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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

GEORGIA FERRELL, individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

V.

NUTRAMAX LABORATORIES, INC.,  
WAL-MART, STORES, INC., and  
RITE-AID CORPORATION

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Georgia Ferrell brings this action on behalf of herself and all others similarly situated against Defendant Nutramax Laboratories, Inc. ("Nutramax"), Wal-Mart Stores, Inc., and Rite-Aid Corporation (collectively "Defendants") and states:

### **NATURE OF ACTION**

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1. Defendants distribute, market and sell Nutramax's "Cosamin" line of glucosamine-based products marketed as "Joint Health Supplements." Defendants claim Cosamin provides a variety of significant health benefits for the cartilage and joints of all consumers who ingest Cosamin. These claimed health benefits are the only reason a consumer would purchase Cosamin. Defendants' advertising claims, however, are false, misleading, and reasonably likely to deceive the public.

2. Defendants represent the primary active ingredients in its Cosamin products are "glucosamine," and "chondroitin sulfate." Through an extensive and uniform nationwide advertising campaign, Defendants represent Cosamin "is the only brand proven effective in controlled, published U.S. studies to reduce joint pain," and that it has been "[s]hown in laboratory tests to protect cartilage cells from breakdown." Defendants further warrant the product "works better" and "lasts longer" purportedly than other similar competitor products.

3. All available scientific evidence demonstrates Cosamin products have no efficacy at all, are ineffective in the improvement of joint health, and provide no benefits related to the reduction of pain in human joints and/or protecting cartilage from breakdown. In fact, Defendants do not have any competent, reliable scientific evidence that substantiates their representations about the health benefits of consuming Cosamin. Numerous scientifically valid studies have been conducted on the ingredients, including the core or primary ingredient in Cosamin, glucosamine hydrochloride, and they have universally demonstrated glucosamine and glucosamine in combination with other ingredients such as chondroitin and/or chondroitin sulfate have absolutely no scientific value in the treatment of joint pain or discomfort.

1 4. Defendants represent the active ingredients in Cosamin products provide relief for joint  
2 pain and osteoarthritis. The product labeling states, that it will “protect your cartilage” and  
3 “reduce joint pain”. These bold claims are in addition to other misrepresentations claiming it is  
4 the only brand “proven effective in controlled, published U.S. studies to reduce joint pain.”  
5 Defendants also represent throughout the Cosamin advertising that Cosamin is the “#1 brand  
6 recommended by Orthopedic Specialists,” implying there is legitimate science substantiating  
7 their joint health and cartilage marketing claims.  
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10 5. Defendants convey their uniform, deceptive message to consumers through a variety of  
11 media including their websites and other online promotional materials and at the point of  
12 purchase, on the front of their products’ packaging and/or labeling where it cannot be missed by  
13 consumers. The front of Cosamin products label states in bold print, “Protect your cartilage with  
14 the only brand proven to reduce joint pain.” The only reason a consumer would purchase  
15 Cosamin is to obtain the advertised joint-health benefits, which Cosamin products do not  
16 provide.  
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18 6. As a result of Defendants’ deceptive advertising and false claims regarding the efficacy  
19 of Cosamin products, Plaintiff and the proposed class purchased a product which does not  
20 perform as represented and they have been harmed in the amount they paid for the product,  
21 which, in the case of Plaintiff Ferrell is approximately thirty five dollars.  
22

23 7. Plaintiff brings this action on behalf of herself and other similarly situated consumers,  
24 who have purchased Cosamin products, to halt the dissemination of this false, misleading and  
25 deceptive advertising message, correct the false and misleading perception it has created in the  
26 minds of consumers, and obtain redress for those who have purchased Cosamin products from  
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1 defendants. Based on violations of state unfair competition laws and Defendants' breach of  
2 express warranty, Plaintiff seeks injunctive and monetary relief for herself and all consumers  
3 who purchased Cosamin products from defendants.  
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### 5 **JURISDICTION AND VENUE**

6 8. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. §1332(d)(2).  
7 The matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
8 \$5,000,000 and is a class action in which there are in excess of 100 class members, many of  
9 which are citizens of states different from Defendants.  
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11 9. This Court has personal jurisdiction over Defendants because Defendants are  
12 authorized to conduct and do conduct business in California. Defendants have marketed,  
13 promoted, distributed, and sold Cosamin products in California and Defendants have sufficient  
14 minimum contacts with California and/or sufficiently avail themselves of the markets in  
15 California through their promotion, sales, distribution and marketing within California to render  
16 the exercise of jurisdiction by this Court permissible.  
17

18 10. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b) because a  
19 substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred while she  
20 resided in this judicial district. Venue is also proper pursuant to 18 U.S.C. §1965(a) because  
21 Defendants transact substantial business in this District.  
22

