

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

GREGORY HOLLIDAY, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

ALBION LABORATORIES, INC.,  
VITACOST.COM, INC.,  
DRVITA, INC., and  
JOHN DOES 1 through 50,

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Gregory Holliday, by and through his undersigned counsel, respectfully files this Class Action Complaint on behalf of himself and a class of similarly situated individuals who purchased, indirectly from Albion Laboratories, Inc., and directly from Vitacost.com, Inc., DrVita, Inc. and John Does 1 through 50 (“Defendants”), a blended form of magnesium glycinate and magnesium oxide known as Magnesium Bisglycinate Chelate Buffered, in which magnesium oxide is not listed in the supplement facts panel on the label, in contravention of the law.

**NATURE OF THE CASE**

1. As consumers have become increasingly health conscious, dietary supplements have become a multi-billion dollar industry. To navigate the vast array of vitamin and mineral products available on the market today, consumers rely on honest and accurate labels. Unfortunately, some companies attempt to maximize their profits by mislabeling their supplements in order to trick consumers into paying a price premium for an inferior product.

Defendants are such companies.

2. Defendants sell a magnesium supplement that contains two kinds of magnesium: magnesium glycinate (“Glycinate”) and magnesium oxide (“Oxide”). It is well-known that Glycinate is superior to Oxide because it is a “chelated” magnesium, which is more easily absorbed into the body and causes fewer negative side effects. Accordingly, the wholesale and retail prices for Glycinate are higher than for Oxide.

3. In an effort to cut costs while maintaining demand, Albion blends Glycinate with Oxide (the “Blended Product”) and sells it to the other named Defendants (“re-sellers”), who do not list the inferior magnesium, Oxide, anywhere on their Blended Product labels. They do, however, list the superior magnesium, Glycinate, as the only magnesium ingredient in the “Supplement Facts” panel on their Blended Product labels. This enables the re-sellers to charge a price premium for their Blended Product by charging the same price as would be charged for pure Glycinate.

4. Under the false impression that Defendants’ Blended Products are pure Glycinate, tens of thousands of consumers have paid a price premium for an inferior form of magnesium, thereby padding Defendants’ pockets with undeserved profits. This suit seeks redress on behalf of consumers who paid a price premium for the Blended Product under the reasonable, but mistaken, belief that it was pure Glycinate.

### **PARTIES**

5. Plaintiff Gregory Holliday resides in Tarpin Springs, Florida, and is a Florida citizen. Plaintiff is a combat veteran who suffers from anxiety and insomnia. After reading about those conditions, Plaintiff learned that magnesium was one of the preferred holistic approaches for treatment. Plaintiff purchased Vitacost Chelated Magnesium, as well as Nature’s

Lab Magnesium Glycinate in 2014 within the state of Florida. During that time, Plaintiff noticed little relief from his conditions. Plaintiff did, however, experience mild cramping and diarrhea. After experiencing those after effects, Plaintiff conducted some research and determined that the products themselves were incorrectly labeled with the proper ingredients, in that they contained the inferior magnesium, Oxide. Plaintiff immediately stopped taking the Blended Product.

6. Were it not for Defendants' unfair and deceptive practices, Plaintiff and the Class members would not have purchased the Blended Product or paid a price premium to purchase it. If the Blended Product did in fact contain pure magnesium Glycinate, as promised, rather than also containing magnesium Oxide, Plaintiff would likely have continued to purchase the Blended Product and paid the price premium to purchase it.

7. Defendant Albion Laboratories, Inc. ("Albion") is a corporation organized under the laws of the State of Utah, with its headquarters located at 101 North Main Street, Clearfield, Utah 84015. Albion, therefore, is a citizen of Utah. Albion manufactures and supplies mineral amino acid chelate nutrition to industries worldwide. Pursuant to an agreement with its re-sellers, Albion was able to control, and did in fact control, the nature and content of the Blended Product's label.

8. Defendant Vitacost.com, Inc. ("Vitacost") is a corporation organized under the laws of the State of Delaware. Vitacost's headquarters are located at 5400 Broken Sound Parkway, Suite 500, Boca Raton, Florida 33487-3522. Vitacost, therefore, is a citizen of Delaware and Florida. Vitacost has marketed and sold nutrition supplements, including the Blended Product, worldwide.

9. Defendant DrVita, Inc. ("DrVita") is a corporation organized under the laws of the State of Delaware. On information and belief, DrVita operates, *inter alia*, through the trade

name of DrVita.com. DrVita's headquarters are located at 6980 West Warm Springs Road, Suite 100, Las Vegas, Nevada. DrVita, therefore, is a citizen of Delaware and Nevada. DrVita has marketed and sold nutrition supplements, including the Blended Product, worldwide.

10. Defendants John Does 1 through 50 are companies whose names are presently unknown to Plaintiff, but are believed to have marketed and sold nutrition supplements, including the Blended Product, worldwide.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, under 28 U.S.C. § 1332(d). Jurisdiction is proper because: (1) the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs; (2) the named Plaintiff and the Defendants are citizens of different states; and (3) the proposed class has more than 100 members. 28 U.S.C. § 1332(d)(2), (5)(B).

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred within this judicial district and because Defendants have marketed and sold the Blended Product at issue in this action within this judicial district and have done business within this judicial district.

### **GENERAL ALLEGATIONS**

13. Consumers are increasingly health conscious and often rely on vitamin and mineral supplements to promote health and prevent disease. A multibillion dollar industry, nutrition supplements have become a mainstay of the American diet and lifestyle. However, because most supplements are over-the-counter, and particularly in the era of self-diagnosis on the Internet, consumers depend on the accuracy and honesty of labels so they can make informed decisions about which products to purchase for their health needs.

14. Magnesium has become one of the best-selling minerals on the market, as studies show that a staggering 68% of Americans do not consume the recommended daily intake of magnesium. Magnesium is critical to a wide variety of essential bodily functions, including protein synthesis, muscle and nerve function, bone development, blood glucose control, and blood pressure regulation. Magnesium deficiencies have also been linked to insomnia. Magnesium supplements are therefore growing in popularity as consumers learn about the consequences of a deficiency in this essential mineral.

15. Because magnesium must be combined with another substance to absorb into the body properly, there are numerous types of magnesium supplements. The types of magnesium supplements are defined by the substances with which the magnesium is combined, and include: glycinate, malate, citrate, threonate, taurate, chloride or lactate, carbonate, sulfate or hydroxide, and oxide. The greater the “bioavailability,” the greater the absorption.

16. Glycinate is one of the most bioavailable forms of magnesium “and is typically ideal for those who are trying to correct a deficiency.”<sup>1</sup> Oxide, by contrast, is one of the least bioavailable forms of magnesium and has an unpleasant laxative effect.<sup>2</sup> One study found that Oxide only has a 4% absorption rate.<sup>3</sup> Another found that Glycinate has a more immediate and higher overall absorption rate in, and is better tolerated by, patients who have difficulty

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<sup>1</sup> <http://articles.mercola.com/sites/articles/archive/2012/12/17/magnesium-benefits.aspx>; *see also* [http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf\\_b\\_425499.html](http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf_b_425499.html) (recommending Mg citrate, glycinate, taurate, or aspartate).

<sup>2</sup> <http://www.emed.com.au/nutrition/vitamin-mineral-info/magnesium/not-all-magnesium-supplements-are-the-same/> <http://www.emed.com.au/3438> (explaining that Mg oxide is used as a laxative).

<sup>3</sup> Firoz M, Graber M. (2001) Bioavailability of US commercial magnesium preparations. *Magnesium Research*. 14(4):257-62.

absorbing and retaining magnesium.<sup>4</sup> The University of Kansas Medical Center clearly states:  
“Magnesium oxide is poorly absorbed, and hence likely to cause diarrhea. We do not  
recommend magnesium oxide.”<sup>5</sup>

17. Livestrong.com also recommends magnesium Glycinate over magnesium Oxide:

If you are suffering from a magnesium deficiency, magnesium glycinate or other forms of chelated magnesium may be your best bet because they are so well absorbed, says Carolyn Dean, author of “The Magnesium Miracle.” Your body may tolerate magnesium glycinate better than magnesium oxide, which is commonly used for this purpose, notes Donald Goldberg, lead author for “The Best Supplement for Your Health.”<sup>6</sup>

18. Dr. Andrew Weil, a well-known naturopath, recommends Glycinate over Oxide.<sup>7</sup>

19. Even Albion’s own studies, which are readily available on the Internet, promote the superiority of Glycinate as compared to Oxide, as the following illustrates:

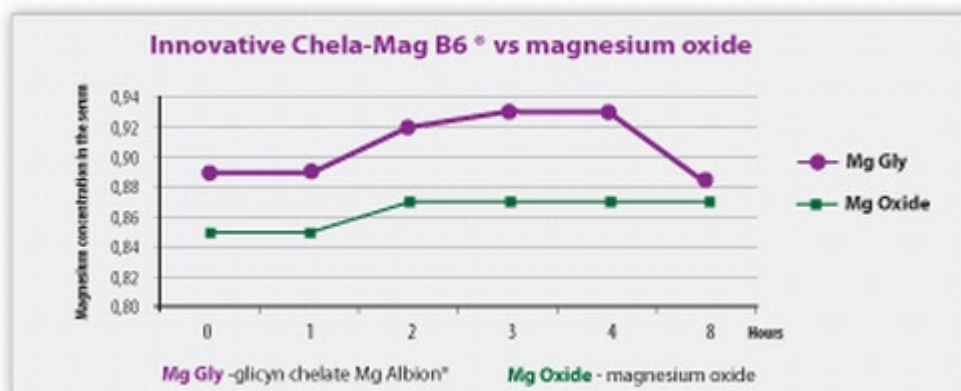
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<sup>4</sup> Schuette S.A. et al. (1994) Bioavailability of magnesium diglycinate vs magnesium oxide in patients with ileal resection. J Parenter Enteral Nutr. 18(5):430-5.

