

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

<p>MARY NOWICKI on behalf of herself and others similarly situated, Plaintiff, v. NATROL, INC., Defendant.</p>	<p>Court File No.: _____ CLASS ACTION COMPLAINT AND JURY DEMAND (Equitable Relief Sought)</p>
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Plaintiff Mary Nowicki (“Plaintiff”), individually and on behalf of all others similarly situated, brings this class action against Natrol, Inc., (“Natrol” or “Defendant”). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others:

NATURE OF ACTION

1. Those who suffer from cartilage degeneration and loss in joints, often associated with arthritis, experience debilitating pain that negatively impacts their quality of life. There is an economic cost as well. The estimated costs attributable to arthritis and other rheumatic conditions were estimated at \$128 billion in 2003.¹

2. To capitalize on this lucrative market, Defendant Natrol, Inc. manufactures, distributes and sells the dietary supplements Glucosamine Chondroitin MSM and Glucosamine MSM & Cetylpure® (the “Products”) that it promises can rebuild or regenerate cartilage. Specifically, the Products’ labels claim that the ingredient glucosamine in the supplement rebuilds and regenerates cartilage.

¹ Centers for Disease Control and Prevention, www.cdc.gov/Arthritis/data_statistics/cost.htm (last visited May 17, 2013).

3. For persons with arthritis and other joint-related diseases, whose pain is caused by degeneration of cartilage causing bone-on-bone contact, the Products offer what appears to be a cure for the disease. To the detriment of Plaintiff and other consumers, scientific evidence specifically refutes Defendant's promises. When the Products are taken orally, only insignificant trace amounts of glucosamine enter the system.² It is scientifically impossible for these trace amounts to rebuild or regenerate cartilage.³ Therefore, Defendant's promises to rebuild and/or regenerate cartilage are false and misleading.

4. Reasonable consumers, including Plaintiff purchase the Products in reliance on the truthfulness of the promises on the labels. The purpose of this action is to enjoin Defendant from its false and misleading practices and recover the ill-gotten gains Defendant received as a result of its fraudulent conduct. Plaintiff seeks relief for Defendant's fraudulent and deceptive conduct under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS Section 505/1, *et seq.* and under the theory of unjust enrichment.

JURISDICTION AND VENUE

5. This action is within the original jurisdiction of this Court by virtue of 28 U.S.C. §1332(d)(2). Plaintiff is a citizen of a different state than Defendant, and the amount in controversy for this class exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)(1)-(2). Plaintiff resides in this District and bought Defendant's product within this District.

² Jeremiah E. Silbert, Glycobiology, *Glyco-Forum section: Dietary glucosamine under question*, Vol. 19 No. 6 Glycobiology 564, at 565-566 (2009).

³ *Id.*

PARTIES

7. Plaintiff Mary Nowicki is a citizen of Illinois who resides in Western Springs, Illinois. Ms. Nowicki purchased Natrol's Glucosamine Chondroitin MSM from approximately 2005 until approximately June 2011. When Ms. Nowicki purchased Natrol's Glucosamine Chondroitin MSM, she read and reviewed the promise on the front label that it "helps rebuild cartilage tissue." Ms. Nowicki purchased the product for that purpose. Had Ms. Nowicki known that the representation on the product was false, she would not have purchased the product, and therefore, suffered injury.

8. Defendant Natrol Inc. is a corporation organized under the laws of the State of Delaware, with its corporate offices located at 21411 Prairie Street, Chatsworth, CA 91311. Natrol Inc. sells many products under its own name. Natrol products are currently sold through 62 retailers, including major chains such as Wal-Mart, Albertsons, and Walgreens.⁴ In 2006, Natrol had \$65,564,000 in net sales with gross profits of \$28,433,000.⁵ In 2007, Natrol became a wholly owned subsidiary of Plethico Pharmaceuticals Ltd., an Indian company. Natrol claims to offer "...a complete line of joint health products to help you perform and feel your best at any age! Each product was carefully designed by our team of scientists to help you enjoy your active lifestyle."⁶

SUBSTANTIVE ALLEGATIONS

9. Arthritis and other joint-related diseases can cause wear-and-tear damage to cartilage, the hard coating on the ends of bones that allows bones of the joint to slide smoothly

⁴ Natrol® Website, <http://www.natrol.com/retailers.aspx> (last visited October 3, 2012).

