging,
 8 Defendant does not possess (and has not possessed) competent scientific evidence
 9 that any of these ingredients, taken alone or in combination, are effective in
 10 providing the advertised joint health and cartilage benefits, including treating the
 11 major symptoms of arthritis or any joint related ailments.

12 24. According to Defendant's website and to the packaging/label, the
 13 Supplements state that "[g]lucosamine and [c]hondroitin help by lubricating,
 14 cushioning, strengthening, protecting and rebuilding joints."

15 25. In short, Schiff engages in a pervasive and widespread marketing
 16 campaign to drive sales of its product, luring consumers into purchasing the
 17 Supplements by making claims that the Supplements are efficacious in treading and
 18 remedying joint pain and discomfort.

19 **Multiple Clinical Studies Demonstrate That the Supplements Are Ineffective**

20 26. Schiff's representations about the efficacy of the ingredients in the
 21 Supplements products are totally contradicted by all credible scientific evidence.
 22 Indeed, since 2004, multiple clinical studies have found that glucosamine and
 23 chondroitin, alone or in combination, are not effective in providing the represented
 24 joint health benefits.

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

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1 649 (Nov. 2004).

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

12 29. In 2006, the first GAIT study concluded that “[t]he analysis of the
 13 primary outcome measure did not show that either supplement, alone or in
 14 combination, was efficacious.” 2006 GAIT Study at 806. Subsequent GAIT studies
 15 in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild
 16 cartilage⁵ and were otherwise ineffective – even in patients with moderate to severe
 17 knee pain for which the 2006 GAIT study reported results were inconclusive. See
 18 Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on the
 19 Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum.
 20 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of
 21 Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo
 22 Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) Ann
 23 Rhem. Dis. 1459-64 (Aug. 2010).

24 30. The GAIT studies are consistent with the reported results of other

25
 26 ⁵ To a similar effect, a study by Kwok, et al., entitled *The Joints On Glucosamine (JOG)*
 27 *Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural*
 28 *Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI*, 60 Arthritis Rheum
 725 (2009), concluded that glucosamine was not effective in preventing the worsening of
 cartilage damage.

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1 studies that have demonstrated the ineffectiveness of both glucosamine and
 2 chondroitin.

3
 4 31. In 2008, a study concluded that glucosamine was no better than a
 5 placebo in reducing either the symptoms or progression of hip osteoarthritis.
 6 Rozendaal et al., Effect of Glucosamine Sulfate on Hip Osteoarthritis, 148 Ann. of
 7 Intern. Med. 268-77 (2008).

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

14 33. Another 2010 study concluded that there was no difference between
 15 placebo and glucosamine for the treatment of low back pain and lumbar
 16 osteoarthritis and that there was no data recommending the use of glucosamine.
 17 Wilkens et al., Effect of Glucosamine on Pain-Related Disability in Patients With
 18 Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1) JAMA 45-
 19 52 (July 7, 2010).

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

25 35. Most recently, a meta-analysis synthesized all available studies
 26 evaluating the efficacy of glucosamine for treating osteoarthritis and concluded that
 27 glucosamine showed no pain reduction benefits for osteoarthritis. Wu D. et al.,
 28 Efficacies of different preparations of glucosamine for the treatment of

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1 osteoarthritis: a meta-analysis of randomised, double-blind, placebo-controlled
2 trials, 67(6) Int. J. Clin. Pract. 585-94 (June 2013).

3
4 36. Scientific studies have also shown that the other ingredients in the
5 Supplements are similarly ineffective. See, e.g., S. Brien, et. al., Systematic Review
6 Of The Nutritional Supplements (DMSO) And Methylsulfonylmethane (MSM) In
7 The Treatment Of Osteoarthritis, 16 Osteoarthritis and Cartilage, 1277 (Nov. 2008);
8 Usha PR and Naidu MU, Randomised, Double-Blind, Parallel, Placebo-Controlled
9 Study of Oral Glucosamine, Methylsulfonylmethane and their Combination in
10 Osteoarthritis, 24 Clinical Drug Investigation 353-63 (2004); see also Biegert C et
11 al., Efficacy and Safety of Willow Bark Extract in the Treatment of Osteoarthritis
12 and Rheumatoid Arthritis: Results of 2 Randomized Double-Blind Controlled Trials,
13 Journal of Rheumatology 31.11 (2004): 2121-30 (no efficacy for willow bark as
14 compared with placebo and willow bark less effective than low dosages of non-
15 steroidal anti-inflammatory); see also Abdel-Tawb, M., et al., Boswellia Serrata: An
16 Overall Assessment Of In Vitro, Preclinical, Pharmacokinetic And Clinical Data, 50
17 Clin Pharmacokinet. 349-69 (2011).

