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16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 LUIS LERMA, On Behalf of Himself and  
19 All Other Similarly Situated California  
Residents,

20 Plaintiff,

21 v.

22 SCHIFF NUTRITION  
23 INTERNATIONAL, INC., a Utah  
24 Corporation and SCHIFF NUTRITION  
25 GROUP, INC., a Utah Corporation,

26 Defendants.

Case No.: 11-CV-1056-JAH(MDD)

CLASS ACTION

SECOND AMENDED CLASS ACTION  
COMPLAINT FOR:

1. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT, Civil Code  
§1750 *et seq.*;
2. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*; and
3. BREACH OF EXPRESS  
WARRANTY.

27 DEMAND FOR JURY TRIAL  
28

1 Plaintiff Luis Lerma (“Plaintiff”), by and through his attorneys, brings this action on  
2 behalf of himself and all other similarly situated California residents against Defendant Schiff  
3 Nutrition International and Defendant Schiff Nutrition Group, Inc. (collectively  
4 “Defendants”), and alleges as follows:

5 **NATURE OF ACTION**

6 1. Forty-six million Americans suffer from arthritis. Osteoarthritis, also called  
7 degenerative joint tissue disease, is the most prevalent and disabling form of arthritis.  
8 Osteoarthritis is caused by the breakdown of cartilage, which is the connective tissue that  
9 cushions the ends of bones within the joint. Osteoarthritis is characterized by pain, joint  
10 damage, and limited motion (hereafter referred to as the “three major symptoms of arthritis”).  
11 The disease generally occurs late in life, and most commonly affects the hands and large  
12 weight bearing joints, such as the knees, hips and back. There is no cure for the three major  
13 symptoms of arthritis. Yet, Defendants promises a cure for each of the three major symptoms  
14 of arthritis in the form of a pill which they manufacture, market, and sell as the Move Free<sup>®</sup>  
15 Advanced line of joint health dietary supplements.<sup>1</sup>

16 2. It has been the accepted standard for over four decades in both the medical  
17 and scientific community that in order for someone to make a health benefit claim about a  
18 product, the party making that claim must possess competent scientific evidence—meaning  
19 that they have at least two adequate and well controlled clinical trials supporting a particular  
20 health benefit claim about a particular product (hereafter referred to as “competent scientific  
21 evidence”).

22 3. On each and every Move Free<sup>®</sup> Advanced product label and/or package,  
23 Defendants prominently state that Move Free<sup>®</sup> Advanced, with its “clinically tested” premium  
24 formula, will rebuild joint cartilage, improve joint function and reduce joint pain in less than 7  
25 days.

26 4. In making these affirmative representations, Defendants represent to each

27 <sup>1</sup> The Move Free<sup>®</sup> Advanced line includes: (1) Move Free<sup>®</sup> Triple Strength; Move Free<sup>®</sup> Plus MSM & Vitamin  
28 D; and Move Free<sup>®</sup> Advanced plus MSM (collectively, “Move Free<sup>®</sup> Advanced” or “the Products”).

1 purchaser of Move Free<sup>®</sup> Advanced that they have competent scientific evidence that these  
2 products are effective in relieving and reducing the three major symptoms of arthritis and  
3 other joint related ailments.

4 5. Yet, Defendants do not possess such competent scientific evidence. In fact,  
5 the Move Free<sup>®</sup> Advanced products are not effective arthritis remedies. In short, Defendants  
6 have not obtained the necessary scientific proof with regard to each of the Move Free<sup>®</sup>  
7 Advanced products it markets and sells in order to make the representations that they have  
8 made about each of these Products.

9 6. As a result, Defendants are guilty of deceptive conduct in their marketing and  
10 sale of the Move Free<sup>®</sup> Advanced products.

11 7. Defendants are also guilty of deception by omission in that, after affirmatively  
12 asserting that these Products are effective remedies against the three major symptoms of  
13 arthritis, Defendants had a duty to tell Plaintiff and the Class members that they did not have  
14 competent scientific evidence to support the efficacy representations that they make about the  
15 Move Free<sup>®</sup> Advanced products.