### 23 **PARTIES**

24 11. Plaintiff Ginger Ferrell resides in Alameda County, California. In or around the latter  
25 half of 2012, Ms. Ferrell was exposed to and saw the representations described herein regarding  
26 the joint health benefits of Cosamin DS by reading the Cosamin DS product label in a Rite Aid  
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1 store near her home in Oakland, California. Thereafter, she was again exposed to and saw the  
2 representations described herein regarding the joint health benefits of Cosamin DS by reading  
3 the Cosamin DS product label in a Rite-Aid store in Oakland, California. In reliance on these  
4 representations, the claims listed on the product label described herein and above and specifically  
5 those claims listed on the front of the product label, that Cosamin would, “protect her cartilage”  
6 and “reduce her joint pain,” Plaintiff purchased the Cosamin DS product at Rite-Aid store near  
7 her home.. She paid approximately \$35.00 for the product at Rite-Aid. She paid approximately  
8 \$25.00 for the product at Rite-Aid. On each occasion she purchased the product believing it  
9 would provide the advertised joint health benefits and improve her joint soreness and comfort.  
10 As a result of her purchase, Plaintiff suffered injury in fact and lost money. Had Plaintiff known  
11 the truth about Defendants’ misrepresentations and omissions, she would not have purchased the  
12 Cosamin DS product. Plaintiff Ferrell is not claiming physical harm and or seeking the recovery  
13 of personal injury damages.

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17 12. Defendant Nutramax Laboratories, Inc. is incorporated under the laws of Maryland  
18 and its headquarters is located at 2208 Lakeside Boulevard, Edgewood, Maryland 21040.  
19 Nutramax researches, develops, manufactures, distributes, markets and sells nutritional  
20 supplements products across the United States and internationally. Nutramax marketed and sold  
21 Cosamin products to tens of thousands of consumers in California.

22  
23 13. Defendant Rite-Aid Corporation (“Rite-Aid”) is one of the nation’s largest drugstore  
24 chain with stores in 31 states and the District of Columbia. Rite-Aid is a Delaware corporation  
25 headquartered in Camp Hill, Pennsylvania. During the Class period, Rite-Aid promoted,  
26 marketed and sold Cosamin products throughout the United States including California.  
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14. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is one of the world’s largest retailers. Wal-Mart operates Wal-Mart Discount Stores, Wal-Mart Supercenters, Sam’s Club warehouse stores, Neighborhood Markets, walmartstores.com, and walmart.com. Wal-Mart is a Delaware corporation with its principal executive offices in Bentonville, Arkansas. During the Class period, Wal-Mart promoted, marketed and sold Cosamin products throughout the United States including California.

### **FACTUAL ALLEGATIONS**

#### **Cosamin Products**

15. Nutramax manufactures, distributes, and sells the Cosamin line of dietary supplements. The Cosamin line of dietary supplements includes Cosamin DS and Cosamin ASU. Nutramax began manufacturing, marketing and selling Cosamin products in the early 1990’s.

16. Cosamin products are sold in virtually every major food, drug and mass retail outlet in the country and online retailers, including, but not limited to: The defendants named herein, BJ’s Wholesale Club, CVS, Costco, Walgreens and Kroger.

17. Since Cosamin products’ launch, Nutramax has consistently conveyed the message to consumers throughout California that its Cosamin products, with their “exclusive formula” will reduce joint pain and protect joint cartilage of all persons who use Cosamin. These claims are false, misleading and are not substantiated by competent scientific evidence.

18. Wal-Mart and Rite-Aid market and sell the Cosamin products at issue, and participated in the dissemination of the representations concerning the efficacy of Cosamin products and adopted the representations as their own. Wal-Mart and Rite-Aid entered into marketing and sales agreements with Nutramax to further promote and repeat the false and

1 deceptive statements at issue. By placing Cosamin products on their store shelves and retail  
2 websites, and thereafter advertising and selling the Products to Plaintiff and other class members,  
3 Defendants Wal-Mart and Rite-Aid adopted, and are responsible for, the representations  
4 Nutramax made on packaging regarding the efficacy of Cosamin products.  
5

6 19. Wal-Mart and Rite-Aid also promote, market and sell their own Wal-Mart and Rite-  
7 Aid-branded glucosamine chondroitin products, which they market for joint health.  
8

9 20. The primary active ingredient in all Cosamin products is glucosamine hydrochloride.  
10 Glucosamine is an amino sugar the body produces and distributes in cartilage and other  
11 connective tissue. Cosamin DS and Cosamin ASU also contain chondroitin sulfate. Chondroitin  
12 sulfate is a complex carbohydrate found in the body's connective tissues.  
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14 21. According to the Mayo Clinic, the signs and symptoms of osteoarthritis include joint  
15 pain, joint tenderness, joint stiffness and the inability to move your joint through its full range of  
16 motion.  
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18 22. There is no competent scientific evidence that taking glucosamine hydrochloride  
19 chondroitin sulfate results in the body metabolizing it into something that provides the advertised  
20 joint health and cartilage benefits, including relieving the major symptoms of arthritis.  
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22 23. Cosamin ASU contains Nutramax's ASU blend, a combination of avocado/soybean  
23 unsaponifiables and soy protein isolate and green tea leaf extract. There is no competent  
24 scientific evidence that taking any of these ingredients results in the body metabolizing them into  
25 something that relieves any of the major symptoms of arthritis.  
26

27 24. Contrary to the stated representations on all Cosamin product labeling and packaging,  
28 Defendants does not, and has not possessed, competent scientific evidence that any of these

1 ingredients, taken alone and/or in combination, are effective in providing the advertised joint  
2 health and cartilage benefits, including treating the major symptoms of arthritis and/or any other  
3 joint related ailments.

