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

14 JEFFREY JOHNSTON, individually and on  
behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 SCHIFF NUTRITION INTERNATIONAL,  
18 INC., a Delaware corporation, and  
RECKITT BENCKISER LLC, a Delaware  
19 limited liability company,

20 Defendants.

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

**COMPLAINT FOR DAMAGES  
AND EQUITABLE RELIEF**

**CLASS ACTION**

1 Plaintiff Jeffrey Johnston, on behalf of himself and all similarly situated  
2 United States residents, allege the following based on personal knowledge as to  
3 allegations regarding Plaintiff's own acts and experiences, and, as to all other  
4 matters, on information and belief.

### 5 INTRODUCTION

6 1. Plaintiff, Jeffrey Johnston, brings this class-action lawsuit on behalf of  
7 himself and all others similarly situated against defendants Reckitt Benckiser LLC  
8 and Schiff Nutrition International, Inc. (collectively, "Defendants"), based on  
9 Defendants' false and fraudulent advertising of MegaRed Omega-3 Krill Oil  
10 supplements in 300 mg, 500 mg, and 1000 mg strengths (collectively, "MegaRed").

11 2. Defendants Reckitt Benckiser LLC and Schiff Nutrition International,  
12 Inc., manufacture, market, advertise, and distribute MegaRed, which is sold via the  
13 internet and in retail stores across the United States, including California.

14 3. In an effort to improve their cardiovascular health, many consumers,  
15 including Plaintiff Johnson, have turned to purchasing dietary supplements such as  
16 MegaRed, from which Defendants reap substantial profits. As alleged more fully  
17 herein, Defendants have engaged in a pervasive, long-term campaign to persuade  
18 consumers to purchase MegaRed by falsely and misleadingly advertising and  
19 promoting certain characteristics, benefits and uses that MegaRed simply does not  
20 have, and by concealing the truth about MegaRed's inability to provide the  
21 promised benefits.

22 4. MegaRed's key ingredients are the omega-3 fatty acids  
23 eicosapentaenoic acid ("EPA") and docosahexaenoic acid ("DHA") (collectively,  
24 "omega-3 fatty acids"). While some research has *suggested* that omega-3 fatty acids,  
25 may, if taken in sufficient doses, help reduce the risk of coronary heart disease,  
26 there is *no* conclusive research supporting the claim that consumption of omega-3  
27 fatty acids benefits the heart, much less reduces the risk of coronary heart disease.  
28 Accordingly, the Food and Drug Administration ("FDA") prohibits sellers of omega-3

1 dietary supplements such as MegaRed from making or implying anything more  
2 than this single, qualified health claim: “Supportive but not conclusive research  
3 shows that consumption of EPA and DHA omega-3 fatty acids may reduce the risk  
4 of coronary heart disease.”

5         5. For the same reason, the FDA precludes sellers of omega-3 dietary  
6 supplements such as MegaRed from stating or suggesting that a particular dose of  
7 omega-3 fatty acids is useful in reducing the risk of coronary heart disease.  
8 Specifically, the FDA considers “any label or labeling suggesting a level of omega-3  
9 fatty acids to be useful in achieving a reduction in the risk of coronary heart disease  
10 for the general healthy population to be false and misleading under Section 403(a)  
11 of the [FD&C Act].”

12         6. In conjunction with their extensive, long-term campaign of deceptive  
13 advertising and misleading statements about the purported cardiovascular benefits  
14 provided by MegaRed, Defendants have violated these clear directives by, *inter alia*,  
15 consistently and repeatedly falsely telling consumers that taking just “one small  
16 softgel per day” may reduce the risk of coronary heart disease—notwithstanding the  
17 clear prohibition against doing so—and by making other false and misleading  
18 claims about the ostensible cardiovascular benefits provided by MegaRed, which  
19 are, among other things, contrary to findings made as a result of scientific studies.

20         7. Plaintiff is informed and believes that, notwithstanding minor  
21 variations during the course of Defendants’ long-term advertising campaign,  
22 Defendants’ false claims and statements were and are made in the same or  
23 substantially same manner with respect to each of the MegaRed varieties (*i.e.*, the  
24 300 mg, 500 mg, and 1000 mg strengths).

25         8. For example, on the MegaRed packages, Defendants proclaim that  
26 MegaRed “May Reduce The Risk of Coronary Heart Disease” and, on every package  
27 of MegaRed, is a slogan upon which MegaRed has built its brand: “Just 1 Small  
28 Softgel Per Day.” Other MegaRed packages also depict the slogan “just 1 small

1 softgel per day” along with a picture of a heart encircling the words “Heart Health.”  
2 MegaRed packages also contain the false claim that “1 small softgel per day” will  
3 “support three markers of cardiovascular health” followed by the following three  
4 “markers”: C-reactive Protein, Triglycerides, and the Omega-3 index. Inserts  
5 included in MegaRed packages ask the question “What is small, red, powerful and  
6 supports heart health” (or, in some inserts, “cardiovascular health”)?”

7 9. Defendants also disparage fish oil by false or misleading statements of  
8 fact by falsely telling consumers that, unlike fish oil (which is often consumed in the  
9 form of multiple, larger pills), consumers need only take “just one small softgel per  
10 day” of MegaRed to achieve the promised cardiovascular benefits, including a  
11 reduction in the risk of coronary heart disease. Similarly, Defendants falsely assure  
12 consumers that the ability to obtain these benefits via “just one small pill with no  
13 fishy aftertaste” is why MegaRed “is the superior choice.” In other words, for years,  
14 Defendants have systematically and repeatedly misled consumers into believing  
15 that “just one” MegaRed softgel provides promised cardiovascular benefits, and that  
16 those benefits are comparable to fish oil.

17 10. Defendants charge consumers a substantial premium over fish oil for  
18 MegaRed’s purported benefits, which, Plaintiff is informed and believes, can be in  
19 excess of *ten times* the per-milligram cost of odorless fish oil capsules, despite the  
20 product’s comparable efficacies.

21 11. Again, the FDA considers “any label or labeling suggesting a level of  
22 omega-3 fatty acids to be useful in achieving a reduction in the risk of coronary  
23 heart disease for the general healthy population to be false and misleading under  
24 Section 403(a) of the [FD&C Act].” Accordingly, the suggestion that “just one small  
25 softgel per day” of MegaRed may help prevent coronary heart disease is false and  
26 misleading as a matter of law.

27 12. Defendants’ illegal dosing instruction is particularly harmful,  
28 misleading, and deceptive in light of the very small amount of omega-3 fatty acids

1 actually contained in “just one small softgel” of MegaRed, can contain as little as  
2 less than one-fifth the amount of omega-3 fatty acids that the American Heart  
3 Association (“AHA”) recommends be consumed daily.