⁵ Natrol® Inc., Annual Report (Form 10-K) at p. 24 (2006).

⁶ Natrol® Website, http://www.natrol.com/cat_joint.aspx (last visited October 2, 2012).

over each other.⁷ This condition can cause bone grinding directly on bone, which results in pain and restriction of movement. Cartilage deterioration is prevalent among those suffering from osteoarthritis, the most common form of arthritis.⁸

10. Glucosamine and chondroitin sulfate are dietary supplements that are widely marketed for joint-related diseases, with estimated sales in 2004 approaching \$730 million.⁹

11. Defendant launched the Products as part of its line of joint health supplements to tap into the lucrative arthritis market, which affects approximately 50 million adults in the United States.

12. Glucosamine Chondroitin MSM is sold in tablet form in bottles that typically retail for approximately \$29.99 (90 tablets) or \$39.99 (150 tablets).¹⁰ The front label of Glucosamine Chondroitin MSM contains the promise that it “Helps Rebuild Cartilage Tissue.” It also states that the product has “Clinically Tested Ingredients to Promote Optimal Joint Flexibility, Lubrication, Mobility and Comfort.” The front label further includes an image of a joint between two bones. *See Ex. A.*

13. Glucosamine MSM & Cetylpure® is typically sold in capsule form in bottles that retail for approximately \$29.99 (60 capsules). The front label of the Glucosamine MSM & Cetylpure® contains the health claim that it “Helps Rebuild & Maintain Cartilage.” It also states that the product provides “Joint Comfort” and that the glucosamine MSM is provided “With

⁷ Arthritis Causes, MAYCOCLINIC.COM, <http://www.mayoclinic.com/health/arthritis/DS01122/DSECTION=causes> (last visited October 3, 2012).

⁸ Osteoarthritis vs. Rheumatoid Arthritis, MAYCOCLINIC.COM, <http://www.mayoclinic.com/health/medical/IM03689> (last visited October 3, 2012). Cartilage degeneration can result from other causes as well.

⁹ Daniel O. Clegg, The New England Journal of Medicine, *Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis*, N. Engl. J. Med. Vol. 354 No. 8, at 806 (February 2006).

¹⁰ Natrol® Website, http://www.natrol.com/prod_joints.aspx?prod=120 (last visited Feb. 5, 2013).

Cetyl Myristoleate Complex.” The front label also has an image of a joint between two bones.
See Ex. B.

14. Both Product labels specify glucosamine as the ingredient responsible for regenerating and rebuilding cartilage. The Glucosamine Chondroitin MSM label states, “Glucosamine works hard to regenerate and rebuild the cartilage tissue.” It further explains, “Chondroitin helps maintain the structural integrity of this tissue and promotes lubricating fluids for the joints.” Finally, it states, “MSM promotes joint and physical function by helping to maintain the elasticity of your joint tissue.” *See, Ex. A.*

15. Glucosamine MSM & Cetylpure® contains the same message. Its label explains that glucosamine “helps rebuild and maintain cartilage.” It further explains, “MSM helps promote joint function,” and “CetyPure helps promote joint comfort as we age and after exercise.” *See Ex. B.*

16. The Products’ packaging contains false statements and illustrations that are intended to induce consumers into believing that Defendant’s products are superior and distinct from other glucosamine and chondroitin products because they rebuild and/or regenerate cartilage. *See generally* Ex. A, B.

17. A reasonable consumer is likely to be deceived by the Products’ promises to rebuild or regenerate cartilage.

18. The labels of the Products are false and misleading because when an individual takes the Products orally, only insignificant trace amounts of glucosamine enter the body’s system.¹¹ It is scientifically impossible for these trace amounts to rebuild or regenerate cartilage.