<sup>5</sup> <http://www.kumc.edu/school-of-medicine/integrative-medicine/the-benefits-of-magnesium.html>.

<sup>6</sup> <http://www.livestrong.com/article/271338-what-are-the-benefits-of-magnesium-glycinate/>.

<sup>7</sup> <http://www.drweil.com/drw/u/ART02805/magnesium.html> (Dr. Weil recommends “magnesium citrate, chelate, or glycinate, and avoid magnesium oxide, which can be irritating to the digestive tract”).



20. Unsurprisingly, consumers believe Glycinate is superior to Oxide. This is demonstrated by numerous blog posts espousing Glycinate over Oxide. For example, in an online forum with a blog post entitled “Bulletproof Magnesium Thread,” a member wrote: “Magnesium Glycinate – The most bioavailable form of Magnesium . . . . Least likely to cause loose stools” and “Magnesium Oxide – VERY POORLY ABSORBED – out of 400 mg only AT MOST 80 mg of magnesium absorbed by the body. The worst form of magnesium.”<sup>8</sup> In another blog post on MedHelp.org, a member wrote that Glycinate is one of the best forms of magnesium and that “Chelated magnesium [which includes Glycinate] is far better absorbed than magnesium oxide . . . .”<sup>9</sup>

21. In part due to this increased consumer awareness and demand for Glycinate, Glycinate is significantly more expensive than Oxide. As noted by the Huffington Post, Oxide is one of “the cheapest and most common forms [of magnesium] found in supplements.”<sup>10</sup> For

<sup>8</sup> <http://forum.bulletproofexec.com/index.php?/topic/2078-bulletproof-magnesium-thread/>.

<sup>9</sup> <http://www.medhelp.org/posts/Heart-Rhythm/Magnesium-supplements----to-avoid---how-to-take-it-and--safety/show/1002415>.

<sup>10</sup> [http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf\\_b\\_425499.html](http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf_b_425499.html) (“Avoid magnesium carbonate, sulfate, gluconate, and oxide. They are poorly absorbed (and the cheapest and most common forms found in supplements).”).

example, Solaray, a supplement retailer, offers Glycinate for \$12.98 per bottle, which contains 120 capsules and 400 milligrams (“mg”) per serving (where each serving is four capsules). This computes to \$0.11/capsule or \$0.001/mg. By contrast, Nature Made, another supplement retailer, offers Oxide for \$2.97 per bottle, which contains 100 capsules and 250 mg per serving (where each serving is one capsule). This calculates to \$0.03/capsule or \$0.0001/mg. Therefore, as between these two retailers, Glycinate costs *ten times* more per mg than Oxide.

22. In addition to increased consumer demand, Glycinate is also more expensive because it is more costly to manufacture. Glycinate is a “chelated” form of magnesium, which means it is combined with another substance to increase absorption and bioavailability. To chelate its Glycinate, Albion uses a six-stage chelation process described in a promotional video on Albion’s homepage.<sup>11</sup> The machinery and expertise required to manufacture Glycinate are very expensive. Oxide is not chelated, and is therefore far less costly to manufacture.

23. To reduce these costs while maintaining consumer demand, Albion blended Oxide with Glycinate, in some cases not informing its re-sellers that it had done so. Albion’s Product Data Sheet<sup>12</sup> lists Glycinate and Oxide as ingredients. Yet the labeling on Defendants’ final products—labeling that is orchestrated and controlled by Albion—lists Glycinate, but entirely omits Oxide, as follows:

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<sup>11</sup> <http://www.albionminerals.com/>

<sup>12</sup> See Exhibit “A,” annexed.





Supplement Facts		
Serving Size: 1 Capsule		
Servings per Container: 180		
	Amount Per Serving	% Daily Value
Magnesium (as TRAACS® magnesium glycinate chelate buffered)	133 mg	33%
Proprietary Blend	55 mg	
Short Chain Fructooligosaccharides (FOS) NutraFlora® scFOS®		*
Ginger Root Extract (Zingiber officinale) (Standardized for 5% gingerols)		*
Black Pepper Powder (piper nigrum) (fruit)		*
Long Pepper Powder (piper longum) (fruit)		*
Multi-Enzyme Complex (amylase, fungal lactase, protease, lipase, cellulase) DigeZyme®		*

\*Daily value not established.

Other Ingredients: Gelatin (capsule), magnesium stearate (vegetable source) and rice flour.



NutraFlora® is a registered trademark of GTC Nutrition LLC, Golden, Colorado.

#### Warnings

Pregnant or lactating women, diabetics, hypoglycemics, and people with known medical conditions and/or taking drugs should consult with a licensed physician and/or pharmacist prior to taking dietary supplements. Keep out of reach of children.



Supplement Facts		
Serving Size: 4 Capsules	Servings Per Container: 30	
	Amount Per Serving	% DV
Magnesium (as TRAACS® buffered magnesium glycinate chelate)	400 mg	100%
*Daily Value not established		

Such deceptive labeling leads a reasonable consumer to believe that the Blended Product is Glycinate, when in fact it is blended with an inferior form of magnesium, Oxide.

24. Like other members of the Class, Plaintiff purchased the Blended Product believing it to have the qualities he sought (pure Glycinate), based on the unlawful and deceptive misrepresentations of Defendants.

25. Instead of receiving a product that has the advantages of pure Glycinate, Plaintiff

and members of the Class received a Blended Product containing both Glycinate and the inferior Oxide.

26. The Blended Product was worth less than what Plaintiff and members of the Class paid for it, and Plaintiff and members of the Class lost monies as a result of Defendants' deception, in that they did not receive what they paid for.

27. Defendants therefore earn a substantial additional profit by knowingly and intentionally misleading consumers into believing that the Blended Product is pure Glycinate.

28. Moreover, Defendants' deceptive labeling practice defies the FDA's explicit instructions. A federal regulation, 21 C.F.R. § 101.36, covers nutrition labeling of dietary supplements and provides that "the label of a dietary supplement that is offered for sale shall bear nutrition labeling in accordance with this regulation unless an exemption is provided for the product in paragraph (h) of this section." 21 C.F.R. § 101.36(a). Defendants are not exempt under 21 C.F.R. § 101.36(h)(3).

29. Defendants must abide by the labeling requirements set forth in 21 C.F.R. § 101.36. Specifically, Section 101.36(b)(2) applies to dietary ingredients and its subcomponents that have a "Reference Daily Intake" or "Daily Reference Value" under Section 101.9(c). Magnesium's daily reference value is readily available online:

AGE	MALE	FEMALE
1-3	80 mg	80 mg
4-8	130 mg	130 mg
9-13	240 mg	240 mg
14-18	410 mg	360 mg (400 mg during pregnancy)
19-30	400 mg	310 mg (350 mg during pregnancy)
31+	420 mg	320 mg

Section 101.9(c)(8)(iv) also includes magnesium as one of the minerals that is “essential” to human nutrition, and magnesium is explicitly referenced in Section 101.36(b)(2)(B). Section 101.36(b)(2) therefore applies to Defendants, and requires such magnesium to be declared “when [it is] added to the product for purposes of supplementation, or when a claim is made about [it].” Because Oxide is added to the Blended Product for purposes of supplementation and claims about nutrient content and health are made about it, the Oxide in the Blended Product must be declared.

30. Although Defendants list magnesium, they only list Glycinate, and not Oxide. This violates Section 101.36(d), which requires “source ingredients” to be disclosed either in the nutrition label or “outside and immediately below the nutrition label.” Further, “[w]hen source ingredients are listed within the nutrition label, and two or more are used to provide a single dietary ingredient, all of the sources shall be listed within the parentheses in descending order by weight.” 21 C.F.R. § 101.36(d)(2).

31. Glycinate and Oxide are source ingredients. Therefore, not only must Defendants disclose the Oxide contained in the Blended Product, they must also list the respective weights, in terms of milligrams, of the Glycinate and Oxide. Dietary Supplement Health and Education Act of 1994, Pub. L. No. 103–417, § 7, 108 Stat. 4325 (1994) (codified as 21 U.S.C. § 343(q)(5)(F)).

32. Even if the Blended Product were deemed a “proprietary blend,” pursuant to Section 101.36(c)(2), each ingredient must nevertheless be listed in descending order of predominance by weight, in accordance with Section 101.36(b)(3). Thus, Defendants may not circumvent the FDA’s disclosure requirements by simply calling the Blended Product “proprietary”; nor can Defendants circumvent state consumer protection law by falsely

representing the Blended Product. In fact, Albion must be aware of this disclosure requirement, as it discloses all of the ingredients of a proprietary blend contained in a prostate health supplement called Natural Prostate Health, for which Albion supplies some of the underlying ingredients, as the following image of Natural Prostate Health's Supplement Facts panel illustrates<sup>13</sup>:

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 30		
	Amount Per Serving	% DV*
<b>Zinc</b>	<b>15 mg</b>	<b>100%</b>
<b>Selenium</b>	<b>25 mcg</b>	<b>36%</b>
<b>Proprietary Blend</b>	<b>2,000 mg</b>	<b>†</b>
Saw Palmetto Fruit Extract		
Beta-Sitosterol with Phytosterols		
Pygeum Africanum Bark Extract		
Cranberry Extract		
Stinging Nettle Root Extract		
Grape Seed Extract		
Evening Primrose Seed Oil (for GLA, ALA, PLA)		
Pumpkin Seed Oil		
* Percent Daily Value (DV) is based on a 2000 calorie diet.		
† Daily Value not established.		