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5 25. Despite scientific studies which demonstrate the claims are false and deceptive, and  
6 no scientifically valid confirmation Cosamin products are an effective “joint health supplement”  
7 Nutramax states on its products’ packaging and labeling that Cosamin is a “Joint Health  
8 Supplement” that will “reduce joint pain” and “protect cartilage cells from breakdown.”  
9

10 26. Nutramax’s statements on its website repeat and reinforce the false and misleading  
11 joint health statements made on the packaging and labeling by stating all and or some  
12 combination of the following:

- 13 • Shown in laboratory tests to PROTECT CARTILAGE cells from breakdown
- 14 • The ONLY brand proven effective in controlled, published U.S. clinical studies to reduce  
15 joint pain
- 16 • Cosamin DS is the #1 Brand Recommended by Orthopedic Specialists. As a joint health  
17 supplement, Cosamin DS helps reduce joint pain and stiffness by using ingredients that  
18 are safe, effective, and easily absorbed. Cosamin DS is superior to all other brands and  
19 has been proven effective in published clinical studies.
- 20 • Cosamin is shown effective in peer-reviewed, controlled, published U.S. research.  
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23 27. Cosamin television commercials repeat the same advertising message. For example,  
24 one commercial includes the following statements:

25 Pharmacist Bob Henderson created Cosamin DS – the only glucosamine chondroitin brand  
26 proven to reduce joint pain. Now we’ve added ASU to make a more advanced formula to combat  
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1 joint discomfort and cartilage breakdown. Cosamin – the number one brand recommended by  
2 orthopedic specialists. Anything less just isn't the best.

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4 28. Likewise, in addition to providing pictures of the false and deceptive packaging and  
5 labeling for Cosamin products, Wal-Mart makes additional statements on its website that repeat  
6 and reinforce the false and misleading joint health statements made on the packaging and  
7 labeling.

8 29. Wal-Mart's advertising statements about Cosamin DS include:

- 9
- 10 • These joint supplements use ingredients that are safe to use and that get easily absorbed  
11 into your bloodstream. The main ingredient being chondroitin sulfate, these tablets  
12 provides cartilage its fluidity and elasticity. The tablets greatly help in protecting your  
13 damaged cartilage, thereby help reduce stiffness in your joints. These chondroitin sulfate  
14 capsules are easy to swallow. Highly recommended by orthopedic surgeons and  
15 rheumatologists, these capsules help maintain healthy and pain-free bone joints.
  - 16 • Orthopedic surgeon and Rheumatologist recommended
  - 17 • Contains the exclusive chondroitin sulfate selected by the National Institutes of Health  
18 for the GAIT study
  - 19 • Take this Cosamin DS Joint Health Supplement to support your joint health. These  
20 Cosamin DS capsules are the only brand that contains pharmaceutical-grade TRH122  
21 chondroitin sulfate and FCHG49 glucosamine. This is why these glucosamine  
22 chondroitin supplements from Cosamin DS are a recommended brand from orthopedic  
23 surgeons and rheumatologists. This joint health supplement isn't only effective, but it  
24 comes in easy-to-swallow capsules, as well  
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- Supports joint health
- Only brand that contains pharmaceutical-grade TRH122 chondroitin sulfate and FCHG49 glucosamine.

30. Wal-Mart's advertising statements about Cosamin ASU include:

- The Cosamin ASU Supplement is designed with active people in mind. As the number one brand recommended by orthopedic specialists, Cosamin ASU Advanced Formula is a comprehensive and complete joint support supplement. The joint health supplement has dual synergy and triple action. The four capsules in this joint pain supplement contain glucosamine and chondroitin sulfate. Start planning for the future and for your health by taking this Cosamin ASU Supplement, Advanced Formula (90ct).
- For active people with joint discomfort
- #1 brand recommended by orthopedic specialists

31. Likewise, in addition to providing pictures of the false and deceptive packaging and labeling for Cosamin products, Rite-Aid makes additional statements on its website that repeat and reinforce the false and misleading joint health statements made on the packaging and labeling.

32. Rite-Aid's advertising statements about Cosamin DS include:

- Premium dietary supplement for joint health
- Joint Health Supplement. Exclusive Formula.
- Protect your cartilage with the only brand proven to reduce joint pain.
- The No. 1 brand recommended by orthopedic specialists.
- Helps your joints last longer.

- Cosamin DS is recommended by Doctors and Pharmacists for joint health.
- The only brand proven effective in controlled, published U.S. studies to reduce joint pain.
- Shown in laboratory tests to protect cartilage from breakdown.
- Contains the full clinical strength of active ingredients-compare to other brands,
- Manufactured in the United States following standards practiced by the pharmaceutical industry.
- Tested and certified by NSF.
- The original researched brand.
- Cosamin DS contains FCHG49 Glucosamine and TRH122 sodium chondroitin sulfate, Nutramax Laboratories exclusive proprietary researched specifications.

33. Rite-Aid's advertising statements about Cosamin ASU include:

- Joint Health Supplement.
- The No. 1 brand recommended by orthopedic surgeons.
- Our most potent formula for joint discomfort.
- Shown to work better than the combination of glucosamine + chondroitin sulfate (In laboratory cell culture studies of inflammatory markers associated with joint discomfort and cartilage breakdown, it was found the combination of ASU [avocado/soybean/unsaponifiables] + glucosamine + chondroitin sulfate was better than the combination of glucosamine + chondroitin sulfate in reducing these markers).
- Help your joints last longer.
- Cosamin ASU is the most complete and comprehensive joint support supplement available; is supported by US published research; is manufactured in the United States

following standards practiced in the pharmaceutical industry; contains decaffeinated green tea extract for antioxidant health benefits.