4 13. According to the AHA’s guidelines, the recommended daily dose of EPA  
5 + DHA omega-3 fatty acids is a minimum of 500 mg for primary prevention of  
6 coronary heart disease, and 1,000 mg of EPA + DHA for secondary prevention of  
7 coronary heart disease.<sup>1</sup>

8 14. In contrast, one 300 mg MegaRed softgel contains just 50 mg of EPA  
9 and just 24 mg of DHA for a total of 74 mg of EPA + DHA. One 500 mg MegaRed  
10 softgel contains just 64 mg of EPA and just 30 mg of DHA, for a total of just 94 mg.  
11 of EPA + DHA. Even the relatively new “Ultra Strength 1000 mg” softgel contains  
12 just 128 mg of EPA and just 60 mg of DHA, for a total of just 188 EPA + DHA.  
13 Thus, while Defendants’ labeling of the 1000 mg softgel as “Ultra Strength”  
14 misleads consumers into believing they are purchasing some sort of super pill, the  
15 truth is consumers are paying an exorbitantly-high premium price to receive less  
16 EPA and DHA than the minimum amounts recommended by the AHA.<sup>2</sup>

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19 <sup>1</sup> *Primary prevention* of coronary heart disease (coronary heart disease)  
20 involves doing something to prevent coronary heart disease before the subject gets  
21 the disease or knows that they have the disease. The AHA recommends that  
22 patients without documented coronary heart disease eat a variety of fatty fish at  
23 least twice a week, including oils and foods rich in alpha-linolenic acid (flaxseed,  
24 canola and soybean oils; flaxseeds and walnuts.) Two servings of fish per week is  
25 “at least 500 mg per day of EPA + DHA”. Artham, Fish Oil in Primary and  
26 Secondary Cardiovascular Prevention, Ochsner Journal, 2008, 8: 49 - 60, pages 49  
27 and 56. *Secondary prevention* of coronary heart disease involves preventing the  
28 first heart attack in a patient with known coronary heart disease. The AHA  
recommends “omega-3 fatty acids from fish or fish oil capsules (1,000 mg of EPA +  
DHA per day) for cardiovascular disease risk reduction.” For patients with stable  
ischemic heart disease of patients after a myocardial infarction, the AHA does not  
recommend EPA + DHA. Fihn SG, Circulation, 2012, 126, e354-e471.

<sup>2</sup> It is important to differentiate “mg of krill oil in the softgel” from “mg of  
EPA + DHA in the softgel.” Thus, for example, while “just one” 500 mg MegaRed  
softgel contains 500 mg of krill oil, it only contains 94 mg. of the omega-3 fatty acids  
EPA + DHA.

1 15. Defendants' claims about MegaRed also go far beyond the qualified  
2 health claim authorized by the FDA. Those claims include the misrepresentations  
3 alleged and discussed in paragraph Nos. 6-14, 27-31, and 119, and in Exhibit A  
4 hereto.

5 16. Plaintiff is informed and believes that, to create the illusion that its  
6 representations about MegaRed are grounded in scientific fact, Defendants rely  
7 upon studies that, when examined, do not support their representations.

8 17. Plaintiff Jeffrey Johnston purchased MegaRed in reliance on  
9 Defendants' promise that "just 1 small softgel per day" would provide him with the  
10 promised heart benefits. Had Plaintiff known that MegaRed is misbranded and  
11 that these statements are false and misleading, he would not have made the  
12 purchase.

13 18. MegaRed is indeed a "small pill." Commensurate with the size of the  
14 pill, however, the amount of omega-3 fatty acids in one MegaRed softgel is also very  
15 small. On information and belief, consumers have been and continue to be deceived  
16 by MegaRed's misrepresentations and, therefore, pay a king's ransom for a  
17 misbranded product that, when taken as directed by Defendants, does not result in  
18 the reduction of coronary heart disease or otherwise benefit the heart.

19 19. Mr. Johnston's and Class members' reliance on the veracity of the  
20 Defendants' false representations and their inability to discover the true facts  
21 concealed by Defendants is reasonable, in that a review of MegaRed's labels and  
22 marketing materials do not allow a reasonable consumer to determine the truth of  
23 the matters alleged herein, including but not limited to the fact that taking "just 1  
24 small softgel per day" does not and cannot provide the promised cardiovascular  
25 benefits.

26 **THE PARTIES**

27 20. Plaintiff Jeffrey Johnston is a citizen and resident of the State of  
28 California.

1           21. Defendant Reckitt Benckiser LLC (“Reckitt”) is Delaware limited  
2 liability company that is headquartered in Parsippany, New Jersey, and is a  
3 subsidiary of UK-based international conglomerate Reckitt Benckiser Group Plc.  
4 Plaintiff is informed and believes that Reckitt makes, markets, distributes and sells  
5 household, cleaning, and food products, including MegaRed, for sale in North  
6 America.

7           22. Defendant Schiff Nutrition International, Inc., is a Delaware  
8 corporation with its principal place of business in Utah. Plaintiff is informed and  
9 believes that Schiff has manufactured, marketed, distributed, and sold MegaRed  
10 since the supplement was introduced in 2008. In 2012, Schiff was acquired by and is  
11 a wholly-owned subsidiary of the Reckitt Benckiser Group Plc.

12           23. When reference is made to any act of “Schiff,” “Reckitt” and/or  
13 “Defendants,” it means that officers, directors, agents, employees, and/or  
14 representatives of Defendants committed or authorized such acts, or failed and  
15 omitted to adequately supervise or properly control or direct its employees, officers,  
16 directors, agents and/or representatives while engaged in the management,  
17 direction, operation or control of the Defendants’ affairs, and they did so while  
18 acting within the scope of their employment or agency.

#### 19           **JURISDICTION, VENUE, & INTRADISTRICT ASSIGNMENT**

20           24. **Jurisdiction.** This Court has original jurisdiction of this action under  
21 the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6),  
22 this Court has original jurisdiction because the aggregate claims of the putative  
23 Class members exceed \$5 million, exclusive of interest and costs, and at least one of  
24 the members of the proposed Class is a resident of a different state than  
25 Defendants.

26           25. **Jurisdiction and Intradistrict Assignment.** This Court has  
27 jurisdiction over Defendants and intradistrict assignment is appropriate because  
28 Defendants are corporations or other business entities authorized to do business in

1 the state of California and have sufficient minimum contacts in California and  
2 within this District. Defendants intentionally avail themselves of the California  
3 consumer market through the promotion, sale, marketing, and distribution of their  
4 products in California and to California residents, including residents residing in  
5 the cities and counties encompassed by this District. For example, MegaRed is  
6 advertised and sold in drugstores and/or supermarkets located in San Francisco and  
7 San Mateo Counties. Moreover, Defendants' wrongful conduct, as described herein,  
8 foreseeably affects consumers in California. As a result, jurisdiction in and  
9 intradistrict assignment to this Court is necessary and proper.

10 26. **Venue.** Venue is proper in the Northern District of California,  
11 pursuant to 28 U.S.C. 1391, because, among other things, Defendants regularly sell,  
12 market, advertise, and distribute MegaRed and otherwise conduct business in this  
13 District, thus a substantial part of the events or omissions giving rise to the claims  
14 asserted herein occurred and continue to occur in this District.

15 **NATURE OF THE CASE AND COMMON ALLEGATIONS OF FACT**

16 27. As alleged and discussed more fully herein (*see, e.g.*, paragraph nos. 6-  
17 16, 28-30, 50-69, 119, and Ex. A), Defendants aggressively and falsely tout the  
18 ability of "just one small softgel per day" to reduce the risk of coronary heart disease  
19 and other heart-related ailments on the MegaRed label and elsewhere.

20 28. Below is an example of MegaRed packaging (from a bottle of 300 mg  
21 MegaRed krill oil (other examples of MegaRed's packaging materials sold in the  
22 United States during the class period are attached hereto as Exhibit A):

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29. Packages of MegaRed’s 300, 500, and 1000 mg Omega-3 Krill Oil are virtually identical (*see, e.g., Ex. A*).