Defendants therefore knowingly and intentionally hide the fact that the Blended Product contains Oxide so they can turn an additional profit at the consumer's expense.

33. Plaintiff conducted additional research on the Blended Product and discovered that Swanson Health Products was the only company that discloses the fact that its similar product contains Oxide, and only in the "other ingredients" section below the more prominent Supplement Facts panel, which lists Glycinate. *See* Swanson Ultra Albion Chelated Magnesium Glycinate Supplement Facts below:

<sup>13</sup> <http://shop.enivausa.com/487786/en-us/product.aspx?id=26005>.

## Supplement Facts

Serving Size 1 Capsule

	Amount Per Serving	% Daily Value
Magnesium (from TRAACS®magnesium glycinate chelate buffered)	133 mg	33%

Other ingredients: Gelatin, magnesium oxide, citric acid, maltodextrin, may contain one or more of the following: microcrystalline cellulose (plant fiber), magnesium stearate, silica.

34. Albion dictates the labeling to its re-sellers by way of a “Trademark and Patent Number License Agreement.”<sup>14</sup> Integrated Supplements, an Albion re-seller which purchased the Blended Product from Albion and sold it to the public as Integrated Supplements Bio-Available Magnesium stated:

\* \* \* Where we source our raw materials from Albion Nutrition (and are proud to do so), we label all ingredients in strict accordance with the requirements legally set forth by Albion Nutrition. If we didn’t label our product exactly as Albion dictates, we simply couldn’t advertise the fact that we use their ingredients.

35. In the comments section of a review of Integrated Supplements Bio-Available Magnesium, Integrated’s representative stated:

As I stated previously, I cannot speak for other companies (or speculate as to the reasons for their actions), but I will, again, speak the truth. Albion, did review, direct, and approve the current content of our label, with instructions to label the ingredient in question as TRAACS® Magnesium Glycinate Chelate Buffered. There is also a contract in place between us which governs all Albion trademarks and descriptions. I am not “hiding behind them” or “shifting the blame.” These are simply the facts (for which I have documentation). Where we labeled the ingredient exactly as they stated, and exactly as many (but perhaps not all) other brands do, there was never any attempt whatsoever to mislead. They are the trademark holder on the ingredient, so I think it was reasonable of us to assume that the descriptions they instructed us to use were legally allowed (especially

<sup>14</sup> See Exhibit “B,” annexed.

considering the numerous other brands that used the same ingredient, and labeled it the exact same way). Again, if this proves to be an incorrect assumption, we, with Albion, will rectify it.

If changes are required, they won't just affect us, but MANY products which contain the ingredient. If you truly want to bring about change in this area, we're small potatoes – I'd recommend you go right to the source and try and appeal to Albion, themselves. Again, I stand behind everything I've said regarding Albion. I have the email correspondences and contracts to support my statements regarding their labeling requirements, and more importantly, I want to reiterate, again, that we proudly use their ingredients. \* \* \*<sup>15</sup>

36. Another re-seller, Nuvari Life, acknowledged that Oxide should have been listed as an ingredient in its Blended Product and apologized for the mislabeling. Nuvari Life, a re-seller of Nuvari Magnesium Ultra, stated on its product page on Amazon:

We have conducted further research into this matter and have spoken further with our supplier and Albion. It appears that our supplier failed to list the following other ingredients in the supplement facts provided for our label: magnesium oxide, citric acid, maltodextrin, silica. These ingredients are part of the formula manufactured by Albion. They are not added in afterwards by our supplier. Nevertheless, it is required that they appear in the ingredients. We are very disappointed to learn that our labeling is incorrect. We will be closing our Amazon listing this week in order to have our product relabeled and the ingredients listed properly.<sup>16</sup>

37. It is therefore apparent that Albion exercises direction and control over the Blended Product's labeling, and either explicitly or implicitly instructs its retailers not to disclose Oxide.

38. Such deceptive labeling leads a reasonable consumer to believe that the Blended

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<sup>15</sup> See

[http://www.amazon.com/review/R31ZRZQWOWX7V0/ref=cm\\_cd\\_pg\\_pg2?ie=UTF8&asin=B003OETP6O&cdForum=Fx3VV3F9TK53FX7&cdPage=2&cdThread=Tx1IUG45A0HOCEY&store=hpc#wasThisHelpful](http://www.amazon.com/review/R31ZRZQWOWX7V0/ref=cm_cd_pg_pg2?ie=UTF8&asin=B003OETP6O&cdForum=Fx3VV3F9TK53FX7&cdPage=2&cdThread=Tx1IUG45A0HOCEY&store=hpc#wasThisHelpful).[http://www.amazon.com/review/R31ZRZQWOWX7V0/ref=cm\\_cr\\_pr\\_perm?ie=UTF8&ASIN=B003OETP6O](http://www.amazon.com/review/R31ZRZQWOWX7V0/ref=cm_cr_pr_perm?ie=UTF8&ASIN=B003OETP6O).

<sup>16</sup> See Exhibit "C," annexed.

Product is pure Glycinate, when in fact it is blended with an inferior form of magnesium. Like other members of the Class, Plaintiff purchased the Blended Product believing it to have the qualities he sought (pure Glycinate), based on the unlawful and deceptive misrepresentations of Defendants. Instead of receiving a Blended Product that has the advantages of pure Glycinate, Plaintiff and members of the Class received a product containing both Glycinate and the inferior Oxide. Defendants' Blended Product was worth less than what Plaintiff and members of the Class paid for it, and Plaintiff and members of the Class lost monies as a result of Defendants' deception in that they did not receive what they paid for. Defendants therefore earn a substantial additional profit by knowingly and intentionally misleading consumers into believing that the Blended Product is pure Glycinate.

39. Notwithstanding Albion's directives to its re-sellers, Defendant re-sellers are required to abide by the FDA regulations set forth above, and to not circumvent state consumer protection laws. Defendant re-sellers could and should have resisted Albion's instructions by either listing Oxide as an ingredient on the Supplement Facts Panel, or refusing to purchase from Albion the Blended Product.

40. Defendant re-sellers therefore cannot claim innocence; by only listing "Magnesium Glycinate" as an ingredient on the Supplement Facts panel and failing to disclose Oxide as an ingredient, Defendant re-sellers were able to charge an unwarranted price premium for an adulterated product.

### **CLASS ACTION ALLEGATIONS**

41. Plaintiff brings this action on his own behalf and, pursuant to Federal Rule of Civil Procedure 23, on behalf of a class of all persons who, during the period from 2008 through present, purchased the Blended Product (the "Class"). Excluded from the Class are Defendants

and any parent, subsidiary, or affiliate of Defendants.

42. Plaintiff brings this action as a class action for the following reasons:

- A. The Class consists of tens of thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- B. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:
  - i. Whether Defendants violated the provisions of law set forth in the causes of action below;
  - ii. The wholesale and retail prices of the Blended Product, Magnesium Glycinate, and Magnesium Oxide;
  - iii. The cost of manufacturing the Blended Product, Magnesium Glycinate, and Magnesium Oxide;
  - iv. Whether a reasonable consumer would believe that the Blended Product contains Magnesium Glycinate without Magnesium Oxide;
  - v. Whether Albion required Defendant re-sellers to include Magnesium Glycinate, and to exclude Magnesium Oxide, from the Blended Product's labeling;
  - vi. Whether Defendants knew the Blended Product was mislabeled;
  - vii. Whether Defendants knowingly deceived consumers;
  - viii. Whether Defendants intentionally deceived consumers;
  - ix. Whether Defendants' labeling and pricing scheme constitutes an unfair method of competition;



- x. Whether Defendants' labeling and pricing scheme is an unconscionable act or practice;
  - xi. Whether Defendants' labeling and pricing scheme is an unfair or deceptive act or practice;
  - xii. Whether Defendants have been unjustly enriched by their labeling and pricing scheme;
  - xiii. Whether Defendants should be enjoined from continuing their labeling and pricing scheme;
- C. The claims asserted by Plaintiff are typical of the claims of the members of the Class;
- D. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class and complex litigation, including class action litigation involving state statutes protecting consumers from deceptive and unfair trade practices;
- E. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants;
- F. Defendants have acted on grounds that apply generally to the Class, *i.e.*, mislabeling and charging an unjustifiable price premium for the Blended Product, so that final injunctive relief prohibiting Defendants from continuing their unfair and deceptive practice is appropriate with respect to the Class as a whole; and

G. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

i. Absent a class action, Class members as a practical matter will be unable to obtain redress; Defendants' violations will continue without remedy; additional consumers will be harmed; and Defendants will continue to reap and retain their ill-gotten gains;

ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

iii. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class;

iv. A class action will permit an orderly and expeditious administration of Class claims and foster economies of time, effort, and expense;

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action; and

vi. Defendants have acted on grounds generally applicable to Class members, making Class-wide monetary and injunctive relief appropriate.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

**(Violation of the Florida Deceptive and Unfair Trade Practices Act,  
F.S.A. § 501.204 *et seq.*)**

43. Plaintiff repeats and re-alleges the allegations contained above as if fully set forth herein.

44. The elements to state a claim under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") are (1) a deceptive act or unfair practice, (2) causation, and (3) actual

damages.

45. Defendants' labeling and pricing scheme constitutes a deceptive act because it is a representation, omission, or practice that that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment. Defendants represent that the Product contains Magnesium Glycinate but omit the fact that it also contains Magnesium Oxide. This mislabeling practice is likely to mislead a consumer acting reasonably under the circumstances into believing that the Product is pure Magnesium Glycinate. As a result of this reasonable but erroneous belief, tens of thousands of consumers have paid and continue to pay an unjustified price premium for Defendants' Product.