- Tested & certified by NSF.

**Scientific Studies Confirm That Cosamin Is Not Effective & Defendants' Health Benefits Message Is False & Deceptive**

34. Contrary to the stated representations on all the Products' labeling and packaging, and throughout Defendants' other advertising and marketing for the Products, Defendants do not possess, and has not possessed, competent scientific evidence any of these ingredients, taken alone and/or in combination, are effective in treating the major symptoms of arthritis and/or any other joint related ailments.

35. Defendants knew and/or should have known that glucosamine alone and taken in combination with the other ingredients present in Cosamin have no actual medicinal value and do not provide any of the warranted benefits as represented by Defendants' Cosamin products' packaging, labeling and other advertising. In fact, there is no scientific study demonstrating that any glucosamine product can regenerate cartilage. To the contrary, as numerous studies have confirmed, neither glucosamine, chondroitin nor any other supplements and/or ingredients actually regenerate cartilage and/or provide joint comfort and/or relief from pain.

36. For example, a 1999 study involving 100 subjects by Houpt *et al.*, entitled *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*, 26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed no better than placebo at reducing pain at the conclusion of the eight week trial.

1 37. In February 2004, a Supplement to the American Journal of Orthopedics published an  
2 article entitled “*Restoring Articular Cartilage in the Knee*.” The authors concluded that adult  
3 cartilage cannot be regenerated because it is not vascularized, meaning that blood does not flow  
4 to damaged cartilage which prevents any mechanism for regeneration.

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6 38. Likewise, a 2004 study by McAlindon, *et al.*, entitled, *Effectiveness of Glucosamine*  
7 *For Symptoms of Knee Osteoarthritis: Results From an Internet-Based Randomized Double-*  
8 *Blind Controlled Trial*, 117(9) Am. J. Med. 649-9 (Nov. 2004), concluded “glucosamine was no  
9 more effective than placebo in treating symptoms of knee osteoarthritis” – in short, that  
10 glucosamine is ineffective.

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12 39. A 2004 study by Cibere, *et al.*, entitled, “*Randomized, Double-Blind, Placebo-*  
13 *Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*”, 51(5) Arthritis Care &  
14 Research 738-45 (Oct. 15, 2004), studied users of glucosamine who claimed to have experienced  
15 at least moderate improvement after starting glucosamine. These patients were divided into two  
16 groups - one that continued using glucosamine and one that was given a placebo. For six months,  
17 the primary outcome observed was the proportion of disease flares in the glucosamine and  
18 placebo groups. A secondary outcome was the time to disease flare. The study results reflected  
19 there were no differences in either the primary and/or secondary outcomes for glucosamine and  
20 placebo. The authors concluded the study provided no evidence of symptomatic benefit from  
21 continued use of glucosamine - in other words, any prior perceived benefits were due to the  
22 placebo effect and not glucosamine.

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25 40. A large (1,583 subjects), 24-week, multi-center RCT study sponsored by the National  
26 Institute of Health (“NIH”), published in the New England Journal of Medicine (the “2006 GAIT  
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Study”), concluded: “[t]he analysis of the primary outcome measure did not show that either [glucosamine or chondroitin], alone or in combination, was efficacious. . . .” Clegg, D., *et al.*, Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis, 354 New England J. of Med. 795, 806 (2006).

41. The 2006 GAIT Study authors rigorously evaluated the effectiveness of glucosamine hydrochloride and chondroitin, alone and in combination, on osteoarthritis for six months. According to the study's authors, “[t]he analysis of the primary outcome measure did not show that either supplement, alone and/or in combination, was efficacious. . . .” 2006 GAIT Study at 806.

42. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 reported results were inconclusive. *See* Sawitzke, A.D., *et al.*, *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum. 3183-91 (Oct. 2008); Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2 Year Results From GAIT*, 69(8) Ann Rheum. Dis. 1459-64 (Aug. 2010).

43. The GAIT studies are consistent with the reported results of prior and subsequent studies. For example, the National Collaborating Centre for Chronic Conditions (“NCCCC”) reported “the evidence to support the efficacy of glucosamine hydrochloride as a symptom modifier is poor” and the “evidence for efficacy of chondroitin was less convincing.” NCCCC, Osteoarthritis National Clinical Guideline for Care and Management of Adults, Royal College of

Physicians, London 2008. Consistent with its lack of efficacy findings, the NCCCC Guideline did not recommend the use of glucosamine or chondroitin for treating osteoarthritis. *Id.* at 33.

44. In a 2007 report, Vlad, *et al.* reviewed all studies involving glucosamine hydrochloride and concluded that “[g]lucosamine hydrochloride is not effective.” Glucosamine for Pain in Osteoarthritis, 56:7 Arthritis Rheum. 2267-77 (2007); *see also id.* at 2275 (“we believe there is sufficient information to conclude that glucosamine hydrochloride lacks efficacy for pain in OA”).

45. In October 2008, the American College of Rheumatology's Journal, Arthritis & Rheumatism published a report on a double blind study conducted at multiple centers in the United States examining joint space width loss with radiograph films in patients who were treated with glucosamine hydrochloride. The authors concluded that after two years of treatment with this supplement, the treatment did not demonstrate a clinically important difference in joint space width loss. Sawitzke *et al.*, Glucosamine for Pain in Osteoarthritis: Why do Trial Results Differ?, Arthritis Rheum., 58:3183-3191 (2008).

