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Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HAROLD M. HOFFMAN, individually
and on behalf of those similarly situated,

Plaintiffs,

v.

MUSHROOM WISDOM, INC.,

Defendant.

Civil Action No.
Judge:

Document electronically filed

**MUSHROOM WISDOM INC.'S
NOTICE OF REMOVAL**

DEFENDANT MUSHROOM WISDOM INC.'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant Mushroom Wisdom, Inc. (“Mushroom Wisdom”), located at 1 Madison St., East Rutherford, NJ, 07073, by and through its undersigned counsel, hereby removes this action, filed by Harold M. Hoffman, located at 240 Grand Avenue, Englewood, NJ 07631, from the Superior Court of New Jersey, Bergen County - Law Division, to the United States District Court for the District of New Jersey in accordance with 28 U.S.C. §§ 1331,

1332(d), 1441, 1446, and 1453. In support of this Notice of Removal, Mushroom Wisdom states as follows:

STATE COURT ACTION

1. On or about January 19, 2016, plaintiff Harold M. Hoffman (“Hoffman”) filed in the Superior Court of New Jersey, Law Division, Bergen County, a purported class action complaint entitled *Harold M. Hoffman, individually and on behalf of all other similarly situated v. Mushroom Wisdom, Inc.*, Docket No. Ber-L-608-16 (Bergen Cnty Sup. Ct. N.J.) (“Complaint”). On January 24, 2016, Hoffman served that Complaint, the Summons, and the Civil Case Information Statement on Mushroom Wisdom, Inc.’s owner, Mike Shirota.

2. In accord with 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty days after Mushroom Wisdom first received a copy of the Complaint, which is the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

3. Attached as Exhibit A is a true and complete copy of all documents referenced herein Paragraph 1, said documents constituting the only process, pleading, or orders received by Mushroom Wisdom in this action.

4. The Complaint alleges that Mushroom Wisdom violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. (“CFA”) in connection with the marketing, labeling, and advertisement of a dietary supplement known as

Amyloban3399 (“Amyloban”).

5. Hoffman’s Complaint alleges that Mushroom Wisdom violated the CFA because Mushroom Wisdom’s labeling violated applicable FDA statutes and regulations. In particular, the Complaint alleges that Mushroom Wisdom violated the CFA through violations of the federal law, to wit, by misbranding the product under 21 U.S.C. § 352(f)(1), and “market[ing] in the U.S. without prior approval from the FDA as described in section 505(a) of the FFDC Act [21 U.S.C. § 355(a)].” *See* Complaint at ¶¶ 16–17; *see also id.* at ¶ 35 (“Defendant marketed and sold Amyloban—and consumers purchased it—on the premise that the product was lawfully sold to deliver specific benefit”).

6. Mushroom Wisdom removes this action because there is (a) original “federal question” jurisdiction in accordance with 28 U.S.C. § 1331, as Plaintiff’s claims arise under the laws of the United States, and (b) because there is diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

FEDERAL QUESTION JURISDICTION

7. Federal question jurisdiction is appropriate where “a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal*

Products, Inc. v. Darune Eng'g & Mfg., 545 U.S. 308, 314 (2005). Hoffman asserts a state law consumer fraud claim that is entirely dependent on an interpretation of federal law. Hoffman's purported state law claim necessarily implicates and arises under federal law. *See, e.g.*, Complaint, at 2 ("Defendant makes these claims that are ... in violation of federal law..."); *id.* at 3 ("Defendant's claims ... were untrue and violative of federal law as Defendant's Amyloban has not been approved by the United States Food & Drug Administration"); *id.* at ¶ 7 ("Defendant violates explicit FDA rules and guidelines"); *id.* at ¶ 8 ("Defendant further violates explicit FDA rules and guidelines"); *id.* at ¶ 9 (same); *id.* at ¶ 10 (same); *id.* at ¶ 11 (same); *id.* at ¶ 12 (same); *id.* at ¶¶ 15-17 (citing purported violations of federal law); *id.* at ¶ 20 (summarizing allegations that are predicated on federal law: "Plaintiff brings this suit to recover funds taken by Defendant as a consequence of its deception of nationwide consumers through marketing and sale of an illegal product"); *id.* at ¶ 28 ("The product delivered by Defendant to plaintiff and members of the putative class was misrepresented and sold in violation of governing federal law"); *id.* at ¶ 35 (claiming a "causal relationship between the Defendant's misrepresentations of lawful efficacy and the loss suffered by plaintiff").