46. Defendants' labeling and pricing scheme constitutes an unfair practice because it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. By representing that the Product contains pure Magnesium Glycinate without Magnesium Oxide, Defendants charge an immoral, unethical, oppressive, and unscrupulous price premium that is substantially injurious to consumers.

47. As a direct and proximate result of Defendants' deceptive acts and unfair practices, Plaintiff and the Class paid a price premium for an inferior product. It was reasonably foreseeable that the Product label would lead a reasonable consumer to believe that the Product contains pure Glycinate, and that such a consumer would unknowingly pay a price premium for the Product even though it is less expensive to manufacture, has a greater laxative effect, and has lower bioavailability than pure Magnesium Glycinate.

48. Consumers suffered actual damages because they paid the fair market price for pure Magnesium Glycinate when the Product they purchased contained both Magnesium Glycinate and Magnesium Oxide, the latter of which is a less expensive and inferior form of

Magnesium.

49. The above-described deceptive acts and unfair practices by Defendants present an ongoing threat to the Class. Plaintiff is informed and believes and thereon alleges that Defendants have systematically perpetrated deceptive acts and unfair practices upon members of the public and have knowingly and intentionally misled Plaintiff and members of the Class.

**SECOND CAUSE OF ACTION**  
**(Breach of Express Warranty under Florida Common Law)**

50. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

51. Plaintiff brings this claim on behalf of himself and on behalf of the Class members for breach of express warranty under the common law of the State of Florida.

52. Defendants provided Plaintiff and the Class members with written express warranties, including but not limited to warranties that the Blended Products contained only magnesium Glycinate, as set forth above.

53. Defendants breached these warranties by providing Blended Products that contained both magnesium Glycinate and the significantly inferior, cheaper magnesium Oxide and that otherwise failed to conform to Defendants' express warranties.

54. This breach resulted in damages to Plaintiff and the Class members, who bought Defendants' Blended Products but did not receive the goods as warranted, in that the Blended Products did not contain only magnesium Glycinate as represented but, instead, contained both magnesium Glycinate and the significantly inferior, cheaper magnesium Oxide.

55. As a proximate result of Defendants' breach of warranties, Plaintiff and the Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Blended Products that did not conform to what

Defendants promised in the Blended Product promotion, marketing, advertising, packaging, and labeling, and they were deprived of the benefit of their bargain and spent money on Blended Products that did not have any value or had less value than warranted or Blended Products that they would not have purchased and used had they known the true facts about them.

56. Therefore, Plaintiff seeks relief as set forth below.

**THIRD CAUSE OF ACTION**  
**(Violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.*)**  
**(Deceptive Acts or Practices by Suppliers)**  
**(Against Defendant Albion Laboratories, Inc., Only)**

57. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

58. Plaintiff brings this claim against defendant Albion Laboratories, Inc., only, on behalf of himself and on behalf of the Class members, for violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.* (the “UCSPA”). Specifically, this claim alleges Albion violated several provisions of Utah Code section 13-11-4 by engaging in deceptive acts or practices.

59. Under the UCSPA, “person” means “an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.” Utah Code § 13-11-3(5).

60. Plaintiff, the Class members, and Albion are “persons” as the UCSPA defines that term because Plaintiff and each of the Class members are individuals and Albion is a corporation, as set forth above.

61. Under the UCSPA, “consumer transaction” means, *inter alia*, “a sale . . . of goods . . . to, or apparently to, a person for: (i) primarily personal, family, or household purposes[.]” *Id.* § 13-11-3(2)(a).

62. Plaintiff and the Class members, on the one hand, and Albion, on the other, engaged in “consumer transactions” as the UCSPA defines that term because Plaintiff and the Class members bought the Blended Products for primarily personal, family, or household purposes.

63. Under the UCSPA, “supplier” means “a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.” *Id.* § 13-11-3(6).

64. Albion is a “supplier” as the UCSPA defines that term because it is a seller or other persons who regularly solicits, engages in, or enforces “consumer transactions,” as the UCSPA defines that term.

65. Under the UCSPA:

[A] supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

\* \* \* \* \*

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not; [or]

(j) . . . (ii) fails to honor a warranty or a particular warranty term[.]

*Id.* § 13-11-4(2)(a), (b), (e), (j)(ii).

66. As fully alleged above, Albion has engaged, and Albion continues to engage, in

deceptive acts or practices in violation of Utah Code section 13-11-4(2)(a) because: (i) the Blended Products were the subject of consumer transactions between Plaintiff and the Class members and Albion, (ii) Albion represented that the Blended Products had performance characteristics and benefits that they did not have, since Albion labeled, marketed, and sold the Blended Products as containing only magnesium Glycinate when, in fact, the Blended Products contained a blend of magnesium Glycinate and magnesium Oxide (which is significantly inferior to and cheaper than Glycinate), and (iii) Albion knew or should have known that the Blended Products did not, in fact, contain only Glycinate and, instead, contained a blend of magnesium Glycinate and an inferior, cheaper ingredient, magnesium Oxide.

67. As fully alleged above, Albion has engaged, and Albion continues to engage, in deceptive acts and practices in violation of Utah Code section 13-11-4(2)(b) because: (i) the Blended Products were the subject of consumer transactions between Plaintiff and the Class members and Albion, (ii) Albion represented that the Blended Products were of a particular standard, quality, or grade when they were not, since Albion labeled, marketed, and sold the Blended Products as containing only magnesium Glycinate when, in fact, the Blended Products contained a blend of Glycinate and Oxide (which is significantly inferior to and cheaper than Glycinate), and (iii) Albion knew or should have known that the Blended Products did not, in fact, contain only Glycinate and, instead, contained a blend of magnesium Glycinate and an inferior, cheaper ingredient, magnesium Oxide.

68. As fully alleged above, Albion has engaged, and Albion continues to engage, in deceptive acts and practices in violation of Utah Code section 13-11-4(2)(e) because: (i) the Blended Products were the subject of consumer transactions between Plaintiff and the Class members and Albion, (ii) Albion represented that the Blended Products were supplied in

accordance with a previous representation when they were not, since Albion labeled, marketed, and sold the Blended Products as containing only magnesium Glycinate when, in fact, the Blended Products contained a blend of Glycinate and Oxide (which is significantly inferior to and cheaper than Glycinate), and (iii) Albion knew or should have known that the Blended Products did not, in fact, contain only Glycinate and, instead, contained a blend of magnesium Glycinate and an inferior, cheaper ingredient, magnesium Oxide.

69. As fully alleged above, Albion has engaged, and Albion continues to engage, in deceptive acts and practices in violation of Utah Code section 13-11-4(2)(j)(ii) because: (i) in labeling, marketing, and selling the Blended Products to Plaintiff and the Class members, Albion warranted that the Blended Products contained only magnesium Glycinate, yet failed to honor that warranty because the Blended Products in fact contained a blend of Glycinate and Oxide (which is significantly inferior to and cheaper than Glycinate), and (ii) Albion knew or should have known that the Blended Products did not, in fact, contain only Glycinate and, instead, contained a blend of magnesium Glycinate and an inferior, cheaper ingredient, magnesium Oxide.

70. As a direct and proximate result of Albion's improper conduct, Plaintiff and the other members of the Class have suffered damages and ascertainable losses of moneys and/or property in amounts to be determined by the Court or jury, by paying more for the Blended Products than they would have, and/or by purchasing the Blended Products when they would not have done so, had Albion not misrepresented the qualities of the Blended Products as set forth herein.

71. Plaintiff and the Class members seek relief to the fullest extent allowable under Utah Code section 13-11-19, including but not limited to: a declaratory judgment under section



13-11-19(1)(a); an injunction under section 13-11-19(1)(b); and actual damages or \$2,000, whichever is greater, plus court costs under section 13-11-19(2).

72. Therefore, Plaintiff seeks relief as set forth below.

**FOURTH CAUSE OF ACTION**  
**(Violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.*)**  
**(Unconscionable Acts or Practices by Suppliers)**  
**(Against Defendant Albion Laboratories, Inc., Only)**

73. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

74. Plaintiff brings this claim against defendant Albion Laboratories, Inc., only, on behalf of himself and on behalf of the Class members, for violation of the Utah Consumer Sales Practices Act, Utah Code § 13-11-1 *et seq.* (the “UCSPA”). Specifically, this claim alleges Albion violated several provisions of Utah Code section 13-11-5 by engaging in unconscionable acts or practices.

75. As alleged above, Plaintiff, the Class members, and Albion are “persons” as the UCSPA defines that term.

76. As alleged above, Plaintiff and the Class members, on the one hand, and Albion, on the other, engaged in “consumer transactions” as the UCSPA defines that term.

77. As alleged above, Albion is a “supplier” as the UCSPA defines that term.

78. Under the UCSPA:

“An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.”

Utah Code § 13-11-5(1).

79. As fully alleged above, Albion has engaged, and Albion continues to engage, in unconscionable acts or practices in violation of Utah Code section 13-11-5 because: (i) the

Blended Products were the subject of consumer transactions between Plaintiff and the Class members and Albion, (ii) Albion labeled, packaged, advertised, marketed, and sold the Blended Products to Plaintiff and the Class members using representations that the Blended Products contained only magnesium Glycinate when, in fact, the Blended Products contained a blend of Glycinate and Oxide (which is significantly inferior to and cheaper than Glycinate), and thereby Albion engaged in practices that constitute deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and/or concealment, suppression, or omission of material facts in connection with the sale or advertisement of the Blended Products in trade or commerce, and (iii) Albion knew or should have known that the Blended Products did not, in fact, contain only Glycinate and, instead, contained a blend of magnesium Glycinate and an inferior, cheaper ingredient, magnesium Oxide.