30. Each box of MegaRed also contains a color pamphlet containing similar claims on both sides. A typical example is reproduced is reproduced below (*see also, Ex. A*):



1           31. Through labeling and marketing efforts such as those featured herein,  
2 Defendants have built a powerful brand unwittingly relied upon by unsuspecting  
3 consumers to supply omega-3 fatty acids often not present in the American diet.

#### 4           **THE LAW GOVERNING HEALTH CLAIMS FOR FOOD AND DIETARY SUPPLEMENTS**

5           32. The Food, Drug and Cosmetic Act of 1938 (“FDCA”) provides the FDA  
6 with the authority to oversee the safety of food, drugs and cosmetics. 21 U.S.C. §  
7 301, *et seq.* In 1990 the FDCA was amended by the Nutrition Labeling and  
8 Education Act to specifically direct the FDA to issue regulations authorizing health  
9 claims for foods and dietary supplements after reviewing and evaluating the  
10 scientific evidence. Public Law 101-535 (Nov. 8, 1990). Pursuant to this directive,  
11 the FDA has promulgated regulations that spell out in detail what health claims  
12 may be made on the labels of foods and dietary supplements. FDA regulations  
13 define a “health claim” as follows:

14           *Health claim* means any claim made on the label or in labeling of a  
15 food, including a dietary supplement, that expressly or by implication,  
16 including “third party” references, written statements (*e.g.*, a brand  
17 name including a term such as “heart”), symbols (*e.g.*, a heart symbol)  
18 or vignettes, characterizes the relationship of any substance to a  
19 disease or health-related condition. Implied health claims include  
20 those statements, symbols, vignettes, or other forms of communication  
21 that suggest, within the context in which they are presented, that a  
22 relationship exists between the presence or level of a substance in a  
23 food and a disease or health-related condition.

24           21 C.F.R. 101, Subpart A, § 101.14(a)(1) (emphasis in original).

25           33. In addition to defining the term “health claim,” the FDA delineates the  
26 specific requirements for making a health claim, listing twelve categories of  
27 permissible health claims, and the particular requirements for each type of claim.

28           21 C.F.R. 101, Subpart E, §§ 101.72-101.83. This regulation is carefully crafted to  
require that health claims be presented in a qualified and contextualized manner so  
that consumers are not misled. For example, a health claim associating diets low in  
saturated fat and cholesterol with reduced risk of coronary heart disease must,  
among other things, state that coronary heart disease risk depends on many factors

1 and state that diets low in saturated fat and cholesterol “may” or “might” reduce the  
2 risk of heart disease. *See id.* § 101.75(c).

3 34. Crucially, the FDA regulations make clear that the specific health  
4 claims delineated in 21 C.F.R. 101, Subpart E, are the *only* health claims that may  
5 be made on the label of a food or nutritional supplement:

6 *Prohibited health claims.* No express or implied health claim may be  
7 made on the label or in labeling for a food, regardless of whether the  
8 food is in conventional food form or dietary supplement form, unless:  
9 (1) The claim is specifically provided for in subpart E of this part; and  
10 (2) The claim conforms to all the general provisions of this section as  
11 well as to all specific provisions in the appropriate section of subpart E  
12 of this part...

13 21 C.F.R. 101, Subpart A, § 101.14(e) (italics in original).

14 35. The clear purpose of this statutory scheme is to prevent unqualified  
15 health claims that are likely to deceive consumers.

16 36. In its January 6, 1993 final rule concerning a health claim for the  
17 relationship between omega-3 fatty acids and coronary heart disease, the FDA  
18 announced its decision not to authorize the use of health claims relating to an  
19 association between omega-3 fatty acids and coronary heart disease. 58 Fed. Reg.  
20 2682 (1993). Consequently, a health claim regarding the relationship between  
21 omega-3 fatty acids and coronary heart disease is not included on among the  
22 approved health claims set forth in 21 C.F.R. 101, Subpart E. The FDA’s decision  
23 was based upon its conclusion that there was not a significant scientific agreement  
24 among experts to support a health claim for omega-3 fatty acids and coronary heart  
25 disease. *Id.*

26 37. In 1999, the U.S. Court of Appeals for the District of Columbia Circuit  
27 directed the FDA to reconsider the health claim “Consumption of omega-3 fatty  
28 acids may reduce the risk of coronary heart disease” in dietary supplement labeling.  
*Pearson v. Shalala*, 164 F.3d 650 (D.C. Cir 1999).

1           38. In response to the Court's request, the FDA ultimately elected to  
2 exercise its enforcement discretion to approve a very limited health claim related to  
3 omega-3 fatty acids and heart disease.

4           39. By letter dated October 31, 2000, the FDA stated that it considered the  
5 following claim to be "appropriately qualified":

6           The scientific evidence about whether omega-3 fatty acids may  
7 reduce the risk of coronary heart disease (coronary heart disease) is  
8 suggestive, but not conclusive. Studies in the general population have  
9 looked at diets containing fish and it is not known whether diets or  
10 omega-3 fatty acids in fish may have a possible effect on a reduced risk  
of coronary heart disease. It is not known what effect omega-3 fatty  
acids may or may not have on risk of coronary heart disease in the  
general population.<sup>3</sup>

11           40. Then approximately four years later by letter dated September 8, 2004,  
12 the FDA authorized the following slightly shorter qualified health claim for dietary  
13 supplements concerning the relationship between omega-3 fatty acids and coronary  
14 heart disease, *which is the only Omega-3 health claim that may be made on a*  
15 *nutritional supplement today*: Supportive but not conclusive research shows  
16 that consumption of EPA and DHA omega-3 fatty acids may reduce the risk of  
17 coronary heart disease.<sup>4</sup>

18           41. In the very same enforcement discretion letter in which it authorized  
19 the above qualified health claim, the FDA specifically considered whether a daily  
20 dietary intake for omega-3 fatty acids should be included on labeling pursuant to 21  
21 C.F.R. section 101.14(d)(2)(vii). The FDA determined that it would be "false and  
22 misleading" to include the qualified health claim for omega-3 fatty acids and  
23 reduced risk of coronary heart disease because "the scientific evidence did not  
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25           <sup>3</sup> See FDA Letter Regarding Dietary Supplement Health Claim for Omega-3  
26 Fatty Acids and Coronary Heart Disease, October 31, 2000.

27           <sup>4</sup> See September 9, 2004, FDA letter responding to health claim petition dated  
28 June 23, 2003 (Wellness Petition): Omega-3 Fatty Acids And Reduced Risk of  
Coronary Heart Disease (FDA Docket No. 2003q-0401).

1 support the establishment of a recommended daily dietary intake level *or even a*  
2 *possible level of effect.*” *Id.* at 26 (emphasis added). The FDA went on to conclude  
3 that

4 *the agency continues to consider any label or labeling*  
5 *suggesting a level of omega-3 fatty acids to be useful in*  
6 *achieving a reduction in the risk of coronary heart disease for*  
*the general healthy population to be false and misleading*  
*under section 403(a) of the act.”*

7 *Id.* (emphasis added).

8 42. The sum and substance of the FDA’s regulatory position is that, to the  
9 extent a qualified health claim is allowed with regard to Omega-3 fatty acids and  
10 heart disease, *such a claim cannot suggest that a particular dosage, amount,*  
11 *level or course of treatment is useful in obtaining the claimed result. Any*  
12 *claim that does so is presumptively false and misleading under section*  
13 *403(a) of the FDCA.*

14 43. As discussed in greater detail below, in light of the foregoing,  
15 MegaRed is a misbranded product under applicable California law; the statements  
16 Defendants make regarding, *inter alia*, the ability of “just one small softgel” to  
17 deliver cardiac benefits—including a reduction in the risk of coronary heart  
18 disease—are false and misleading as a matter of law; and Defendants’ claims about  
19 MegaRed’s purported cardiac-related health benefits exceed the limited qualified  
20 health claim authorized by the FDA.