8. Plaintiff advances a class action claim and seeks class certification. *See* Complaint at ¶ 37. One of the "common questions of law and fact" that

purportedly affects all members of the class includes the following issue, which is the crux of the Plaintiff's Complaint: "Whether Defendant marketed Amyloban in violation of federal law." *Id.* at ¶ 37(b).

9. The marketing, labeling, and advertisement of Amyloban is comprehensively regulated by the FDCA and regulations promulgated thereunder. The Complaint alleges that Mushroom Wisdom violated the CFA solely because Amyloban's marketing, labeling, and advertisement does not comport with the FDCA and regulations promulgated thereunder.

10. The Supreme Court has repeatedly held that for federal jurisdiction a case "arises under" federal law if resolution of the claim requires the Court to evaluate significant federal issues, even if the plaintiff's claim technically proceeds under a state law theory. *Grable*, 545 U.S. at 312 (*citing Hopkins v. Walker*, 244 U.S. 486, 490–91 (1917)). "The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Id.*

11. Here the Complaint: alleges that Mushroom Wisdom's claims "are in violation of federal law"; cites to the FDCA as evidence that Mushroom Wisdom violates federal law; repeatedly alleges that Mushroom Wisdom "violates explicit

FDA rules;” alleges that Mushroom Wisdom violates the FDCA; and continuously cites directly to the FDCA as the only evidence that Mushroom Wisdom has allegedly violated the CFA. *See* Complaint at pp. 2–7. Indeed, the Complaint alleges that “Plaintiff and members of the putative class paid hard earned money and received from Defendant, in exchange, **a product which was marketed in violation of governing federal law.**” *See* Complaint at pp. 10–11 (emphasis added). A significant and central issue in this case will therefore concern whether Mushroom Wisdom’s labeling and marketing violated federal law, rendering removal appropriate. *See DeAngelo-Shuayto v. Organon USA Inc.*, 2007 WL 4365311, at *8 (D.N.J. Dec. 12, 2007) (explaining that federal question jurisdiction is appropriate where the merits of the New Jersey Consumer Fraud Act depend solely on construction of federal law).

REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT (“CAFA”)

12. This matter is subject to removal under the CAFA, 28 U.S.C. § 1332(d).

13. The CAFA, with limited exceptions, confers federal jurisdiction over any class action lawsuit if the following elements are satisfied: (i) the claims of all plaintiffs, aggregated together, exceed \$5 million, and (ii) at least one plaintiff is diverse from at least one defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(6).

14. “Class action” is defined in 28 U.S.C. § 1332(d)(1)(B) as any action

filed pursuant to Fed. R. Civ. Proc. 23 or any analogous state rule or statute.

Section 1332(d)(8) states that “[t]his subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.”

15. Here the class action Complaint “demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney’s fees, civil penalties mandated by N.J.S.A. 56:8-19, and any other and further relief as the Court deems just and proper.” The claims of all plaintiffs to this action (including the nationwide class), aggregated together, exceed \$5 million. *See* Declaration of Donna Noonan, attached hereto as Exhibit B.

16. The Complaint states that “[t]he class is comprised of consumers throughout the United States.” At least one member of the proposed class is a citizen of a state different from Mushroom Wisdom. In fact, the substantial majority of all putative class plaintiffs reside in different states across the country. Only a small minority of Mushroom Wisdom’s sales are to New Jersey consumers. Accordingly, diversity under the CAFA exists. *See* 28 U.S.C. § 1332(d).

CONCLUSION

Mushroom Wisdom requests that this Court assume jurisdiction over the entire action herein as provided by law.

DATED: February 12, 2016

Respectfully submitted,

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Attorneys for Defendant Mushroom Wisdom

¹ Defendant's out-of-state counsel intend to promptly move for pro hac vice admission pursuant to Local Rule 101.1(c).