80. As a direct and proximate result of Albion's improper conduct, Plaintiff and the other members of the Class have suffered damages and ascertainable losses of moneys and/or property in amounts to be determined by the Court or jury, by paying more for the Blended Products than they would have, and/or by purchasing the Blended Products when they would not have done so, had Albion not misrepresented the qualities of the Blended Products as set forth herein.

81. Plaintiff and the Class members seek relief to the fullest extent allowable under Utah Code section 13-11-19, including but not limited to: a declaratory judgment under section 13-11-19(1)(a); an injunction under section 13-11-19(1)(b); and actual damages or \$2,000, whichever is greater, plus court costs under section 13-11-19(2).

82. Therefore, Plaintiff seeks relief as set forth below.

**FIFTH CAUSE OF ACTION**  
**(Unjust Enrichment)**

83. Plaintiff repeats and re-alleges the allegations contained in above as if fully set forth herein.

84. By deceiving consumers into paying more for a less expensive and inferior product, Defendants have unjustly enriched themselves at the expense of Plaintiff and the Class. Defendants are therefore required in equity and good conscience to compensate Plaintiff and members of the Class for the damages they have suffered as a result of Defendants' inequitable conduct.

85. By reason of the foregoing, Defendants are liable to Plaintiff and the Class for the damages that they have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial, plus attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants as follows:

A. Certifying this action as a class action as soon as practicable, with the Class as defined above;

B. On Plaintiff's First Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial, and ordering appropriate injunctive relief, including a prohibition against Defendants' deceptive acts and unfair practices of mislabeling and overcharging for the Product;

C. On Plaintiff's Second Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class have suffered as a result of Defendants' actions,

the amount of such damages to be determined at trial;

D. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and

E. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury.

Dated: October 22, 2014

Respectfully submitted,

SHEPHERD, FINKELMAN, MILLER  
& SHAH, LLP

s/Scott R. Shepherd

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**EXHIBIT “A”**



# Product Data Sheet

**TRAACS®**

ISO 9001:2008



101 North Main Street • Clearfield • Utah 84015 / P.O. Box 750 • Clearfield • Utah 84089 • USA • (801)773-4631 • (800)453-2406 • Fax (801)773-4633  
www.AlbionMinerals.com

Product Name: **Magnesium Bisglycinate Chelate Buffered**  
Product Number: **03451**

Revision Date: **01-Jan-2012**  
Country of Origin: **USA**

GUARANTEED ANALYSIS	
Magnesium	Not less than 18.0 %
TRAACS ID	
FTIR Spectrum	Pass
HEAVY METAL	
Lead	Not more than 1.5 ppm
Cadmium	Not more than 0.5 ppm
Mercury	Not more than 0.1 ppm
PHYSICAL CHARACTER	
Color	White to off-white
Density	Not less than 0.70 g/cc
Nitrogen	8.5 -10.5 %
Moisture	Not more than 7 %
pH	10.0 -11.0 (1 % in distilled water)
MICROBIOLOGICAL ANALYSIS	
Total Plate Count	Not more than 1,000 CFU/g
Mold & Yeast	Not more than 100 CFU/g
Coliform Count	Negative
E Coli	Negative
Staphylococcus aureus	Negative
Salmonella	Negative
INCOMPATIBILITIES	
Do not use with organic solvents: i.e., acetone, benzene, alcohols.	
INGREDIENTS	
Magnesium bisglycinate chelate (CAS # 14783-68-7), magnesium oxide, citric acid, maltodextrin, silica	

NUTRITION FACTS *			
Serving	100 g		
Total Calories	305		
	Calories	% DV **	RDA (g/day) ***
Fat (0 g)	0	0 %	35
Carbohydrates (17 g)	67	13 %	130
Protein (238 g)	238	119 %	50

\* All nutritional information is based on proximate analysis

\*\* %DV calculated from 2000 calorie diet.

\*\*\*www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf

The above specifications are subject to change without notice. A Certificate of Analysis is issued for each production lot indicating compliance with the above specification at the time the lot is produced

Albion's products comply with allergen regulations from all major markets including those of the US FDA, the European Commission and Health Canada. An allergen declaration is available on [www.AlbionSIDI.com](http://www.AlbionSIDI.com)

Patents: 5516925, 2198258, P19508746-0, 7838042

While applicable tariff codes may change from jurisdiction to jurisdiction, some importers have imported this product under the following Tariff Code 2922.50.5000.

©2013 Albion Laboratories, Inc. All rights reserved

All trademarks referenced herein (with ®, ™, or otherwise) are the property of, or used under license by, Albion Laboratories, Inc. The information in this document is proprietary information and is supplied solely for the customer's use with respect to this product.

# **EXHIBIT “B”**



#### TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT

THIS TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT (the "Agreement") is made and entered into as of July 12, 2012 (the "Effective Date"), by ALBION LABORATORIES, INC. ("Albion"), a Utah corporation with offices located at 101 North Main Street, Clearfield, Utah 84015, and VITACOST.COM, INC. ("Customer"), with offices located at 5400 Broken Sound Parkway, N.W., Suite 500, Boca Raton, Florida 33480, collectively "the Parties".

#### RECITALS

A. Albion Laboratories, Inc. owns various U.S. and foreign patents giving Albion the right to exclude others in the U.S. and abroad from making, using, or selling products covered by Albion patents.

B. Albion Laboratories, Inc. owns various U.S. and foreign trademark registrations for marks intended for the exclusive use of Albion and its licensees.

C. Customer has purchased or may purchase product(s) covered by one or more of Albion's trademarks or patents for use in Customer's formulations, compositions or business ("Customer Purposes"). In connection with the marketing of Customer's Purposes, Customer shall mark its goods with applicable Albion Patent Numbers and Albion Licensed Trademarks.

D. Albion is willing to allow Customer to mark its formulations, compositions and products containing Albion Ingredient with applicable Albion Patent Numbers, and use the Albion Licensed Trademarks under the terms and conditions set forth in this Agreement.

#### AGREEMENT

In consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** In this Agreement, the following terms shall have the meanings set forth below:

1.1 "Albion Ingredient" shall mean certain products manufactured, sold, or offered for sale by Albion through its human nutrition division.

1.2 "Albion Licensed Trademarks" shall mean the trademark or trademarks specifically identified in Exhibit A, attached hereto and incorporated herein by reference.

1.3 "Albion Patent Numbers" shall mean the patent number or numbers used to identify any issued and valid U.S. or foreign patent for which Albion has the right to license hereunder and specifically identified in Exhibit B, attached hereto and incorporated herein by reference.

1.4 "Covered Products" shall mean the products identified in Exhibit C, attached hereto and incorporated herein by reference, which are products manufactured and/or distributed by Customer that include Albion Ingredient as an ingredient therein. Although the Covered Products may be amended from time to time by the Parties, Covered Products must always contain Albion Ingredient.

1.5 "Market" shall mean the general foods and dietary supplement market in the Territory.

1.6 "Territory" shall mean the United States and its territories and possessions.

2. **GRANT OF TRADEMARK LICENSE.** Albion hereby grants to Customer a nonexclusive license and right to use the Albion Licensed Trademarks (i) in connection with the Covered Products; (ii) when the Covered Products contain Albion Ingredient in accordance with Exhibit A; (iii) solely in the Market in the Territory as defined herein; and (iv) subject to the terms and conditions of this Agreement. Albion shall require that a notice or notices acceptable to Albion be used on the Covered Products or marketing material bearing Albion Licensed Trademarks or Albion Patent Numbers to identify the licensed use under this Agreement and the proprietary rights of Albion.



3. **ANCILLARY USE OF ALBION LICENSED TRADEMARKS.** Customer is further authorized to use the Albion Licensed Trademarks and Albion Patent Numbers within the Market in the Territory on related Covered Products marketing material in publicity, advertising, signs, product brochures, cartons and other forms of advertising subject to the terms and conditions of this Agreement.

4. **GOLD MEDALLION.** Customer's permission to use the Albion Minerals Medallion design trademark shall be restricted to use on Covered Products that meet Albion's stringent Gold Medallion Program requirements concerning use of Albion Ingredient, and on promotional material directly related to such Covered Products. Covered Products meeting the Gold Medallion Program requirements shall be specifically designated in the list of Covered Products in Exhibit C.

5. **GRANT OF RIGHTS TO MARK LABELS WITH ALBION PATENT NUMBERS.** For the term of this Agreement, in the Market in the Territory, Albion hereby grants to Customer a nonexclusive right to use the applicable Albion Patent Numbers on the respective Covered Products when the Covered Products contain Albion Ingredient subject to the terms and conditions of this Agreement. Notwithstanding the above, Albion Patent Numbers are only valid during the life of the patent on which they are based. Patents generally have a life of twenty (20) years from the time of their initial filing. However, patents may have a shorter lifespan. It is the responsibility of Customer to verify the continued validity of a patent number prior to use. Customer acknowledges and agrees that it does not have, nor shall it ever have or claim, any right, title or interest in any of Albion's patents. All containers or packaging of the Covered Products sold by Customer which bear an Albion Patent Number shall identify Albion as the manufacturer of the Albion Ingredient contained therein. Product labels and packaging shall also bear such additional information and detail as Albion may from time to time require, including without limitation, relevant patent information. All benefits arising from the use of the Albion Patent Numbers shall inure solely to Albion.

