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17  
18 **UNITED STATES DISTRICT COURT**  
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 LAURA CORBETT, On Behalf of  
Herself and All Others Similarly  
21 Situated,

22 Plaintiff,

23 v.

24 PHARMAVITE LLC, a California  
25 limited liability company,

26 Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*;
2. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT,  
Civil Code §1750 *et seq.*; and
3. VIOLATION OF THE NEW YORK  
GENERAL BUSINESS LAW §349

27 DEMAND FOR JURY TRIAL  
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1 Plaintiff Laura Corbett brings this action on behalf of herself and all others  
2 similarly situated against Defendant Pharmavite LLC, and states:

3 **NATURE OF ACTION**

4 1. Pharmavite manufactures, markets, sells and distributes Vitamin E  
5 dietary supplements under its brand name Nature Made.<sup>1</sup> Through an extensive,  
6 widespread, comprehensive and uniform nationwide marketing campaign,  
7 Pharmavite uniformly claims that its Vitamin E products will help maintain a healthy  
8 heart. On each and every bottle of Vitamin E, Pharmavite represents that the Products  
9 “help[] maintain a healthy heart” (hereinafter “the heart health representation”). This  
10 is the only benefit representation made on the Products’ front labels. In truth,  
11 Pharmavite’s Vitamin E products do not help maintain a healthy heart.

12 2. Consumers’ health concerns motivate the purchase and consumption of  
13 dietary supplements such as Defendant’s vitamin E supplements. By prominently  
14 but falsely stating that its Vitamin E products provide heart health benefits,  
15 Defendant plays upon those concerns to lure consumers to purchase its products.

16 3. Defendant’s marketing and sale of its Vitamin E products is directed to  
17 the general population as opposed to those extremely rare few that have what is called  
18 “frank Vitamin E deficiency.”

19 4. Experts in the field recognize that the measure of whether a heart is  
20 healthy is that it is free from cardiovascular disease. Thus, experts in the field view  
21 the test for whether a substance, such as Vitamin E supplements, provide any heart  
22 health benefits is whether the substance helps prevent cardiovascular disease  
23 (“CVD”).<sup>2</sup> As more fully set forth below, large scale randomized controlled clinical  
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25 <sup>1</sup> (1) Natural Vitamin E 400 IU d-Alpha; (2) Vitamin E 400 IU dl Alpha; (3) Vitamin E 400  
26 I.U. Water Solubilized; (4) Vitamin E 1000 IU dl Alpha; and (5) Vitamin E 200 IU dl Alpha  
27 (collectively “the Products” or “Vitamin E”).

28 <sup>2</sup> For example, the American Heart Association defines cardiovascular health as the absence of  
disease.<http://www.heart.org/idc/groups/heartpublic/@wcm/@sop/@smd/documents/dow>

1 trials (“RCTs”) have conclusively shown that Vitamin E supplements such as those  
2 sold by Defendant do not prevent CVD and thus the consensus in the scientific  
3 community is that Vitamin E supplements do not provide any heart health benefits  
4 and most certainly do not help maintain a healthy heart.

5 5. Thus, even though Plaintiff is not asserting that Defendant is making a  
6 false disease claim as that is defined in the FDA Act, and instead is asserting that  
7 Defendant’s Products helps maintain a healthy heart is a false structure function  
8 claim, the evidence will show that, as a matter of science and fact, the measure of  
9 whether Defendant’s structure function claim is truthful or not is determined by  
10 whether it prevents CVD – which the evidence conclusively shows that it does not.

11 6. Another measure of whether Vitamin E supplements, such as those sold  
12 by Defendant, provide any overall long term health benefits, including heart health,  
13 is a measure known as “all-cause mortality.” This measure is used to measure the  
14 rate of death in people who take a substance, in this case Vitamin E supplements,  
15 versus placebo.

16 7. In the last few years several large scale meta-analyses have been  
17 conducted and reported which address the effect, or lack thereof, of Vitamin E  
18 supplementation on all-cause mortality.

19 8. While none of these studies have found Vitamin E supplementation to  
20 benefit all-cause mortality, several well-conducted and highly regarded meta-  
21 analyses have concluded that Vitamin E supplementation actually poses a risk of  
22 harm because people taking Vitamin E supplements were found to die at a higher rate  
23 than those who did not take supplements. The authors of these studies have  
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25 nloadable/ucm\_319831.pdf. Similarly, the Columbia University Medical web site  
26 (<http://www.cumc.columbia.edu/cbch/>), the Mayo Clinic web site  
27 (<http://www.mayoclinic.org/cardiovascular-disease-rst/cardioheartclinic.html>), and  
28 University of Chicago (<http://www.ucmc150.uchicago.edu/cardio/>) web sites all define  
cardiovascular health in terms of the prevention of CVD.

1 concluded that Vitamin E supplements should not be taken by the general population.  
2 See, e.g., Bjelakovic G, Nikolova D, Gluud C., *Meta-Regression Analyses, Meta-*  
3 *Analyses, and Trial Sequential Analyses of the Effects of Supplementation, with Beta-*  
4 *Carotene, Vitamin A, and Vitamin E Singly or in Different Combinations on All-*  
5 *Cause Mortality: Do We Have Evidence for Lack of Harm?* PLOS ONE September  
6 2013: Vol. 8, Issue 9, e74558.

7 9. Other meta-analyses have concluded that although Vitamin E  
8 supplements may not increase the rate of all-cause mortality, nonetheless Vitamin E  
9 supplements have been definitively proven to have no effect on all-cause mortality,  
10 meaning that Vitamin E supplements do not contribute to overall health, including  
11 heart health. In fact, the authors of these studies, like those that authored the studies  
12 that concluded Vitamin E supplements pose risks of harm, have uniformly found that  
13 Vitamin E supplements should not be taken by the general population because they  
14 have been definitively proven not to provide health benefits. See, e.g., Curtis et al.,  
15 “Vitamin E Supplementation and Mortality in Healthy People: A Meta-Analysis of  
16 Randomized Controlled Trials”, *Cardiovasc Drugs Ther* (2014) 28:563-573 (“The  
17 results provide no support for recommending vitamin e supplementation to healthy  
18 adults.”).

19 10. In a similar vein, The U.S. Preventative Services Task Force, an entity  
20 of experts in the field<sup>3</sup> who reviewed the scientific evidence regarding vitamin E  
21 supplements, concluded “with moderate certainty that *the net benefit of vitamin E*  
22 *supplementation is zero.*” *Id.* at 562 (emphasis added).