46. In December 2008, the American Academy of Orthopedic Surgeons published clinical practice guidelines for the “Treatment of Osteoarthritis of the Knee (Non-Arthroplasty),” and recommended that “glucosamine and sulfate or hydrochloride should not be prescribed for patients with symptomatic OA of the knee.” Richmond *et al.*, *Treatment of osteoarthritis of the knee* (non-arthroplasty), J. Am. Acad. Orthop. Surg. Vol. 17 No. 9 591-600 (2009). This recommendation was based on a 2007 report from the Agency for Healthcare Research and Quality (AHRQ), which states that “the best available evidence found that glucosamine hydrochloride, chondroitin sulfate, or their combination did not have any clinical benefit in

1 patients with primary OA of the knee.” Samson, *et al.*, *Treatment of Primary and Secondary*  
2 *Osteoarthritis of the Knee*, Agency for Healthcare Research and Quality, 2007 Sep 1. Report No.  
3 157.

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5 47. Even studies not concerning the type of glucosamine in Cosamin products  
6 demonstrate that glucosamine does not provide the joint health benefits that Defendants  
7 represent. For example, a study by Rozendaal, *et al.*, entitled, *Effect of Glucosamine Sulfate on*  
8 *Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of  
9 glucosamine on the symptoms and structural progression of hip osteoarthritis during two years of  
10 treatment, concluded that glucosamine was no better than placebo in reducing symptoms and  
11 progression of hip osteoarthritis.

12  
13 48. In March 2009, Harvard Medical School published a study conclusively proving the  
14 ingestion of glucosamine could not affect the growth of cartilage. The study took note of the  
15 foregoing 2006 and 2008 studies, which “cast considerable doubt” upon the value of  
16 glucosamine. The authors went on to conduct an independent study of subjects ingesting 1500  
17 mg of glucosamine, and proved that *only trace amounts of glucosamine* entered the human  
18 serum, far below any amount that could possibly affect cartilage (emphasis added). Moreover,  
19 even those trace amounts were present only for a few hours after ingestion. The authors noted  
20 that a 1986 study had found no glucosamine in human plasma after ingestion of four times the  
21 usual 1500 mg of glucosamine chloride or sulphate. Silbert, Dietary Glucosamine Under  
22 Question, *Glycobiology* 19(6):564-567 (2009).

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24  
25 49. In April 2009, the Journal of Orthopedic Surgery published an article entitled,  
26 “Review Article: *Glucosamine*.” The article's authors concluded that, based on their literature  
27



1 review, there was “little or no evidence” to suggest that glucosamine was superior to a placebo  
2 even in slowing down cartilage deterioration, much less regenerating it. Kirkham, *et al.*, Review  
3 Article: Glucosamine, Journal of Orthopedic Surgery, 17(1): 72-6 (2009).  
4

5 50. In 2009, a panel of scientists from the European Food Safety Authority (“EFSA”) (a  
6 panel established by the European Union to provide independent scientific advice to improve  
7 food safety and consumer protection), reviewed nineteen studies submitted by an applicant, and  
8 concluded that “a cause and effect relationship has not been established between the  
9 consumption of glucosamine hydrochloride and a reduced rate of cartilage degeneration in  
10 individuals without osteoarthritis.” EFSA Panel on Dietetic Products, Nutrition and Allergies,  
11 *Scientific Opinion on the substantiation of a health claim related to glucosamine hydrochloride*  
12 *and reduced rate of cartilage degeneration and reduced risk of osteoarthritis*, EFSA Journal  
13 (2009), 7(10):1358.  
14

15 51. In a separate opinion from 2009, an EFSA panel examined the evidence for  
16 glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin sulfate  
17 and maintenance of joints. The claimed effect was “joint health,” and the proposed claims  
18 included “helps to maintain healthy joint,” “supports mobility,” and “helps to keep joints supple  
19 and flexible.” Based on its review of eleven human intervention studies, three meta-analyses, 21  
20 reviews and background papers, two animal studies, one in vitro study, one short report, and one  
21 case report, the EFSA panel concluded that “a cause and effect relationship has not been  
22 established between the consumption of glucosamine (either as glucosamine hydrochloride or as  
23 glucosamine sulphate), either alone or in combination with chondroitin sulphate, and the  
24 maintenance of normal joints.” EFSA Panel on Dietetic Products, Nutrition and Allergies,  
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Scientific Opinion on the substantiation of health claims related to glucosamine alone or in combination with chondroitin sulphate and maintenance of joints and reduction of inflammation, EFSA Journal (2009), 7(9):1264.

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

53. On July 7, 2010, Wilkens, *et al.*, reported there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that neither glucosamine, nor a placebo, were effective in reducing pain related disability. The researchers also concluded that, “Based on our results, it seems unwise to recommend glucosamine to all patients” with low back pain and lumbar osteoarthritis. Wilkens, *et al.*, *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

54. In 2011, Miller and Clegg, after surveying the clinical study history of glucosamine and chondroitin, concluded that, “[t]he cost-effectiveness of these dietary supplements alone or

1 in combination in the treatment of OA has not been demonstrated in North America.” Miller, K.  
2 and Clegg, D., *Glucosamine and Chondroitin Sulfate*, Rheum. Dis. Clin. N. Am. 37 103-118  
3 (2011).