16 8. By making representations on the box of each Move Free<sup>®</sup> Advanced product  
17 that it was an arthritis remedy, Defendants represented (and continue to represent) to Plaintiff  
18 and the Class members that they have competent scientific evidence to back up these  
19 assertions when they did not possess such evidence. These were material misrepresentations  
20 concerning the only reason that Plaintiff and the Class members would have purchased  
21 Defendants' Move Free<sup>®</sup> Advanced products—that the Products were proven by competent  
22 scientific evidence to be effective against the three major symptoms of arthritis.

23 9. Other than to use the Move Free<sup>®</sup> Advanced products to relieve these  
24 symptoms of arthritis, there is no reason for Plaintiff or the Class members to have purchased  
25 these Products. Plaintiff and the Class members would not have purchased a Move Free<sup>®</sup>  
26 Advanced product without believing that it was a proven effective arthritis remedy and that it  
27 provided relief from the three major symptoms of arthritis.

28 10. Thus, through the act of purchasing one of Defendants' Move Free<sup>®</sup>

1 Advanced products, Plaintiff and each Class member necessarily was deceived by  
2 Defendants' representations that these Products were effective arthritis remedies and would  
3 provide relief from the three major symptoms of arthritis.

4 11. Plaintiff and the Class members were also deceived by Defendants in that,  
5 after affirmatively asserting that these Products would provide relief for the three major  
6 symptoms of arthritis, Defendants failed to inform Plaintiff and the Class members that they  
7 did not possess competent scientific evidence to support these health benefit claims.

8 12. Every purchase of the Move Free<sup>®</sup> Advanced products was tainted with  
9 Defendants' deceptions in that just by looking at the package on the shelf or following the  
10 directions for use, Plaintiff and the Class members would have seen Defendants' deceptive  
11 representations.

12 13. Defendants' deceptive marketing and advertising, as well as the complete lack  
13 of any disclosure that no competent scientific evidence exists to substantiate the claim that  
14 Move Free<sup>®</sup> Advanced will "protect" "replenish" "rebuild[]" or "lubricate" joints – let alone  
15 reduce joint pain "in less than 7 days"—is designed to cause consumers to buy Move Free<sup>®</sup>  
16 Advanced. Defendants' deceptive marketing and advertising campaign has succeeded.  
17 According to Defendants, in 2010 sales of Move Free<sup>®</sup> Advanced exceeded \$100 million.<sup>2</sup>

18 14. Plaintiff brings this action on behalf of himself and other similarly situated  
19 California consumers who have purchased the Products to halt the dissemination of this false  
20 and misleading advertising message, correct the false and misleading perception it has created  
21 in the minds of consumers, and obtain redress for those who have purchased Move Free<sup>®</sup>  
22 Advanced products. Plaintiff alleges violations of the Consumers Legal Remedies Act, the  
23 Unfair Competition Law, and Breach of Express Warranty created by Defendants'  
24 advertising, including false labeling.

25 **JURISDICTION AND VENUE**

26 15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The  
27

28 <sup>2</sup> Sales figures are based on Fiscal Year 2010. See <http://www.schiffnutrition.com/movefree.asp> (last visited May 2, 2010).

1 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
2 \$5,000,000 and is a class action in which members of the class are citizens of a state different  
3 from Defendant.

4 16. This Court has personal jurisdiction over Defendants because Defendants are  
5 authorized to do and conduct business in California. Defendants have marketed, promoted,  
6 distributed, and sold the Move Free<sup>®</sup> Advanced products in California, and Defendants have  
7 sufficient minimum contacts with this State and/or sufficiently avail themselves of the  
8 markets in this State through their promotion, sales, and marketing within this State to render  
9 the exercise of jurisdiction by this Court permissible.

10 17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
11 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred  
12 while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a)  
13 because Defendants transact substantial business in this District.