23 11. The RDA (recommended daily allowance) of Vitamin E, from any  
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25 <sup>3</sup> Created by Congress in 1984, “the U.S. Preventive Services Task Force (USPSTF or Task  
26 Force) is an independent group of national experts in prevention and evidence-based  
27 medicine that works to improve the health of all Americans by making evidence-based  
28 recommendations about clinical preventive services such as screenings, counseling  
services, or preventive medications.” <http://www.ahrq.gov/professionals/clinicians-providers/guidelines-recommendations/uspstf/index.html>

1 source, is 15 mg. This RDA was established in 2000 by the Institute of Medicine  
2 based upon the educated guesstimates of experts in the field.

3 12. Thus, according to experts in the field, there is no need for more than 15  
4 mg of vitamin E per day. Even then Vitamin E deficiency is extremely rare, is almost  
5 never caused by a poor diet, and no deficiency symptoms have been found in healthy  
6 people who obtain less than the RDA of Vitamin E from their diets.<sup>4</sup>

7 13. Defendant sells Vitamin E supplements in mega-dose amounts – 200iu,  
8 400iu and 1000iu.

9 14. Defendant employs the false lure of heart health benefits, prominently  
10 displayed on the front of its labels, to, at best, fraudulently induce persons to purchase  
11 mega-doses of superfluous Vitamin E supplements – well in excess of what, if any,  
12 supplementation is needed – and, at worst, is fraudulently inducing consumers to  
13 purchase mega-dose Vitamin E supplements that are worthless, pose the risk of harm  
14 through increased all-cause mortality or both.

15 15. Consumers' damages are easily calculated – damages are either (1) the  
16 full retail purchase price because the mega-dose supplements they purchased are  
17 worthless and potentially harmful, or (2) the full retail purchase price minus the  
18 additional amount of Vitamin E that is needed to fill any purported alleged gap  
19 between the average intake of 9.7 mg per day and the 15 mg RDA (again, with the  
20 understanding that the overwhelming consensus in the scientific community is that  
21 Vitamin E supplements should not and need not be taken at all). Retail pricing  
22 information sufficient to provide economically reliable estimates of the average retail  
23 prices paid by consumers for Defendant's Vitamin E product are readily obtained  
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25 <sup>4</sup> The average amount of vitamin E consumed on a daily basis from diet is deemed by one survey  
26 to be 9.7 mg. Thus, at best, consumers only need an additional 5.3 mg of vitamin E to meet the 15  
27 mg RDA. And even then, the evidence is that this "gap filling" amount is not needed, since there  
28 are no known negative health consequences that have occurred as a result of the average intake  
being less than the 15mg.

1 from Nielsen.

2 16. By law, the FDA does not and cannot regulate the pre-market approval  
3 of health benefit statements about dietary supplements such as Defendant's Vitamin  
4 E products. Instead, it is the manufacturer's responsibility to ensure that the  
5 statement "characterizes the documented mechanism by which a nutrient or dietary  
6 ingredient acts to maintain such structure or function...." and that the manufacturer  
7 "has substantiation that such statement is truthful and not misleading." 21 U.S.C.  
8 343 (r). As more fully set forth herein, the statement that Defendant's Vitamin E  
9 supplements "help[] maintain a healthy heart" does not have a "documented  
10 mechanism by which" it acts to provide any heart health benefits. And Pharmavite  
11 does not and cannot have substantiation that its heart health statements are truthful  
12 and not misleading because the scientific evidence is overwhelming that Vitamin E  
13 supplements do not provide any heart health structure function benefits. In short,  
14 Vitamin E supplements have been conclusively proven to not "help maintain a  
15 healthy heart" and Defendant's representation in this regard is false.

16 17. That the false heart health representation is the only health  
17 representation on the front label and is prominently displayed on the lower right hand  
18 corner of that label (where consumer's eyes come to rest) was at least a material  
19 influence on consumers' purchases of Defendant's products is reflected in the basics  
20 of marketing and literature, including consumer surveys/studies. The literature  
21 shows that most people do not read the backs of labels and that it is readily recognized  
22 as a basic tenet of marketing that the front of the label is the primary source of  
23 information for consumers about a product just prior to purchase.

24 18. With regard to the science, in testing whether Vitamin E supplements  
25 provided any heart health benefits, the hypothesis was that if Vitamin E supplements  
26 provided any heart health benefits, be they structure function or otherwise, that would  
27 warrant people paying for and taking Vitamin E supplements, such benefits would  
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1 be seen in large scale long-term RCTs studying whether Vitamin E supplementation  
2 would help prevent or its related symptoms.

3 19. Thus, large scale studies were conducted to test the hypothesis of  
4 whether, when taken over a long term, Vitamin E supplements would result in less  
5 incidence of heart health problems such as CVD. While the endpoints of the studies  
6 were the prevention of CVD and its related conditions, if Vitamin E supplements  
7 actually provided any meaningful structure function benefits to the heart (e.g.  
8 benefits that would justify the purchasing and taking of a Vitamin E supplement), it  
9 would result in the Vitamin E supplements showing that they prevented CVD or its  
10 related conditions.

11 20. The results of these large scale RCTs demonstrated that Vitamin E  
12 supplements, like Pharmavite's Products, do not provide any cardiovascular or heart  
13 health benefits. Thus, the sole "active" ingredient in the Products, Vitamin E, does  
14 not work as represented by Pharmavite in that it does not help maintain a healthy  
15 heart. Pharmavite's structure function heart health representation is false,  
16 misleading, and reasonably likely to deceive the public.

17 21. The overwhelming consensus in the scientific community is that  
18 Vitamin E supplementation provides no cardiovascular or heart health benefits.  
19 Thus, major medical groups including the American Heart Association (AHA) and  
20 Mayo Clinic do not recommend that they be taken for heart health. Likewise, a panel  
21 of experts commissioned by the U.S. Preventive Services Task Force<sup>5</sup> has concluded  
22 that Vitamin E supplements have been proven to lack a benefit with regard to  
23 cardiovascular disease and thus with heart health.

24 22. Pharmavite has employed numerous media to convey its uniform,  
25 deceptive heart health representation to consumers, including magazines,  
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27 <sup>5</sup> The U.S. PSTF is a volunteer panel of national experts convened by the Agency for  
28 Healthcare Research and Quality.

1 newspapers, the internet, social media websites, and, importantly, on the front of the  
2 Vitamin E Products’ packaging and labeling where it cannot be missed by consumers.

3 23. As a result of Pharmavite’s deceptive heart health representation,  
4 consumers – including Plaintiff and members of the proposed Class – have purchased  
5 Products that do not perform as advertised.