21 44. California’s Sherman Law incorporates “[a]ll food labeling regulations  
22 and any amendments to those regulations adopted pursuant to the FDCA” as “the  
23 food labeling regulations of this state.” Cal. Health & Saf. Code § 110100(a).

24 45. Moreover, the Sherman Law explicitly adopts and incorporates  
25 specific federal food and drug laws and regulations. Under the Sherman Law,  
26 “[a]ny food is misbranded if its labeling does not conform with the requirements for  
27 nutrient content or health claims as set forth in Section 403(r) (21 U.S.C. Sec.  
28 343(r)) of the federal act and the regulations adopted pursuant thereto.” Cal.

1 Health & Saf. Code § 110670. The Sherman Law also declares that “any food is  
2 misbranded if its labeling is false or misleading in any particular,” Cal. Health &  
3 Saf. Code § 110660, and makes clear that a food product is “misbranded if its  
4 labeling does not conform with the requirements for nutrition labeling as set forth  
5 in Section 403(q) (21 U.S.C. § 343(q)) of the federal act and the regulations adopted  
6 pursuant thereto,” Cal. Health & Saf. Code § 110665.

7 46. State law claims based on a dietary supplement’s non-conforming,  
8 misleading, or deceptive label are expressly permitted when they impose legal  
9 obligations identical to the FDCA and corresponding FDA regulations, including  
10 FDA regulations concerning health claims.

11 **MEGARED IS A MISBRANDED PRODUCT AND DEFENDANTS CONDUCT IS FALSE,  
12 MISLEADING, AND CONTRARY TO THE SCIENTIFIC EVIDENCE**

13 47. As alleged above, Defendants blatantly violate the rule that omega-3  
14 claims may not suggest a relationship between a particular level of consumption  
15 and the prevention of coronary heart disease.

16 48. The message Defendants falsely and misleadingly convey to the  
17 reasonable consumer by the representations alleged and discussed herein (including  
18 in paragraph Nos. 6-14, 28-30, 50-69, 119, and Exhibit A) is clear and unmistakable:  
19 “just one small softgel per day” of MegaRed contains all the omega-3 fatty acids a  
20 consumer needs to obtain the promised cardiovascular benefits, including a  
21 potential reduction in the risk of coronary heart disease

22 49. The purported cardiac-related health claims made by Defendants  
23 about MegaRed also exceed the limited qualified health claim authorized by the  
24 FDA.

25 50. Defendants falsely represent, on MegaRed’s packaging and elsewhere,  
26 that their claims are bolstered by legitimate scientific studies. For example,  
27 MegaRed packaging states that certain claims made therein have been confirmed  
28 by “a 30-day randomized, double blind, placebo controlled trial measuring the effect

1 of 300 mg krill oil on CRP levels,” “15 randomized controlled trials assessing the  
 2 impact of Omega-3 fatty acid intake on serum triglyceride levels,” and/or a  
 3 “proprietary controlled human clinical study of 300 mg MegaRed for improving  
 4 Omega-3 index.” Plaintiff is informed and believes these statements are false.  
 5 Indeed, it is precisely because there is no conclusive scientific support for claims  
 6 such as those made by Megared that the FDA permits only a limited qualified  
 7 health claim regarding the impact of omega-3 fatty acids on coronary heart disease.

8 **THE DECEPTION POSED BY MEGARED’S VIOLATIONS OF THE LAW IS GREAT**  
 9 **BECAUSE OF THE COMPARATIVELY SMALL AMOUNT OF OMEGA-3 FATTY ACIDS**  
 10 **CONTAINED WITHIN ONE SMALL MEGARED SOFTGEL**

11 51. One 300 mg MegaRed softgel contains only 74 mg of EPA + DHA.

12 52. One 500 mg MegaRed “Extra Strength” softgel contains only 94 mg of  
 13 EPA + DHA.

14 53. One 1000 mg “Ultra Strength” softgel contains only 188 EPA + DHA.

15 54. Plaintiff is informed and believes that the research and  
 16 recommendations related to the cardiovascular benefits associated with omega-3  
 17 fatty acids have generally involved daily intake and/or supplementation of DHA +  
 18 EPA well in excess of these amounts.

19 55. In fact, 100 mg a day of EPA + DHA is generally considered  
 20 insufficient intake, for the reasons articulated in an article that appeared in the  
 21 journal *Food and Nutrition Sciences* in 2013:

22 Dietary intakes of n-3 PUFA are very low in most western  
 23 societies. Dietary intake data from NHANES (1999-2000) indicate that  
 24 fish consumption in the US population is inadequate, resulting in a  
 25 mean intake of only 100 mg/day of EPA and DHA combined [12]. Along  
 26 with important lifestyle changes, including dietary changes and weight  
 27 loss, the AHA recommends a daily intake of 500-1000 mg of n-3 PUFA  
 28 for individuals with borderline high TG (150-199 mg/dL), 1000-2000  
 mg for individuals with high TG (200-499 mg/dL), and 2000-4000 mg  
 for individuals with very high TG levels ( $\geq 500$  mg/dL) [1]. For  
 individuals who prefer not to eat fatty fish such as herring, salmon, or

1 sardines, dietary supplements of n-3 PUFA are available as a  
2 substitute.<sup>5</sup>

3 56. Primary prevention of coronary heart disease involves doing something  
4 to prevent coronary heart disease before the subject gets the disease or knows that  
5 they have the disease. The AHA recommends that patients without documented  
6 coronary heart disease eat a variety of fatty fish at least twice a week, including oils  
7 and foods rich in alpha-linolenic acid (e.g., flaxseed, canola and soybean oils;  
8 flaxseeds and walnuts). Consuming two servings of fatty fish per week is equivalent  
9 to consuming “at least 500 mg per day of EPA + DHA”.<sup>6</sup>

10 57. Secondary prevention of coronary heart disease involves preventing  
11 the first heart attack in a patient with known coronary heart disease. The AHA  
12 recommends “omega-3 fatty acids from fish or fish oil capsules (1,000 mg of EPA +  
13 DHA per day) for cardiovascular disease risk reduction.” Fihn SG, *Circulation* 126,  
14 e354-e471 (2012).

15 58. Therefore, the dose per day of combined EPA + DHA omega-3 fatty  
16 acids recommended by the AHA is a minimum of 500 mg for primary prevention of  
17 coronary heart disease and 1,000 mg for secondary prevention of coronary heart  
18 disease.

19 59. As noted, the 300 mg MegaRed krill oil softgel contains only 50 mg of  
20 EPA and 24 mg of DHA for a total of 74 mg of EPA + DHA, and the so-called “Extra  
21 Strength” 500 mg MegaRed Softgel contains only 94 mg of EPA + DHA.

22  
23 <sup>5</sup> Alan S. Ryan, Stephen S. Porter, and Frederick D. Sancilio, “A Dietary  
24 Supplement with a High Eicosapentaenoic Acid to Docosahexaenoic Acid Ratio  
25 Reduces Triglyceride Levels in Mildly Hypertriglyceridemic Subjects” (January  
2013) (available online at <http://sancilio.com/wp-content/uploads/2014/01/SCI-Omega-article.pdf>).