14 **PARTIES**

15 18. Plaintiff Luis Lerma resides in Imperial, California. During the Class Period,  
16 Plaintiff Lerma was exposed to and saw Defendants' claims by reading the Move Free<sup>®</sup>  
17 Advanced label, purchased the Move Free<sup>®</sup> Advanced products in reliance on those claims,  
18 and suffered injury in fact and lost money. Had Plaintiff Lerma known the truth about  
19 Defendants' misrepresentations and omissions, Plaintiff would not have purchased and used  
20 the Move Free<sup>®</sup> Advanced products.

21 19. Defendant Schiff Nutrition International, Inc. is a corporation organized and  
22 existing under the laws of the State of Utah. Defendant's headquarters is at 2002 South 5070  
23 West, Salt Lake City, Utah 84104. Defendant manufactures, distributes, markets and sells  
24 the Move Free<sup>®</sup> Advanced products to tens of thousands of consumers in California.

25 20. Defendant Schiff Nutrition Group, Inc., is a corporation organized and  
26 existing under the laws of the State of Utah. Defendant's headquarters is at 2002 South 5070  
27 West, Salt Lake City, Utah 84104. Defendant manufactures, distributes, markets and sells  
28 the Move Free<sup>®</sup> Advanced products to tens of thousands of consumers in California.

21. Plaintiff is informed and believes, and thus alleges, that at all times herein mentioned, each of the Defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein, was acting within the course and scope of such agency, employment, representation, on behalf of such partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of the other Defendant.

### FACTUAL ALLEGATIONS

#### *The Move Free<sup>®</sup> Advanced Products*

22. Defendants develop, manufacture, market, distribute and sell vitamins, nutritional supplements and sports nutrition products nationwide. Defendants' "flagship brand" is Move Free<sup>®</sup> Advanced. Move Free<sup>®</sup> Advanced is available in three different formulas: (1) Move Free<sup>®</sup> Advanced Triple Strength; (2) Move Free<sup>®</sup> Advanced Plus MSM & Vitamin D; and (3) Move Free<sup>®</sup> Advanced plus MSM. Defendants began manufacturing, marketing and selling the Move Free<sup>®</sup> Advanced products nationwide in 1996.<sup>3</sup>

23. The Move Free<sup>®</sup> Advanced products are sold in virtually every major food, drug, and mass retail outlet in California, including, but not limited to: BJ's Wholesale Club, Costco, Sam's Club and Wal-Mart stores. The Move Free<sup>®</sup> Advanced products are also sold through online retailers such as Costco.com, cvs.com, and walgreens.com. A 120-count bottle of Move Free<sup>®</sup> Advanced retails for approximately \$30.00. The following are screen shots of the Products:



<sup>3</sup> In 2000, Defendants rebranded their joint dietary supplements as "Move Free".  
SECOND AMENDED CLASS ACTION COMPLAINT

1           24.     Since the Products’ launch, Defendants have consistently conveyed the  
2 message to consumers throughout California that Move Free<sup>®</sup> Advanced, with its “clinically  
3 tested” formula will “protect,” “replenish” and “rebuild” one’s joints simply by taking the  
4 recommended number of tablets each day. According to Defendants, Move Free<sup>®</sup> Advanced  
5 will also “START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS.” These  
6 claims are not substantiated by competent scientific evidence and are factually baseless.

7           25.     The primary active ingredients in all the Move Free<sup>®</sup> Advanced products are  
8 glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the  
9 body produces and distributes in cartilage and other connective tissue. The Products’  
10 labeling and packaging states the benefits associated with taking glucosamine hydrochloride:  
11 “Glucosamine—Helps by strengthening, protecting and rebuilding joints.” There is no  
12 competent scientific evidence that taking glucosamine—let alone through oral administration  
13 —results in the body metabolizing it into something that strengthens, protects or rebuilds  
14 joints.

15           26.     Chondroitin sulfate is a complex carbohydrate found in the body’s connective  
16 tissues. On the Products’ labeling and packaging, Defendants claim that chondroitin “assists  
17 in lubricating and cushioning joints.” There is no competent scientific evidence that taking  
18 chondroitin sulfate—let alone through oral administration—results in the body metabolizing  
19 it into something that assists in lubricating and cushioning joints.