6 24. Plaintiff brings this action on behalf of herself and other similarly  
7 situated consumers who purchased the Vitamin E Products, to halt the dissemination  
8 of this false, misleading and deceptive advertising message, correct the false and  
9 misleading perception it has created in the minds of consumers, and obtain redress  
10 for those who have purchased the Products. Based on violations of California state  
11 unfair competition laws and other similar state consumer fraud laws, Plaintiff seeks  
12 injunctive and monetary relief for consumers who purchased the Vitamin E Products.

13 **JURISDICTION AND VENUE**

14 25. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).  
15 Defendant has admitted its sales of Vitamin E bearing the “helps maintain a healthy  
16 heart” statement exceed \$5,000,000. The matter in controversy, exclusive of interest  
17 and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there  
18 are in excess of 100 class members and some members of the Class are citizens of a  
19 state different from Pharmavite.

20 26. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many  
21 of the acts and transactions giving rise to the alleged claims occurred in this district  
22 and because Pharmavite:

- 23 • is headquartered in this district;  
24 • is authorized to conduct business in this district and has  
25 intentionally availed itself of the laws and markets within this district through the  
26 promotion, marketing, distribution, and sale of its Products in this district; and  
27 • does substantial business in this district  
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**PARTIES**

27. Plaintiff Laura Corbett is a police officer in the New York Police Department (NYPD) and currently resides in Comack, New York. For several years until approximately 1 ½ years ago, Plaintiff Corbett purchased Pharmavite’s Vitamin E products in various doses. During this entire time, Plaintiff Corbett purchased Defendant’s Vitamin E product solely for its represented heart health benefits. Plaintiff Corbett saw, was exposed to and relied upon Defendant’s representation on the front of the label – that the product “Helps Maintain a Healthy Heart” – and it was this representation that caused Plaintiff to purchase and continue to purchase Defendant’s Vitamin E product during the years that she purchased the products. Plaintiff believes that she made most, if not all, of her purchases of Defendant’s products at a Rite Aid store near where she resided in Queens, New York. During this time period she believes that she paid approximately \$10 for each purchase. The Vitamin E Plaintiff Corbett purchased did not and could not help maintain her heart health as represented because, as discussed herein, the vast weight of scientific evidence and the consensus in the scientific community is that Vitamin E supplements do not provide any heart health benefits. As a result, Plaintiff Corbett suffered injury in fact and lost money. Had Plaintiff Corbett known the truth about Pharmavite’s misrepresentations and omissions, she would not have purchased Defendant’s Vitamin E product.

28. Defendant Pharmavite LLC, is a limited liability company organized and existing under the laws of the State of California. Pharmavite’s headquarters is at 8510 Balboa Boulevard, Mission Hills, California 91325. From its headquarters in Mission Hills, California, Pharmavite manufactures, distributes, markets and sells the Vitamin E products to consumers nationwide and created the deceptive heart health representation which it caused to be disseminated to consumers nationwide.

## FACTUAL ALLEGATIONS

29. Pharmavite manufactures, distributes, markets and sells nationwide Vitamin E dietary supplements under its brand name “Nature Made”. They are: (1) Natural Vitamin E 400 IU d-Alpha; (2) Vitamin E 400 IU dl Alpha; (3) Vitamin E 400 IU Water Solubilized; (4) Vitamin E 1000 IU dl Alpha; and (5) Vitamin E 200 IU dl Alpha.

30. Pharmavite’s Vitamin E products are sold in virtually every major food, drug, and mass retail outlet in the country. The Vitamin E products are available in 60, 100, 180 and 300 count bottles retailing for between \$13 and \$30. The following are screen shots of the Products:



31. Throughout the relevant time period, Pharmavite has consistently conveyed the message to consumers throughout the United States that its Vitamin E products “help[] maintain a healthy heart,” simply by taking the recommended daily dosage. They do not. Pharmavite’s heart health representation is false, misleading and deceptive.

32. Pharmavite represents that the claimed heart health benefit is achieved from the Products’ only purported active ingredient - Vitamin E. Vitamin E is a fat-soluble nutrient found in a variety of foods including, nuts, seeds and green leafy vegetables. In the 1980s and 1990s, because Vitamin E was found to slow down the

1 oxidation of LDL cholesterol in a test tube setting (e.g. *in vitro* testing) it, along with  
2 certain other vitamins such as C and D, was coined an antioxidant. That Vitamin E  
3 carries an “antioxidant” label does not, however, mean that it provides any health  
4 benefits. In fact, there is little known about how Vitamin E and other purported  
5 antioxidants actually work in the human body.

6 33. “Basic science” studies (e.g. *in vitro*, *in vivo*, and animal studies)  
7 conducted decades ago have led to hypotheses, yet to be proven in humans, that  
8 Vitamin E’s purported antioxidant properties might provide a whole host of health  
9 benefits. It is recognized by experts in the field, however, that such “basic science”  
10 studies only create hypotheses that need to be tested and do not constitute scientific  
11 substantiation that Vitamin E provides *any* of these health benefits. Basic science  
12 studies do not constitute proof that a substance works in humans.

13 34. The popularity of Vitamin E and sales of the supplement got an  
14 additional boost when, in the early 1990s, “observational studies” reported a  
15 perceived relationship between the intake of Vitamin E and the prevention of  
16 cardiovascular disease. As a result of those studies – and the commonly held  
17 perception at the time that Vitamin E supplements were safe – there was a rapid  
18 increase in use of Vitamin E supplements.

19 35. However, like basic science studies, observational studies (also known  
20 as “epidemiological or population studies”) are not considered by experts in the field  
21 to constitute adequate proof of cause and effect in human beings. Like basic science  
22 studies, observational studies can only create hypotheses and do not constitute  
23 scientific substantiation that Vitamin E provides any heart health benefits. Among  
24 other things, observational studies cannot control for confounding factors such as  
25 whether the subjects taking Vitamin E were leading healthier lifestyles. As a result,  
26 as with basic science studies, observational studies are deemed by experts in the field  
27 to provide hypotheses about potential effects which then must be tested through  
28

1 RCTs.

2 36. The only accepted form of scientific evidence recognized by experts in  
3 the field for determining any heart or other human health benefit provided by a  
4 substance such as Vitamin E is through RCTs.

5 37. Since the mid-1990s, Vitamin E has been the subject of numerous, large  
6 scale-RCTs, making it one of the most tested substances ever. To date, there have  
7 been more than 25 large long-term RCTs or meta-analyses published, involving  
8 collectively over 200,000 subjects.

