IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHAD CONRAD, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	Case No.: 13-cv-3780
v.	)	
NUTRAMAX LABORATORIES, INC., a Maryland Corporation,	)	
Defendant.	)	

CLASS ACTION COMPLAINT

Plaintiff Chad Conrad ("Plaintiff") brings this class action complaint against Defendant Nutramax Laboratories, Inc. ("Nutramax" or "Defendant"), on behalf of himself and all others similarly situated, and complains and alleges upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

I. NATURE OF ACTION

1. Nutramax markets, sells and distributes a line of joint health dietary supplements under its "Cosamin" brand name.[1] The primary purported active ingredients in Cosamin are glucosamine hydrochloride and chondroitin sulfate. Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, Nutramax promises that Cosamin is clinically tested to help reduce joint pain, help joints last longer and protect cartilage breakdown. For example, on each and every Cosamin DS label, Defendant states the Product is "the ONLY brand proven effective in controlled published U.S. studies to reduce joint pain",

[1] The Cosamin line of joint dietary supplements include: (1) Cosamin DS; and (2) Cosamin ASU (collectively, "Cosamin" or the "Products"). Plaintiff reserves the right to include other Products upon completion of discovery.

"helps your joints last longer" and the Product has been "[s]hown in laboratory tests to protect cartilage cells from breakdown." Similar statements are made on the Cosamin ASU label, in that the labeling and packaging states that the Product "helps joints last longer", and its "potent formula" has been proven to reduce "joint discomfort and cartilage breakdown" (collectively, the "joint health benefit representations").

2. No limitations accompany Defendant's joint health benefit representations, such that the takeaway is that Cosamin will provide these specific joint health benefits for all joints in the human body, for adults of all ages and for all manner and stages of joint related ailments.

3. Furthermore, the representations that Defendant makes on its Cosamin labels with respect to helping with joint discomfort, helping joints last longer and protecting cartilage breakdown are clearly directed at and, as a result, the majority of persons who purchase Cosamin are persons suffering from osteoarthritis. For example, the University of Chicago Medicine web site describes the symptoms of osteoarthritis as a breakdown of joint cartilage which in turn interferes with joint mobility and causes joint pain and stiffness[2] -- these are almost verbatim the symptoms that Defendant represents that Cosamin will relieve. Thus, Defendant's joint health benefit representations, at a minimum, implicitly claim, using lay terminology, that Cosamin has a positive effect on the characteristic symptoms of arthritis.

4. In truth, Cosamin does relieve joint discomfort, help joints last longer or protect cartilage breakdown. Clinical studies have proven that the primary active ingredients Cosamin, glucosamine and chondroitin, are ineffective, taken alone or in combination with the other ingredients in the Products, with regard to the purported joint health benefits represented on the Products' packaging and labeling. As a large scale study sponsored and conducted by the National Institute of Health ("NIH") concluded: "The analysis of the primary outcome measure

[2] *See* http://www.uchospitals.edu/online-library/content=P00061.

did not show that [glucosamine and chondroitin], alone or in combination, was efficacious. . . ." Clegg, D., et al., Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis, 354 New England J. of Med. 795, 806 (2006) ("2006 GAIT Study"). While most of the clinical studies finding a lack of efficacy (using the same amounts of the ingredients as are in Defendant's Cosamin products) were performed on subjects with arthritis, some were performed on "healthy" subjects. Moreover, experts in the field deem the arthritis clinical studies finding the ingredients to be inefficacious to be proxies for whether the ingredients are effective for both arthritic and non-arthritic users of these ingredients. As a result, in addition to affirmatively misrepresenting the joint health benefits of Cosamin, Defendant's failure to disclose the facts regarding these studies also constitutes deception by omission or concealment. Thus, Defendant's joint health benefit representations and omissions are false, misleading and reasonably likely to deceive the public.

5. Despite the deceptive nature of Defendant's representations, Defendant conveys its uniform, deceptive message to consumers through a variety of media including its website and online promotional materials, and, most important, at the point of purchase, on the Products' packaging and/or labeling where it cannot be missed by consumers. The only reason a consumer would purchase Cosamin is to obtain the advertised joint health benefits, which the Products do not provide.

6. As a result of Defendant's deceptive joint health benefit representations, consumers – including Plaintiff and members of the proposed Class – have purchased Products that do not perform as advertised.