4  
5 55. In June 2011, the Journal of Pharmacy & Pharmaceutical Sciences published an  
6 article entitled, “*The Glucosamine Controversy; A Pharmacokinetic Issue*.” The authors  
7 concluded that regardless of the formulation used, no or marginal beneficial effects were  
8 observed as a result of low glucosamine bioavailability. Aghazadeh-Habashi and Jamali, *The*  
9 *Glucosamine Controversy; A Pharmacokinetic Issue*, Journal of Pharmacy & Pharmaceutical  
10 Sciences, 14(2): 264-273 (2011).

11  
12 56. In 2012, a report by Rovati, *et al.* entitled *Crystalline glucosamine sulfate in the*  
13 *management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties*, Ther Adv  
14 Muskuloskel Dis 4(3) 167-180, noted that glucosamine hydrochloride “ha[s] never been shown  
15 to be effective.”

16  
17 57. In 2012, EFSA examined the evidence to determine if glucosamine sulphate or  
18 glucosamine hydrochloride could substantiate a claimed effect of “contributes to the  
19 maintenance of normal joint cartilage.” Based on its review of 61 references provided by Merck  
20 Consumer Healthcare, the EFSA panel concluded that “a cause and effect relationship has not  
21 been established between the consumption of glucosamine and maintenance of normal joint  
22 cartilage in individuals without osteoarthritis.” EFSA Panel on Dietetic Products, Nutrition  
23 and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine*  
24 *and maintenance of normal joint cartilage*, EFSA Journal 2012, 10(5): 2691.  
25  
26  
27  
28

58. The studies identified by Nutramax on its website are fundamentally flawed, not scientifically valid and/or possess obvious, unmitigated bias, *i.e.* the study itself was sponsored by Nutramax. For example: **Cosamin ASU research & review articles** (as identified on Nutramax's website: <http://www.nutramaxlabs.com/index.php/2012-06-20-17-18-09/research-citations>) (Last viewed 04/08/2013).

- Au RY, Al-Talib TK, Au AY, *et al.*, *Osteoarthritis and Cartilage* 2007;15(11):1249-1255.
- This study was conducted with the support of two employees of Defendant Nutramax, and did not involve any formulation of glucosamine, nor chondroitin. Instead, it studied the effect of avocado soybean unsaponifiables on human cells in a laboratory.
- Au R, Au A, Rashmir-Raven A, Frondoza CG. *The FASEB Journal* 2007;21(6):A736.
- This study was “supported by Nutramax Laboratories, and at least one employees of Nutramax contributed to its findings. The study was conducted on Horse and Human cells in a laboratory, and the findings were totally unreliable, and conclusive at best: “Our study supports the *potential* clinical utility of the combination of ASU, Glu, and CS in suppressing inflammation.” (emphasis added).
- Au A, Au R, Kramer E, *et al.*, *The FASEB Journal* 2007;21(6):A736.
- This Study was not performed on any on either of the key ingredients, glucosamine or chondroitin sulfate.
- Au AY, Polotsky M, Au RY, *et al.*, *Proceedings, 35th Annual Conference Veterinary Orthopedic Society* 2008,56.
- This was a conference; not a clinical study.

- 1 • Cosamin DS Clinical Trials
- 2 • Das AK, Hammad TA. *Osteoarthritis and Cartilage* 2000;8(5):343-350.
- 3 • This was not an independent clinical trial; it was co-sponsored by Nutramax
- 4 Laboratories. Even accounting for the inherent bias in this study, the WOMAC score,
- 5 described as a measurement for the “severity of pain,” did not produce “statistically
- 6 significant” improvements in pain reduction amongst the study participants. *Id.* at p. 347.
- 7 • Leffler CT, Philippi AF, Leffler SG, *et al.*, *Military Medicine* 1999;164(2):85-91.
- 8 • This purported “clinical” trial involved only 34 male participants treating “degenerative
- 9 joint disease of the knee and low back. The methodology performed was not scientifically
- 10 valid as it weighed the participants’ subjective responses and measured improvements in
- 11 physical activity (running times). It made no finding regarding benefits for treating spinal
- 12 degenerative joint disease.
- 13 • Van Blitterswijk WJ, van de Nes JCM, Wuisman PIJM. *BMC Complementary and*
- 14 *Alternative Medicine* 2003, 3:2.

15 This was not clinical trial; it was merely a medical case report of a *single* patient who consumed

16 Defendant’s product. The authors reached no definitive conclusion, stating only, “[I]t is justified

17 to conduct more definitive trials focusing on (disc) cartilage morphology, to unambiguously

18 prove or disprove the beneficial affects of these supplements.”

- 19 • Scroggie DA, Albright A, Harris MD. *Archives of Internal Medicine* 2003. Vol. 163(13):
- 20 1587-1590.

1 This study was not designed to test the efficacy of oral glucosamine consumption, but instead it  
2 was designed to determine whether consumption of glucosamine altered glucose metabolism in  
3 patients with type 2 diabetes.