9 38. The theory/hypothesis that Vitamin E supplements may provide heart  
10 health benefits has been discredited fully by this scientific research. Instead, the  
11 conclusions from the large randomized clinical trials have been consistent that  
12 Vitamin E supplementation provides no heart health benefits, because these studies  
13 demonstrated that Vitamin E supplements were no better than placebo in affecting  
14 the markers for heart health, such as reducing the risk for cardiovascular disease and  
15 its associated outcomes including heart attacks, stroke, or mortality. In other words,  
16 numerous large scale RCT's, making Vitamin E supplements one of the most studied  
17 substances ever, have established that Vitamin E supplements **do not "help maintain**  
18 **a healthy heart."**

19 39. Representative examples of studies concluding that Vitamin E  
20 supplementation does not provide heart health benefits include: Sesso, H.D., et al.,  
21 *Vitamins E and C in the Prevention of Cardiovascular Disease in Men, The*  
22 *Physicians' Health Study II Randomized Controlled Trial*, 300(18) JAMA 2123-33  
23 (Nov. 2008) (concluding that long term Vitamin E supplementation does not prevent  
24 cardiovascular events in healthy middle-aged and older men and concluding with the  
25 recommendation that persons not take Vitamin E supplements); Lee, I-Min, et al.,  
26 *Vitamin E in the Primary Prevention of Cardiovascular Disease and Cancer. The*  
27 *Women's Health Study: A Randomized Controlled Trial*, 294(1) JAMA 56-65 (July  
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1 2005) (concluding that Vitamin E supplementation provided no heart health benefits  
2 in healthy women and recommending that women not take Vitamin E supplements);  
3 Lonn, E., et al., *Effects of Long-Term Vitamin E Supplementation On Cardiovascular*  
4 *Events And Cancer: A Randomized Controlled Trial*, 293(11) JAMA 1338–47 (Mar.  
5 2005) (concluding that long-term Vitamin E supplementation does not prevent  
6 cardiovascular events, and in fact, may increase the risk for heart failure and  
7 recommending not taking Vitamin E supplements); Arnold, J., et al., *Prevention of*  
8 *Heart Failure in Patients in the Heart Outcomes Prevention Evaluation (HOPE)*  
9 *Study*, 107 *Circulation J.* 1284–290 (Feb. 2003) (concluding that participants taking  
10 400 IU/day of Vitamin E experienced no fewer cardiovascular events or  
11 hospitalizations for heart failure or chest pain than participants taking a placebo);  
12 Chae C., Albert C., Moorthy, MV, Lee I., Buring, J., *Vitamin E Supplementation and*  
13 *the Risk of Heart Failure in Women*, *Circulation: Heart Failure*, 5:176 *Journal of the*  
14 *American Heart Association* 182 (2012) (concluding that “at the present time, the  
15 cumulative evidence to date does not support the use of Vitamin E supplementation  
16 to reduce the risk of cardiovascular diseases”).<sup>6</sup> These large scale and long term  
17 RCTs conclusively demonstrate that Vitamin E supplementation provides no heart  
18 health benefits. That the results of these large scale/long term studies showed that  
19 Vitamin E supplements were no better than placebo demonstrate Defendant’s heart  
20 health representations are false, misleading or deceptive.

21 40. Numerous meta-analyses – which follow accepted statistical protocols  
22 to combine the results of multiple RCTs – have likewise concluded that Vitamin E  
23 supplements do not provide heart health benefits. Additionally, those meta-analyses  
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25 <sup>6</sup> Consistent with the forgoing allegations regarding the hypotheses presented by basic  
26 science and observational studies, each of these studies, in prefatory statements, noted the  
27 results of the basic science or observational studies as background for why they were  
28 conducting their particular RCT. Ultimately, the RCTs did not support the results of the  
observational studies.

1 indicate that people who take a dosage of more than 15mgs of Vitamin E supplements  
2 are more likely to die than those taking a placebo. See Miller ER 3rd, Pastor-  
3 Barriuso R, Dalal D et al., *Metaanalysis: High-Dosage Vitamin E Supplementation*  
4 *May increase all-cause mortality*, Ann Intern Med 2005; 142(1):37-46; Bjelakovic  
5 G, Nikolova D, Gluud LL, Simonetti RG, Gluud C., *Mortality in randomized trials*  
6 *of antioxidant for primary and secondary prevention: systematic review and meta-*  
7 *analysis*, JAMA Feb 28 2007; 297(8):842-857; Bjelakovic G, Nikolova D, Gluud C.,  
8 *Meta-Regression Analyses, Meta-Analyses, and Trial Sequential Analyses of the*  
9 *Effects of Supplementation, with Beta-Carotene, Vitamin A, and Vitamin E Singly or*  
10 *in Different Combinations on All-Cause Mortality: Do We Have Evidence for Lack*  
11 *of Harm?* PLOS ONE September 2013: Vol. 8, Issue 9, e74558.

12 41. Furthermore, in analyzing the endpoint “all-cause mortality” which is  
13 what the above referenced meta-analyses did, they were evaluating whether Vitamin  
14 E supplementation provided any long-term health benefits. Even if one were to  
15 ignore or contest the findings regarding whether Vitamin E supplementation above  
16 15 mg actually increases all-cause mortality, the fact is the Bjalakovic 2013 study,  
17 the most all-inclusive study of Vitamin E supplementation to date, concludes that any  
18 further studies attempting to show that Vitamin E supplementation might provide any  
19 general health benefits such that it might decrease all-cause mortality would be futile.  
20 Even meta-analyses that conclude that Vitamin E supplementation has no effect on  
21 all-cause mortality still conclude that Vitamin E supplementation has been  
22 definitively proven to provide no overall general health benefits (e.g., such as the  
23 hypothesis that since Vitamin E the nutrient is an antioxidant, Vitamin E supplements  
24 might provide some generalized health benefits).

25 42. As such, in addition to being proven to not provide any heart health  
26 benefits (the false lure that Defendant uses to entice consumers to purchase its  
27 products at the point of purchase), the products Defendant sells have been proven  
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1 worthless for providing any overall health benefits and have been proven to pose the  
2 risk of harm. As such, for calculation of damages purposes, Defendant's products  
3 are worthless and Plaintiff and the class are entitled to a full refund of the purchase  
4 price that they paid for these products.