20           27.     All of the Move Free<sup>®</sup> Advanced products also contain lesser amounts of other  
21 ingredients including Defendants’ “patent-pending” ingredient Uniflex and hyaluronic acid.  
22 On their packaging and labeling, Defendants define Uniflex as “a ground breaking dual  
23 bioflavonoid antioxidant system that protects joints from harmful antioxidants that accelerate  
24 the breakdown of cartilage and joint tissue.” There is no competent scientific evidence that  
25 taking Uniflex or any of its individual ingredients—let alone through oral  
26 administration—results in the body metabolizing it into something that protects joints or  
27 slows the breakdown of cartilage or joint tissue.

28           28.     Hyaluronic acid is a component of synovial fluid found in the eyes and joints.

1 On the Products' labeling and packaging, Defendants claim that hyaluronic acid "helps  
2 lubricate, rejuvenate, re-hydrate, and repair joints." There is no competent scientific  
3 evidence that taking hyaluronic acid—let alone through oral administration—results in the  
4 body metabolizing it into something that helps lubricate, rejuvenate, re-hydrate or repair  
5 joints.

6 29. In addition to those ingredients, Move Free<sup>®</sup> Advanced plus MSM and Move  
7 Free<sup>®</sup> Advanced Plus MSM & Vitamin D also contain methylsulfonylmethane ("MSM"), an  
8 organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and milk. There is no  
9 competent scientific evidence that taking MSM—let alone through oral  
10 administration—results in the body metabolizing it into something that relieves any of the  
11 three major symptoms of arthritis or any other joint related ailments.

12 30. Contrary to the stated representations on all the Products' labeling and  
13 packaging, Defendants do not possess (and have not possessed) competent scientific evidence  
14 that any of these ingredients, taken alone or in combination, are effective in treating any of  
15 the three major symptoms of arthritis or any other joint related ailments.

16 31. Despite inadequate testing and no scientifically valid confirmation that Move  
17 Free<sup>®</sup> Advanced is an effective joint treatment—let alone an effective treatment for *all* joints  
18 in the human body, for customers of *all* ages and for *all* stages of joint disease—Defendants  
19 state on the Products' packaging and labeling that Move Free<sup>®</sup> Advanced, with its "clinically  
20 tested" formula will, *inter alia*, "strengthen[], protect[] and rebuild[] joints" and "START[]  
21 COMFORTING SORE JOINTS IN LESS THAN 7 DAYS." Front and back shots of a  
22 representative Move Free<sup>®</sup> Advanced Triple Strength product label appear as follows:  
23  
24  
25  
26  
27  
28



(FRONT)



(BACK)



*The Impact of Defendants Wrongful Conduct*

32. Despite the lack of competent scientific evidence, Defendants continue to unequivocally claim that with its “clinically tested” premium formula, Move Free® Advanced

1 provides joint health benefits to all persons.

2 33. As the manufacturer and distributor of Move Free<sup>®</sup> Advanced, Defendants  
3 possess specialized knowledge regarding the content and effects of the ingredients contained  
4 in their Products and are in a superior position to learn of the effects—and have learned of  
5 the effects—their Products have on consumers.

6 34. Specifically, Defendants knew or should have known, but failed to disclose  
7 that they have no competent scientific evidence that their Move Free<sup>®</sup> Advanced products are  
8 effective in treating the three major symptoms of arthritis or any other joint related ailments.

9 35. Notwithstanding these deceptive representations and material omissions,  
10 Defendants conveyed and continue to convey one uniform message: Move Free<sup>®</sup> Advanced,  
11 with its “clinically tested” formula, is effective in treating the three major symptoms of  
12 arthritis.