7. Plaintiff brings this action on behalf of himself and all other similarly situated consumers to halt the dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for

those who have purchased Cosamin. Plaintiff alleges violations of the Illinois Consumer Fraud Act, 815 Ill. Comp. Stat. 502/1, et seq. and similar laws in other states.

II. JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000 and is a class action in which there are in excess of 100 class members and many members of the Class are citizens of a state different from Defendant.

9. This Court has personal jurisdiction over Nutramax because Nutramax is authorized to do and does business in Illinois. Nutramax has marketed, promoted, distributed, and sold Cosamin in Illinois and Nutramax has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

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

III. PARTIES

Plaintiff

11. Plaintiff Conrad resides in Chicago, Illinois and is a resident of Illinois. In or around January 2013, Plaintiff was exposed to and saw Defendant's representations by reading the front, back and sides of the Cosamin DS product at a Costco in downtown Chicago, Illinois. Based on the joint health benefit representations on the label, Plaintiff purchased Cosamin DS and paid approximately $60.00for the bottle. At the time that he purchased Cosamin DS, Plaintiff

was deceived in some manner by Defendant in that he believed (1) that Cosamin DS would provide him some or all of the benefits represented by Defendant on the packaging and (2) that it was proven to be and was effective for the representations made on the packaging – that Product would reduce joint pain, help joints last longer and protect cartilage breakdown. Had Plaintiff known the truth about Defendant's misrepresentations and omissions, including that the scientific evidence demonstrated that Cosamin was not effective as represented by Defendant, Plaintiff would not have purchased the Product. Plaintiff used the Product as directed and, consistent with the scientific evidence that the Product was not effective, the Product did not work. As a result, Plaintiff suffered injury in fact and lost money.

Defendant

12. Defendant Nutramax Wholesale Inc., is a corporation incorporated under the laws of the state of Maryland. Defendant's corporate headquarters is located at 2208 Lakeside Boulevard, Edgewood, Maryland 21040. Defendant manufactures, distributes, markets and sells the Cosamin products to consumers nationwide, including throughout Illinois.

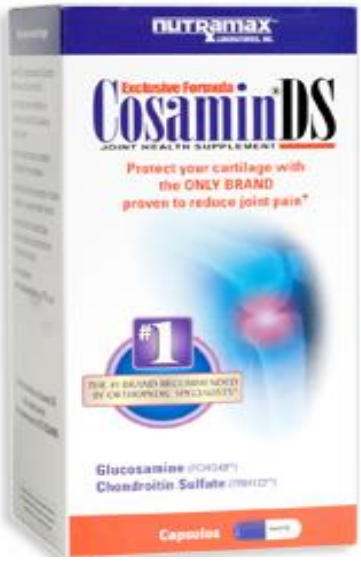
IV. FACTUAL BACKGROUND

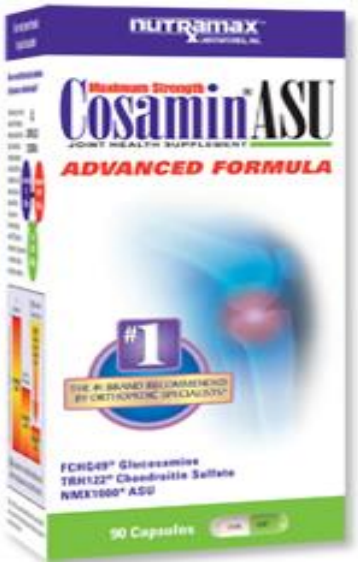
The Cosamin Products

13. Nutramax manufactures, distributes, and sells dietary supplements. This lawsuit concerns two of those products: (1) Cosamin DS; and (2) Cosamin ASU.[3] Nutramax began manufacturing, marketing and selling Cosamin in 1992.

14. The Cosamin products are sold in virtually every major food, drug, and mass retail outlet in the country and online retailers, including, but not limited to: BJ's Wholesale Club, CVS, Kroger, and Rite Aid. The following are screen shots of the Cosamin products:

[3] Plaintiff reserves the right to include other products upon completion of discovery.