5 43. Since the last of the large scale long term studies showed that Vitamin  
6 E supplementation caused a statistically significant increase (17%) in the incidence  
7 of prostate cancer in men over 50 (the "Select" study), there have been no other large  
8 scale long term RCTs conducted regarding whether Vitamin E supplements like those  
9 sold by Defendant may provide any health benefits. In short, the book is closed on  
10 the question of Vitamin E supplementation. The scientific evidence and the  
11 overwhelming consensus in the scientific community is that other than the few who  
12 have rare deficiency conditions, Americans should not and do not need to take  
13 Vitamin E supplements – that, at best, they are superfluous and at worst are harmful.

14 44. In light of the consistent scientific evidence, well-regarded science  
15 organizations also have uniformly stated that Vitamin E supplementation does not  
16 provide any cardiovascular or heart health benefits. The American Heart Association  
17 has released science advisories, including one in 2004, concluding that "scientific  
18 data do not justify the use of antioxidant vitamin supplements for CVD  
19 [cardiovascular disease] risk reduction."<sup>7</sup> In reaching its conclusion based upon  
20 review of the RCTs, the AHA also recognized that the "positive findings from  
21 observational studies with regard to vitamin E supplementation and lower rates of  
22 CVD may be a reflection of the generally healthy lifestyles and dietary intakes of  
23 supplement users" rather than any true causal effect. *Id.* Consequently, the AHA  
24 stated that it did not recommend people take Vitamin E supplements.

25 45. Mayo Clinic researchers reached the same conclusion upon evaluating  
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27 <sup>7</sup> American Heart Association Science Advisory on Antioxidant Vitamin Supplements and  
28 Cardiovascular Disease *available at* <http://circ.ahajournals.org/content/110/5/637.full>.

1 the history of studies of Vitamin E supplements: “The bottom line is that even though  
 2 initial laboratory studies, animal studies and population research into the health  
 3 benefits of vitamin E looked promising, the clinical trial findings — which provide  
 4 the best form of evidence — didn't bear that out. Instead, they uncovered health risks  
 5 that make it unwise to take separate vitamin E supplements.”<sup>8</sup>

6 46. Despite the overwhelming evidence the Products do not help maintain a  
 7 healthy heart, each and every Product package and label repeatedly emphasizes that  
 8 the Products “help[] maintain a healthy heart.” Each and every consumer who  
 9 purchases these Products is exposed to this deceptive heart health representation,  
 10 which appears prominently and conspicuously on the front of each bottle and is  
 11 repeated again on the back as follows:

12 Front

Back



23  
 24 ***The Impact of Pharmavite’s Wrongful Conduct***

25 47. Despite the scientific evidence that Vitamin E supplementation does not

26 <sup>8</sup> Mayo Clinic Medical Edge Newspaper Column, *Possible Risks Associated with Taking*  
 27 *Vitamin E Supplements*, March 18, 2011 available at <http://www.mayoclinic.org/medical-edge-newspaper-2011/mar-18a.html>.



1 help maintain heart health, Pharmavite continues to unequivocally convey through  
2 its advertising and labeling one uniform message: its Vitamin E products “help[]  
3 maintain a healthy heart.”

4 48. As the manufacturer and distributor of the Vitamin E products,  
5 Pharmavite possesses specialized knowledge regarding the content and effect of the  
6 ingredients contained in its Products and is in a superior position to learn of the  
7 effects – and has learned of the effects – its Products have on consumers.

8 49. Plaintiff and Class members have been and will continue to be deceived  
9 or misled by Pharmavite’s deceptive heart health representation. Plaintiff purchased  
10 and consumed the Vitamin E Products during the Class period and in doing so, read  
11 and considered the Products’ labels and based her decision to buy the Products on  
12 the heart health representation. Pharmavite’s heart health representation was a  
13 material factor in influencing Plaintiff’s decision to purchase and consume the  
14 Products. Plaintiff would not have purchased the Products had she known that  
15 Pharmavite’s heart health representation was false and misleading and that competent  
16 and reliable scientific evidence demonstrates that Vitamin E does not help maintain  
17 heart health.

18 50. As a result, Plaintiff and the Class members have been damaged in their  
19 purchases of these Products and have been deceived into purchasing Products that  
20 they believed, based on Pharmavite’s representations, helped maintain heart health,  
21 when, in fact, they do not. Furthermore, the vast weight of scientific evidence shows  
22 that Vitamin E supplementation does not provide any other long-term general health  
23 benefits –when the results of clinical trials involving Vitamin E supplements are  
24 combined they show that either (1) Vitamin E supplementation causes harm by  
25 increasing the rate of all-cause mortality in those who take them, or (2) provide no  
26 general health benefits.

27 51. Pharmavite, by contrast, reaped enormous profits from its false  
28

1 marketing and sale of these Products.

2 **CLASS DEFINITION AND ALLEGATIONS**

3 52. Plaintiff Corbett brings this action on behalf of herself and all other  
4 similarly situated Class members pursuant to Rule 23(a), (b)(2) and (b)(3) of the  
5 Federal Rules of Civil Procedure and seeks certification of the following Class  
6 against Pharmavite for violations of California consumer protection laws:

7 **Nationwide Class Action**

8 All consumers who, within the applicable statutes of  
9 limitations, purchased Pharmavite’s Vitamin E Products in the  
10 United States.

11 Excluded from the Class are Pharmavite and its officers,  
12 directors and employees and those who purchased Nature  
13 Made Vitamin E dietary supplements for the purpose of resale.

14 In the alternative, if the Court does not certify a nationwide class, Plaintiff Corbett  
15 brings this action on behalf of herself and all other similarly situated Class members  
16 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and  
17 seeks certification of a Multi-state class action minus those states that the Court  
18 finds, under the facts of this case, should not be included in this class action.

19 Excluded from this Class are Pharmavite and its officers, directors and employees  
20 and those who purchased Nature Made Vitamin E dietary supplements for the  
21 purpose of resale.

22 53. In the alternative, Plaintiff Corbett brings this action on behalf of  
23 herself and all other similarly situated consumers pursuant to Rule 23(a), (b)(2) and  
24 (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following  
25 Class against Pharmavite for violations of California consumer protection laws and  
26 the New York State consumer protection laws:

27 ///

28 ///

1                    **California and New York Class Action**

2                    All consumers who, within the applicable statute of  
3                    limitations period, purchased Pharmavite's Vitamin E  
4                    products in California and New York.

5                    Excluded from this Class are Pharmavite and its officers,  
6                    directors and employees and those who purchased Nature  
7                    Made Vitamin E dietary supplements for the purpose of  
8                    resale.