18 37. Doctor's Best's claims that the Supplements Products "stimulate"
19 cartilage are also totally belied by the available scientific evidence:

20 38. In October 2008, the GAIT Study also concluded that glucosamine
21 and/or chondroitin, alone or in combination, did not demonstrate a clinically
22 important difference in joint space loss, indicating that they were ineffective in
23 rebuilding or regenerating cartilage. Sawitzke et al., The Effect of Glucosamine
24 and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis, A Report from
25 the Glucosamine/Chondroitin Arthritis Intervention Trial, 58 Arthritis Rheum. 3183-
26 3191 (2008).

27 39. In April 2009, the Journal of Orthopaedic Surgery published an article
28 that concluded that there was scant evidence to support a claim that glucosamine was

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1 superior to placebo in even arresting the deterioration of cartilage, to say nothing of
2 arresting that process and promoting regeneration or rebuilding. Kirkham, et al.,
3 Review Article: Glucosamine, 17(1) Journal of Orthopaedic Surgery 72-6 (2009).

4 **Schiff Harms Consumers By Continuing To Market And Sell the Supplements**

5 40. Undeterred by the weight of scientific evidence demonstrating that the
6 ingredients in the Supplements are wholly ineffective, Schiff conveyed and
7 continues to convey one uniform message: the Supplements maintain joints and
8 promote growth of cartilage.

9 41. As the manufacturer and/or distributor of the Supplements, Schiff
10 possesses specialized knowledge regarding the efficacy of the ingredients contained
11 in its products and, moreover, is in a superior position to, and has, learned of the
12 lack of efficacy for all of the key ingredients in the Supplements.

13 42. Specifically, Schiff knew, but failed to disclose, that the Supplements
14 do not provide the joint health benefits represented and that well-conducted, clinical
15 studies have found the ingredients in the Supplements to be ineffective in providing
16 the joint health benefits represented by Schiff.

17 43. Plaintiff and Class members have been and will continue to be deceived
18 or misled by Defendant's deceptive joint health benefit representations. Plaintiff
19 purchased and consumed one of the Supplements during the Class Period and in
20 doing so, read and considered the advertising and marketing by Schiff and based his
21 decision to purchase the Supplements on the joint health benefit representations on
22 the packaging and on Defendant's website. Schiff's joint health benefit
23 representations and omissions were a material factor in influencing Plaintiff's
24 decision to purchase and consume the product he purchased.

25 44. Other than obtaining the benefits that the Supplements promise but do
26 not deliver, there is no other reason for Plaintiff and the Class to have purchased the
27 Supplements as the Supplements are not represented to provide any other benefits
28 and Plaintiff and the Class would not have purchased the Supplements had they

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1 known Schiff's joint health benefit statements were false and misleading and that
 2 clinical cause and effect studies have found the ingredients to be ineffective for the
 3 represented joint health benefits.

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

7 46. Schiff, by contrast, reaped enormous profit from its false marketing and
 8 sale of the Supplements.

9 CLASS DEFINITION AND ALLEGATIONS

10 47. Plaintiff Thomas Flowers brings this action on behalf of himself and all
 11 other similarly situated persons pursuant to Rule 23(a), (b)(2), and (b)(3) of the
 12 Federal Rules of Civil Procedure and seeks certification of the following Class:

13 All consumers who, within the applicable Class Period,
 14 purchased the Supplements within the State of California.

15 Excluded from the Class are Schiff, its parents, subsidiaries,
 16 affiliates, officers and directors, and those who purchased the
 Supplements for resale.

17 48. Plaintiff reserves the right to amend or modify the Class definitions
 18 with greater specificity or further division into subclasses or limitation to particular
 19 issues after discovery.

20 49. The Class satisfies the numerosity, commonality, typicality, adequacy,
 21 predominance and superiority requirements of Federal Rule of Civil Procedure 23(a)
 22 and (b)(3).

23 50. The members of the Class are so numerous that joinder of all members
 24 is impracticable. Although the precise number of Class members is unknown to
 25 Plaintiff at this time and can be determined only by appropriate discovery, it is
 26 reasonably estimated that the Class consists of thousands of purchasers of the
 27 Supplements who have been damaged by Schiff's conduct as alleged herein.

28 51. Because Plaintiff is a purchaser of the Supplements who has been

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1 subjected to Defendant's deceptive and misleading course of conduct, intent to trick,
2 mislead, and significantly confuse consumers, Plaintiff is a member of the Class,
3 and his claims are typical of the claims of the members of the Class. The harm
4 suffered by Plaintiff and all other Class members was and is caused by the same
5 misconduct by Defendant.

6 52. Plaintiffs will fairly and adequately represent and protect the interests
7 of the Class, in that Plaintiff has no interest antagonistic to, nor in conflict with, the
8 Class. Plaintiff has retained competent counsel, who are experienced in consumer
9 and commercial class action litigation, to further ensure such protection and who
10 intend to prosecute this action vigorously.