¹¹ Jeremiah E. Silbert, Glycobiology, *Glyco-Forum section: Dietary glucosamine under question*, Vol. 19 No. 6 Glycobiology 564, at 565-566 (2009).

Accordingly, competent and reliable scientific evidence demonstrates that the Products are incapable of rebuilding and/or regenerating cartilage.

19. Consumers, like Plaintiff and other members of the Class, purchased the Products based upon Defendant's false representations that the Products can rebuild or regenerate cartilage, but they received products that did not in fact perform as promised, and therefore, suffered injury.

20. Corroborating the label representations, the Natrol website states that the benefit of Glucosamine Chondroitin MSM is that it contains "Glucosamine to Help Regenerate and Rebuild Cartilage Tissue."¹² With respect to Glucosamine MSM & CetylPure®, the website claims: "this potent formula includes glucosamine to help build and maintain cartilage."¹³

21. Plaintiff, and all other class members, would not have purchased the Products and/or paid a premium if they had known that the representations regarding the Products' ability to rebuild and/or regenerate cartilage are false.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23. She seeks to represent a class ("Class") consisting of:

- (a) **Nationwide Class:** All consumers throughout the United States who purchased Glucosamine Chondroitin MSM and Glucosamine MSM & CetylPure® during the liability period for their household use, rather than for resale or distribution, that were marketed under the brand name Natrol®.

In the alternative, Plaintiff seeks to represent a class consisting of:

- (b) **Illinois Class:** All consumers within the State of Illinois who purchased Glucosamine Chondroitin MSM and Glucosamine MSM & CetylPure® during the liability period for their household

¹² Natrol® Website, http://www.natrol.com/prod_joints.aspx?prod=120 (last visited Feb. 5, 2013).

¹³ Natrol Website, <http://www.natrol.com/p-51-glucosamine-msm-cetylpure.aspx> (last visited Feb. 5, 2013).

use, rather than for resale or distribution, that were marketed under the brand name Natrol®.

23. For purposes of this Complaint, the phrase, “Class members” refers collectively to all members of the Class, including the named Plaintiff.

24. The action has been brought and may properly be maintained as a class action against Defendant pursuant to the provisions of Federal Rules of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

25. The requirements of Rule 23 are satisfied because:

- a. Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of class members is presently unknown to Plaintiff, Defendant’s volume of sales and availability of the Products indicates that the number of class members would make joinder impracticable.
- b. Commonality: The questions of law and fact which predominate over questions which may affect individual Class members include the following:
 - i. Whether Defendant materially misrepresented the health benefits of the Products to the Class members;
 - ii. Whether Defendant materially misrepresented that the Products can rebuild and/or regenerate cartilage to Class members;
 - iii. Whether Defendant’s misrepresentations and omissions were material to reasonable consumers;

- iv. Whether Defendant's marketing, advertising, packaging, labeling, distributing, and selling of the Products constitute an unfair, unlawful or fraudulent practice;
 - v. Whether marketing, advertising, packaging, labeling, distributing, and selling of the Products constitute false advertising;
 - vi. Whether Defendant's conduct described above injured consumers and, if so, the extent of the injury; and
 - vii. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future.
- c. Typicality: Plaintiff's Claims are typical of the claims of the Class because Plaintiff has suffered from the same harm as the Class, i.e., purchasing Products during the liability period, which did not deliver what they promised, based on misleading and deceptive labels that were the same regardless of where the Products were purchased. Moreover, Defendant made the same false and misleading representations and omissions to the Class Members on the labels of the Products. Thus, Plaintiff and members of the Class sustained the same injuries and damages arising out of Defendant's conduct in violation of Illinois law. Plaintiff does not have any interests antagonistic to, or in conflict with, her Class.
- d. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes. No conflicts of interest exist between the Plaintiff and the Class members. Plaintiff has retained competent counsel

experienced in class action litigation and intends to prosecute this action vigorously.

- e. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will permit a large number of similarly situated person to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Since the damages suffered by individual class members are relatively small, the expense and burden of individual litigation make it virtually impossible for the class members to seek redress for the wrongful conduct alleged, while an important public interest will be served by addressing the matter as a class action.

26. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Federal Rule of Civil Procedure 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

27. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS Section 505/1, et seq.

28. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

29. Defendant engaged in unfair and/or deceptive acts and practices, by among other things, labeling its Products Glucosamine Chondroitin MSM and Glucosamine MSM & CetylPure® in a deceptive and misleading manner by stating that its Products are capable of rebuilding and/or regenerating cartilage.

30. At all times material, Defendant engaged in a scheme of labeling the Products as capable of rebuilding and/or regenerating cartilage when, in fact, Defendant knew that these representations were false and misleading. In engaging in this conduct, Defendant misrepresented an important characteristic of its Products – i.e., their ability to rebuild and/or regenerate cartilage. Defendant intended that Plaintiff and members of the Class rely on its deceptive acts and misrepresentations, and Plaintiff and the members of the Class were actually deceived by Defendant's representations that the Products were capable of rebuilding and/or regenerating cartilage.

31. If not for Defendant's deceptive and misleading representations, Plaintiff and members of the Class would not have purchased the Products and/or paid a premium for the Products.

32. Defendant was able to sell large quantities of product that it could not have sold absent its deceptive marketing, causing Plaintiff and the Class substantial injuries.

33. The misrepresentations made by Defendant described above, with intent that Plaintiff and the other members of the Class rely upon the deceptive acts and misrepresentations, constituted unfair and/or deceptive acts and practices occurring in the course of conduct involving trade or commerce within the meaning of 815 ILCS §505/1, *et seq.*

34. Defendant's misconduct in the course of trade and/or commerce offends public policy and is immoral, unethical, oppressive and/or unscrupulous and caused substantial injury to consumers.

35. Plaintiff and members of the Class suffered damages as a result of Defendant's deceptive and/or unfair acts. Accordingly, Plaintiff on behalf of herself and the other Class members, seek monetary damages, punitive damages, attorneys' fees and costs and such other and further relief as set forth in the Illinois Consumer Fraud and Deceptive Business Practices Act.

36. THEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION
Injunctive Relief

37. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

38. Given Defendant's wrongful actions as set forth above, which are ongoing and continuing to deceive and harm purchasers and users of the Products, the Court should (a) enjoin Defendant from continuing to market, advertise, promote, distribute, or sell the Products with a statement that the Products "rebuild" or "regenerate" cartilage (b) order Defendant to take all steps necessary to remove the falsely labeled products from the shelves.

39. Unless Defendant's conduct is enjoined, consumers will continue to be deceived when buying Defendant's Products that contain a false promise that the Products can rebuild or regenerate cartilage.

40. Such harm will continue unless and until injunctive relief is granted.

THIRD CAUSE OF ACTION
UNJUST ENRICHMENT
(ON BEHALF OF PLAINTIFF AND ALL CLASS MEMBERS)

41. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

42. Plaintiff asserts this claim in the alternative.

43. By the acts and conduct described herein, Plaintiff and members of the Class conferred a benefit on Defendant by purchasing its Products, proceeds of which were retained by Defendant.

44. By the acts and conduct described herein, Defendant knowingly accepted and retained the benefit of the money paid by Class members.

45. Defendant's retention of the money is inequitable and unjust for the reasons stated above at paragraphs 8 through 21.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the Class proposed in this Complaint and appointing Plaintiff and his counsel to represent the Class and requiring Defendant to bear the cost of class notice;

B. Restitution and/or disgorgement of amounts paid by Plaintiff and members of the Class for the purchase of the Products, together with interest from the date of payment;

C. Actual damages;

D. An order granting injunctive relief requiring Defendant to stop making claims that the Products rebuild and/or regenerate cartilage., and requiring other appropriate disclosures and disclaimers on the labeling, distributing, and selling of the Products;

E. Statutory prejudgment interest;

F. Reasonable attorneys' fees and the costs of this action;

- G. Other legal and equitable relief under the causes of action state herein;
- H. A trial by jury on all issues so triable; and
- I. Such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury with respect to any claims so triable.

Date: May 24, 2013

Respectfully submitted,

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Exhibit A



Exhibit B