9                    54. **Numerosity.** The members of the Class are so numerous that joinder of  
10                    all members of the Class is impracticable. Plaintiff is informed and believes that the  
11                    proposed Class(es) contain thousands of purchasers of the Vitamin E products who  
12                    have been damaged by Pharmavite's conduct as alleged herein. The precise number  
13                    of Class members is unknown to Plaintiff.

14                    55. **Existence and Predominance of Common Questions of Law and Fact.**  
15                    This action involves common questions of law and fact, which predominate over any  
16                    questions affecting individual Class members. These common legal and factual  
17                    questions include, but are not limited to, the following:

- 18                    (a) whether Pharmavite's heart health representations are misleading, or  
19                    objectively reasonably likely to deceive;
- 20                    (b) whether Pharmavite's alleged conduct violates public policy;
- 21                    (c) whether the alleged conduct constitutes violations of the laws asserted;
- 22                    (d) whether Pharmavite engaged in false or misleading advertising;
- 23                    (e) whether Plaintiff and Class members have sustained monetary loss and  
24                    the proper measure of that loss; and
- 25                    (f) whether Plaintiff and Class members are entitled to other appropriate  
26                    remedies, including damages, corrective advertising and injunctive relief.

27                    56. **Typicality.** Plaintiff's claims are typical of the claims of the members  
28                    of the Class because, *inter alia*, all Class members were injured through the uniform  
29                    misconduct described above and were subject to Pharmavite's deceptive heart health

1 representation that accompanied each and every bottle of Vitamin E. Plaintiff is also  
2 advancing the same claims and legal theories on behalf of herself and all members of  
3 the Class. Plaintiff has standing to advance these claims because Pharmavite is  
4 headquartered in California; created and disseminated the deceptive heart health  
5 representation nationwide from its California headquarters; and manufactured,  
6 distributed, marketed, and/or sold its Vitamin E products from its California  
7 headquarters.

8       **57. Adequacy of Representation.** Plaintiff will fairly and adequately  
9 protect the interests of the members of the Class. Plaintiff has retained counsel  
10 experienced in complex consumer class action litigation, and Plaintiff intends to  
11 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to  
12 those of the Class.

13       **58. Superiority.** A class action is superior to all other available means for  
14 the fair and efficient adjudication of this controversy. The damages or other financial  
15 detriment suffered by individual Class members is relatively small compared to the  
16 burden and expense that would be entailed by individual litigation of their claims  
17 against Pharmavite. It would thus be virtually impossible for members of the Class,  
18 on an individual basis, to obtain effective redress for the wrongs done to them.  
19 Furthermore, even if Class members could afford such individualized litigation, the  
20 court system could not. Individualized litigation would create the danger of  
21 inconsistent or contradictory judgments arising from the same set of facts.  
22 Individualized litigation would also increase the delay and expense to all parties and  
23 the court system from the issues raised by this action. By contrast, the class action  
24 device provides the benefits of adjudication of these issues in a single proceeding,  
25 economies of scale, and comprehensive supervision by a single court, and presents  
26 no unusual management difficulties under the circumstances here.

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

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

10 61. Pharmavite has acted and refused to act on grounds generally applicable  
11 to the Class, making appropriate final injunctive relief with respect to the Class as a  
12 whole.

13 **COUNT I**  
14 **Violation of Business & Professions Code §17200, et seq.**  
15 **(Applicable to the Nationwide, Multi-State Class, or Alternatively, to the**  
16 **California-Only Class)**

17 62. Plaintiff repeats and re-alleges the allegations contained in the  
18 paragraphs above, as if fully set forth herein.

19 63. Plaintiff Corbett brings this claim individually, and on behalf of the  
20 California-only Class, and on behalf of the Nationwide and Multi-State Class.

21 64. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
22 property as a result of Pharmavite's conduct because she purchased the Product in  
23 reliance on Pharmavite's heart health representation, but did not receive a Product  
24 that maintains heart health. The Unfair Competition Law, Business & Professions  
25 Code §17200, et seq. ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair"  
26 business act or practice and any false or misleading advertising. In the course of  
27 conducting business, Pharmavite committed unlawful business practices by, *inter*  
28 *alia*, making the representations (which also constitutes advertising within the

1 meaning of §17200) and omissions of material facts, as set forth more fully herein,  
2 and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business &  
3 Professions Code §§17200, *et seq.*, 17500, *et seq.*

4 65. Plaintiff and the Class reserve the right to allege other violations of law,  
5 which constitute other unlawful business acts or practices. Such conduct is ongoing  
6 and continues to this date.

7 66. Pharmavite's actions also constitute "unfair" business acts or practices  
8 because, as alleged above, *inter alia*, Pharmavite engaged in false advertising,  
9 misrepresented and omitted material facts regarding its Vitamin E products, and  
10 thereby offended an established public policy, and engaged in immoral, unethical,  
11 oppressive, and unscrupulous activities that are substantially injurious to consumers.

12 67. As stated in this Complaint, Plaintiff alleges violations of consumer  
13 protection, unfair competition and truth in advertising laws, resulting in harm to  
14 consumers. Pharmavite's acts and omissions also violate and offend the public policy  
15 against engaging in false and misleading advertising, unfair competition and  
16 deceptive conduct towards consumers. This conduct constitutes violations of the  
17 unfair prong of Business & Professions Code §17200, *et seq.*

18 68. There were reasonably available alternatives to further Pharmavite's  
19 legitimate business interests, other than the conduct described herein.

20 69. Business & Professions Code §17200, *et seq.*, also prohibits any  
21 "fraudulent business act or practice."

22 70. Pharmavite's actions, claims, nondisclosures and misleading  
23 statements, as more fully set forth above, were also false, misleading and/or likely to  
24 deceive the consuming public within the meaning of Business & Professions Code  
25 §17200, *et seq.*

26 71. Plaintiff and the other Class members have suffered injury in fact and  
27 lost money as a result of these unlawful, unfair, and fraudulent practices.

28

1 72. As a result of its deception, Pharmavite has been able to reap unjust  
2 revenue and profit.

3 73. Unless restrained and enjoined, Pharmavite will continue to engage in  
4 the above-described conduct. Accordingly, injunctive relief is appropriate.

5 74. Plaintiff, on behalf of herself, all others similarly situated, and the  
6 general public, seeks restitution of all money obtained from Plaintiff and the  
7 members of the Class as a result of unfair competition, an injunction prohibiting  
8 Pharmavite from continuing such practices, corrective advertising and all other relief  
9 this Court deems appropriate, consistent with Business & Professions Code §17203.