EXHIBIT A

HAROLD M. HOFFMAN, ESQ.
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ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiff,

-against-

MUSHROOM WISDOM, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: **BER-L-608-16**

CIVIL ACTION

SUMMONS

From the State of New Jersey To the Defendant(s) named above:

MUSHROOM WISDOM, INC.

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided). If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A \$200 filing fee, payable to the Clerk of the Superior Court, and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

/s/ Michelle M. Smith
Michelle M. Smith, Superior Court Clerk

Dated: January 22, 2016

Name of Defendant to be Served: **MUSHROOM WISDOM, INC.**
Address of Defendant to be Served: c/o Masaki Shirota, **Reg. Agent**, 6 Aster Ct., Paramus, NJ

ATLANTIC COUNTY

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Beacharach Blvd., 1st Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY

Deputy Clerk of the Superior Court
Case Processing Section - Rm 113
Justice Center - 10 Main St.
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY

Deputy Clerk of the Superior Court
Central Processing Office
Attn.: Judicial Intake
49 Rancocas Rd., 1st Fl.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Records, Suite 150
101 S. Fifth St.
Camden, NJ 08103-4001
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY

Deputy Clerk of the Superior Court
Court House
9 N. Main Street
Cape May, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., PO Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY

Deputy Clerk of the Superior Court
237 Hall of Records
465 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(973) 533-6755
Legal Services
(973) 624-4500

GLOUCESTER COUNTY

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Delaware Streets
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 964-9400

HUDSON COUNTY

Deputy Clerk of the Superior Court
Administration Bldg
Hudson Fee Office, Room G-9
595 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY

Deputy Clerk of the Superior Court
Local Filing Office, Court House
175 S. Broad St., PO Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY

Deputy Clerk of the Superior Court
Court House, 1st Fl.
1 Kennedy Sq., PO Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY

Deputy Clerk of the Superior Court
71 Monument Park, PO Box 1260
Court House
Freehold, NJ 07728-1262
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY

Deputy Clerk of the Superior Court
Civil Division
PO Box 910
Morristown, NJ 07930-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY

Deputy Clerk of the Superior Court
Court House, Room 121
118 Washington St.
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY

Deputy Clerk of the Superior Court
92 Market St., PO Box 29
Salem, NJ 08079
LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House, 3rd Fl.
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY

Deputy Clerk of the Superior Court
Court House, Room 107
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 387-1835
LEGAL SERVICES
(908) 475-2010

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HAROLD M. HOFFMAN, individually and on behalf of those similarly situated,

Plaintiff,

-against-

MUSHROOM WISDOM, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: **BER-L-608-16**

CIVIL ACTION

**COMPLAINT AND JURY
DEMAND IN CLASS ACTION**

OVERVIEW

By this civil action, Plaintiff brings claims on his own behalf and on behalf of those similarly situated (the "Class"), to redress nationwide injury inflicted on the United States consumer public. As detailed below, Defendant, on a nationwide basis, advertised, promoted, marketed, distributed and sold a dietary supplement in tablet form, known as *Amyloban 3399* ("Amyloban"), as effective in the cure, mitigation, treatment, or prevention of Brain Disease (including Alzheimer's Disease).

As alleged below, Defendant manufactures, advertises, promotes, markets, distributes and sells **Amyloban** coupled with the highly specific claim that it is an effective therapy for the prevention of Brain Disease. Indeed, it claims that Amyloban delivers a “Breakthrough” in “Brain Function.”

Specifically, the Amyloban product label as well as Defendant’s website [www.mushroomwisdom.com] prominently claim and represent that Amyloban:

- Inhibits the formation of Amyloid, a toxic peptide in brain cells. Amyloid has been shown to be toxic to several relevant cell types, including neurons, cerebrovascular smooth muscle cells, and endothelial cells. Recent medical research suggests that amyloid build-up in the brain may contribute to Alzheimer’s Disease.

- Contains a constituent ingredient “that supports healthy nerves and brain” and another constituent ingredient that stimulates “the production of Nerve Growth Factor (“NGF”) in the brain.” NGF is a neuropeptide primarily involved in the regulation of growth, maintenance, proliferation, and survival of certain neurons, which are core components of the brain and spinal cord.