15. Since the Products' launch, Nutramax has consistently conveyed the message to consumers throughout the United States, including Illinois, that Cosamin is clinically proven to reduce joint pain, help joints last longer and protect cartilage breakdown simply by taking the recommended number of tablets each day. It does not. Nutramax's joint health benefit representations are false, misleading, and reasonably likely to deceive the public.

16. The primary active ingredients in Cosamin are glucosamine hydrochloride and chondroitin sulfate. As more fully set forth below, the scientific evidence is that glucosamine and chondroitin, taken alone or in combination, do not provide the joint health benefits represented by Nutramax.

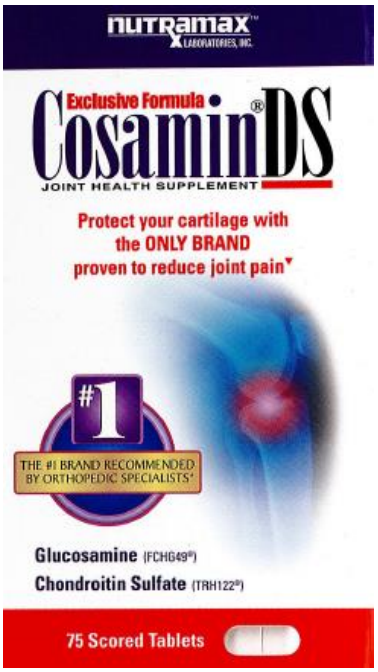
17. In addition to the primary active ingredients, Cosamin ASU contains an ASU blend, a combination of avocado/soybean unsaponifiables and soy protein isolate and green tea leaf extract. These ingredients, taken alone or in combination, are also not effective in providing the joint health benefits represented by Defendant.

18. On both Cosamin bottles, Defendant represents that the Products are proven to reduce joint pain and cartilage breakdown. No information is included to enable consumers to locate and review the studies that support the "proven" representations. By making references to

"proven" research that supports Defendant's joint health benefit claims, the burden is on Defendant to provide what it cannot – proof that these Products work as represented. But, since the vast weight of competent and reliable scientific evidence is that the ingredients in Defendant's Products do not work as represented, these representations are false.

19. Even though numerous clinical studies and the vast weight of competent clinical evidence have found that the primary ingredients in Cosamin, glucosamine and chondroitin, alone or in combination, are ineffective, Cosamin continues to state on the Products' packaging and labeling that Cosamin is "proven" to "reduce joint pain", help "joints last longer" and "protect cartilage cells from breakdown." Front and side shots of a representative Cosamin DS label appear as follows:

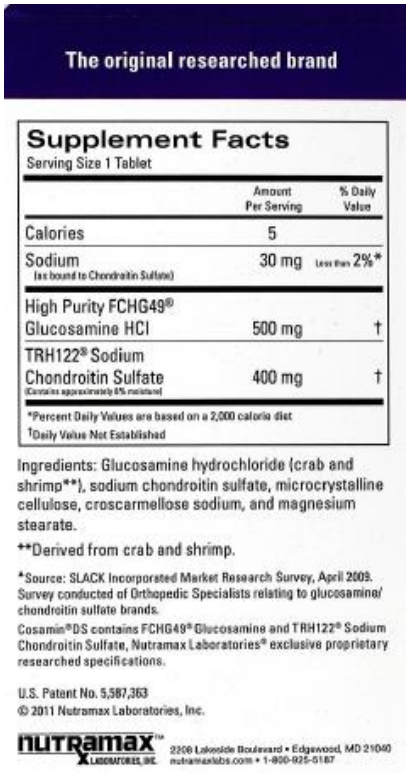
Front



Side

Back

Side



Scientific Studies Confirm Cosamin is Not Effective

20. At least as early as 2004, clinical studies have found that glucosamine and chondroitin, alone or in combination, are not effective in providing the represented joint health benefits.

21. For example, a 2004 study by McAlindon et al., entitled Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based Randomized Double-Blind Controlled Trial, 117(9) Am. J. Med. 649 (Nov. 2004), concluded that glucosamine was no more effective than placebo in treating the symptoms of knee osteoarthritis – in short, it was ineffective.