10 **COUNT II**  
11 **Violations of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.***  
12 **(Applicable to the Nationwide, Multi-State Class, or Alternatively, to the**  
13 **California-Only Class)**

14 75. Plaintiff repeats and re-alleges the allegations contained in the  
15 paragraphs above, as if fully set forth herein.

16 76. Plaintiff Corbett brings this claim individually and on behalf of the  
17 California-only Class, and on behalf of the Nationwide and Multi-State Class.

18 77. This cause of action is brought pursuant to the Consumers Legal  
19 Remedies Act, California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a  
20 “consumer” as defined by California Civil Code §1761(d). Pharmavite’s Vitamin E  
21 products are “goods” within the meaning of the Act.

22 78. Pharmavite violated and continues to violate the Act by engaging in the  
23 following practices proscribed by California Civil Code §1770(a) in transactions with  
24 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
25 the Vitamin E products:

- 26 (5) Representing that [the Vitamin E products have] . . . approval,  
27 characteristics, . . . uses [and] benefits . . . which [they do] not have . . . .

28 \* \* \*

1 (7) Representing that [the Vitamin E products are] of a particular standard,  
2 quality or grade . . . if [they are] of another.

3 \* \* \*

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

5 \* \* \*

6 (16) Representing that [the Vitamin E products have] been supplied in  
7 accordance with a previous representation when [they have] not.

8 79. Pharmavite violated the Act by representing and failing to disclose  
9 material facts on the Products' labels and associated advertising, as described above,  
10 when it knew, or should have known, that the representations were false and  
11 misleading and that the omissions were of material facts it was obligated to disclose.

12 80. Pursuant to California Civil Code §1782(d), Plaintiff and the Class seek  
13 a Court order enjoining the above-described wrongful acts and practices of  
14 Pharmavite and for restitution and disgorgement.

15 81. Pursuant to §1782 of the Act, Plaintiff notified Pharmavite in writing by  
16 certified mail of the particular violations of §1770 of the Act and demanded that  
17 Pharmavite rectify the problems associated with the actions detailed above and give  
18 notice to all affected consumers of Pharmavite's intent to so act. A copy of the letter  
19 is attached hereto as Exhibit A

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

24 83. Pharmavite's conduct is fraudulent, wanton and malicious.

25 84. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the  
26 affidavit showing this action has been commenced in the proper forum.

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**COUNT III**

**Violations of the New York General Business Law § 349  
(Applicable to the New York-Only Class)**

1  
2  
3 85. Plaintiff Corbett repeats and re-alleges the allegations contained in the  
4 paragraphs above, as if fully set forth herein.

5 86. Plaintiff Corbett brings this claim individually and on behalf of the New  
6 York-only Class.

7 87. Pharmavite's actions alleged herein constitute unlawful, unfair, and  
8 deceptive business practices. Those actions include misrepresenting that Nature  
9 Made Vitamin E "helps maintain a healthy heart," leading consumers to incorrectly  
10 believe Nature Made Vitamin E would reduce their risk of cardiovascular disease or  
11 otherwise maintain a healthy heart.

12 88. Plaintiff Corbett is not challenging any statement on Pharmavite's labels  
13 required by the FDA.

14 89. Pharmavite's conduct constitutes acts, uses and/or employment by  
15 Pharmavite or its agents or employees of deception, unconscionable and unfair  
16 commercial practices, false pretenses, false promises, misrepresentations and/or the  
17 knowing concealment, suppression, or omission of material facts with the intent that  
18 others rely upon such concealment, suppression or omission, in connection with the  
19 sale or advertisement of goods in violation of Section 349 of New York's General  
20 Business Law.

21 90. Pharmavite's deceptive conduct was generally directed at the  
22 consuming public.

23 91. Pharmavite's unfair and deceptive trade acts and practices have directly,  
24 foreseeably, and proximately caused damages and injury to Plaintiff and other  
25 members of the New York-only Class.

26  
27  
28

1 92. Pharmavite's violations of Section 349 of New York's General Business  
2 Law have damaged Plaintiff and other New York-only Class members, and threaten  
3 additional injury if the violations continue.

4 93. Pharmavite's deceptive conduct has caused harm to New York-only  
5 Class members in that they purchased Nature Made Vitamin E when they otherwise  
6 would not have or paid more for Nature Made Vitamin E than they otherwise would  
7 have, absent Pharmavite's deceptive conduct.

8 94. Plaintiff Corbett, on her own behalf and on behalf of the New York-only  
9 Class, seeks damages, injunctive relief, including an order enjoining Pharmavite's  
10 Section 349 violations alleged herein, and court costs and attorneys' fees, pursuant  
11 to NY Gen. Bus. Law § 349.

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for a judgment:

- 14 A. Certifying the Class(es) as requested herein;  
15 B. Awarding Plaintiff and the proposed Class members damages;  
16 C. Awarding restitution and disgorgement of Pharmavite's revenues to  
17 Plaintiff and the proposed Class members;  
18 D. Awarding injunctive relief as permitted by law or equity, including  
19 enjoining Pharmavite from continuing the unlawful practices as set forth herein;  
20 E. Awarding statutory and punitive damages, as appropriate;  
21 F. Ordering Pharmavite to engage in a corrective advertising campaign;  
22 G. Awarding attorneys' fees and costs; and  
23 H. Providing such further relief as may be just and proper.

24 **DEMAND FOR JURY TRIAL**

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

1 Dated: August 7, 2015

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

3 /s/ Patricia N. Syverson

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26 GOLDMAN SCARLATO & PENNY P.C.

27 Brian D. Penny (*To Be Admitted Pro Hac Vice*)

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Attorneys for Plaintiff  
*LAURA CORBETT, On Behalf of Herself and All  
Others Similarly Situated*

# **EXHIBIT A**



**BONNETT FAIRBOURN  
FRIEDMAN & BALINT PC**

WILLIAM G. FAIRBOURN  
VAN BUNCH<sup>6</sup>  
ELAINE A. RYAN<sup>7</sup>  
JONATHAN S. WALLACK  
CHRISTINA L. BANNON  
TONNA K. FARRAR<sup>5</sup>  
TY D. FRANKEL  
KENDALL K. WILSON

ANDREW S. FRIEDMAN  
ROBERT J. SPURLOCK  
ANDREW Q. EVERROAD  
GUY A. HANSON  
MANFRED P. MUECKE<sup>4</sup>  
T. BRENT JORDAN<sup>8</sup>  
KEVIN R. HANGER  
LAURA A. VAN BUREN