11 53. A class action is superior to other available methods for the fair and
12 efficient adjudication of this controversy. Because the monetary damages suffered
13 by individual Class members are relatively small, the expense and burden of
14 individual litigation make it impossible for individual Class members to seek redress
15 for the wrongful conduct asserted herein. If Class treatment of these claims was not
16 available, Defendant would likely continue its wrongful conduct, would unjustly
17 retain improperly obtained revenues, or would otherwise escape liability for its
18 wrongdoing as asserted herein.

19 54. Common questions of law and fact exist as to all members of the Class,
20 which predominate over any questions that may affect individual Class members.
21 Among the questions of law and fact common to the Class are the following:

- 22 1. Whether Defendant violated California Business and Professions Code
- 23 17500, et seq.;
- 24 2. Whether Defendant violated California Business and Professions Code
- 25 17200, et seq.;
- 26 3. Whether Defendant breached the implied covenant of good faith and
- 27 fair dealing in its sales transactions with Plaintiffs and the Class
- 28 Members; and
4. The appropriate measure of damages or other relief to which Plaintiffs
- and the Class members are entitled.

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1 55. Plaintiffs know of no difficulty which will be encountered in the
 2 management of this litigation which would preclude its maintenance as a Class
 3 action.

4 56. The prosecution of separate actions by individual members of the Class
 5 would run the risk of inconsistent or varying adjudications, which might establish
 6 incompatible standards of conduct for the Defendant. Prosecution as a class action
 7 will eliminate the possibility of repetitious litigation.

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

12 58. Defendant has acted or refused to act on grounds generally applicable
 13 to the Class, thereby making appropriate final injunctive relief or corresponding
 14 declaratory relief with respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**
 16 **(California False Advertising Law**
 - Cal. Bus. & Prof. Code § 17500, Et Seq.)

17 59. Plaintiff Flowers incorporates by reference and reasserts each
 18 allegation contained in the preceding paragraphs and further alleges as follows:

19 60. Defendant engaged in unlawful conduct under California Business &
 20 Professions Code § 17500, et seq., by claiming that the Supplements “help rebuild
 21 cartilage & lubricate joints.” Plaintiff Flowers and the Class members reasonably
 22 relied upon Defendant’s representations and/or omissions made in violation of
 23 California Business & Professions Code § 17500, et seq.

24 61. As a direct and proximate result of Defendant’s violations, Plaintiff
 25 Flowers and the Class members would not have otherwise purchased the
 26 Supplements and, therefore, suffered injury in fact and lost money.

27 62. Plaintiff Flowers is informed and believes that as a further direct and
 28 proximate result of the marketing described above, Defendant has received from

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1 members of the Class, money obtained through its violation of California Business
2 & Professions Code § 17500, et seq., which Defendant continues to hold for its sole
3 benefit.

4 63. Accordingly, Plaintiff, on behalf of himself and all others similarly
5 situated, seek equitable relief in the form of an order requiring Defendant to refund
6 to Plaintiff, and the Class all monies they paid for the Supplements above and, in
7 addition, an order requiring Defendant to cease claiming that the Supplements “help
8 rebuild cartilage & lubricate joints.”

9 **SECOND CAUSE OF ACTION**
10 **(California Unfair Competition Law –Cal. Bus. &**
Prof. Code§ 17200, et seq.)

11 64. Plaintiff Flowers incorporates by reference and reasserts each
12 allegation contained in the preceding paragraphs and further alleges as follows:

13 65. Defendant engaged in unlawful conduct under California Business &
14 Professions Code § 17200, et seq., by falsely claiming that the Supplements “help
15 rebuild cartilage and lubricate joints.”

16 66. Defendant’s conduct is unlawful in that it violates the False Advertising
17 Law, California Business & Professions Code § 17500, et seq.

18 67. Defendant’s conduct is unfair in that it offends established public
19 policy or is immoral, unethical, oppressive, unscrupulous, unconscionable, or
20 substantially injurious to Plaintiff Flowers and the Class. The harm to Plaintiff
21 Flowers and the Class members arising from Defendant’s conduct outweighs any
22 legitimate benefit Defendant has derived from the conduct.

23 68. Defendant’s misrepresentations and omissions are likely to mislead a
24 reasonable consumer.

25 69. Plaintiff Flowers and members of the Class relied on Defendant’s
26 misrepresentations and omissions.

27 70. As a direct and proximate result of Defendant’s violations, Plaintiff
28 Flowers and members of the Class would not have otherwise purchased the

1 Supplements, or would have paid less, and therefore, suffered injury in fact and lost
2 money.

3
4 71. Plaintiff Flowers and the Class members, seek reimbursement of
5 monies they paid for the Supplements. Additionally, Plaintiff Flowers and the Class
6 members seek equitable and injunctive relief on behalf of themselves and the Class
7 members pursuant to Cal. Business & Professions Code § 17203.