22. Also as early as 2004, many studies confirmed there is a significant "placebo" effect with respect to consumption of products represented to be effective in providing joint health benefits such as Defendant's Products – 30% and more of persons who took placebos in

these studies believed that they were experiencing joint health benefits when all they were taking was a placebo. In this regard, a 2004 study by Cibere et al., entitled Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at least moderate improvement after starting glucosamine. These patients were divided into two groups – one that continued using glucosamine and one that was given a placebo. For six months, the primary outcome observed was the proportion of disease flares in the glucosamine and placebo groups. A secondary outcome was the time to disease flare. The study results reflected that there were no differences in either the primary or secondary outcomes for glucosamine and placebo. The authors concluded that the study provided no evidence of symptomatic benefit from continued use of glucosamine – in other words, any prior perceived benefits were due to the placebo effect and not glucosamine.

23. In the 2006 GAIT Study, the study authors rigorously evaluated the effectiveness of glucosamine and chondroitin, alone and in combination, on osteoarthritis for six months. According to the study's authors, "The analysis of the primary outcome measure did not show that either supplement, alone or in combination, was efficacious. . ." 2006 GAIT Study at 806.[4] Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage[5] and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 GAIT study reported results were inconclusive. *See* Sawitzke, A.D., et al., The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee

[4] The 2006 GAIT Study was funded by the National Center for Complementary & Alternative Medicine and the National Institute of Arthritis and Musculoskeletal and Skin Diseases, two components of NIH.

[5] To a similar effect a study by Kwok, et al., entitled The Joints On Glucosamine (JOG) Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural 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.

Osteoarthritis: A GAIT Report, 58(10) J. Arthritis Rheum. 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) Ann Rhem. Dis. 1459-64 (Aug. 2010).

24. The GAIT studies are consistent with the reported results of prior and subsequent studies. For example, a study by Rozendaal et al., entitled Effect of Glucosamine Sulfate on Hip Osteoarthritis, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of glucosamine on the symptoms and structural progression of hip osteoarthritis during 2 years of treatment, concluded that glucosamine was no better than placebo in reducing symptoms and progression of hip osteoarthritis.

25. A 2010 meta-analysis by Wandel et al. entitled Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and chondroitin, alone or in combination, and whether they relieved the symptoms or progression of arthritis of the knee or hip. The study authors reported that glucosamine and chondroitin, alone or in combination, did not reduce joint pain nor have an impact on the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and their combination do not result in a relevant reduction of joint pain nor affect joint space narrowing compared with placebo." *Id*. at 8. The authors went as far to say, "We believe it unlikely that future trials will show a clinically relevant benefit of any of the evaluated preparations." *Id*.

26. On July 7, 2010, Wilkens et al., reported that there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that neither glucosamine nor placebo were effective in reducing pain related disability. The researchers also stated that, "Based on our results, it seems unwise to recommend glucosamine to

all patients" with low back pain and lumbar osteoarthritis. Wilkens et al., Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1) JAMA 45-52 (July 7, 2010).

27. In 2011, Miller and Clegg, after surveying the clinical study history of glucosamine and chondroitin reported that, "The cost-effectiveness of these dietary supplements alone or in combination in the treatment of OA has not been demonstrated in North America." Miller, K. and Clegg, D., Glucosamine and Chondroitin Sulfate, Rheum. Dis. Clin. N. Am. 37 (2011) 103-118.

28. Avocado/soybean unsaponifiables, soy protein isolate and green tea leaf extract do not have a scientific relationship to joint health.

The Impact of Nutramax's Wrongful Conduct

29. Despite the vast weight of scientific evidence and clinical studies that definitively show the ingredients in Cosamin are ineffective, Defendant conveyed and continues to convey one uniform message: Cosamin is "proven" to reduce joint pain help joints last longer and protect cartilage breakdown.

30. As the manufacturer and/or distributor of Cosamin, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in Cosamin and is in a superior position to learn of the effects – and has learned of the effects, or lack thereof – Cosamin has on consumers.

31. Specifically, Defendant knew, but failed to disclose, that Cosamin does not provide the joint health benefits represented and that well-conducted, clinical studies have found the ingredients in Cosamin to be ineffective in providing the joint health benefits represented by Defendant.

32. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's deceptive joint health benefit representations. Plaintiff purchased and consumed a Cosamin product during the Class period and in doing so, read and considered the Product's label and based his decision to purchase the Product on the joint health benefit representations on the Product packaging. Defendant's joint health benefit representations and omissions were a material factor in influencing Plaintiff's decision to purchase and consume Cosamin.