Defendant makes these claims and promises that are not only disingenuous and unsubstantiated, they are in violation of federal law which prohibits the sale of all

unapproved and uncleared products for the diagnosis, mitigation, prevention, treatment, or cure of any disease, including Brain Disease. Dietary supplements may not be labeled with therapeutic claims suggesting that they are intended for use in the cure, mitigation, treatment, or prevention of disease, as this causes them, by operation of federal law, to be considered as unapproved drugs [21 U.S.C. § 321(g)(1)(B)].

Defendant's claims and promises with respect to the purported efficacy and legality of its product, Amyloban, were calculated and designed to lead Plaintiff and others similarly situated to believe that Amyloban had the capacity to mitigate, prevent, treat or cure Brain Disease. Defendant's claims and promises were both untrue and violative of federal law as Defendant's Amyloban has not been approved by the United States Food & Drug Administration ("FDA") for its claimed and intended purpose.

The putative class comprises all nationwide purchasers of Amyloban who purchased the product during the six year period preceding the filing of this suit.

1. At all times relevant, Plaintiff Harold M. Hoffman had a place of residence in the State of New Jersey, County of Bergen. Plaintiff was exposed to and read, saw and/or heard Defendant's labeling, advertising and marketing claims and promises with respect to Amyloban, and thereafter purchased the product at a health food store called Aylward's in Englewood, New Jersey, in reliance upon such labeling, advertising and

marketing claims and promises, in December of 2015, for a purchase price of \$89.99.

2. At all relevant times, Defendant **MUSHROOM WISDOM, INC.**, was a corporation organized and existing pursuant to the laws of the State of Delaware, with a principal place of business located in East Rutherford, New Jersey.

3. Defendant advertised, marketed, distributed and sold Amyloban in commerce throughout the United States.

4. At all relevant times, plaintiff was and is a consumer, with a residence in the State of New Jersey, County of Bergen.

5. At all relevant times, Defendant constituted a "person" as defined in the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1(d)*.

6. For the six-year period preceding the filing of this action, Defendant, through retail and/or other distribution, advertised, promoted, offered, labeled, and sold its products to consumers, including Amyloban, a purported dietary supplement in tablet form, as able and intended to mitigate, prevent, treat or cure Brain Disease, including Alzheimer's Disease.

7. Indeed, Defendant violates explicit FDA rules and guidelines by making a claim of efficacy, *i.e.*, intended to mitigate, prevent, treat or cure Brain Disease, disguised

as a product name. Here, Defendant sells and labels its product as Amyloban, a poorly concealed attempt to communicate that Amyloban, is capable of **banning**, relieving, stopping, addressing, impacting, mitigating, preventing, treating or curing Brain Disease caused by the accumulation of Amyloids, a toxic peptide in brain cells.

8. Defendant further violates explicit FDA rules and guidelines by suggesting, in its advertising, on its website and on the product label, that Amyloban has an effect on a specific disease, Brain Disease, by purportedly banning / eliminating the accumulation of Amyloids, a toxic peptide in brain cells.

9. Defendant further violates explicit FDA rules and guidelines by claiming, in its advertising, on its website and on the product label, that Amyloban relieves and/or mitigates the alleged dangers of Amyloid accumulation in the brain.

10. Moreover, Defendant further violates explicit FDA rules and guidelines by suggesting that its product and/or product ingredients belong to a particular class of products intended to cure, treat, prevent, or mitigate Brain Disease.

11. Defendant further violates explicit FDA rules and guidelines, as noted, by claiming that its product, Amyloban, inhibits the formation of Amyloid, a toxic peptide in brain cells. Amyloid has been shown to be toxic to several relevant cell types, including

neurons, cerebrovascular smooth muscle cells, and endothelial cells. Recent medical research suggests that amyloid build-up in the brain may contribute to Alzheimer's Disease.

12. Defendant further violates explicit FDA rules and guidelines, as noted, by claiming , on its product label, that Amyloid contains a constituent ingredient "that supports healthy nerves and brain" and another constituent ingredient that stimulates "the production of Nerve Growth Factor ("NGF") in the brain." NGF is a neuropeptide primarily involved in the regulation of growth, maintenance, proliferation, and survival of certain neurons, which are core components of the brain and spinal cord.