13 36. Plaintiff and Class members have been and will continue to be deceived or  
14 misled by Defendants’ deceptive representations touting the effectiveness of the Move Free<sup>®</sup>  
15 Advanced products. Plaintiff purchased and used the Move Free<sup>®</sup> Advanced products during  
16 the Class period and in doing so, read, considered and based his decisions to buy the  
17 Products on the above cited representations. Because the Products’ sole purpose is to  
18 provide joint relief for the three major symptoms of arthritis or other joint related ailments,  
19 Defendants’ representations and omissions were a material factor in influencing Plaintiff’s  
20 decision to purchase and use the Move Free<sup>®</sup> Advanced products. There is no other reason  
21 for Plaintiff to have purchased the Move Free<sup>®</sup> Advanced products and Plaintiff would not  
22 have purchased the Products had he known that Defendants did not possess competent  
23 scientific evidence to support the claims that they made about these Products.

24 37. As a result, Plaintiff and the Class members have been damaged in their  
25 purchases of these Products and have been deceived into purchasing Products that they  
26 believed, based on Defendants’ representations, were proven to be effective in treating the  
27 three major symptoms of arthritis and other joint related ailments when, in fact, they are not.

28 38. Defendants, by contrast, reaped enormous profits from their false marketing

1 and sale of these Products, generating more than \$100 million in sales revenue in 2010 alone.

2 **CLASS ALLEGATIONS**

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

6 All California residents who, within the applicable statute of  
7 limitations, purchased Move Free<sup>®</sup> Advanced products.<sup>4</sup>

8 Excluded from the Class are Defendants, their parents,  
9 subsidiaries, affiliates, officers and directors, and those who  
10 purchased the Move Free<sup>®</sup> Advanced products for the purpose of  
11 resale.

12 40. Members of the Class are so numerous and geographically dispersed that  
13 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that  
14 basis alleges, that the proposed Class contains many thousands of members. The precise  
15 number of Class members is unknown to Plaintiff.

16 41. Common questions of law and fact exist as to all members of the Class and  
17 predominate over questions affecting only individual Class members. The common legal  
18 and factual questions include, but are not limited to, the following:

- 19 • Whether Defendants had competent scientific evidence to support each  
20 of the claims that they made about their Products;
- 21 • Whether the claims discussed herein that Defendants made about their  
22 Products were or are misleading, or reasonably likely to deceive;
- 23 • Whether Defendants' alleged conduct violates public policy;
- 24 • Whether the alleged conduct constitutes violations of the laws asserted  
25 herein;
- 26 • Whether Defendants engaged in false and misleading advertising;
- 27 • Whether Plaintiff and Class members have sustained monetary loss and  
28 the proper measure of that loss;

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<sup>4</sup> The Move Free<sup>®</sup> Advanced products include: (1) Move Free<sup>®</sup> Triple Strength; (2) Move Free<sup>®</sup> Plus MSM & Vitamin D; and (3) Move Free<sup>®</sup> Advanced plus MSM.

- 1           •       Whether Plaintiff and Class members are entitled to restitution,  
2 disgorgement of Defendants' profits, declaratory and/or injunctive relief; and
- 3           •       Whether Plaintiff and Class members are entitled to an award of  
4 punitive and/or compensatory damages.

5           42.   The claims asserted by Plaintiff in this action are typical of the claims of the  
6 members of the Class, as the claims arise from the same course of conduct by Defendants,  
7 and the relief sought is common. Plaintiff and Class members suffered uniform damages  
8 caused by their purchase of the Move Free<sup>®</sup> Advanced products manufactured, marketed, and  
9 sold by Defendants.

10          43.   Plaintiff will fairly and adequately represent and protect the interests of the  
11 members of the Class. Plaintiff has retained counsel competent and experienced in both  
12 consumer protection and class litigation, and Plaintiff intends to prosecute this action  
13 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

14          44.   A class action is superior to other available methods for the fair and efficient  
15 adjudication of this controversy. The expense and burden of individual litigation would  
16 make it impracticable or impossible for proposed Class members to prosecute their claims  
17 individually. It would thus be virtually impossible for the Class, on an individual basis, to  
18 obtain effective redress for the wrongs done to them. Furthermore, even if Class members  
19 could afford such individualized litigation, the court system could not. Individualized  
20 litigation would create the danger of inconsistent or contradictory judgments arising from the  
21 same set of facts. Individualized litigation would also increase the delay and expense to all  
22 parties and the court system from the issues raised by this action. By contrast, the class  
23 action device provides the benefits of adjudication of these issues in a single proceeding,  
24 economies of scale, and comprehensive supervision by a single court, and presents no  
25 unusual management difficulties under the circumstances here.