26 <sup>6</sup> Artham, “Fish Oil in Primary and Secondary Cardiovascular Prevention,”  
27 *Ochsner Journal* at 8:49-60, pages 49 and 56 (2008). See also Lee JH, “Omega-3 for  
28 cardioprotection,” *Mayo Clin. Pro.* (2008) 83: 324-332; Anand RG, “The role of fish  
oil in arrhythmia prevention,” *J. Cardiopulm. Rehabil. Pre.* at 28(2):92-98 (2008).

1           60.    Indeed, even the highest dose, most expensive MegaRed softgel—the  
2 1,000 mg “Ultra Strength”—contains only 128 mg EPA and 60 mg DHA for a total of  
3 188 mg of EPA + DHA, which is well below recommended levels of EPA + DHA for  
4 primary or secondary prevention of coronary heart disease. Thus, while Megared’s  
5 labeling of this softgel as “Ultra Strength” misleads consumers into believing they  
6 are purchasing some sort of super pill, the truth is consumers are paying an  
7 exorbitantly-high premium price to receive far less EPA and DHA than the  
8 minimum amounts recommended for primary and secondary prevention of coronary  
9 heart disease.

10           61.    The krill oil Defendants use in MegaRed is provided by Aker  
11 BioMarine (“Aker”), a for-profit Norwegian fishing and krill oil cultivation company  
12 that is responsible for supplying a large volume of krill oil throughout the world:

13                   The markets in which Aker BioMarine operates continued to  
14 grow in 2012. In total, Aker BioMarine sold 363 MT of Superba™ Krill  
15 in 2012 compared to 232 MT in 2011 which is an increase of 57  
16 percent. In the US, krill is now recognized as a key source of omega-3.  
17 MegaRed® which is sold and marketed by Schiff Nutrition  
18 International, Aker BioMarine’s key partner, is now the most-selling  
19 dietary supplement brand in the US. Superba™ Krill from Aker  
20 BioMarine is the only omega-3 ingredient in MegaRed®.

21           62.    In 2011, an Aker-affiliated researcher published an article titled  
22 “Metabolic Effects of Krill Oil are Essentially Similar to Those of Fish Oil But at  
23 Lower Dose of EPA and DHA in Healthy Volunteers,” in the journal *Lipids* (the  
24 “2011 Aker Study”). The Aker Study measured the effect of krill oil  
25 supplementation, and the volunteers took a daily dose of **3,000 mg** of krill oil for  
26 seven weeks to examine its efficacy—a full **10 times** the daily dose of the krill oil in  
27 “just one” MegaRed 300 mg softgel; **six times** the recommended daily dose of the  
28 krill oil in “just one” MegaRed 500 mg softgel; and **three times** the recommended  
daily dose of the krill oil available in “just one” MegaRed “UltraStrength” 1000 mg  
softgel. The 2011 Aker Study represented that the

1 American Heart Association guidelines for omega-3 and fish for the  
2 primary prevention of coronary artery disease are two servings of fish  
3 per week. This recommendation will provide 250-500 mg EPA + DHA  
4 per day. In the present study we have shown that the daily intake of 3  
5 mg krill oil containing 543 mg EPA + DHA increases the plasma level  
6 of EPA + DHA to the same extent as intake of fish oil containing 864  
7 mg EPA + DHA.

8 63. The foregoing statement is misleading to the extent it suggests two  
9 servings of fatty fish per day equates to as little as 250 mg of omega-3 per day (it  
10 does not), and to the extent it suggests omega-3 fatty acids has been proven to  
11 provide heart benefits (they have not). But even taking the statement at face value,  
12 it still underscores the fallacy of MegaRed's representation that taking "just 1 small  
13 softgel per day" provides cardiovascular benefits, including a reduction in the risk of  
14 coronary heart disease.

15 64. A consumer would have to take *four 300 mg MegaRed softgels per*  
16 *day, or three 500 mg MegaRed softgels per day, or two 1000 mg*  
17 *"UltraStrength" MegaRed sortgels per day* just to get to the *minimum 250 mg*  
18 *threshold* of omega-3 fatty acids described in this study. Significantly more would  
19 need to be consumed to reach the threshold set by the AHA.

20 65. Again, however, according to Defendants, "Just 1 Small Softgel Per  
21 Day" is all you need.

22 66. Notwithstanding the significant differences in the doses of omega-3  
23 fatty acids studied as compared to the amount of omega-3 fatty acids found in a  
24 single MegaRed softgel, the 2011 Aker Study referenced above failed to find  
25 statistically-significant changes in the vast majority of study participants:

26 Small changes in the levels of HDL-cholesterol, LDL cholesterol, and  
27 TG were observed in all study groups from start to end of the  
28 intervention phase, but only the within-group increase in LDL-  
cholesterol seen in the fish oil group ( $p = 0.039$ ) was statistically  
significant.

67. There were no statistically significant changes in triglyceride levels,  
cholesterol levels, or C-Reactive Protein levels between the 2011 Aker Study

1 subjects who took 3,000 mg of krill oil per day and the control group who did not  
2 take any supplements. In short, the 2011 Aker Study belies Defendants' claims  
3 concerning the impact of taking "just 1" 300 mg or 500 mg or 1000 mg MegaRed  
4 softgel per day.

5 68. The 2011 Aker Study also belies Defendants' claim that "just 1 small  
6 softgel" of Megared is an adequate (much less a superior) alternative to the  
7 consumption of multiple fish oil pills. More specifically, even accepting, *arguendo*,  
8 that the 2011 Aker Study showed omega-3 supplementation to have a clinically  
9 significant effect (which it did not), it concludes that 543 mg of EPA + DHA from  
10 krill oil was equivalent to 846 EPA + DHA from fish oil, which is a factor of 1.55  
11 (*i.e.*, less than two). But ***most, if not all, fish oil supplements sold on the***  
12 ***market today possess two or more times the EPA+DHA per pill than***  
13 ***MegaRed.*** Consequently, for one MegaRed softgel to substitute for two fish oil  
14 pills, it would have to have a potency of four or more times that of fish oil.

15 69. In another study sponsored by Aker, which was published in  
16 *Nutritional Research*, "Krill Oil Supplementation" (2014), subjects were given krill  
17 oil in doses of 500 mg, 1,000 mg 2,000 mg and 4,000 mg per day for 12 weeks. After  
18 12 weeks, none of the subjects had a reduction in their triglyceride levels. None of  
19 the subjects achieved an Omega-3-Index between 8.0-11.0, the level that Drs.  
20 Clemens von Schacky and William S. Harris (the two co-founders of the Omega-3-  
21 Index) recommend for protection against coronary heart disease. See "Omega-3-  
22 Index and Cardiovascular Health, Nutrients", 2014, 5, 799-814.

#### 23 **PLAINTIFF JOHNSTON'S EXPERIENCE WITH MEGARED**

24 70. Plaintiff Jeffrey Johnston is a health-conscious individual who  
25 purchased MegaRed softgels in reliance on the Defendants' advertising.

26 71. During the class period, Plaintiff regularly purchased MegaRed  
27 Omega-3 Krill Oil in 300 and 500 mg doses in various locations in California.