33. The only purpose behind purchasing Cosamin is to obtain some or all of the represented joint health benefits. There is no other reason for Plaintiff and the Class to have purchased the Products as the Products are not represented to provide any other benefits and Plaintiff and the Class would not have purchased the Products had they known Defendant's joint health benefit statements were false and misleading and that clinical cause and effect studies have found the ingredients to be ineffective for the represented joint health benefits.

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

35. Defendant, by contrast, reaped enormous profit from its false marketing and sale of Cosamin.

V. CLASS ALLEGATIONS

36. Plaintiff brings this action on behalf of himself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

> All consumers who, within the applicable statute of limitations, purchased the Cosamin products in Illinois and states with similar laws (the "Multi-State Class").[6]

[6] While discovery may alter the following, Plaintiff preliminarily avers that the other states with similar consumer fraud laws under the facts of this case include, but are not limited to: Arkansas,

Excluded from the Multi-State Class are Nutramax, its parents, subsidiaries, affiliates, officers and directors, all consumers who purchased Cosamin in California and those who purchased the Cosamin products for resale.

37. In the alternative, Plaintiff brings this action on behalf of himself and all other similarly situated Illinois consumers pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

> All consumers who, within the applicable statute of limitations, purchased the Cosamin products in Illinois (the "Illinois Class").

Excluded from the Illinois Class are Nutramax, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Cosamin products for resale.

38. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

39. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. On information and belief, there are thousands of consumers who have been damaged by Defendant's wrongful conduct as alleged herein. The precise number of Class members and their addresses is presently unknown to Plaintiff, but may be ascertained from Defendant's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Virginia, Vermont, Washington, West Virginia, and Wisconsin (collectively, the "Class States").

40. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

i) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;

ii) whether Nutramax's alleged conduct violates public policy;

iii) whether the alleged conduct constitutes violations of the laws asserted;

iv) whether Nutramax engaged in false or misleading advertising;

v) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and

vi) whether Plaintiff and Class members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

41. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform prohibited conduct described above.

42. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other Class members he seeks to represent; he has retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by the Plaintiff and his counsel.

43. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action.

The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

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

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

46. Nutramax has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

VI. CLAIMS ALLEGED

COUNT I
Violation of Illinois Consumer Fraud Act
(815 Ill. Comp. Stat. 502/1, et seq.)

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

48. In Illinois, the "Consumer Fraud and Deceptive Business Practices Act" 815 Ill. Comp. Stat. 502/1, et seq. ("the Act"), like the consumer fraud acts of numerous other states across the nation, prohibits deceptive acts and practices in the sale of such products as Defendant's Cosamin products.

49. Plaintiff and the Class were injured by Defendant's deceptive misrepresentations, concealments and omissions and these misrepresentations, concealments and omissions were material and deceived Plaintiff and the Class.

50. Defendant does business in Illinois, sells and distributes Cosamin in Illinois, and engaged in deceptive acts and practices in connection with the sale of Cosamin in Illinois and elsewhere in the United States.

51. The Cosamin products purchased by Plaintiff and the Class were "consumer items" as that term is defined under the Act.

52. Defendant misrepresented and deceptively concealed, suppressed and/or omitted the material information known to Defendant as set forth above concerning Cosamin, which has caused damage and injury to Plaintiff and the Class.

53. Defendant's deceptive acts occurred in a course of conduct involving trade and commerce in Illinois and throughout the United States.

54. Defendant's deceptive acts proximately caused actual injury and damage to Plaintiff and the Class.

55. Defendant intended Plaintiff and all Class members to rely on its deceptive acts.

56. The conduct of the Defendant constituted a consumer fraud under the Illinois Consumer Fraud Act and similar laws in other states.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that the Court enter an Order as follows:

A. Certifying this action as a class action – either as a multi-state class or, in the alternative, as an Illinois class;

B. Awarding to Plaintiff and the Class compensatory/actual damages and such other monetary relief as the Court deems appropriate;

C. Granting declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein;

D. Awarding attorneys' fees, expert fees and costs; and

E. Such other and further relief as the Court deems just and proper.

Dated: May 21, 2013

Respectfully submitted,

CHAD CONRAD, on behalf of himself and all others similarly situated

By:_____
One of the Attorneys for Plaintiff
And the Proposed Putative Class

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