FRANCIS J. BALINT, JR.<sup>9</sup>  
C. KEVIN DYKSTRA  
PATRICIA N. SYVERSON<sup>2</sup>  
KIMBERLY C. PAGE<sup>3</sup>  
WILLIAM F. KING  
ANDREW M. EVANS  
ERIC D. ZARD  
AUDRA E. PETROLLE<sup>10</sup>

JERRY C. BONNETT,<sup>1</sup> Of Counsel  
MICHAEL N. WIDENER, Of Counsel

<sup>1</sup>Admitted Also in Colorado  
<sup>2</sup>Admitted Also in California  
<sup>3</sup>Admitted Also in Alabama and Georgia  
<sup>4</sup>Admitted Only in California  
<sup>5</sup>Admitted Only in California, Kansas, Missouri  
and Oregon (located in Oregon)  
<sup>6</sup>Admitted Only in Pennsylvania  
<sup>7</sup>Admitted Also in Colorado, Idaho, Illinois,  
Kansas, Missouri, Texas, Utah and  
Washington  
<sup>8</sup>Admitted Also in Tennessee and West Virginia  
<sup>9</sup>Admitted Also in Massachusetts and Virginia  
<sup>10</sup>Admitted Also in New Jersey and New York

August 7, 2015

**VIA CERTIFIED MAIL**  
**(RECEIPT NO. 7009 0080 0000 4081 5608)**

Pharmavite, LLC  
General Counsel  
P.O. Box 9606  
Mission Hills, California 91346-9606

Re: *Corbett v. Pharmavite, LLC.*

Dear Sir or Madam:

Our law firm together with Boodell & Domanskis, LLC and Goldman Scarlato Karon & Penny P.C., represent Laura Corbett and all other consumers similarly situated in an action against Pharmavite, LLC (collectively, “Pharmavite” or “Defendant”), arising out of, *inter alia*, misrepresentations by Defendant to consumers that your Nature Made Vitamin E dietary supplements<sup>1</sup> “help[] maintain a healthy heart” (hereinafter “the heart health representation”).

Ms. Corbett and others similarly situated purchased Vitamin E unaware that Pharmavite’s representations that the Products’ heart health representation is false. Large scale RCTs have demonstrated that Vitamin E supplements, like Pharmavite’s Products, do not provide any cardiovascular or heart health benefits. Thus, the sole “active” ingredient in the Products, Vitamin E, does not work as represented by Pharmavite in that it does not help maintain a healthy heart. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Pharmavite’s heart health representation is false and misleading and constitutes unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Pharmavite with the intent to induce the consuming public to purchase Vitamin E. The heart health representation does not assist consumers; it simply mislead them.

<sup>1</sup> The products include: (1) Natural Vitamin E 400 IU d-Alpha; (2) Vitamin E 400 IU dl Alpha; (3) Vitamin E 400 I.U. Water Solubilized; (4) Vitamin E 1000 IU dl Alpha; and (5) Vitamin E 200 IU dl Alpha (collectively “the Products” or “Vitamin E”).

August 7, 2015  
Page 2

Pharmavite's heart health representation violates California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Vitamin E has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [Vitamin E is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

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

\* \* \*

- (16) Representing that [Vitamin E has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Pharmavite's heart health representation also constitutes violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Pharmavite immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Pharmavite should offer to refund the purchase price to all consumer purchasers of Vitamin E, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted Consumers Legal Remedies Act theories. Thus, to avoid further litigation, it is in the interest of all parties concerned that Pharmavite address these violations immediately.

Pharmavite must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

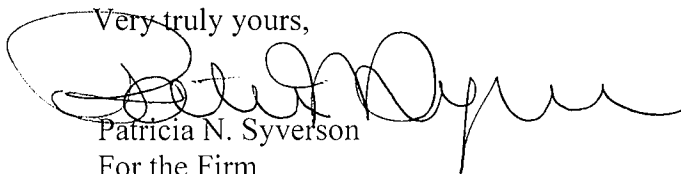
August 7, 2015

Page 3

1. Identify or make a reasonable attempt to identify purchasers of Vitamin E;
2. Notify all such purchasers so identified that upon their request, Pharmavite will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for Vitamin E, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Vitamin E purchasers who so request; and
4. Cease from representing to consumers that the Vitamin E products “help[] maintain a healthy heart”, when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Patricia N. Syverson', written over a circular stamp or seal.

Patricia N. Syverson  
For the Firm

PNS:td  
Enclosures



# **EXHIBIT B**

1 BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.  
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 14

15 *Additional Attorneys Appear on Signature Page*

16 *Attorneys for Plaintiff and the Proposed Class*

17 **UNITED STATES DISTRICT COURT**  
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 LAURA CORBETT On Behalf of  
 20 Herself and All Others Similarly  
 Situated,

21 Plaintiff,

22 v.

23 PHARMAVITE, LLC, a California  
 24 limited liability company,

25 Defendant.

Case No.:

CLASS ACTION:

**DECLARATION OF PATRICIA N.  
 SYVERSON PURSUANT TO  
 CALIFORNIA CIVIL CODE  
 §1780(d)**

26  
 27  
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1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of  
3 the State of California. I am a shareholder of the law firm of Bonnett, Fairbourn,  
4 Friedman & Balint, P.C., the counsel of record for plaintiff in the above-entitled  
5 action.

6 2. Defendant Pharmavite, LLC has done and is doing business in the  
7 Central District of California. Such business includes the distributing, marketing,  
8 labeling, packaging and sale of its Nature Made Vitamin E dietary supplements.<sup>1</sup>  
9 Furthermore, Plaintiff purchased Vitamin E 400 I.U. product in California.

10 3. I declare under penalty of perjury under the laws of the State of  
11 California that the foregoing is true and correct.

12 Executed this 7<sup>th</sup> day of August 2015, at Phoenix, Arizona.

13 BONNETT, FAIRBOURN, FRIEDMAN  
14 & BALINT, P.C.  
PATRICIA N. SYVERSON (203111)

15 /s/ Patricia N. Syverson

16 Elaine A. Ryan (*To Be Admitted Pro Hac Vice*)  
eryan@bffb.com

17 Patricia N. Syverson (203111)

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20 Attorneys for Plaintiff

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26  
27 <sup>1</sup> The products include: (1) Natural Vitamin E 400 IU d-Alpha; (2) Vitamin E 400 IU dl  
28 Alpha; (3) Vitamin E 400 I.U. Water Solubilized; (4) Vitamin E 1000 IU dl Alpha; and  
(5) Vitamin E 200 IU dl Alpha.