26          45.   In the alternative, the Class also may be certified because Defendants have  
27 acted or refused to act on grounds generally applicable to the Class thereby making  
28 appropriate final declaratory and/or injunctive relief with respect to the members of the Class

1 as a whole.

2 46. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
3 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and  
4 prevent Defendants from engaging in the acts described, and requiring Defendants to provide  
5 full restitution to Plaintiff and Class members.

6 47. Unless a Class is certified, Defendants will retain monies received as a result  
7 of their conduct that were taken from Plaintiff and Class members. Unless a Class-wide  
8 injunction is issued, Defendants will continue to commit the violations alleged, and the  
9 members of the Class and the general public will continue to be misled.

10 **COUNT I**

11 **Violation of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***

12 48. Plaintiff re-alleges and incorporates by reference the allegations contained in  
13 the paragraphs above as if fully set forth herein.

14 49. This cause of action is brought under the Consumers Legal Remedies Act,  
15 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by  
16 California Civil Code §1761(d). Defendants’ Move Free<sup>®</sup> Advanced products are goods  
17 within the meaning of the Act.

18 50. Defendants violated and continue to violate the Act by engaging in the  
19 following practices proscribed by California Civil Code §1770(a) in transactions with  
20 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
21 Defendants’ Move Free<sup>®</sup> Advanced products:

22 (5) Representing that [the Move Free<sup>®</sup> Advanced products have] . . .  
23 characteristics, . . . uses [or] benefits . . . which [they] do not have.

24 \* \* \*

25 (7) Representing that [the Move Free<sup>®</sup> Advanced products are] of a particular  
26 standard, quality or grade, . . . if [they are] of another.

27 \* \* \*

28 (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

1  
2 (16) Representing that [the Move Free<sup>®</sup> Advanced products have] been supplied in  
3 accordance with a previous representation when [they have] not.

4 51. Defendants violated and continue to violate the Act by representing and  
5 failing to disclose material facts on their Move Free product labels and packages as described  
6 above, when they knew, or should have known, that the representations were  
7 unsubstantiated, false and misleading and that the omissions were of material facts.

8 52. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order  
9 enjoining the above-described wrongful acts and practices of Defendants and for restitution  
10 and disgorgement.

11 53. Pursuant to §1782 of the Act, by letter dated May 13, 2011, Plaintiff notified  
12 Defendant Schiff Nutrition International and Schiff Nutrition Group, Inc., in writing by  
13 certified mail of the particular violations of §1770 of the Act and demanded that Defendants  
14 rectify the problems associated with the actions detailed above and give notice to all affected  
15 consumers of Defendants' intent to so act.

16 54. Defendants have failed to rectify or agree to rectify the problems associated  
17 with the actions detailed above and give notice to all affected consumers within 30 days of  
18 the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks for  
19 actual, punitive and statutory damages, as appropriate.

20 55. Defendants' conduct is malicious, fraudulent and wanton.

21 **COUNT II**

22 **Violation of Business & Professions Code §17200, *et seq.***

23 56. Plaintiff re-alleges and incorporates by reference the allegations contained in  
24 the paragraphs above as if fully set forth herein.

25 57. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
26 property as a result of Defendants' conduct because he purchased the Move Free<sup>®</sup> Advanced  
27 products.

1           58. In the course of conducting business, Defendants committed unlawful  
2 business practices by, *inter alia*, making the representations (which also constitute  
3 advertising within the meaning of §17200) and omissions of material facts, as set forth more  
4 fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business &  
5 Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

6           59. Plaintiff and the Class reserve the right to allege other violations of law,  
7 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
8 continues to this date.