6. **PROTECTION OF ALBION LICENSED TRADEMARKS AND PATENT NUMBERS.**

6.1 Customer acknowledges the validity of, and agrees not to challenge the Albion Licensed Trademarks and Albion Patent Numbers. Customer also agrees that any and all rights that may be acquired by the use of the Albion Licensed Trademarks by Customer, with the exception of all of Customer's rights to receive payments from Customer's customers, shall inure to the sole benefit of Albion. Customer agrees to execute all documents reasonably requested by Albion to effect further registration, maintenance and renewal of the Albion Licensed Trademarks and, where applicable, to record Customer as a registered user of the Albion Licensed Trademarks. Customer shall not use the Albion Licensed Trademarks or any part thereof as part of Customer's corporate name or product names and Customer shall not use any name or mark confusingly similar to the Albion Licensed Trademarks.

6.2 Customer further agrees not to register in any country any name or mark that resembles or is confusingly similar to the Albion Licensed Trademarks. If any application for registration is, or has been filed in any country of said Territory by Customer which relates to any name or mark which, in the sole opinion of Albion, is confusingly similar, deceptive or misleading with respect to the Albion Licensed Trademarks, Customer shall immediately abandon any such application or registration or, at Albion's sole discretion, assign it to Albion at Customer's expense. Customer shall reimburse Albion for all the costs and expenses of any opposition, cancellation or related legal proceedings, including attorneys' fees, instigated by Albion or its authorized representative, in connection with any such registration or application.

6.3 Customer agrees to notify Albion, or its authorized representative, in the event Customer becomes aware of any infringement or threatened infringement in relation to Customer's usage, pursuant to this Agreement, of the Albion Licensed Trademarks or any misuse of the Albion Patent Numbers. Likewise, Customer will notify Albion of any third party allegations or claims related to the Albion Licensed Trademarks or Albion Patent Numbers and shall provide all necessary information and assistance to Albion should Albion decide that infringement proceedings should be commenced or defended.

6.4 In the performance of this Agreement, Customer shall comply with all applicable laws and regulations and obtain all appropriate governmental approvals pertaining to its production, distribution, sale and advertising of the Covered Products, particularly those laws and regulations pertaining to the proper use and designation of trademarks and patent numbers in the countries of said Territory. Customer shall promptly notify Albion should Customer become aware of any applicable laws or regulations that are inconsistent with the provisions of this Agreement. Albion may, at its option, either waive the performance of such inconsistent provisions or terminate the license and rights granted hereunder.



**6.5** Customer agrees to cooperate with Albion in facilitating Albion's control of the nature and quality of the Covered Products incorporating Albion's Ingredient and the nature and quality of labeling, advertising, promotional, and other related materials marked with an Albion Licensed Trademark or Albion Patent Number. Customer agrees to supply Albion with specimens of use of Albion Patent Numbers and Albion Licensed Trademarks upon request or in accordance with a schedule established by Albion. Albion reserves the right to require Customer to submit layouts and/or drafts of proposed use of the Albion Licensed Trademarks or Albion Patent Numbers for advance approval with respect to, but not limited to, content, style, appearance, composition, timing and media. Albion shall not unreasonably withhold its approval of such materials.

**6.6** If at any time the Covered Products and usage of the Albion Licensed Trademarks or Albion Patent Numbers fail, in the sole opinion of Albion, to conform to Albion's standards of quality in materials, design, workmanship, use, advertising, and promotion, Albion or its authorized representative shall so notify Customer. At the request of Albion, Customer shall cease or modify any use of the Albion Licensed Trademarks or Albion Patent Numbers deemed not to be in compliance with Albion's the applicable standards or instructions. Albion reserves the right to immediately terminate this Agreement without notice upon unauthorized or improper use of the Albion Patent Numbers or Albion Licensed Trademarks, or failure to comply with a request to correct such use.

**7. QUALITY CONTROL -TRADEMARK AND PATENT NUMBER USAGE.** Customer agrees that, with respect to use of Albion Ingredient, Albion Patent Numbers and/or Albion Licensed Trademarks, the nature and quality of Covered Products and all labeling, advertising, promotional, and other related materials marked with an Albion Patent Number or Albion Licensed Trademark shall conform to standards set by Albion. Customer agrees to use the Albion Patent Numbers and Albion Licensed Trademarks only in accordance with the usage guidelines in the exhibits attached hereto and hereby incorporated by reference and in the form and manner and with appropriate legends as instructed from time to time by Albion.

**8. NO ROYALTIES.** No royalties shall be paid under this Agreement. Notwithstanding, this Agreement shall not fail for lack of consideration.

**9. ASSIGNMENT.** Customer shall not sell, assign, delegate, or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Albion. Any attempted or actual assignment in contravention hereof shall be null and void.

**10. SUBLICENSE.** Customer may not enter into any sublicense pursuant to this Agreement without the prior written consent of Albion. No sublicense agreement entered into by Customer pursuant to this Agreement may extend beyond the term of this Agreement.

**11. TERM.** Unless sooner terminated in accordance with this Agreement, the rights granted herein shall commence on the Effective Date of this Agreement and shall continue in effect for an initial term of one (1) year, with automatic renewal for four (4) additional one-year terms, unless either party gives notice of non-renewal to the other party at least thirty (30) days prior to expiration of the initial or subsequent terms.

**12. TERMINATION OF AGREEMENT.** This Agreement, and the license granted in this Agreement, may be immediately terminated by notice from Albion at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or otherwise, in the event (i) Customer breaches or violates any of the terms of this Agreement; (ii) Albion, at its sole discretion, and as part of its marketing strategy or for other reasonable business purposes, decides to terminate this Agreement; (iii) Customer makes an assignment for the benefit of its creditors, commits any act of bankruptcy, has a receiver appointed, or otherwise admits of its inability to pay its debts as they mature; and/or (iv) Customer attempts an assignment or transfer of any interest hereunder without the prior written approval of Albion. Under no circumstances shall Albion be liable to Customer by reason of termination or non-renewal of this Agreement, whether for compensation, reimbursement, or damages for any reason, including any expenses or commitment made by Customer in reliance on the existence of this Agreement.

**13. RIGHTS UPON TERMINATION OF AGREEMENT.** Upon the termination or expiration of this Agreement, and any license granted in this Agreement, for any reason, Customer shall remove from its property and immediately discontinue all direct or indirect use of Albion Licensed Trademarks and Albion Patent Numbers, or of any word, title, expression, trademark, design, or marking that, in the opinion of Albion, is confusingly similar thereto regardless of whether Customer's products have been labeled with Albion Licensed Trademarks and/or Albion Patent Numbers.

**14. INDEMNITY.** Customer agrees to indemnify, defend and hold harmless Albion, its shareholders, employees, agents and assigns from and against any claim, demand, action or cause of action which is made against Albion by



any third party, including, without limitation, any judgment rendered against Albion in any such action and reasonable attorneys' fees and expenses incurred by Albion in defending any claim brought against it to the extent arising out of or resulting from (i) a breach of this Agreement by Customer, (ii) a breach of any of Customer's obligations under this Agreement, (iii) the negligence of Customer related to the manufacture, sale, distribution, marketing or advertising of the Covered Products, or (vi) any violation of any rule, regulation or law related to the manufacture, sale, distribution, marketing or advertising of the Covered Products.

**15. ATTORNEYS' FEES.** Should Customer default with respect to any of the covenants or agreements contained herein, Customer shall pay all costs and expenses, including reasonable attorneys' fees, expenses and costs, incurred by Albion to protect its rights hereunder, regardless of whether an action is commenced or prosecuted to judgment.

**16. NOTICES.** Any notice required or permitted to be given under this Agreement shall be in writing sent by certified mail, confirmed facsimile message, or personal delivery. Notice shall be directed by one party to the other at its respective address below unless otherwise provided for in this Agreement:

Albion:	Albion Laboratories, Inc. 101 North Main Street Clearfield, Utah 84015 Attn: Legal Counsel
Customer:	Vitacost.com, Inc. Attn: Legal Department 5400 Broken Sound Parkway, N.W., Suite 5400 Boca Raton, Florida 33480

Any changes to the foregoing address information shall be by written notice to the other party. However, until such change of address has been received, any notice or request sent to the above addresses shall be effective upon mailing and shall be considered as having been received.

**17. WAIVERS.** Any failure by Albion at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any obligation or duty of Customer. None of the covenants of Customer hereunder shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by Albion.

**18. LIMITATION OF LIABILITY.** TO THE EXTENT PERMISSIBLE BY LAW, ALBION SHALL NOT BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE VALUE OF THE ALBION INGREDIENT SOLD TO CUSTOMER WITHIN THE MOST RECENT THREE (3) MONTH PERIOD. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ALBION SHALL IN NO EVENT BE RESPONSIBLE TO CUSTOMER OR ANY THIRD PARTY IN CONTRACT OR IN TORT, OR OTHERWISE, FOR LOSS OF PROFIT OR REVENUES, OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM ANY CAUSE WHATSOEVER.

**19. GOVERNING LAW.** This Agreement and all matters relating hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah, without regard to principles of conflicts of laws. In addition, Customer hereby consents to the jurisdiction of the federal and state courts of the State of Utah as the forum for resolution of disputes hereunder.

**20. SECTION HEADINGS.** Section headings in this Agreement are for ease of reference only and are not intended to affect the meaning or interpretation of this Agreement.

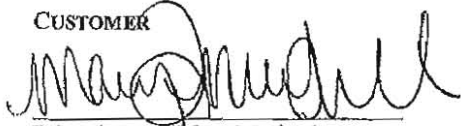
**21. ENTIRE AGREEMENT.** The provisions of this Agreement contain the entire agreement between the Parties relating to use by Customer of the Albion Licensed Trademarks and/or the Albion Patent Numbers on Covered Products, and on marketing material, manufactured or provided by Customer. These provisions supersede and cancel all prior provisions, negotiations, agreements and commitments (whether oral or in writing) with respect to the subject matter hereof. No rights are granted to use the Albion Licensed Trademarks or Albion Patent Numbers on such Customer manufactured Covered Products or marketing material except as specifically set forth in this Agreement. This Agreement may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by the Parties. In the event of any conflict between the provisions of this Agreement and provisions in any other agreement involving Customer, the provisions of this Agreement shall prevail.

22. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and via facsimile signature, including PDF/email, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories hereto.

23. **INCORPORATION OF EXHIBITS.** The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representatives below.

**CUSTOMER**



Printed name: Mary Marbach  
Title: General Counsel

**VITACOST.COM, INC.**

**ALBION**




Nathan D. Nelson  
General Counsel

**ALBION LABORATORIES, INC.**

EXHIBIT A  
TO THE TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT  
between Albion Laboratories, Inc., and Vitacost.com, Inc.  
dated July 12, 2012

ALBION LICENSED TRADEMARKS

TRADEMARKS	RESTRICTIONS
ALBION®	MAY BE USED WITH COVERED PRODUCTS CONTAINING ANY ALBION INGREDIENT
	MAY BE USED WITH COVERED PRODUCTS CONTAINING ANY ALBION INGREDIENT
	MAY ONLY BE USED WITH COVERED PRODUCTS WHEN EACH SIGNIFICANT MINERAL SOURCE IS AN ALBION INGREDIENT AND ONLY AFTER RECEIVING WRITTEN "GOLD MEDALLION" PROGRAM APPROVAL
	MAY ONLY BE USED WITH COVERED PRODUCTS CONTAINING CALCI-K
<b>DimaCal®</b>	MAY ONLY BE USED WITH COVERED PRODUCTS CONTAINING DIMACAL
	MAY ONLY BE USED WITH COVERED PRODUCTS CONTAINING MAGNESIUM CREATINE CHELATE
	MAY ONLY BE USED WITH COVERED PRODUCTS CONTAINING FERROUS BISGLYCINATE CHELATE
<b>TRAACS®</b>	MAY BE USED WITH COVERED PRODUCTS CONTAINING ANY ALBION INGREDIENT

The following statement is an example of a notice that could be used on the labels and advertising media of a Covered Product containing Ferrochel® Iron as an Albion Ingredient:

*ALBION, ALBION HUMAN NUTRITION LOGO, FERROCHEL, AND TRAACS ARE REGISTERED TRADEMARKS OF ALBION LABORATORIES, INC.*

*EXHIBIT B*

**TO THE TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT**  
between Albion Laboratories, Inc., and Vitacost.com, Inc.  
dated July 12, 2012

**ALBION LICENSED PATENTS**

PATENTS
U.S. PATENT NUMBER: <b>5,516,925</b> AMINO ACID CHELATES HAVING IMPROVED PALATABILITY *FILED: 8-23-94
U.S. PATENT NUMBER: <b>6,716,814</b> ENHANCING SOLUBILITY OF IRON AMINO ACID CHELATES AND IRON PROTEINATES *FILED: 8-16-01

\*PLEASE NOTE THAT PATENTS ARE TYPICALLY VALID FOR A PERIOD OF TWENTY (20) YEARS FROM THE TIME OF FILING.

FOLLOWING IS A NOTICE TO BE USED AS A MODEL FOR MARKING THE ALBION PATENT NUMBERS ON LABELS AND ADVERTISING MEDIA RELATED TO PRODUCTS CONTAINING ALBION INGREDIENT:

*This product is covered by U.S. Patent Numbers: 5,516,925; 6,716,814 and patents pending.*



**EXHIBIT C**  
**TO THE TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT**  
between Albion Laboratories, Inc., and Vitacost.com, Inc.  
dated July 12, 2012

**CUSTOMER'S PRODUCTS**

Vitacost Chelated Zinc – Product VCT 7015566  
Vitacost Chelated Multi-Mineral – Product VCT 7015344  
Vitacost Chelated Chromium – Product VCT 7015351  
Vitacost Complexed Selenium – Product VCT 7015535  
Vitacost Chelated Copper – Product VCT 7015368  
Vitacost Chelated Magnesium – Product VCT 7015542  
Vitacost Potassium Complex- Product VCT 7015597  
Vitacost Chelated Calcium & Magnesium – Product VCT 7015382  
Vitacost Chelated Manganese – Product VCT 7015375  
Vitacost Chelated Calcium – Product VCT 7015580  
Vitacost Chelated Vanadium – Product VCT 7015559  
Vitacost Iron Glycinate Chelate – Product NSI 3001699 & NSI 7013548

IF THERE IS AN ASTERISK (\*) NEXT TO A PRODUCT NAME ABOVE, IT INDICATES THAT THE PRODUCT IS A GOLD MEDALLION PRODUCT

† CUSTOMER PRODUCT NAMES MAY NOT CONTAIN ANY ALBION INGREDIENT NAMES OR ALBION TRADEMARKS BY THEMSELVES AS THE CUSTOMER PRODUCT NAME. IF CUSTOMER USES AN ALBION INGREDIENT NAME OR ALBION TRADEMARK, IT MAY DO SO ONLY AFTER RECEIVING ALBION'S CONSENT AND IF IT IS USED IN CONJUNCTION WITH OTHER VERBIAGE FOR EXAMPLE:

“PRODUCT X MADE PARTIALLY WITH ALBION® FERROCHEL®”; OR

“PRODUCT Y CONTAINING ALBION® FERROCHEL®”.

HOWEVER, REGARDLESS OF THE NAMING CONVENTION DESIRED, CUSTOMER MAY NOT IMPLY THAT THE PRIMARY OR SOLE CONTENT OF THE LABELED GOODS ONLY CONTAIN ALBION INGREDIENTS WHEN ANY AMOUNT OF OTHER INGREDIENTS ARE ADDED.

## EXHIBIT D

### TO THE TRADEMARK AND PATENT NUMBER LICENSE AGREEMENT between Albion Laboratories, Inc., and Vitacost.com, Inc. dated July 12, 2012

#### Trademark Usage Guidelines

Albion's trademarks are the principal means by which the public identifies Albion, its products, and its activities. Albion's success is due in part to the favorable recognition it has achieved under The Albion® name, and the product trademarks such as those listed on Exhibit A. Subject to the terms of this Agreement, you may cite Albion trademarks properly as outlined herein:

However, you may not use Albion trademarks:

- In, as, or as part of your own trademarks;
- To identify products that do not contain Albion Ingredients;
- In a manner likely to cause confusion; or
- In a manner that implies inaccurately that Albion sponsors or endorses, or is otherwise connected with, your own activities, products, and services

Please follow these guidelines when using our trademarks:

#### Proper Notice

Please use the appropriate trademark notice (®, ™, or SM) with Albion trademarks. As used herein: ® indicates a trademark registered in the United States; and ™ indicates a trademark that is presently unregistered. The appropriate notice for each of Albion's trademarks is indicated on Exhibit A. If you are uncertain which notice to use with Albion trademarks, please contact Albion's Legal Department. Wherever possible, the trademark notice should appear in superscript in a size smaller than the mark itself and without parentheses. Where such formatting is not available, however, place the appropriate letters in parentheses next to the mark.

#### Proper Use

Albion trademarks are *adjectives* (brand names) modifying nouns (the generic product type). Please follow these guidelines in using Albion trademarks:

- Please do not use Albion trademarks as nouns or verbs
- Please do not pluralize Albion trademarks
- Please do not hyphenate Albion trademarks
- Please keep Albion trademarks distinct from other text, images, or material
- Please do not alter, edit, modify, or combine Albion trademarks
- Please do not render Albion trademarks possessive through use of an apostrophe
- Please provide a proper trademark notice and attribution

#### Proper Attribution

When you use Albion trademarks in any materials, please include a brief statement attributing ownership of these trademarks to Albion. This attribution should identify each mark used, attribute it to its proper owner by name, and indicate whether the trademark is registered. For example: TRAACS and FERROCHEL are registered trademarks of Albion Laboratories, Inc. *Please note that the attribution need only identify Albion trademarks that you actually use in your material and thus may vary from the above example.*

Only legal counsel for Albion can grant authorization for trademark uses and related issues not in accord with these guidelines; Albion sales personnel or other personnel do not have this authority. Accordingly, where such permission or exceptions are sought, they must be brought to the attention of Albion's Legal Department by emailing [trademarks@albionminerals.com](mailto:trademarks@albionminerals.com).



**EXHIBIT “C”**

Amazon.com: Magnesium ULTRA - High Absorption Magnesium BisGlycinate Chelate from Albion Labs - Scientifically Proven, i

Richard's Amazon.com Today's Deals Gift Cards Sell Help

Shop by  
Department

Search

Hello, Richard  
Your AccountYour  
Prime

Cart

Wish  
List

Health &amp; Personal Care

Best Sellers

New Arrivals

Baby &amp; Child Care

Vitamins &amp; Diet Supplements

Sports Nutrition

Household Supplies

Health Care



Roll over image to zoom in

## Magnesium ULTRA - High Absorption Buffered Magnesium

Albion Labs - Scientifically Proven to Correct Magnesium Deficiency - Satisfaction Guaranteed - Free Supplement Guide Included

ASIN: B005A20B5A

3 customer reviews

Frequently asked questions

We don't know when or if this item will be back in stock.