28





1 separate claims against Defendants based on the conduct alleged herein. Plaintiff  
2 reserves the right to expand, limit, modify or amend this class definition, and to add  
3 one or more subclasses, in connection with his motion for class certification, or at  
4 any other time, based upon, *inter alia*, changing circumstances and/or new facts  
5 obtained during discovery. Unless otherwise stated herein, “Class” encompasses all  
6 Class and Subclass members.

7 81. Plaintiff does not assert claims in this action for personal injuries  
8 caused by or related to the use of MegaRed. Rather, Plaintiff, individually and on  
9 behalf of the other Class members, seeks solely economic and injunctive relief  
10 arising from the false representations and other wrongful conduct alleged herein.

11 82. **Numerosity and Impracticability of Joinder:** Plaintiff is informed  
12 and believes that the Subclass and Class composed of tens of thousands to hundreds  
13 of thousands of people whose joinder in this action would be impracticable.

14 83. **Commonality and Predominance:** There is a well-defined  
15 community of interest in questions of law and fact affecting the Class. These  
16 questions of law and fact predominate over individual questions affecting individual  
17 Class members, and include, but are not limited to, the following:

18 a. Whether Defendants engaged in unlawful, unfair or deceptive business  
19 practices by engaging in the conduct alleged herein;

20 b. Whether Defendants engaged in false advertising by engaging in the  
21 conduct alleged herein;

22 c. Whether MegaRed is a misbranded product under California law;

23 d. Whether Defendants made health claims on MegaRed that exceed the  
24 permitted qualified health claim concerning Omega-3 fatty acids and their impact  
25 on coronary heart disease;

26 e. Whether Defendants made claims in connection with the sale and  
27 marketing of MegaRed suggesting a level of Omega-3 fatty acids to be useful in  
28

1 achieving a reduction in the risk of coronary heart disease for the general healthy  
2 population;

3 f. Whether Defendants made false, misleading, and/or fraudulent  
4 statements concerning the benefits or effects of taking MegaRed;

5 g. Whether Defendants made false, misleading and/or fraudulent  
6 statements via its labeling of MegaRed;

7 h. Whether Defendants' conduct violates the California Consumers Legal  
8 Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*;

9 i. Whether Defendants violates California's Unfair Competition Law  
10 ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*;

11 j. Whether Defendants violates California's False Advertising Law ("FAL"),  
12 Cal. Bus. & Prof. Code §§ 17500, *et seq.*;

13 k. Whether Defendants violated California's Sherman Food, Drug, and  
14 Cosmetic Law ("Sherman Law"), Cal. Health & Saf. Code §§ 109875, *et seq.*;

15 l. Whether defendants have committed fraud;

16 m. Whether Defendants' conduct, as alleged herein, was intentional and  
17 knowing;

18 n. Whether Defendants were unjustly enriched as a result of engaging in  
19 the conduct alleged herein;

20 o. Whether Class members are entitled to injunctive and other equitable  
21 relief, and, if so, the nature of such relief;

22 p. Whether Defendants' unlawful, unfair and/or deceptive practices harmed  
23 Plaintiff and the Class;

24 q. Whether Plaintiff and Class members are entitled to an award of  
25 compensatory damages;

26 r. Whether Plaintiff and Class members are entitled to an award of  
27 punitive and exemplary damages; and  
28

1 s. Whether Plaintiff and Class members are entitled to an award of  
2 reasonable attorneys' fees, prejudgment interest and cost of suit.

3 84. **Typicality:** Plaintiff's claims are typical of, and are not antagonistic  
4 to, the claims of all Class members because Plaintiff and Class members purchased  
5 MegaRed for personal or household use, and not for resale, and all are affected by  
6 Defendants' misrepresentations in the same way. Neither Plaintiff nor Class  
7 members would have purchased MegaRed had they known of the conduct alleged  
8 herein. Plaintiff and the other Class members suffered damages as a direct  
9 proximate result of Defendants' wrongful conduct; that is, Plaintiff's claims arise  
10 from the same practices and course of conduct that give rise to the other Class  
11 members' claims and are based on the same legal theories, and Plaintiff and all  
12 Class members have similarly suffered injury, including the loss of money, arising  
13 from Defendants' unfair, unlawful and deceptive conduct, as alleged herein.

14 85. **Adequacy:** Plaintiff will fully and adequately assert and protect the  
15 interests of the other Class members. In addition, Plaintiff has retained class  
16 counsel who are experienced and qualified in prosecuting class action cases similar  
17 to this one, including consumer class actions and other forms of complex litigation.  
18 Neither Plaintiff nor his counsel have any interests contrary to or conflicting with  
19 other Class members' interests.

20 86. **Superiority:** A class action is superior to other available means for  
21 the fair and efficient adjudication of the claims alleged herein. Plaintiff and Class  
22 members have suffered monetary harm as a result of Defendants' unfair, unlawful,  
23 and fraudulent conduct. Because of the relatively modest size of individual Class  
24 member's claims, few, if any, Class members could afford to seek legal redress of the  
25 wrongs complained of herein on any individual basis. Absent a class action, Class  
26 members will continue to be deceived and suffer monetary losses and the violations  
27 of law described herein will continue without remedy, and Defendants will be  
28 permitted to retain the proceeds of their misdeeds.







1           105. The UCL defines unfair business competition to include any “unlawful,  
2 unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or  
3 misleading advertising.” Cal. Bus. & Prof. Code § 17200.

4           106. By committing the acts and practices alleged herein, the Defendants  
5 have engaged in unlawful, fraudulent, and unfair business practices in violation of  
6 the UCL.

7           107. **Unlawful conduct.** The Defendants have violated the UCL’s  
8 proscription against engaging in unlawful conduct by virtue of **(a)** misbranding  
9 under section 403(a) of the FDCA (“misbranding”) by violating FDA regulations,  
10 adopted by the Sherman Law, governing the only health claim concerning Omega-3  
11 fatty acids and coronary heart disease that may be made on a dietary supplement;  
12 **(b)** misbranding by indicating that a certain level of omega-3 fatty acids (*i.e.*, “just 1  
13 small softgel per day”) may reduce the risk of coronary heart disease; **(c)** their  
14 fraudulent and deceitful conduct in violation of California Civil Code sections 1709,  
15 1710, and 1711; **(d)** their violations of the CLRA as a result of Defendants engaging  
16 in conduct proscribed by California Civil Code section 1770, subdivisions (a)(5),  
17 (a)(7), (a)(8), and (a)(9); and **(e)** their violations of the FAL, California Business &  
18 Professions Code sections 17500 through 17536.

19           108. **Fraudulent conduct.** The Defendants have violated the UCL’s  
20 proscription against fraud by engaging in the acts alleged in paragraph nos. 1-23,  
21 27-78, and 119-124.

22           109. **Unfair Conduct.** The Defendants have violated the UCL’s  
23 proscription against unfair conduct as a result of engaging in the conduct alleged in  
24 this Complaint, which is immoral, unethical, unscrupulous, and violates  
25 legislatively-declared policies of this state, including those articulated in, *inter alia*,  
26 California Civil Code sections 1667, 1709, 1711, and 1760. Moreover, there were  
27 reasonable alternatives available to Defendants to further their legitimate business  
28 interests, other than the conduct described herein. For example, Defendants could

1 have refrained from making unauthorized/untrue health claims and instead  
2 provided accurate, approved information that places MegaRed in the appropriate  
3 context.<sup>7</sup>

4 110. Defendants' violations of the UCL continue to this day.

5 111. As a direct and proximate result of Defendants' conduct, Plaintiff has  
6 suffered actual damage in that, *inter alia*, he would not have purchased MegaRed  
7 had he known the truth about the Defendants' claims or the information  
8 Defendants concealed about the efficacy of MegaRed products.

9 112. As a direct and proximate result of the conduct described above,  
10 Defendants have been, and will continue to be, unjustly enriched at the expense of  
11 Plaintiff and members of the proposed Class. Specifically, Defendants have been  
12 unjustly enriched by obtaining revenues and profits that they would not otherwise  
13 have obtained absent their false, misleading, and deceptive conduct.

14 **FOURTH CLAIM FOR RELIEF**

15 **Violations of the FAL—on Behalf of the California Subclass**

16 113. Plaintiff incorporates by reference the allegations contained in  
17 paragraph nos. 1-23 and 27-78.

18 114. The conduct described herein constitutes untrue or misleading  
19 advertising in violation of the FAL, which provides that it is unlawful to engage in  
20 advertising “which is untrue or misleading, and which is known, or which by the  
21 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus.  
22 & Prof. Code § 17500.

23 115. Defendants' violations of the FAL continue to this day.  
24  
25

---

26 <sup>7</sup> The Sherman Law defines a “person” to include any firm, partnership,  
27 trust, corporation, limited liability company, company, association, and  
28 organization. Cal. Health & Safety Code § 109995. Defendants are, therefore,  
“persons” within the meaning of the Sherman Act.



- 1           • support the following three markers of cardiovascular health: CRP,  
2           Triclycerides, and the Omega-3 index.

3           121. Defendants had a duty to disclose these facts, regardless of the  
4 existence of privity (*see, e.g.*, Cal. Civ. Code § 1711), by virtue of **(a)** Defendants'  
5 exclusive knowledge about MegaRed (including information pertaining to  
6 MegaRed's Omega-3 content, and the inability of "just one small softgel" of  
7 MegaRed to provide the stated benefits), and Defendants' awareness that Plaintiff  
8 and Class members were not reasonably likely to discover these facts; **(b)**  
9 Defendants' active concealment of those facts from Plaintiff and Class Members (by,  
10 *inter alia*, making false representations about MegaRed and its purported cardiac  
11 benefits in the course of a long-term advertising campaign designed and intended to  
12 mislead and defraud Plaintiff and Class members); **(c)** Defendants' disclosure of  
13 some facts to Plaintiff and Class members while intentionally failing to disclose  
14 other important fact(s), making those disclosures deceptive; and **(d)** Defendants'  
15 statutory and common-law obligations to disclose material information to Plaintiff  
16 and Class members.

17           122. Plaintiff and Class members were unaware of the facts Defendants  
18 concealed and would have acted differently if Defendants had disclosed this  
19 information to them and allowed them to make a fully-informed decision before they  
20 purchased MegaRed.

21           123. Defendants' misrepresentations of material fact are uniform and  
22 consistent and are part of a long-term advertising campaign designed and intended  
23 to mislead and defraud Plaintiff and Class members. The facts Defendants have  
24 concealed are similarly material and uniform.

25           124. Defendants made the misrepresentations of material facts and omitted  
26 the material facts alleged herein intentionally and/or recklessly, with the intention  
27 that Plaintiff and Class members rely on them.

28



1           131. AS TO THE SECOND CLAIM FOR RELIEF: For **(1)** an order  
2 enjoining Defendants from continuing to engage in the false advertising practices  
3 alleged herein, including but not limited to an order requiring Defendants to (i)  
4 cease utilizing any label, slogans, or other advertising suggesting a level of omega-3  
5 fatty acids to be useful in achieving a reduction in the risk of coronary heart disease  
6 for the general healthy population (e.g., “just one small softgel per day”) and (ii)  
7 cease making or implying anything more than this single, qualified health claim:  
8 “Supportive but not conclusive research shows that consumption of EPA and DHA  
9 omega-3 fatty acids may reduce the risk of coronary heart disease”; **(2)** injunctive  
10 relief in the form of an order requiring Defendants to engage in corrective  
11 advertising to undo the harm caused by their extensive, long-term campaign of  
12 deceptive advertising and misleading statements related to the purported  
13 cardiovascular benefits provided by “just one small softgel per day” of MegaRed; **(4)**  
14 an order awarding actual damages in an amount to be determined at trial; **(5)** an  
15 order awarding punitive damages in an amount to be determined at trial on the  
16 bases that Defendants deliberately engaged in the conduct alleged herein with  
17 malicious intent.

18           132. AS TO THE THIRD AND FOURTH CLAIMS FOR RELIEF: For an  
19 order **(1)** directing Defendants to disgorge and restore the money that served to  
20 unjustly enrich them, together with interest during the period in which Defendants  
21 retained such funds, to Plaintiff and all Class members; **(2)** enjoining Defendants  
22 from continuing to engage in the false advertising practices alleged herein,  
23 including but not limited to an order enjoining Defendants (i) from continuing to  
24 suggest a level of omega-3 fatty acids to be useful in achieving a reduction in the  
25 risk of coronary heart disease for the general healthy population, including  
26 continuing to utilize the slogan “just one small softgel per day” and (ii) from making  
27 or implying anything more than this single, qualified health claim: “Supportive but  
28 not conclusive research shows that consumption of EPA and DHA omega-3 fatty

1 acids may reduce the risk of coronary heart disease”; **(3)** injunctive relief in the form  
2 of an order requiring Defendants to engage in corrective advertising to undo the  
3 harm caused by their extensive, long-term campaign of deceptive advertising and  
4 misleading statements related to the purported cardiovascular benefits provided by  
5 “just one small softgel per day” of MegaRed..

6 133. AS TO THE FIFTH CLAIM FOR RELIEF: For an order **(1)** awarding  
7 actual damages in an amount to be determined at trial; **(2)** an order awarding  
8 punitive damages in an amount to be determined at trial on the bases that  
9 Defendants deliberately engaged in the conduct alleged herein with malicious  
10 intent.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial by jury of all issues which may be tried by a  
13 jury.

14 DATED: August 11, 2015

**FAZIO | MICHELETTI LLP**

15  
16 by /s/ Dina E. Micheletti  
17 Dina E. Micheletti

18 Attorneys for Plaintiff  
19 Jeffrey Johnston, on behalf of himself  
20 and all others similarly situated  
21  
22  
23  
24  
25  
26  
27  
28

**EX. A**



**May Reduce  
the Risk of Coronary  
Heart Disease**

† SUPPORTIVE, BUT NOT CONCLUSIVE RESEARCH SHOWS THAT CONSUMPTION OF EPA  
AND DHA (OMEGA-3 FATTY ACIDS) MAY REDUCE THE RISK OF CORONARY HEART DISEASE.

*Schiff*  
**MegaRed**  
EXTRA STRENGTH 500 mg  
OMEGA-3 KRILL OIL

*Schiff*  
**MegaRed**  
EXTRA STRENGTH 500 mg  
OMEGA-3 KRILL OIL

**EXTRA STRENGTH 500 mg  
OMEGA-3 KRILL OIL**

**COMPARE TO FISH OIL**

- ☑ Just 1 Small Softgel Per Day
- ☑ No Fishy Odor or Aftertaste
- ☑ 100% Pure Krill Oil

ACTUAL SIZE

**45** ONE PER DAY  
SOFTGELS

DIETARY  
SUPPLEMENT

# What is Small, Red, Powerful and Supports Cardiovascular Health?



ACTUAL  
SIZE  
SOFTGEL  
SHOWN



## COMPARE TO FISH OIL

	Just 1 Small Softgel Per Day	Powerful Antioxidants	Contains Omega-3 Fatty Acids	No Fishy Taint or Aftertaste
MegaRed <sup>®</sup> Softgel	✓	✓	✓	✓
Fish Oil Softgel			✓	

## May Reduce the Risk of Coronary Heart Disease<sup>1</sup>

Schiff<sup>®</sup> MegaRed<sup>®</sup> contains oil from 100% pure Antarctic krill, tiny crustaceans that thrive in the frigid waters of the Antarctic. MegaRed<sup>®</sup> provides a combination of omega-3 fatty acids, phospholipids and critical antioxidants to support heart and joint health.\*

Unlike fish oil, MegaRed<sup>®</sup> omega-3 fatty acids are mainly absorbed and carried to the body's cells in phospholipid form. Phospholipids form the structural basis of cell membranes, so MegaRed<sup>®</sup> phospholipids with omega-3 fatty acids are easily recognized, incorporated and utilized by the body.

Just one small, easy-to-swallow softgel per day. Quality tested for purity.

For more information, visit [www.SchiffMegaRed.com](http://www.SchiffMegaRed.com) or call 1-800-526-6251

\* THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

<sup>1</sup> Supportive, but not conclusive research shows that consumption of EPA and DHA Omega-3 fatty acids may reduce the risk of coronary heart disease.

# What is Small, Red, Powerful and Supports Heart Health?



ACTUAL  
SIZE  
SOFTGEL  
SHOWN



## COMPARE TO FISH OIL

	Just 1 Small Softgel Per Day	Contains Omega-3 Fatty Acids	No Fishy Aftertaste
 MegaRed® Softgel	✓	✓	✓
 Fish Oil Softgel		✓	

## May Reduce the Risk of Coronary Heart Disease†

Schiff® MegaRed® contains oil from 100% pure Antarctic krill, tiny crustaceans that thrive in the frigid waters of the Antarctic. MegaRed® provides a combination of omega-3 fatty acids, phospholipids and critical antioxidants to support heart and joint health.\*

Unlike fish oil, MegaRed® omega-3 fatty acids are mainly absorbed and carried to the body's cells in phospholipid form. Phospholipids form the structural basis of cell membranes, so MegaRed® phospholipids with omega-3 fatty acids are easily recognized, incorporated and utilized by the body.

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† Supportive, but not conclusive research shows that consumption of EPA and DHA Omega-3 fatty acids may reduce the risk of coronary heart disease.



MegaRed® contains oil from 100% pure Antarctic krill, tiny crustaceans that thrive in the frigid waters of the Antarctic. Just one small MegaRed® softgel provides an optimal combination of omega-3 fatty acids and the powerful antioxidant astaxanthin to support heart health.\* Research has shown that omega-3s may reduce the risk of coronary heart disease.<sup>1</sup>

### COMPARE TO FISH OIL

	MegaRed softgel	Fish Oil softgel
100% pure Antarctic Krill oil	✓	
Contains Omega-3 Fatty acids	✓	✓
Just one small softgel per day	✓	
No fishy aftertaste	✓	
In phospholipid form for easy absorption	✓	
Contains powerful antioxidant astaxanthin	✓	

MegaRed Omega-3 Krill oil is carried in phospholipid form so it is easily recognized and utilized by your body, giving easy absorption.

#### MEGARED® OMEGA-3 KRILL OIL CONTAINS INGREDIENTS TO SUPPORT THREE MARKERS OF CARDIOVASCULAR HEALTH:

- C-reactive Protein (CRP): An important marker of systemic inflammation<sup>1</sup>
- Triglycerides: A type of fat measured in the blood<sup>2</sup>
- Omega-3 index: The amount of omega-3 fatty acids EPA/DHA in blood cells<sup>3</sup>

Just one small pill, with no fishy aftertaste, that's why MegaRed® Omega-3 Krill Oil is the superior choice.

<sup>1</sup> Based on a 30-day randomized, double-blind, placebo-controlled trial measuring the effect of 300 mg EPA/DHA on CRP levels.

<sup>2</sup> Based on 70 randomized control trials assessing the impact of omega-3 fatty acid intake on serum triglyceride levels.

<sup>3</sup> Proprietary controlled human clinical study of 300 mg MegaRed® for improving Omega-3 index.

**\* THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.**

<sup>1</sup> Supplemental, but not conclusive, research shows that consumption of EPA and DHA Omega-3 fatty acids may reduce the risk of coronary heart disease.

<sup>2</sup> Activity within the normal range.

MegaRed® contains oil from 100% pure Antarctic krill, tiny crustaceans that thrive in the frigid waters of the Antarctic. Just one small MegaRed® softgel provides an optimal combination of omega-3 fatty acids and the powerful antioxidant astaxanthin to support heart health.\* Research has shown that omega-3s may reduce the risk of coronary heart disease.†

## COMPARE TO FISH OIL



	MegaRed softgel	Fish Oil softgel
100% pure Antarctic Krill oil	✓	
Contains Omega-3 Fatty acids	✓	✓
Just one small softgel per day	✓	
No fishy aftertaste	✓	
In phospholipid form for easy absorption	✓	
Contains powerful antioxidant astaxanthin	✓	

\* MegaRed Omega-3 Krill oil is carried in phospholipid form so it is easily recognized and utilized by your body, giving easy absorption.

### MEGARED® OMEGA-3 KRILL OIL CONTAINS INGREDIENTS TO SUPPORT THREE MARKERS OF CARDIOVASCULAR HEALTH:

- C-reactive Protein (CRP): An important marker of systemic inflammation<sup>1</sup>
- Triglycerides: A type of fat measured in the blood<sup>2†</sup>
- Omega-3 index: The amount of omega-3 fatty acids EPA DHA in blood cells<sup>3</sup>

Just one small pill with no fishy aftertaste, that's why MegaRed® Omega-3 Krill Oil is the superior choice.

easily recognized and utilized by your body, giving easy absorption

**MEGARED® OMEGA-3 KRILL OIL CONTAINS INGREDIENTS TO SUPPORT THREE MARKERS OF CARDIOVASCULAR HEALTH:**

- C-reactive Protein (CRP): An important marker of systemic inflammation<sup>1</sup>
- Triglycerides: A type of fat measured in the blood<sup>2†</sup>
- Omega-3 index: The amount of omega-3 fatty acids EPA DHA in blood cells<sup>3</sup>

**Just one small pill with no fishy aftertaste, that's why MegaRed® Omega-3 Krill Oil is the superior choice.**

<sup>1</sup>Based on a 30 day randomized, double blind, placebo controlled trial measuring the effect of 300 mg krill oil on CRP levels.

<sup>2</sup>Based on 15 randomized controlled trials assessing the impact of omega-3 fatty acid intake on serum triglyceride levels.

<sup>3</sup>Proprietary controlled human clinical study of 300 mg MegaRed® for improving Omega-3 Index.

**★ THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.**

<sup>†</sup>Supportive, but not conclusive research shows that consumption of EPA and DHA Omega-3 fatty acids may reduce the risk of coronary heart disease.

<sup>†</sup>Already within the normal range.



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and sub-categories with checkboxes.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 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

05/4+

(Place an "X" in One Box Only) ( ) SAN FRANCISCO/OAKLAND ( ) SAN JOSE ( ) EUREKA

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

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

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