9           60. Defendants' acts, omissions, misrepresentations, practices and non-  
10 disclosures as alleged herein also constitute "unfair" business acts and practices within the  
11 meaning of Business and Professions Code §17200 *et seq.*, in that their conduct is  
12 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
13 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits  
14 attributable to such conduct.

15           61. As stated in this complaint, Plaintiff alleges violations of consumer  
16 protection, unfair competition and truth in advertising laws resulting in harm to consumers.  
17 Plaintiff asserts violations of the public policy of engaging in false and misleading  
18 advertising, unfair competition and deceptive conduct towards consumers. This conduct  
19 constitutes violations of the unfair prong of Business & Professions Code §17200 *et seq.*

20           62. There were reasonably available alternatives to further Defendants' legitimate  
21 business interests, other than the conduct described herein.

22           63. Defendants' claims, nondisclosures and misleading statements, as more fully  
23 set forth above, are also false, misleading and/or likely to deceive the consuming public  
24 within the meaning of Business & Professions Code §17200 *et seq.*

25           64. Defendants' labeling and packaging as described herein, also constitute  
26 unfair, deceptive, untrue and misleading advertising.

27           65. Defendants' conduct caused and continues to cause substantial injury to  
28 Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost

1 money as a result of Defendants' unfair conduct.

2 66. Plaintiff, on behalf of himself, and all other similarly situated California  
3 residents, seeks restitution of all money obtained from Plaintiff and the members of the Class  
4 collected as a result of unfair competition, an injunction prohibiting Defendants from  
5 continuing such practices, corrective advertising and all other relief this Court deems  
6 appropriate, consistent with Business & Professions Code §17203.

7 **COUNT III**

8 **Breach of Express Warranty**

9 67. Plaintiff re-alleges and incorporates by reference the allegations contained in  
10 the paragraphs above as if fully set forth herein.

11 68. Plaintiff, and each member of the Class, formed a contract with Defendants at  
12 the time Plaintiff and the other members of the Class purchased the Move Free<sup>®</sup> Advanced  
13 products. The terms of that contract include the promises and affirmations of fact made by  
14 Defendants on their Move Free<sup>®</sup> Advanced products' labels and packages, as described  
15 above. These representations constitute express warranties, became part of the basis of the  
16 bargain, and are part of a standardized contract between Plaintiff and the members of the  
17 Class on the one hand, and Defendants on the other.

18 69. All conditions precedent to Defendants' liability under this contract have been  
19 performed by Plaintiff and the Class.

20 70. Defendants breached the terms of this contract, including the express  
21 warranties, with Plaintiff and the Class by not providing products that could provide the  
22 benefits described above which was the only reason Plaintiff and Class members purchased  
23 the Move Free<sup>®</sup> Advanced products.

24 71. As a result of Defendants' breach of their warranty, Plaintiff and Class  
25 members have been damaged in the amount of the purchase price of the Move Free<sup>®</sup>  
26 Advanced products they purchased.

27 **PRAYER FOR RELIEF**

28 Wherefore, Plaintiff prays for a judgment:



- 1 A. Certifying the class as requested herein;
- 2 B. Awarding Plaintiff and the proposed Class members damages;
- 3 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff
- 4 and the proposed Class members;
- 5 D. Awarding declaratory and injunctive relief as permitted by law or equity,
- 6 including: enjoining Defendants from continuing the unlawful practices as set forth herein,
- 7 and directing Defendants to identify, with court supervision, victims of their conduct and pay
- 8 them restitution and disgorgement of all monies acquired by Defendants by means of any act
- 9 or practice declared by this Court to be wrongful;
- 10 E. Ordering Defendants to engage in a corrective advertising campaign;
- 11 F. Awarding attorneys' fees and costs; and
- 12 G. Providing such further relief as may be just and proper.

13 **JURY DEMAND**

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

15 Dated: September 16, 2011.

16 BONNETT, FAIRBOURN, FRIEDMAN  
17 & BALINT, P.C.

18 s/ Patricia N. Syverson

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

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I hereby certify that on September 16, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 16, 2011.

By: s/ Patricia N. Syverson  
Patricia N. Syverson

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