10 Easy-to-swallow Vcaps - 150mg each. One bottle contains 30-90 servings depending on daily use. May alleviate symptoms of Magnesium Deficiency including fatigue, muscle aches, cramps, leg twitches, anxiety, depression, migraines, hypertension, severe PMS, persistent constipation, insulin resistance and more.\*

Our unique 100% TRAACS Buffered Magnesium BisGlycinate Chelate formula from Albion Labs is scientifically proven to be highly bio-available. Buffered formula is easily tolerated by sensitive persons. No odor, capsules are easy on the digestive system. Contains NO soy, yeast, sugar, dairy, gluten, artificial colors, flavors, or preservatives. Hypoallergenic, Kosher, and Halal. Includes a FREE easy to read Supplement Guide with valuable information on Magnesium ULTRA and recommendations on daily use.

Share

Currently unavailable.

We don't know when or if this item will be back in stock.

Add to Wish List

### Customers Who Viewed This Item Also Viewed

Page 1 of 10



Doctor's Best High Absorption Magnesium (200 Mg Elemental, 240-Caps)

(187)

\$16.24



Basabonnet - Albion Chelated Magnesium 200 Mg - 120 VegCap Kosher, Gluten-Free

(141)

\$10.88



Designs for Health Magnesium Glycinate Chelate Capsules, 120-Caps

(12)

\$22.85



Albion Chelated Magnesium 120 mg 90-Caps

(21)

\$21.50

### Customers viewing this page may be interested in these sponsored links (What's this?)

DFH:



Improve mental health, fatigue & more. Shop online now & save big! [www.rockwellnutrition.com/](http://www.rockwellnutrition.com/)



Designs For Health Products. Free Shipping, Low Prices- Buy Now! [www.pureformulas.com/](http://www.pureformulas.com/)

DrVita



Save Up To 70% at DrVita. Free Shipping on all Orders over \$49. [www.drvida.com/](http://www.drvida.com/)

Amazon.com: Magnesium Ultra 70% Buffered Magnesium Supplement, Scientifically Proven to...  
 Magnesium Ultra 70% Buffered Magnesium Supplement, Scientifically Proven to...

See a problem with these advertisements? [Let us know.](#)

## Product Description

### TIRED OF FEELING RUN-DOWN BUT YOU DON'T KNOW WHY?

- Are You Fatigued, Stressed-out, or Anxious?
- Do You Suffer from Low Energy and Poor Sleep?
- Do you have Hypertension, Migraines, or Sore Muscles?

### AS MANY AS 80% OF AMERICANS SUFFER FROM MAGNESIUM DEFICIENCY BUT MAY NOT EVEN KNOW IT!

- Your Body NEEDS Magnesium for Over 300 Important Enzymatic Reactions that are Essential for Health and Well Being.
- The typical diet does NOT contain enough Magnesium, and our stressful lifestyles rapidly deplete our bodies of this vital nutrient.
- Most Multi-Vitamins and cheap supplements contain a form of magnesium that is not readily bio-available.

### MAGNESIUM ULTRA IS DRAMATICALLY DIFFERENT FROM OTHER MAGNESIUM SUPPLEMENTS

- Magnesium ULTRA is formulated to bind Magnesium ions between two glycinate 'carrier' molecules which form a 'shield' to safely deliver it to the small intestine and into the bloodstream.
- Our easy to swallow Vcaps do not contain ANY of the additives found in cheaper brands that often cause digestive problems or allergic reactions.
- We source our special formula from Albion Labs - the mineral supplement experts. Albion scientifically tests it's magnesium for quality, so you can rest assured you are getting what you've paid for.

### HOW MUCH SHOULD I TAKE?

- Everyone is a little different and your Magnesium needs will vary depending on your diet and lifestyle. So we've taken out the guesswork with a FREE guide on the recommended daily use of Magnesium ULTRA.

**SATISFACTION GUARANTEED:** If at any time you are not completely satisfied with this product, you may return it for a full refund.

**You Deserve to Feel Better! Click the Add to Cart Button to Buy Now!**

## Product Details

**Shipping Weight:** 4.8 ounces

**Origin:** Made in USA

**ASIN:** B00EAPQIRU

**UPC:** 820103235709

**Average Customer Review:** (3 customer reviews)

**Amazon Best Sellers Rank:** #329,059 in Health & Personal Care (See Top 100 in Health & Personal Care)

Did we miss any relevant features for this product? [Tell us what we missed.](#)

Would you like to see this product at a lower price? [Tell us what a lower price?](#)

## Product Ads from External Websites (What's New)

## Sponsored Content



Chelated Magnesium  
100 Tabs by Solgar  
(1)

\$10.71

+ \$1.97 Est. shipping

Envision Vitamins



Magnesium-400 mg  
180 Caps by NOW  
Foods (2)

\$7.75

+ \$1.97 Est. shipping

Shoreline Vitamins



Carlson Labs -  
Chelated Magnesium  
200 mg (2)

\$33.40

+ Free Shipping

ProteinProtein  
Supplement Center



Magnesium-400mg,  
180 capsules  
(1)

\$7.99

+ \$1.97 Est. shipping

NutraBio, Inc.

See a problem with these advertisements? [Let us know.](#)

Advertise here

## Customer Questions & Answers

**Q:** How does this person know that this product is buffered with 50% magnesium oxide? I'm just a consumer and wondering where this information came from

**A:** Thank you for your interest in Nuvar's Magnesium ULTRA. The question you are referring to appears to come from a few comments posted on forums or...

[See more](#)

2048 17014 0

See also:

Have a question? Ask the owners here.

3.7 out of 5 stars

2 Share your thoughts with other customers

3.4/5  0  0 Write a customer review

[illegible]

Final Treatment Report

3 or 4 people round the following review helpful

Grateful to have found this product

By [Paul E. Isinger](#) on January 7, 2014

After multiple trips to the doctors with no real solution to my intestinal ailments, I am finally turning to something more natural and less toxic to my body. What truly made me take the leap into buying this product over all other options was the free guide that helps to determine how much to take. Most Supplements tell you to take up to 5 or 6 at a time and multiple times a day, which may not suite everyone's needs (and truly is more about benefitting the supplement producer's pockets over anything else (imo)). My husband decided to try this supplement as well for his less than stellar sleep. He can take the amount he needs to see improvements and I take a different amount. This leads to another reason I like this product. There is enough so that my husband and I don't have to over stock on the product in order to have enough between the two of us for more than a few weeks. Thankfully too, this is also a Vcap, so my vegetarian family members can take them knowing they are animal byproduct free. I recommend anyone looking for a more natural and balanced way of getting healthier, to try this product.

Was this review helpful to you? ☒ Yes ☐ No

1 of 2 people found the following review helpful

THIS SEVERELY OVERPRICED PRODUCT VIOLATES FEDERAL LABELING

## LAWS

By [A. HERNANDEZ](#) on January 15, 2014

This product is severely overpriced and contains a large amount of magnesium oxide (the company says 40%) which is less bioavailable than other forms and is a well known laxative.

Swanson sells basically the same product for \$10.90 vs \$27.11 for Nuvarin on Amazon, although it has 133 mg/cap vs. 150 mg for the Nuvarin product, a difference of slightly more than 10%. That is almost 1/3 the price, a difference of \$.12/cap vs. \$.30/cap. If you go to the Swanson website you can find the same Swanson caps for \$.046/cap if you buy the 180 cap bottle. That makes the Nuvarin product 650% more expensive for only 10% more magnesium. That is clearly a rip off.

And this company is in violation of federal law by failing to disclose magnesium oxide on their label!

CAVEAT EMPTOR LET THE BUYER BEWARE

Those who are interested can check out the questions and answers section of this product. After repeated denials, this company has now admitted they were in violation of FDA labeling regulations.

Ask owners:

OWNERS

WIRELESS

MONTHLY UNLIMITED TALK & TEXT

**\$45** MONTHLY ACCESS

DATA • UNLIMITED PLAN • TALK & TEXT

**Learn More**

А.С. ПЕТРОВ

Add a product image

Search Customer Reviews

☐ Only search this product's reviews







## CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS** Gregory Holliday**DEFENDANTS**Albion Laboratories, Inc., Vitacost.com, Inc.,  
DrVita.com and John Does 1 through 50(b) County of Residence of First Listed Plaintiff Pinellas County  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott R. Shepherd/Nathan C. Zipperian

SHEPHERD, FINKELMAN, MILLER &amp; SHAH, LLP

1640 Town Center Circle, Suite 216, Weston, FL 33326 Ph: 954-515-0123

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☒ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff  
and One Box for Defendant)

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

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER 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 Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's 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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal 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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input checked="" 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Other:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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	<b>LABOR</b> <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 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

**VI. RELATED/RE-FILED CASE(S)**

(See instructions):

a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

**VII. 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):

28 U.S.C. Section 1332(d) - Deceptive labeling and price scheme of dietary supplement  
LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)**VIII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE &amp; CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

October 21, 2014

s/Scott R. Shepherd

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Gregory Holliday, on behalf of himself and all others  
similarly situated,

---

*Plaintiff(s)*

v.

Civil Action No.

Albion Laboratories, Inc., Vitacost.com, Inc., DrVita,  
Inc. and John Does 1 through 50

---

*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Albion Laboratories, Inc.  
101 NORTH MAIN STREET  
CLEARFIELD, UT 84015

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott R. Shepherd  
Nathan C. Zipperian  
1640 Town Center Circle, Suite 216  
Weston, FL 33326

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_ , a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Gregory Holliday, on behalf of himself and all others  
similarly situated,

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*Plaintiff(s)*

v.

Civil Action No.

Albion Laboratories, Inc., Vitacost.com, Inc., DrVita,  
Inc. and John Does 1 through 50

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*Defendant(s)*

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* Vitacost.com, Inc.  
CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE, FL 32301-2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott R. Shepherd  
Nathan C. Zipperian  
1640 Town Center Circle, Suite 216  
Weston, FL 33326

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_ .

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the summons unexecuted because \_\_\_\_\_ ; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: