

Kazerouni Law Group, APC

**KAZEROUNI LAW GROUP, APC**  
Abbas Kazerounian, Esq. (SBN: 249203)  
ak@kazlg.com  
245 Fischer Avenue, Suite D1  
Costs Mesa, California 92626  
Telephone: (800) 400-6808  
Facsimile: (800) 520-5523

**HYDE & SWIGART**  
Joshua B. Swigart, Esq. (SBN: 225557)  
josh@westcoastlitigation.com  
Jessica R. K. Dorman, Esq. (SBN: 279919)  
Jessica@westcoastlitigation.com  
2221 Camino Del Rio South, Suite 101  
San Diego, CA 92108-3551  
Telephone: (619) 233-7770  
Facsimile: (619) 297-1022

*Attorneys for Plaintiff,*  
Rebecca Scheuerman

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

**Rebecca Scheuerman, Individually  
and on Behalf of All Others  
Similarly Situated,**

**Plaintiff,**

**v.**

**VITAMIN SHOPPE INDUSTRIES,  
INC., d/b/a VITAMIN SHOPPE,  
INC,**

**Defendant.**

Case No.: '15CV0025 AJB NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES  
AND RESTITUTION FOR  
VIOLATIONS OF CALIFORNIA'S  
BUS. & PROF. CODE §§ 17200 ET  
SEQ.; CALIFORNIA'S BUS. &  
PROF. CODE §§ 17500 ET SEQ.;  
CALIFORNIA'S HEALTH AND  
SAFETY CODE § 110660;  
NEGLIGENT AND INTENTIONAL  
MISREPRESENTATION.**

**JURY TRIAL DEMANDED**

## INTRODUCTION

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28
1. REBECCA SCHEUERMAN (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Complaint to challenge the actions of VITAMIN SHOPPE INDUSTRIES, INC., D/B/A VITAMIN SHOPPE, INC (“VITAMIN SHOPPE” or “Defendant”) with regard to Defendant’s false promotion of its Reservie Trans-Resveratrol products (250mg and 500mg) as, *inter alia*, primarily consisting of “French Grape Seed Extract,” and “Organic Muscadine Grape and Seed” while entirely omitting the main plant used in the product to provide trans-resveratrol, *Polygonum cuspidatum*, or Japanese Knotweed, as required under federal law. The nationwide advertising, promotion, marketing, packaging and selling of Defendant’s trans-resveratrol content constitutes: (a) a violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 et seq., (b) California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500 et seq.; (c) California Health and Safety Code § 110660; (d) negligent misrepresentation and (e) intentional misrepresentation. This conduct caused Plaintiff and the putative class members damages, and requires restitution to remedy and/or prevent further damages.
2. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of the named Defendant.

## NATURE OF ACTION

3. Dietary supplements sold in the United States commonly contain or are comprised mainly of plants, plant extracts or plant parts that provide important nutrients. As such, legislation has been enacted to protect consumers by providing them with adequate information about what exactly

Kazerouni Law Group, APC

1 a dietary supplement contains before consuming it. One of these protections  
2 exists in 21 C.F.R. § 101.4(h) which requires the following:

3 The common or usual name of ingredients of dietary  
4 supplements that are botanicals (including fungi and algae) shall  
5 be consistent with the names standardized in Herbs of  
6 Commerce

7 ....

8 The listing of these names on the label shall be followed by  
9 statements of: (1) The part of the plant (e.g., root, leaves) from  
10 which the dietary ingredient is derived

11 ...

12 (2) The Latin binomial name of the plant, in parentheses, except  
13 that this name is not required when it is available in the  
14 reference entitled: Herbs of Commerce for the common or usual  
15 name listed on the label

16 ...

17 4. These protections provide consumers important knowledge for decision  
18 making including, but not limited, whether to take a dietary supplement  
19 containing a specific plant that they may have an allergy, sensitivity or  
20 other adverse reaction to but that is not one of the eight major allergens  
21 required to be listed under federal law.

22 5. Laws have also been put in place to protect consumers from false claims of  
23 quality or purity of ingredients and nutrients. The term “organic” is used to  
24 convey the message that the product is a healthier choice than competing  
25 products that contain processed ingredients, potential pesticides, are grown  
26 with chemical fertilizers and that the product is superior and even worth a  
27 premium price because of the benefit. Whereas some may see the terms  
28 “natural” or “organic” as interchangeable, only the term “organic” is

1 defined by law and carries any weight.

2 6. The term “organic” is regularly used by manufacturers, such as Vitamin  
3 Shoppe, to describe a product that has been deemed and/or certified organic  
4 by the federal government (specifically, the United States Department of  
5 Agriculture), whereas the term “natural” has no such certification  
6 requirements. The term natural can mean anything as there is no regulation,  
7 but “organic” has a very unique meaning. More specifically 7 C.F.R. §  
8 205.301 requires that products stating “Made with organic (specified  
9 ingredients)” must “...contain (by weight or fluid volume, excluding water  
10 and salt) at least 70 percent organically produced ingredients...”

11 7. At all times relevant, Vitamin Shoppe has made, and continues to make,  
12 affirmative misrepresentations and/or omissions regarding its Reserve  
13 Trans-Resveratrol products. Specifically, the Reserve Trans-Resveratrol  
14 products, which have been packaged, advertised, marketed, promoted and  
15 sold by Vitamin Shoppe to Plaintiff and other consumers similarly situated,  
16 were represented by Defendant to contain grape based or organic trans-  
17 resveratrol as a substantial ingredient, i.e., “French Grape seed extract” and  
18 “organic muscadine grape and seed.” Although Reserve Trans-Resveratrol  
19 contains some grape and organic ingredients, Reserve Trans-Resveratrol  
20 contains little grape based trans-resveratrol (or much less than consumers  
21 reasonably expect based upon Defendant’s representations as alleged  
22 herein) from the claimed “French grape seed extract” and “Organic  
23 Muscadine Grape and Seed” a fact that Defendant knew and purposely  
24 failed to disclose (or adequately disclose) to consumers. The Reserve  
25 Trans-Resveratrol products consist of mostly, non-organic, presumably  
26 Chinese sourced *Polygonum cuspidatum*, commonly known as Japanese  
27 Knotweed, which is a much cheaper source of trans-resveratrol than French  
28 Grape Seed Extract based trans-resveratrol or Organic Muscadine Grape

1 based trans-resveratrol.<sup>1</sup> To this day, Defendant has taken few, if any  
2 meaningful steps to clear up consumers' misconceptions regarding the  
3 Reservie Trans-Resveratrol product.

4 8. As a consequence of Defendant's unfair and deceptive practices, Plaintiff  
5 and other consumers similarly situated have purchased Reservie Trans-  
6 Resveratrol under the false impression that, by consuming the product they  
7 would be enjoying the healthful and nutritional benefits associated with a  
8 product which they reasonably believed, based upon Defendant's  
9 representations alleged herein, at least substantially contained trans-  
10 resveratrol from French Grape Seed Extract or other grape sources.<sup>2</sup>

---

11  
12 <sup>1</sup> "Although we commonly think of resveratrol as coming from grape skins and red  
13 wine, many resveratrol supplements obtain their high doses of the powerful  
14 antioxidant from the Japanese knotweed plant. Native to parts of Asia including  
15 Japan, China and Korea, Japanese knotweed is successfully grown in North  
16 America and Europe as well. Providing a more concentrated source of resveratrol,  
17 Japanese knotweed is preferred over grape skins by many dietary supplement  
18 manufacturers. Unlike grapes, Japanese knotweed can be grown year round,  
19 allowing manufacturers to have a consistent source of resveratrol for their pills."  
20 <http://www.resveratrolbenefits.com/japanese-knotweed.html>, which was accessed  
21 on July 20, 2014.

22 <sup>2</sup> "Because there have been very few studies conducted on resveratrol in humans,  
23 doctors still can't confirm any benefits, and they don't know what effects these  
24 supplements might have on people over the long term. So far, studies have not  
25 discovered any severe side effects, even when resveratrol is taken in large doses.  
26 However, resveratrol supplements might interact with blood thinners such as  
27 warfarin (Coumadin), and nonsteroidal anti-inflammatory medications such as  
28 aspirin and ibuprofen, increasing the risk for bleeding. Like other supplements,  
resveratrol isn't regulated by the FDA, so it's difficult for consumers to know  
exactly what they're getting when they buy a bottle, or whether the product is  
actually effective. There also isn't any specific dosage recommendation, and  
dosages can vary from supplement to supplement. The dosages in most resveratrol  
supplements are typically far lower than the amounts that have been shown  
beneficial in research studies. Most supplements contain 250 to 500 milligrams of  
resveratrol. To get the equivalent dose used in some animal studies, people would  
have to consume 2 grams of resveratrol (2,000 milligrams) or more a day. The

1 9. Each consumer, including Plaintiff, was exposed to virtually the same  
2 material misrepresentations and/or omissions, which are prominently  
3 displayed on the product's packaging for Reservie Trans-Resveratrol, as  
4 well as on Defendant's website, prior to purchasing the product. In fact,  
5 Defendant completely omitted the words "Japanese Knotweed" or  
6 "*Polygonum cuspidatum*" or the plant part this botanical as required by 21  
7 C.F.R. 101.4, from its website, packaging, advertising, marketing and  
8 promotional materials.

9 10. As a result of Defendant's representations and/or omissions regarding  
10 Reservie Trans-Resveratrol, Plaintiff and other consumers similarly situated  
11 overpaid for the product because the value of the product was diminished at  
12 the time it was sold to consumers. Had Plaintiff and other consumers  
13 similarly situated been made aware that the Reservie Trans-Resveratrol  
14 products contained little or no grape based resveratrol (or much less than  
15 consumers reasonably expect based upon Defendant's representations  
16 alleged herein) from French Grape Seed Extract or other grape sources, they  
17 would not have purchased the Reservie Trans-Resveratrol products, would  
18 have paid less for it, or purchased a different Reservie Trans-Resveratrol  
19 supplement.

20 11. As a result of Defendant's false and misleading statements and failures to  
21 disclose (or adequately disclose), as well as Defendant's other conduct  
22 described herein, Plaintiff and other consumers similarly situated purchased  
23 hundreds of thousands of units of the Reservie Trans-Resveratrol products  
24 and have suffered, and continue to suffer, injury in fact.

25  
26 bottom line: Until more high-quality research is available, experts say they can't  
27 recommend resveratrol supplements for antiaging or disease prevention"  
28 <http://www.webmd.com/heart-disease/resveratrol-supplements>, accessed July 20,  
2014.

1 12. Defendant's conduct violates several federal and California State laws, as  
2 alleged more fully herein.

3 13. This action seeks, among other things, restitution of all amounts unlawfully  
4 retained by Defendant from Defendant's wrongdoing alleged herein.

5 **JURISDICTION AND VENUE**

6 14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d),  
7 as the matter in controversy, exclusive of interest and costs, exceeds the  
8 sum or value of \$5,000,000 and is a class action in which the named  
9 Plaintiff is a citizen of a State different from Defendant.

10 15. Defendant has a great number of retail stores across California, as well as a  
11 website from which it sells its Reserve Trans-Resveratrol products to  
12 consumers. Plaintiff believes that Defendant has sold in excess of  
13 \$5,000,000 worth of its Reserve Trans-Resveratrol products to consumers.

14 16. This Court has personal jurisdiction over Defendant because Defendant  
15 does business in the State of California, is incorporated in the State of New  
16 York, has sufficient minimum contacts with this state, and otherwise  
17 purposely avails itself of the markets in this state through the promotion,  
18 sale, and marketing of its products in this state, to render the exercise of  
19 jurisdiction by this Court permissible under traditional notions of fair play  
20 and substantial justice.

21 17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, in that  
22 Defendant resides within the judicial district and many of the acts and  
23 transactions giving rise to this action occurred in this district because  
24 Defendant:

25 (a) is authorized to conduct business in this district and has intentionally  
26 availed itself of the laws and markets within this district;

27 (b) does substantial business within this district;

28 (c) is subject to personal jurisdiction in this district; and

Kazerouni Law Group, APC

(d) the harm to Plaintiff occurred within this district.

**PARTIES**

18.Plaintiff is, and at all relevant times was, a natural person residing in the State of California, County of Chula Vista.

19.Plaintiff is informed and believes, and thereon alleges, that Defendant’s principal place of business is 2101 91<sup>st</sup> Street, North Bergen, New Jersey 07047, and is incorporated under the laws of the State of Delaware, and does business within the State of California and this district.

**GENERAL ALLEGATIONS**

20.Vitamin Shoppe, is a leading producer and retailer of health supplements in the United States. Defendant sells Reservie Trans-Resveratrol in varying quantities, including 250 mg and 500 mg, throughout the United States, including in California.

21.It has become recently well known that resveratrol may be a powerful antioxidant, and is found in high concentrations in certain types of grapes, such as French Red-Wine Grapes and other grape sources. For years, scientists have believed the health benefits that come from consuming red wine, which may be helpful in maintaining health and preventing disease by neutralizing free radicals,<sup>3</sup> thus helping to prevent cell and tissue damage.

22.During the “Class Period” as defined in paragraph 116, Plaintiff was exposed to and saw Defendant’s advertising, marketing, promotional and packaging claims, purchased Reservie Trans-Resveratrol 250 mg in reliance on these claims, and suffered injury in fact and lost money as a result of

<sup>3</sup> Free radicals are atoms or molecules in a person’s body with an unpaired electron, making them highly unstable. Normally, electrons are found in pairs, and therefore, the free radicals collide with other molecules in an attempt to steal an electron, which in turn, may start a chain reaction, causing damage to cell membranes and DNA through a process known as oxidative stress. In fact, free radicals are able to aggressively destroy healthy cells and have been linked to serious health threats, such as cancer and heart disease.



1 Defendant's unfair, misleading and unlawful conduct described herein.

2 23. Plaintiff is a generally health conscientious person who often shops at  
3 health foods stores and supplement shops. Purity of health supplements and  
4 accuracy of a product's labeling is important to Plaintiff.

5 24. Prior to purchasing Reservie Trans-Resveratrol, Plaintiff visited the website  
6 for Vitamin Shoppe, where Defendant advertised its Reservie Trans-  
7 Resveratrol product.

8 25. Health conscientious people, like Plaintiff, typically rely on a company's  
9 representations, including representations found on a company's website,  
10 when purchasing that company's products, especially representations about  
11 the source of the nutrients or that a product is, or is mostly, "organic," such  
12 as the Reservie Trans-Resveratrol product that is labeled "Made with  
13 Certified Organic Ingredients," which is sold by Defendant "Vitamin  
14 Shoppe." Plaintiff contends that Defendant's Reservie Trans-Resveratrol  
15 products are not made of at least 70% organic materials.

16 26. On April 9, 2014, Plaintiff purchased a bottle of Resveratrol 250 mg (120  
17 capsules) from the Vitamin Shoppe in San Ysidro, California, because  
18 Plaintiff had been exposed to representations by Defendant, including those  
19 on Defendant's website, that it was resveratrol from grapes and similar  
20 representations from Defendant.

21 27. Plaintiff paid \$27.99 pre-tax for the Reservie Trans-Resveratrol product.

22 28. Plaintiff was seeking a dietary health supplement that was high in  
23 resveratrol from grapes because Plaintiff believed that such substance  
24 would likely result in substantial health benefits, such as longevity of life  
25 and other health benefits and not be tainted with solvents such as would be  
26 used in the manufacture of Chinese sourced materials, like Japanese  
27 Knotweed.

28 29. Plaintiff trusted the "Vitamin Shoppe" brand name because of Defendant's

1 claims and wide-spread marketing of the purported high quality of its  
2 products and Plaintiff's interest in such advertised quality. Plaintiff  
3 reasonably relied upon the representations on Reserve Trans-Resveratrol  
4 packaging and various forms of advertisement, such as by internet, rather  
5 than performing in-depth independent research into the truthfulness or  
6 accuracy of Defendant's representations.

7 30. Plaintiff consumed the Reserve Trans-Resveratrol product subsequent to  
8 purchasing it.

9 31. Sometime after purchasing and consuming Reserve Trans-Resveratrol,  
10 Plaintiff learned that it was not likely that Reserve Trans-Resveratrol  
11 contained "250 mg" of resveratrol from "French Grape Seed Extract" and  
12 "Organic Muscadine Grape and Seed" or even a substantial amount of  
13 grape based or organic resveratrol.

14 32. Plaintiff was shocked to learn that it was Japanese Knotweed that was  
15 standardized to contain 250 mg of resveratrol, which means that Reserve  
16 Trans-Resveratrol could not possibly contain 250 mg of resveratrol from  
17 French and organic grape sources.

18 33. Defendant's many representations concerning the Reserve Trans-  
19 Resveratrol product led Plaintiff to believe that Reserve Trans-Resveratrol  
20 contained resveratrol from French and organic grapes that were supposed to  
21 be a very pure source of resveratrol, according to Defendant's website, as  
22 opposed to non-organic Japanese Knotweed, which is presumably from  
23 China, as explained in detail below.

24 34. Health conscientious people, like Plaintiff, also tend to select products that  
25 are created from ingredients they know. It is for this reason that Defendant  
26 intentionally chose to mislead through its labeling and advertising that its  
27 Reserve Trans-Resveratrol product was comprised of Trans-Resveratrol  
28 from grapes, a easily recognizable fruit, instead of Japanese Knotweed, a

1 generally unknown plant.

2 35. With the alleged nutritional and health benefits of resveratrol becoming  
3 more widely known, consumer demand for resveratrol has increased  
4 significantly over the past few years. Defendant hoped to profit from such  
5 research and discovery by selling its products, such as Reservie Trans-  
6 Resveratrol, and differentiating from other resveratrol products by claiming  
7 it substantially contained organic ingredients and/or grape based trans-  
8 resveratrol.

9 36. The words “organic” and “grape” are used on Reservie Trans-Resveratrol’s  
10 packaging, as well as the website while the words “Japanese Knotweed” are  
11 completely omitted

12 37. Defendant seeks to capitalize on consumers’ preference for organic foods  
13 and health supplements with the association between such foods and  
14 supplements and a wholesome and healthy way of life. Defendant is aware  
15 that consumers are willing to pay more for organic supplements because of  
16 this association, as well as the perceived higher quality, health and safety  
17 benefits with products labeled as “organic.”

18 38. Further, Defendant chooses to highlight grape sourced materials as the  
19 source of the trans-resveratrol because known and common fruits, such as  
20 grapes, are more appealing to consumers than Japanese Knotweed, which  
21 is a relatively unknown plant to most consumers and produced in China,  
22 which has other negative connotations.

23 39. In making Plaintiff’s decision to purchase Reservie Trans-Resveratrol 250  
24 mg, Plaintiff relied upon, *inter alia*, the labeling, packaging, advertising  
25 and/or other promotional materials prepared and approved by Defendant  
26 and its agents and disseminated through its packaging, advertising,  
27 marketing, promotion, and/or through local and national advertising media,  
28 including Defendant’s internet websites, media and in-store advertisement,

1 containing the misrepresentations and/or omissions alleged herein.  
2 40. On Defendant's website, Vitamin Shoppe advertises the Reservie Trans-  
3 Resveratrol (in the 250 mg bottle containing 120 capsules) as follows:  
4



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20 Thus, the front packaging states that it is “Made with Certified Organic  
21 Ingredients,” rather than referencing Japanese Knotweed, which constitutes  
22 the main resveratrol ingredient in Reservie Trans-Resveratrol and does not  
23 come from France and is not organic. This misrepresentation of the  
24 products as “organic” is in direct violation of 7 C.F.R. § 205.301.

25 41. Further, on its website Defendant provides the Supplement Facts label  
26 from the Reservie Trans-Resveratrol product (in the 250 mg bottle  
27 containing 60 capsules):  
28

**Reservie Trans Resveratrol Supplement Facts**

How do you read a supplement facts label?

**Supplement Facts****Serving Size** 1 VEGGIE CAP**Servings Per Container** 60

	Amount Per Serving	% Daily Value
RESERVIE TRANS-RESVERATROL COMPLEX BLEND (TRANS-RESVERATROL STANDARDIZED TO CONTAIN 500 MG OF TRANS-RESVERATROL, FRENCH GRAPE SEED EXTRACT, ORGANIC MUSCADINE GRAPE AND SEED (VITIS ROTUNDIFOLIA))	1000 Mg	N/A*
QUERCETIN(AS QUERCETIN DIHYDRATE)	40 Mg	N/A*

\* Daily value not established

**Other Ingredients:**

Vegetable cellulose, magnesium stearate, silica

42. It's true that grapes are generally known to contain resveratrol, but without a substantial amount of grapes (so much so that the product cannot fit into a standardized consumable capsule), it is not commercially or financially viable to produce a consumable capsule containing 500 mg of resveratrol from such grapes (or even 250 mg), such as the French Grape Seed Extract and Organic Muscadine Grape and Seed as advertised by Defendant.

43. According to the Linus Pauling Institute Micronutrient Research for Optimum Health, located at <http://lpi.oregonstate.edu/infocenter/phytochemicals/resveratrol>, accessed on July 20, 2014, "Red wine extracts and red grape extracts containing resveratrol and other polyphenols are also available in the U.S. as dietary supplements. Resveratrol supplements may contain anywhere from **10-50 mg of resveratrol**, but the effective doses for chronic disease prevention in humans are not known." (Emphasis added.)

44. On the Supplement Facts panel, on the back of the packaging, and the product, Reservie Trans-Resveratrol purports to combine two of nature's alleged most potent sources of trans-resveratrol, French Grape Seed Extract and Organic Muscadine Grape and Seed, into a single supplement in the

1 form of a consumable capsule. However, the main ingredient in Reserve  
 2 Trans-Resveratrol, and the main ingredient providing substantial trans-  
 3 resveratrol, is non-organic Japanese Knotweed, not French Grape Seed  
 4 Extract or Organic Muscadine Grapes. Non-organic Japanese Knotweed is a  
 5 much cheaper and more plentiful source of natural trans-resveratrol, as  
 6 opposed to organic, grape based resveratrol or even non-organic grape  
 7 based resveratrol. In addition, despite Defendant’s claim “...From French  
 8 Grape Seed Extract...”, Plaintiff believes that Defendant’s Japanese  
 9 Knotweed is sourced from China, not France.

10 45. The Supplement Facts panel for the 250 mg quantity (60 capsules), which is  
 11 also found on Defendant’s website<sup>4</sup>, indicates “750 mg” next to the word  
 12 “Reservie Trans-Resveratrol” on the same line under the Supplement Facts  
 13 panel. This is misleading because on its face, this capsule is providing the  
 14 consumer 250 mg of resveratrol without indicating how much, if any, is  
 15 actually resveratrol from grape sources.

16 46. According to the Supplement Facts panel, there is “750 Mg” of “Reservie  
 17 Trans-Resveratrol Complex Blend” in the Reserve Trans-Resveratrol  
 18 product, with the “750 Mg” listed to the right of the word “Reservie Trans-  
 19 Resveratrol Complex Blend” on the same line. Reserve Trans-Resveratrol  
 20 is therefore a deceptively packaged and advertised product designed to  
 21 induce the purchase of Reserve Trans-Resveratrol as containing resveratrol  
 22 from “Organic” and “French” grapes, even though the product does not in  
 23 fact contain 750 Mg or even 250 mg of grape based resveratrol, and despite  
 24 the front of the packaging which represents the presence of 250 mg of  
 25 resveratrol from grapes per capsule in this product, that is “Made with  
 26 Certified Organic Ingredients.”

27 \_\_\_\_\_  
 28 <sup>4</sup> See: <http://www.vitaminshoppe.com/p/reservie-trans-resveratrol-250-mg-60-veggie-caps/vs-2841#.Uy-l91xggwi>

1 47. Plaintiff and consumers similarly situated are simply not informed by  
2 Defendant exactly how much, if any, resveratrol from “French Grape Seed  
3 Extract” and “Organic Muscadine Grape and Seed” they are receiving in  
4 each capsule of Reservie Trans-Resveratrol, even though they are paying a  
5 premium for the product due to its advertising, marketing, and other  
6 misrepresentations.

7 48. Defendant fails to properly identify the name of the real predominant source  
8 of the trans- resveratrol, Japanese Knotweed, in violation of 21 C.F.R. §  
9 101.4(h) and further claims that the product is “Made with...” organic  
10 ingredients, when such is not true in violation of 7 C.F.R. § 205.301,  
11 because it contains less than 70% organic ingredients.

12 49. Even though Reservie Trans-Resveratrol contains little trans-resveratrol (or  
13 much less than consumers reasonably expect based upon Defendant’s  
14 representations alleged herein) from French Grape Seed Extract or Organic  
15 Muscadine Grapes, Defendant made a tactical marketing and/or advertising  
16 decision to create a deceptive and misleading label for Reservie Trans-  
17 Resveratrol. Defendant’s label fails to disclose how much trans-resveratrol,  
18 if any, is from conventional or organic grapes and further, misleadingly  
19 indicates that Reservie Trans-Resveratrol, which is advertised as “Made  
20 with Certified Organic Ingredients” contains 250 mg of trans-resveratrol  
21 from French grape seed extract and organic muscadine grape and seed,  
22 when such is not true.

23 50. Vitamin Shoppe could have associated the product with sources of trans-  
24 resveratrol other than French Grape Seed Extract, such as the Japanese  
25 Knotweed, which is the primary ingredient providing resveratrol in  
26 Resveratrol.

27 51. Defendant’s decision to associate its product with grapes, including French  
28 and organic grapes, demonstrates Defendant’s intention to focus consumers

1 on the more desired source of resveratrol, grapes, in the product, rather than  
2 the cheaper (presumably Chinese sourced) Japanese Knotweed.

3 52. The effect of Defendant's label is to communicate that the resveratrol in the  
4 product is composed primarily or wholly of grapes and grape seed,  
5 including French and organic grapes, since there are supposed to be great  
6 health benefits associated with red wine. As a result, purchasers are likely  
7 mislead and deceived by the product's label and other forms of marketing  
8 and advertising, and as a result purchasers reasonably expect that Reserve  
9 Trans-Resveratrol actually consists primarily grape based resveratrol, when,  
10 in fact, this is not the case.

11 53. In addition to the deceptive label, Defendant deceptively describes Reserve  
12 Trans-Resveratrol on its interactive website which is accessible to the  
13 general public. As explained below, Defendant's website conveys the  
14 marketing and/or advertising message in a calculated way to lead  
15 consumers to believe that the product primary contained resveratrol from  
16 grape sources, including French and organic grapes, when in fact it does  
17 not.

18 54. Plaintiff's claim that Defendant's website is misleading and deceptive is  
19 based on specific marketing and/or advertising content, which Defendant  
20 displays on its website, distinct from the misleading aspects of the product  
21 label. Specifically, the misleading and deceptive website content was not  
22 required by the FDA labeling requirements. Instead, Defendant voluntarily,  
23 and in violation of various laws, selected each of the features on the website  
24 in order to maximize its impact on consumers seeking to obtain information  
25 concerning Reserve Trans-Resveratrol. However, Defendant's website  
26 does not adequately inform consumers that the primary ingredient in  
27 Reserve Trans-Resveratrol and the primary source of resveratrol in the  
28 product is Japanese Knotweed, not French Grape Seed Extract and Organic



1 Muscadine Grape and Seed.

2 55.The scope of Defendant’s advertising of Reservie Trans-Resveratrol is  
3 wide-spread. Reservie Trans-Resveratrol is marketed in California and  
4 throughout the nation. Defendant has advertised it Reservie Trans-  
5 Resveratrol product during the Class Period.

6 56.In addition, Plaintiff is informed and believes, and thereupon alleges, that  
7 Defendant has also engaged in other forms of advertising and/or marketing  
8 of Reservie Trans-Resveratrol, including print advertisements, point-of-  
9 purchase displays, and national in-store programs. Through the uniform  
10 deceptive and misleading advertising and marketing campaigns, Vitamin  
11 Shopp leads consumers to believe that the primary, or sole, ingredients in  
12 the product providing resveratrol are “French Grape Seed Extract” and  
13 “Organic Muscadine Grape and Seed”, and that there is a significant  
14 amount of such organic or grape based resveratrol in each capsule.

15 57.As a result of this campaign, the average consumer, unaware that the  
16 product actually contains little or no organic or grape based resveratrol (or  
17 much less than consumers reasonably expect), has purchased the product  
18 believing the main and active nutrient, resveratrol, in the product is derived  
19 primarily or solely from grape sources, namely French and organic grapes.  
20 The primary ingredient is actually Japanese Knotweed, which is much  
21 cheaper than grape based resveratrol, and presumably from China, a much  
22 less desirable source of origin than the United States and France.

23 58.Moreover, consumers’ confusion is reasonable, given that red wine is  
24 typically thought of as an excellent source of resveratrol, and a product  
25 advertised and/or promoted as made from grapes should primarily contain  
26 grapes that provide the main nutrient, not Japanese Knotweed.

27 59.Accordingly, Defendant’s representations regarding trans-resveratrol are  
28 false, misleading and/or fail to disclose material facts. Defendant knew or

1 should have known and/or was reckless in not knowing and adequately  
2 disclosing that Reservie Trans-Resveratrol contained little or no grape  
3 based resveratrol (or much less than consumers reasonably expect).  
4 Defendant knew or should have known that its representations concerning  
5 Reservie Trans-Resveratrol were likely to deceive consumers into believing  
6 that they were purchasing primarily grape based resveratrol from French  
7 and organic grapes.

8 60. Plaintiff's claim that Defendant's product label and associated advertising is  
9 misleading and deceptive does not seek to bring a private action against the  
10 product's formal name in areas for which the Food and Drug  
11 Administration ("FDA") has promulgated regulations implementing the  
12 Federal Food and Drug and Cosmetic Act ("FFDCA"). Plaintiff's claim is,  
13 instead, predicated on the fact that the labeling and associated advertising is  
14 misleading and deceptive even if in compliance with the minimum  
15 requirements set forth by the FDA. Indeed, compliance with the minimum  
16 requirements is necessary, but it is not sufficient to determine whether a  
17 product's label is false and misleading, and simply does not provide a shield  
18 from liability. *See e.g., Wyeth v. Levine*, 129 S. Ct 1187, 12012 (2009). In  
19 this case however, Defendant's label does not meet minimum requirements  
20 as discussed herein.

21 61. Plaintiff's state law claims are aimed at the features of the labeling of  
22 Reservie Trans-Resveratrol and associated advertising that are voluntary,  
23 and not required by the FDA regulations, which Defendant selected in order  
24 to maximize the label's deceptive impact upon Plaintiff and other  
25 consumer's similarly situated. Defendant made the decision to so label its  
26 product because of its marketing strategy. Indeed, Defendant's strategy  
27 misleads consumers to buy Reservie as a result of this deceptive message;  
28 and Defendant has been successful thus far, earning hundreds of thousands,

1 if not millions, of dollars annually from sales of Reservie Trans-Resveratrol  
2 throughout the nation within the last few years.

3 62. Defendant's misrepresentation specifically lies within its efforts to appear  
4 as though it was complying with FDA regulations. The formatting, and  
5 structure of the labels and nutritional information appears to the consumer  
6 to be accurate and in compliance. However, the fact remains that the  
7 amount of trans-resveratrol stated to be included within the product was not  
8 obtained from the sources listed, and therefore the regulations are not being  
9 followed, as the statements are untrue.

10 63. As a result of Defendant's representations and/or omissions, Plaintiff  
11 overpaid for Reservie Trans-Resveratrol purchased by Plaintiff because the  
12 value of the product was diminished at the time of the sale. Had Plaintiff  
13 been aware that Reservie Trans-Resveratrol included little resveratrol (or  
14 much less than consumers reasonably expect) from grapes, and contained  
15 less than 70 percent organic ingredients overall, Plaintiff would not have  
16 purchased it, would have paid less for it, or would have purchased a  
17 different resveratrol supplement. For all the reasons stated herein, Plaintiff  
18 suffered injury in fact and has lost monies as a result of Defendant's  
19 actions.

20 64. Defendant produces and/or sells Resveratrol in bottles of:

21 (a) 250 mg (60 capsules);

22 (b) 500 mg (60 capsules).

23 Defendant's packaging, labeling and marketing of these Reservie Trans-  
24 Resveratrol products is likewise false or misleading for the same or  
25 substantially similar reasons that Defendant's representations and/or  
26 omissions regarding Reservie Trans-Resveratrol 250 mg (60 capsules) is  
27 false or misleading and in violation of California law as alleged herein.  
28

**FIRST CAUSE OF ACTION FOR VIOLATION OF  
CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.  
(California’s False Advertising Law)**

65. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if set forth fully herein.

66. Plaintiff brings this cause of action on behalf of herself and on behalf of the putative class.

67. The misrepresentations, acts and non-disclosures by Defendant of the material facts detailed above constitute false and misleading advertising and therefore violates Business & Professions Code §§ 17500 et seq.

68. At all times relevant, Defendant’s advertising and promotion regarding Reservie Trans-Resveratrol was untrue, misleading and likely to deceive the public and/or has deceived the Plaintiff and California consumers similarly situated by representing that the product contained primarily Trans-Resveratrol from grape sources, including French and organic grapes, when in fact defendant knew and failed to disclose that the product contain primarily Japanese knotweed, and little organic or grape based resveratrol (or much less than consumers reasonably expect based upon Defendant’s representations alleged herein).

69. State law claims based on a food products misleading and deceptive labels are expressly permitted when they impose legal obligations identical to those of the FFDCa and its implementing FDA regulations, including FDA regulations concerning naming and labeling. *See e.g., In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077, 1094-95 (2008). Plaintiff § 17500 claim that the label of the Reservie Trans-Resveratrol product is false or misleading imposes legal obligations identical to 21 U.S.C. § 343(a) of the FFDCa, which states that, “a food shall be deemed to be misbranded...[i]f (1) its labeling is false or misleading in any particular[.]” Further, section

1 343(a) of the FFDCA is not subject to express preemption provision set  
2 forth in 21 U.S.C. § 343-1 of the FFDCA.

3 70. Defendant engaged in the false and/or misleading advertising and marketing  
4 alleged herein with the intent to directly or indirectly induce the purchase of  
5 Reserve Trans-Resveratrol.

6 71. In making and disseminating the statements and and/or omissions alleged  
7 herein, Defendant knew or should have known that the statements and  
8 and/or omissions were untrue or misleading, and acted in violation of  
9 California Business & Professions Code §§ 17500 et seq.

10 72. Plaintiff and members of the putative class have suffered injury in fact and  
11 have lost money or property as a result of Defendant's False Advertising, as  
12 more fully set forth herein. Plaintiff and members of the class have been  
13 injured because they overpaid for Reserve Trans-Resveratrol, since the  
14 value of the supplement was diminished at the time of sale. Plaintiff and  
15 members of the putative class have been injured because had they been  
16 made aware that the Resveratrol product contains primarily Japanese  
17 Knotweed and little grape based or organic resveratrol (or much less than  
18 consumers reasonably expect based upon Defendant's representations  
19 alleged herein), they would have not purchased the supplement, would have  
20 paid less for it, or would purchased a different resveratrol supplement.

21 73. At a date presently unknown to Plaintiff, but at least four years prior to the  
22 filing of this action, and as set forth above, Defendant has committed acts of  
23 untrue and misleading advertising and promotion of Reserve Trans-  
24 Resveratrol, as defined by Business & Professions Code §§ 17500 et seq.,  
25 by engaging in the false advertising and promotion of Reserve Trans-  
26 Resveratrol as grape based Trans-Resveratrol.

27 74. The fraudulent, unlawful and unfair business practices and false and  
28 misleading advertising of Defendant, as described above, presents a

1 continuing threat to consumers in that they will continue to mislead  
2 consumers to purchase Resveratrol on false premises.

3 75.As a direct and proximate result of the aforementioned acts and  
4 representations of Defendant, Defendant received and continues to hold  
5 monies rightfully belonging to Plaintiff and other similarly situated  
6 consumers who were led to purchase, purchase more of, or pay more for  
7 Defendant’s product, due to the unlawful acts of Defendant, during the  
8 Class Period.

9 **II. SECOND CAUSE OF ACTION FOR VIOLATION OF**  
10 **CAL. HEALTH & SAFETY CODE §§ 110660**  
11 **(California’s Sherman Law)**

12 76.Plaintiff repeats, re-alleges and incorporates herein by reference the above  
13 allegations as if set forth fully herein.

14 77.Plaintiff brings this cause of action on behalf of herself and on behalf of the  
15 putative class.

16 78.State law claims based on a food products misleading and deceptive label  
17 are expressly permitted when they impose legal obligations identical to the  
18 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing  
19 FDA regulations, including FDA regulations concerning naming and  
20 labeling. *See e.g., In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077,  
21 1094-95 (2008). The Sherman law expressly incorporates into California  
22 law all of the food labeling regulations adopted pursuant to the FFDCA.  
23 Plaintiff’s § 17200 claim that the label of the Resveratrol product violates  
24 California Health & Safety Code § 110660 imposes legal obligations  
25 identical to 21 U.S.C. § 343(a) of the FFDCA. Since § 110660 imposes the  
26 identical legal obligation that “any food is misbranded if its labeling is false  
27 or misleading in any particular,” part of Plaintiff’s section 17200 claim  
28 (*infra*), which is based in part on § 110660, is expressly permitted and not  
preempted by the FFDCA. Further, § 343(a) of the FFDCA is not subject to

1 express preemption provision set forth in 21 U.S.C. § 343-1 of the FFDCA.  
 2 79. Section 110660 states, “any food is misbranded if its labeling is false or  
 3 misleading in any particular.” Section 110660 is part of California's  
 4 Sherman Food, Drug and Cosmetic law, California Health & Safety Code §  
 5 109875, et seq. (the “Sherman law”). Defendant has violated § 110660  
 6 because the product label misleads and deceives consumers into believing  
 7 that the primary ingredient in **Resveratrol** is resveratrol from grapes, when  
 8 in fact, the product contains little organic or grape based resveratrol (or  
 9 much less than consumers reasonably expect based upon Defendant’s  
 10 representations alleged herein), and does not contain 250 mg of resveratrol  
 11 from grapes, and does not indicate the exact amount of organic or grape  
 12 based resveratrol. The primary ingredient is actually Japanese Knotweed,  
 13 which is presumably from China and not organic.

14 **III. THIRD CAUSE OF ACTION FOR VIOLATION OF**  
 15 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**  
 16 **(California’s Unfair Competition Law)**

17 80. Plaintiff repeats, re-alleges and incorporates herein by reference the above  
 18 allegations as if fully stated herein.

19 81. “Unfair competition” is defined in Business and Professions Code Section §  
 20 17200 as encompassing any one of the five types of business “wrongs,”  
 21 three of which are at issue here: (1) an “unlawful” business act or practice;  
 22 (2) an “unfair” business act or practice; and (3) a “fraudulent” business act  
 23 or practice. The definitions in § 17200 are disjunctive, meaning that each of  
 24 these five “wrongs” (Plaintiff alleges three of them here) operates  
 25 independently from the others.

26 82. Plaintiff and Defendant are both “person[s]” as defined by California  
 27 Business & Professions Code § 17201. Section 17204 authorizes a private  
 28 right of action on both an individual and representative basis.

**a. “Unlawful” Prong**

83. Because Defendant has violated California’s False Advertising Law, Business & Professions Code §§ 17500 et seq., California’s Health and Safety Code § 110660, and the FDA’s regulations under 7 C.F.R. § 205.301 and 21 C.F.R. § 101.4(h) Defendant has violated California’s Unfair Competition Law, Business & Professions Code §§ 17200 et seq., which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

84. There were reasonably available alternatives to further Defendant’s legitimate business interest, other than the conduct described herein.

85. Plaintiff and the putative class reserve the right to allege other violations of law, which constitute other unlawful business practices or acts, as such conduct is ongoing and continues to this date.

**b. “Unfair” Prong**

86. Defendant’s actions and representations constitute an “unfair” business act or practice under § 17200, in that Defendant’s conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. Without limitation, it is an unfair business act or practice for Defendant to knowingly and negligently represent to the consuming public, including Plaintiff, that Resveratrol is primarily composed of trans-resveratrol from grapes when it in fact is primarily composed of less expensive and less appealing sources of resveratrol, such as Japanese Knotweed. Defendant’s business practices, and each of them, are “unfair” because they offend established public policy and/or are in moral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers in that consumers are led to believe that Resveratrol has qualities and benefits, including quantities of grape based trans-



1 resveratrol that it does not have.

2 87. At a date presently unknown to Plaintiff, but at least four years prior to the  
3 filing of this action, and as set forth above, Defendant has committed acts of  
4 unfair competition as defined by Business & Professions Code §§ 17200 et  
5 seq., by engaging in the false advertising and promotion of Reservie Trans-  
6 Resveratrol as, *inter alia*, trans-resveratrol from grape sources, as described  
7 above.

8 88. Plaintiff and other members of the class could not reasonably have avoided  
9 the injury suffered by each of them. Plaintiff reserves the right to allege  
10 further conduct that constitutes other unfair business acts or practices. Such  
11 conduct is ongoing and continues to this date.

12 89. Defendant could have and should have furthered its legitimate business  
13 interests by expressly indicating on its packaging and website the exact  
14 amount of organic and grape based resveratrol in Reservie Trans-  
15 Resveratrol. Further, it is not unreasonably difficult for Defendant to  
16 indicate the exact amount of organic and grape based resveratrol in its  
17 product.

18 **c. “Fraudulent” Prong**

19 90. Defendant’s claims and misleading statements were false, misleading  
20 and/or likely to deceive the consuming public within the meaning of §  
21 17200. Without limitation, it is a fraudulent act or business act or practice  
22 for Defendant to knowingly or negligently represent to Plaintiffs, whether  
23 by conduct, orally or in writing by:

- 24 (a) intentionally and misleadingly designing the product’s front label by  
25 displaying the product’s name “Reservie Trans-Resveratrol” from  
26 “Vitamin Shoppe” along with “Made with Certified Organic  
27 Ingredients” while Resveratrol predominately contains non-organic  
28 Japanese Knotweed (or contains much less organic or grape based

1 resveratrol than consumers reasonably expect based upon Vitamin  
 2 Shoppe’s representations alleged herein concerning Reservie Trans-  
 3 Resveratrol) and other non-organic ingredients such as French Grape  
 4 Seed Extract, Quercetin, Vegetable Cellulose, Magnesium Stearate  
 5 and Silica;

6 (b) intentionally creating Defendant’s website to mislead and deceive  
 7 consumers into believing that Reservie Trans-Resveratrol primarily  
 8 contains trans-resveratrol from “French Grape Seed Extract” and  
 9 “Organic Muscadine Grape and Seed” without adequately identifying  
 10 that the primary ingredient is actually Japanese knotweed, which is a  
 11 less expensive source of resveratrol and presumably Chinese sourced.

12 91. Plaintiff reserves the right to allege further conduct that constitutes other  
 13 fraudulent business acts or practices. Such conduct is ongoing and  
 14 continues to this date.

15 92. The fraudulent, unlawful and unfair business practices and false and  
 16 misleading advertising of Defendant, as described above, presents a  
 17 continuing threat to consumers in that they will continue to be misled into  
 18 purchasing Reservie Trans-Resveratrol on false premises.

19 93. As a direct and proximate result of the aforementioned acts and  
 20 representations of Defendant, Defendant received and continues to hold  
 21 monies rightfully belonging to Plaintiff and other similarly situated  
 22 consumers who were led to purchase, purchase more of, or pay more for,  
 23 the Reservie Trans-Resveratrol product, due to the unlawful acts of  
 24 Defendant.

25 94. Thus, Defendant caused Plaintiff and other members of the Class to  
 26 purchase Reservie Trans-Resveratrol on false premises during the Class  
 27 Period.

28 95. Defendant has engaged in unlawful, unfair and fraudulent business acts or

1 practices, entitling Plaintiff to judgment and equitable relief against  
2 Defendant, as set forth in the Prayer for Relief. Pursuant to Business &  
3 Professions Code § 17203, as result of each and every violation of the UCL,  
4 which are continuing, Plaintiff is entitled to restitution from against  
5 Defendant, as set forth in the Prayer for Relief.

6 96. Plaintiff and members of the putative class have suffered injury in fact and  
7 have lost money or property as a result of Defendant's unfair competition,  
8 as more fully set forth herein. Plaintiff and members of the putative class  
9 have been injured because they overpaid for Reservie Trans-Resveratrol,  
10 since the value of the supplement was diminished at the time of sale.  
11 Plaintiff and members of the class of been injured because, had they been  
12 made aware that the product contained primarily Japanese knotweed and  
13 little or no resveratrol (or much less than consumers reasonably expect)  
14 from French Grape Seed Extract or Organic Muscadine Grape and Seed or  
15 other organic sources, they would not have purchased the product, would  
16 have paid less for it, or purchased a different resveratrol supplement.

17 97. Defendant, through its acts of unfair competition, has unfairly acquired  
18 money from Plaintiff and members of the putative class. It is impossible for  
19 the Plaintiff to determine the exact amount of money that Defendant has  
20 obtained without a detailed review of the Defendant's books and records.  
21 Plaintiff requests that this Court restore this money and enjoin Defendant  
22 from continuing to violate California Business & Professions Code § 17200  
23 et seq., as discussed above.

24 98. Plaintiff further seeks an order requiring Defendant to make full restitution  
25 of all moneys wrongfully obtained and disgorge all ill-gotten revenues  
26 and/or profits, together with interest thereupon.

27 99. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,  
28 California Civil Code section 1021.5.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. FOURTH CAUSE OF ACTION  
FOR NEGLIGENT MISREPRESENTATION**

100. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if fully stated herein.

101. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this action, and as set forth above, Defendant represented to the public, including Plaintiff, by packaging and other means, that Reservie Trans-Resveratrol contains trans-resveratrol from “French Grape Seed Extract” and “Organic Muscadine Grape and Seed” and completely omitted the true, predominant source of resveratrol, namely Japanese Knotweed.

102. Defendant’s representations were untrue in that Resveratrol does not contain 250 mg of resveratrol from organic grapes or grapes grown in France, and does not identify how much organic or grape based resveratrol is in each individual capsule.

103. Defendant made the representations herein alleged with the intention of inducing the public, including Plaintiff, to purchase Reservie Trans-Resveratrol.

104. Plaintiff and other similarly situated persons in California saw, believed, and relied upon Defendant’s advertising representations and, in reliance on them, purchased Reservie Trans-Resveratrol, as described above.

105. At all times relevant, Defendant made the misrepresentations herein alleged, Defendant had no reasonable grounds for believing the representations to be true.

106. As a proximate result of Defendant’s negligent misrepresentations, Plaintiff and other consumers similarly situated were induced to purchase, purchase more of, or pay more for, the Reservie Trans-Resveratrol product,

1 due to the unlawful acts of Defendant, in an amount to be determined at  
2 trial, during the Class Period.

3 **V. FIFTH CAUSE OF ACTION**  
4 **FOR INTENTIONAL MISREPRESENTATION**

5 107. Plaintiff repeats, re-alleges and incorporates herein by reference the  
6 above allegations.

7 108. At a date presently unknown to Plaintiff, but at least four years prior  
8 to the filing of this action, and as set forth above, Defendant represented to  
9 the public, including Plaintiff, by packaging and other means, that Reservie  
10 Trans-Resveratrol contains trans-resveratrol from “French Grape Seed  
11 Extract” and “Organic Muscadine Grape and Seed.”

12 109. Defendant’s representations were untrue in that Resveratrol does not  
13 contain 250 mg of resveratrol from organic grapes or grapes grown in  
14 France, and does not identify how much organic or grape based resveratrol  
15 is in each individual capsule.

16 110. Defendant made the representations herein alleged with the intention  
17 of inducing the public, including Plaintiff, to purchase Reservie Trans-  
18 Resveratrol.

19 111. Plaintiff and other similarly situated persons in California saw,  
20 believed, and relied upon Defendant’s advertising representations and, in  
21 reliance on them, purchased the products, as described above.

22 112. At all times relevant, Defendant made the misrepresentations herein  
23 alleged, Defendant knew the representations to be false.

24 113. As a proximate result of Defendant’s intentional misrepresentations,  
25 Plaintiff and other consumers similarly situated were induced to spend an  
26 amount of money to be determined at trial on Defendant’s product Reservie  
27 Trans-Resveratrol.

28 114. Plaintiff is informed, and believes, and thereupon alleges, that

1 Defendant knew that Reservie Trans-Resveratrol was not as healthy as  
 2 promoted, as it does in fact not contain 250 mg of resveratrol from organic  
 3 grapes or grapes grown in France. Defendant intended that consumers and  
 4 the unknowing public should rely on such representations and other  
 5 representations as alleged herein. Plaintiff and other consumers similarly  
 6 situated, in purchasing and using the products as herein alleged, did rely on  
 7 Defendant's representations, all to their damage and/or detriment, as herein  
 8 alleged. By engaging in said acts, Defendant is guilty of malice, oppression,  
 9 and fraud, and each Plaintiff is therefore entitled to recover exemplary or  
 10 punitive damages.

### 11 CLASS ACTION ALLEGATIONS

12 115. Plaintiff and the members of the Class have all suffered injury in fact  
 13 as a result of the Defendant's unlawful and misleading conduct.

14 116. The "Class Period" means four years prior to filing of this action.

15 117. Plaintiff bring this lawsuit on behalf of herself and the other  
 16 California consumers similarly situated under Rule 23(b)(2) and (b)(3) of  
 17 the Federal Rules of Civil Procedure. Subject to additional information  
 18 obtained through further investigation and/or discovery, the proposed  
 19 "Class" consists of:

20  
 21 "All persons in California who purchased Reservie  
 22 Trans-Resveratrol , 250 mg (60 capsules), and 500  
 23 mg (60 capsules) formulated and distributed by  
 24 Defendant, within four years prior to the filing of  
 25 this action."

26 Excluded from the Class are Defendant and any of its officers,  
 27 directors, and employees, or anyone who purchased Reservie Trans-  
 28 Resveratrol (or Defendant's other products containing resveratrol) for

1 the purposes of resale. Plaintiff reserves the right to modify or amend  
2 the Class definition before the Court determines whether certification  
3 is appropriate.

4 118. ***Ascertainability.*** The members of the Class are readily ascertainable  
5 by resort to Defendant's records and/or Defendant's agent's records,  
6 including in-store and online sales, as well as through public notice.

7 119. ***Numerosity.*** The members of the Class are so numerous that their  
8 individual joinder is impracticable. Plaintiff is informed and believes, and  
9 on that basis alleges, that the proposed class contains several thousands of  
10 members.

11 120. ***Existence and Predominance of Common Questions of Law and***  
12 ***Fact.*** Common questions of law and fact exist as to all members of the  
13 Class predominate over any questions affecting only individual Class  
14 members. All members of the Class have been subject to the same conduct  
15 and their claims are based on the standardized marketing, advertisements  
16 and promotions. The common legal and factual questions include, but are  
17 not limited to, the following:

- 18 (a) Whether Reservie Trans-Resveratrol, i.e., Reservie Trans-Resveratrol  
19 250 mg (60 capsules), and 500 mg (60 capsules) contain primarily  
20 Chinese sourced Japanese Knotweed as the source of resveratrol;  
21 (b) Whether Vitamin Shoppe's claims alleged herein are untrue, or are  
22 misleading, or reasonably likely to deceive;  
23 (c) Whether Defendant's conduct is an unlawful act or practice within  
24 the meaning of California Business & Professions Code § 17200;  
25 (d) Whether Defendant's conduct is a deceptive act or practice within the  
26 meaning of California Business & Professions Code § 17200;  
27 (e) Whether Defendant's conduct is an unfair act or practice within the  
28 meaning of California Business & Professions Code § 17200;

1 (f) Whether Defendant's advertising is untrue or misleading with the  
2 meaning of California Business & Professions Code § 17500;

3 (g) Whether Defendant's advertising is untrue or misleading in violation  
4 of California Health And Safety Code § 110660;

5 (h) Whether Defendant, through its conduct, received money that, in  
6 equity and good conscience, belongs to Plaintiff and members of the  
7 Class; and,

8 (i) Whether Plaintiff and proposed members of the Class are entitled to  
9 restitution and/or disgorgement of Vitamin Shoppe's unjust profits.

10 121. **Typicality.** Plaintiff's claims are typical of the claims of the members  
11 of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to  
12 represent. Plaintiff, like members of the proposed Class, purchased  
13 Resveratrol after exposure to virtually the same material misrepresentations  
14 and/or omissions appearing on the product packaging, and on Defendant's  
15 website, and received a product that contained no resveratrol from French  
16 Grape Seed Extract or Organic Muscadine Grapes (or much less than  
17 consumers reasonably expect from Defendant's representations). Plaintiff is  
18 advancing the same claims and legal theories on behalf of herself and all  
19 absent members of the Class. Vitamin Shoppe's misrepresentations and/or  
20 omissions regarding its other products containing resveratrol, i.e., Reserve  
21 Trans-Resveratrol 250 mg (60 capsules), and 500 mg (60 capsules), are  
22 substantially similar to the misrepresentations and/or omissions regarding  
23 the Reserve Trans-Resveratrol product. Defendant has no defenses unique  
24 to the Plaintiff.

25 122. **Adequacy of Representation.** Plaintiff will fairly and adequately  
26 protect the interests of the members of the Class. Plaintiff has retained  
27 counsel experience in consumer protection law, including class actions.  
28 Plaintiff has no adverse or antagonistic interest to those in the Class, and



1 will fairly and adequately protect the interests of the Class. Plaintiff's  
2 attorneys are aware of no interests adverse or antagonistic to those of the  
3 Plaintiff and proposed Class.

4 123. **Superiority.** A class-action is superior to all other available means for  
5 the fair and efficient adjudication of this controversy. Individualized  
6 litigation would create the danger inconsistent or contradictory judgments  
7 arising from the same set of facts. Individualized litigation would also  
8 increase the delay and expense to all parties and court system and the issues  
9 raised by this action. The damages or other financial detriment suffered by  
10 individual Class members may be relatively small compared to the burden  
11 and expense that would be entailed by individual litigation of the claims  
12 against the Defendant. The injury suffered by each individual member of  
13 the proposed class is relatively small in comparison to the burden and  
14 expense of individual prosecution of the complex and extensive litigation  
15 necessitated by Defendant's conduct. It would be virtually impossible for  
16 members of the proposed Class to individually redress effectively the  
17 wrongs to them. Even if the members of the proposed Class could afford  
18 such litigation, the court system could not. Individualized litigation  
19 increases the delay and expense to all parties, and to the court system,  
20 presented by the complex legal and factual issues of the case. By contrast,  
21 the class action device presents far fewer management difficulties, and  
22 provides the benefits of single adjudication, economy of scale, and  
23 comprehensive supervision by a single court. Therefore, a class action is  
24 maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

25 124. Unless a Class is certified, Defendant will retain monies received as a  
26 result of Defendant's unlawful and deceptive conduct alleged herein.  
27 Unless a class-wide restitution is permitted as compensation and as a  
28 deterrent, Defendant will also likely continue to advertise, market, promote

1 and package Resveratrol in an unlawful and misleading  
2 manner, and members of the Class will continue to be misled and denied  
3 their rights under California law.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and  
6 Plaintiff and Class members be awarded damages from Defendant as follows:

- 7 a. Certifying the Class as requested herein;
- 8 b. An order requiring imposition of a constructive trust to pay restitution to  
9 Plaintiff and all members of the Class and to restore to the plaintiff and  
10 members of the class all funds acquired by means of any act or practice  
11 declared by this Court to be an unlawful, fraudulent or unfair business  
12 act or practice, in violation of laws, statutes or regulations, or  
13 constituting unfair competition;
- 14 c. Distribution of any monies recovered on behalf of members of the Class  
15 via fluid recovery or *cy pres* recovery were necessary and as applicable,  
16 to prevent Defendant from retaining the benefits of their wrongful  
17 conduct;
- 18 d. Statutory prejudgment and post judgment interest;
- 19 e. Special, general, and compensatory damages to Plaintiff and Class  
20 members;
- 21 f. Costs of this suit;
- 22 g. Reasonable attorneys' fees pursuant to, *inter alia*, California Code of  
23 Civil Procedure § 1021.5; and
- 24 h. Awarding any and all other relief that this Court deems necessary or  
25 appropriate.

26 Dated: January 7, 2015

**KAZEROUNI LAW GROUP, APC**

27 BY: /s/ ABBAS KAZEROUNIAN

28 ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

Kazerouni Law Group, APC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Trial By Jury**

1. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 7, 2015

**KAZEROUNI LAW GROUP, APC**

BY: /s/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rebecca Scheuerman, Individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kazerouni Law Group, APC; 245 Fischer Avenue, Suite D1 Costa Mesa, CA 92626 (800) 400-6808

DEFENDANTS

VITAMIN SHOPPE INDUSTRIES, INC., d/b/a VITAMIN SHOPPE, INC,

County of Residence of First Listed Defendant Hudson County, NJ (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'15CV0025 AJB NLS

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): Cal. Bus. & Prof. Code §§ 17500 et seq., CAL. HEALTH & SAFETY CODE §§ 110660, Cal. Bus. &

Brief description of cause: California Unfair Competition Law, False Advertizing

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$ 5,000,001.00+, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

01/07/2015 s/Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## 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.C.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; 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 clerks 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 seven 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**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 dollar amount (in thousands of dollars) 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.