8 **THIRD CAUSE OF ACTION**
9 **(Unjust Enrichment on behalf of the Class)**

10 72. Plaintiff incorporates by reference and reasserts each allegation
11 contained in the preceding paragraphs and further alleges as follows:

12 73. Plaintiff's cause of action for unjust enrichment is pled in the
13 alternative to other causes of action asserted herein.

14 74. As a result of Defendant's misconduct in the form of deceptive
15 marketing of the Supplements as set forth above, Defendant has received a benefit at
16 the expense of Plaintiff and the Class members that would be unjust for Defendant
17 to retain.

18 75. As a result of Defendant's unjust enrichment, Plaintiff and the Class
19 Members are entitled to the return of the financial unjust benefit conferred by
20 Plaintiff and Class members on Defendant.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the Class, requests the
23 following relief:

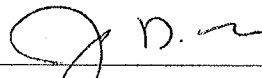
- 24 A. An order that this action may be maintained as a Class Action under
25 Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff be
26 appointed Class representatives for the Class, and that Plaintiff's
27 counsel be appointed as counsel for the Class;
- 28 B. A permanent injunction against Defendant, restraining, preventing and
enjoining Defendant from engaging in the illegal practices alleged;
- C. An order requiring Defendant to disgorge the profits wrongfully
obtained through the use of its illegal practices;

NYE, PEABODY, STIRLING, HALE & MILLER
33 WEST MISSION STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

- D. Actual damages;
- E. An award of attorneys' fees;
- F. An award of the costs of suit reasonably incurred by Plaintiff and his counsel;
- G. An award of interest, including prejudgment interest, at the legal rate, and;
- H. Such other and further relief as the Court deems necessary and appropriate.

DATED: December 20, 2013.

Respectfully submitted,

By: 

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

By: _____/s/_____

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

By: _____/s/_____

R. Bruce Carlson (*Pro Hac Pending*)
Stephanie Goldin (*Pro Hac Pending*)
Jamisen Etzel (*Pro Hac Pending*)
CARLSON LYNCH LTD
PNC Park

Proposed Lead Counsel

Attorneys for Plaintiff THOMAS FLOWERS,
on behalf of himself and all others similarly
situated,

NYE, PEABODY, STIRLING, HALE & MILLER
33 WEST MISSION STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

DEMAND FOR JURY TRIAL

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

DATED: December 20, 2013.

Respectfully submitted,

By: 

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

By: _____/s/_____

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

By: _____/s/_____

R. Bruce Carlson (*Pro Hac Pending*)
Stephanie Goldin (*Pro Hac Pending*)
Jamisen Etzel (*Pro Hac Pending*)
CARLSON LYNCH LTD
PNC Park

Proposed Lead Counsel
Attorneys for Plaintiff THOMAS FLOWERS,
on behalf of himself and all others similarly
situated,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Michael W. Fitzgerald and the assigned Magistrate Judge is Michael R. Wilner.

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

CV 13-09406 MWF (MRWx)

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

December 20, 2013

Date

By S. Bourgeois
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:

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701 | <input type="checkbox"/> 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 <input checked="" type="checkbox"/>) THOMAS FLOWERS, on behalf of themselves and all others similarly situated	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>)
(b) County of Residence of First Listed Plaintiff Santa Barbara Cty <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	County of Residence of First Listed Defendant _____ <small>(IN U.S. PLAINTIFF CASES ONLY)</small>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Jonathan D. Miller, Nye Peabody, Stirling, Hale Miller, 33 West Mission St., Suite 201, Santa Barbara CA, 93101, (805) 963-2345	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td></td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="text-align: center;">X</td> <td style="text-align: center;">X</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		1	1		4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5					X	X	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6						
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																																
	1	1		4	4																																
Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5																																
				X	X																																
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																																

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

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 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:** \$ in excess of \$5 million

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.)
 1. California False Advertising Law - Cal. Bus. & Prof. Code § 17500, Et Seq 2. California Unfair Competition Law - Cal. Bus. & Prof. Code § 17200, et seq. 3. Unjust Enrichment on behalf of the Class

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"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property TORTS <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions TORTS <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement FORFEITURE/PENALTY: <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY:

Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

Page 1 of 3

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

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside:	Then check the box below for the county in which the majority of PLAINTIFFS reside:	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A Los Angeles County	B Ventura, Santa Barbara, or San Luis Obispo Counties	C Orange County	D Riverside or San Bernardino Counties	E Outside the Central District of California	F Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the
SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the
EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the
WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

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

IX(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): _____

IX(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.

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

DATE: 12/20/13

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. It 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))