4  
5 59. To date, there are only two studies, both of which are more than a decade old and  
6 analyze a form of glucosamine not in Cosamin products, purporting to claim the ingestion of  
7 glucosamine can affect the growth or deterioration of cartilage, both sponsored by a glucosamine  
8 supplement manufacturer: Pavelka *et al.*, Glucosamine Sulfate Use and Delay of Progression of  
9 Knee Osteoarthritis, Arch. Intern. Med., 162: 2113-2123 (2002); Reginster *et al.*, Long-term  
10 Effects of Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled  
11 Clinical Trial, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of Orthopedic  
12 Surgery article, the methodologies in those studies had “inherently poor reproducibility,” and  
13 even minor changes in posture by the subjects during scans could cause false apparent changes in  
14 cartilage. The authors of the Journal of Orthopedic Surgery article explained the manufacturer-  
15 sponsored studies’ findings by noting that “industry-sponsored trials report positive effects more  
16 often than do non-sponsored trials and more find pro-industry results.” Moreover, neither study  
17 examined the form of glucosamine in the Products – glucosamine hydrochloride. In fact, no  
18 reliable scientific medical study has shown that glucosamine hydrochloride and chondroitin,  
19 alone or in combination, have a structure modifying effect that will regenerate cartilage that has  
20 broken down or worn away.

21  
22  
23  
24 60. Plaintiff and class members have been and will continue to be deceived or misled by  
25 Defendants’ deceptive representations touting the effectiveness of Cosamin products. Plaintiff  
26 purchased and used Cosamin products during the Class Period and in doing so, read, considered  
27

1 and based her decisions to buy Cosamin on the above cited label representations. Because  
2 Cosamin products' sole purpose is to provide joint relief for the major symptoms of arthritis,  
3 Defendants' representations and omissions were a material factor in influencing Plaintiff's  
4 decision to purchase Cosamin. There is no other reason for Plaintiff to have purchased Cosamin  
5 and Plaintiff would not have purchased Cosamin had she known that Cosamin was ineffective  
6 and Defendants did not possess competent scientific evidence to support the claims that it made  
7 about Cosamin.  
8

9  
10 61. As a result, Plaintiff and the class members have been damaged in their purchases of  
11 Cosamin products and have been deceived into purchasing products they believed, based on  
12 Defendants' representations, were proven to be effective in treating the major symptoms of  
13 arthritis and other joint related ailments when, in fact, they are not.

14 62. Defendants, by contrast, reaped enormous profits from their false marketing and sale  
15 of Cosamin products.  
16

### 17 **CLASS DEFINITION AND ALLEGATIONS**

18 63. Plaintiff brings this action on behalf of herself and all other similarly situated  
19 pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks  
20 certification of the following Class:  
21

22 All persons who purchased Cosamin products in California.

23 Cosamin products include Cosamin DS and Cosamin ASU.

24 Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers and  
25 directors, those who purchased Cosamin products for the purpose of resale, and those who assert  
26 claims for personal injury.  
27

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

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

i. Whether Defendants had competent scientific evidence to support each of the claims that it made about Cosamin products;

ii. Whether the claims discussed herein that Defendants made about Cosamin products were or are false, misleading, or reasonably likely to deceive;

iii. Whether Defendants' alleged conduct violates public policy;

iv. Whether the alleged conduct constitutes violations of the laws asserted herein;

v. Whether Defendants engaged in false and misleading advertising;

vi. Whether Plaintiff and class members have sustained monetary loss and the proper measure of that loss;

vii. Whether Plaintiff and class members are entitled to restitution, disgorgement of Defendants' profits, declaratory and/or injunctive relief; and

viii. Whether Plaintiff and class members are entitled to an award of compensatory damages.

66. The claims asserted by Plaintiff in this action are typical of the claims of the class members, as the claims arise from the same course of conduct by Defendants, and the relief



1 sought is common. Plaintiff and class members suffered uniform damages caused by their  
2 purchase of Cosamin products manufactured, marketed, and sold by Defendants.

3  
4 67. Plaintiff will fairly and adequately represent and protect the interests of the class  
5 members. Plaintiff has retained counsel competent and experienced in both consumer protection  
6 and class litigation.

7  
8 68. A class action is superior to other available methods for the fair and efficient  
9 adjudication of this controversy. The expense and burden of individual litigation would make it  
10 impracticable or impossible for proposed class members to prosecute their claims individually. It  
11 would thus be virtually impossible for the Class, on an individual basis, to obtain effective  
12 redress for the wrongs done to them. Furthermore, even if class members could afford such  
13 individualized litigation, the court system could not. Individualized litigation would create the  
14 danger of inconsistent or contradictory judgments arising from the same set of facts.  
15 Individualized litigation would also increase the delay and expense to all parties and the court  
16 system from the issues raised by this action. By contrast, the class action device provides the  
17 benefits of adjudication of these issues in a single proceeding, economies of scale, and  
18 comprehensive supervision by a single court, and presents no unusual management difficulties  
19 under the circumstances here.  
20

21  
22 69. In the alternative, the Class also may be certified because Defendants have acted or  
23 refused to act on grounds generally applicable to the Class thereby making final declaratory  
24 and/or injunctive relief with respect to the class members as a whole appropriate.  
25  
26  
27  
28

COUNT I

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

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

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

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

73. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendant’s Cosamin products are goods within the meaning of the Act.

74. Defendants violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Cosamin products:

(5) Representing that [the Products] have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . . .

\* \* \*

(7) Representing that [the Products] are of a particular standard, quality or grade . . . if [they are] of another.

\* \* \*

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

\* \* \*

(16) Representing that [the Products have] been supplied in accordance with a previous representation when [they have] not.

75. Defendants violated and continue to violate the Act by representing and failing to disclose material facts on Cosamin products labels and packages as described above when they knew, or should have known, the representations were unsubstantiated, false and misleading and the omissions were of material facts.

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

77. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. Copies of the letters are attached hereto as Exhibit B.

78. If Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add claims for actual, punitive and statutory damages, as appropriate.

1 79. Defendants' conduct is malicious, fraudulent and wanton, and provides misleading  
2 information.

3 80. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing  
4 that this action has been commenced in the proper forum.  
5

6 **COUNT II**  
7 **Violation of Business & Professions Code §17200, et seq.**

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

10 82. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a  
11 result of Defendants' conduct because she purchased the Products.  
12

13 83. In the course of conducting business, Defendants committed unlawful business  
14 practices by, *inter alia*, making the representations (which also constitute advertising within the  
15 meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating  
16 Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions Code §§17200, *et seq.*,  
17 17500, *et seq.*, and the common law.  
18

19 84. Plaintiff and the Class reserve the right to allege other violations of law, which  
20 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to  
21 this date.

22 85. Defendants' acts, omissions, misrepresentations, practices and non-disclosures as  
23 alleged herein also constitute "unfair" business acts and practices within the meaning of Business  
24 and Professions Code §17200 *et seq.*, in that their conduct is substantially injurious to  
25  
26  
27  
28

1 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the  
2 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

3  
4 86. As stated in this complaint, Plaintiff alleges violations of consumer protection, unfair  
5 competition and truth in advertising laws resulting in harm to consumers. Plaintiff asserts  
6 violations of the public policy of engaging in false and misleading advertising, unfair  
7 competition and deceptive conduct towards consumers. This conduct constitutes violations of the  
8 unfair prong of Business & Professions Code §17200 *et seq.*

9  
10 87. There were reasonably available alternatives to further Defendants' legitimate  
11 business interests, other than the conduct described herein.

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

15  
16 89. Defendants' labeling and packaging as described herein, also constitutes unfair,  
17 deceptive, untrue and misleading advertising.

18 90. Defendants' conduct caused and continues to cause substantial injury to Plaintiff and  
19 the other class members. Plaintiff has suffered injury in fact and has lost money as a result of  
20 Defendants' unfair conduct.

21  
22 91. Plaintiff, on behalf of herself, and all other similarly situated California residents, seeks  
23 restitution of all money obtained from Plaintiff and the class members collected as a result of  
24 unfair competition, an injunction prohibiting Defendants from continuing such practices,  
25 corrective advertising and all other relief this Court deems appropriate, consistent with

26  
27 Business & Professions Code §17203.

**COUNT III**

**Breach of Express Warranty**

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

93. Plaintiff, and each member of the Class, formed a contract with Defendants at the time Plaintiff and the other class members purchased Cosamin products. The terms of that contract include the promises and affirmations of fact made by Defendants on Cosamin products advertisements, labels and packaging, as described above. These representations constitute express warranties, became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the class members on the one hand, and Defendants on the other.

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

95. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing Cosamin products that could provide the benefits described above which was the only reason Plaintiff and class members purchased Cosamin products.

96. As a result of Defendants' breach of warranty, Plaintiff and class members have been damaged in the amount of the purchase price for Cosamin products they purchased.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a judgment:

A. Certifying the class as requested herein;

B. Awarding Plaintiff and the proposed class members damages;

1 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the  
2 proposed class members;

3 D. Awarding declaratory and injunctive relief as permitted by law or equity, including  
4 enjoining Defendants from continuing the unlawful practices as set forth herein, and directing  
5 Defendants to identify, with court supervision, victims of their conduct and pay them restitution  
6 and disgorgement of all monies acquired by Defendants by means of any act or practice declared  
7 by this Court to be wrongful;  
8

9 E. Ordering Defendants to engage in a corrective advertising campaign;

10 F. Awarding attorneys' fees and costs; and

11 G. Providing such further relief as may be just and proper.  
12

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.  
15

16 Respectfully submitted,

17 Dated: February 6, 2014

THE TERRELL LAW GROUP

18 /s/ Reginald Terrell

19 \_\_\_\_\_  
REGINALD TERRELL, ESQ.

20  
21 REGINALD TERRELL, ESQ.  
22 THE TERRELL LAW GROUP  
23 Post Office Box 13315, PMB #148  
24 Oakland, California 94661  
25 Telephone: (510) 237-9700  
26 Facsimile: (510) 237-4616  
27  
28

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.)

I. (a) PLAINTIFFS

GEORGIA FERRELL, individually and  
on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff ALAMEDA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
THE TERRELL LAW GROUP, REGINALD TERRELL, PO Box 13315, PMB  
148, Oakland, CA 94605 510-237-9700

DEFENDANTS

NUTRAMAX LABORATORIES, INC., WAL-MART,  
STORES, INC., and RITE-AID CORPORATION

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 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 checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input 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 (Excludes 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 <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical 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 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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 checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of 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 <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <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			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:  
Misrepresentation regarding benefits product allegedly conferred.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)



DATE

SIGNATURE OF ATTORNEY OF RECORD

2-7-2014

REGINALD TERRELL

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.