13. Based on Defendant's illicit marketing efforts and product labeling, including the foregoing unlawful claims, Defendant is believed to have sold substantial quantities of Amyloban, a product that purportedly contains a particular mushroom extract, to consumers throughout the nation.

14. Defendant makes the foregoing illicit claims of product efficacy directly on the product label and/or Defendant's website, which tout, claim and offer Amyloban as intended to mitigate, prevent, treat or cure Brain Disease including Alzheimer's Disease.

15. Amyloban, which is labeled as a dietary supplement, has not been approved or cleared by the FDA for use in the mitigation, prevention, treatment, or cure of Brain

Disease. Thus, the marketing of Amyloban violates the Federal Food, Drug, and Cosmetic Act ("FFDC Act), 21 U.S.C. §§ 331, 352, in that it is an unapproved and uncleared product for the diagnosis, mitigation, prevention, treatment, or cure of a disease.

16. Amyloban is not recognized as safe and effective for the treatment of Brain Disease and thus it constitutes a "new drug" under section 201(p) of the FFDC Act [21 U.S.C. § 321(p)]. New drugs may not be legally marketed in the U.S. without prior approval from the FDA as described in section 505(a) of the FFDC Act [21 U.S.C. § 355(a)]. The FDA approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate that the drug is safe and effective. Defendant has made no such submission to the FDA.

17. Furthermore, Amyloban is offered for conditions that are not amenable to self-diagnosis and treatment by individuals who are not medical practitioners; therefore, adequate directions for use cannot be written so that a layperson can use Amyloban safely for its intended purposes. Thus, Amyloban is misbranded within the meaning of section 502(f)(1) of the FFDC Act [21 U.S.C. § 352(f)(1)], in that the labeling fails to bear adequate directions for use. The introduction of a misbranded drug into interstate commerce is a violation of section 301(a) of the FFDC Act [21 U.S.C. § 331(a)].

18. The marketing and sale of unapproved or uncleared products to treat Brain

Disease, such as Amyloban, is a potentially significant threat to the public health.

19. Defendant's blatant misrepresentations and false claims regarding the legality and efficacy of Amyloban were designed to and did lead Plaintiff and others similarly situated to believe that Amyloban was being lawfully sold and that it was effective, and conformed to the requirements of federal law regulating the marketing of products claiming to treat and/or prevent Brain Disease. Plaintiff and members of the Class relied on Defendant's misrepresentations and would not have purchased and/or paid a purchase price for the product but for Defendant's false claims and misrepresentations. As a result, Defendant has wrongfully taken substantial sums from hard-working U.S. consumers.

20. Plaintiff brings this suit to recover funds taken by Defendant as a consequence of its deception of nationwide consumers through marketing and sale of an illegal product.

21. The affirmative claims, promises and representations made by Defendant in connection with the marketing, advertisement and sale of Amyloban, as aforesaid, are false and violative of federal law.

22. Plaintiff and members of the putative class are purchasers of Amyloban and, prior to purchasing the product, saw, read and/or heard Defendant's advertisements,

product labeling, promises, claims and representations, as aforesaid.

23. Plaintiff and members of the class, prior to purchasing the product, saw, read and/or heard Defendant's promises, product labeling, claims and representations as aforesaid, and made an out of pocket payment to Defendant in response thereto and in reliance thereon.

24. The very purpose of the New Jersey Consumer Fraud Act is to protect consumers, such as the putative class members at bar, from being victimized by false and/or illegal promises and claims with respect to product efficacy, benefit and legality.

25. In truth and fact, Defendant misrepresented the efficacy, legality and benefit of its product. Plaintiff and members of the class paid for a product that Defendant affirmatively and specifically represented to be lawful and effective.

26. Here, consumers, including plaintiff, made purchasing decisions and did, in fact, make purchases from Defendant based upon Defendant's specific claims and representations of product efficacy, legality and benefit for its claimed purpose.

27. Defendant has affirmatively misrepresented, misbranded and mislabeled its product.

28. The affirmative promises and representations made by Defendant – both in

product labeling and in marketing advertisements and representations – in connection with Amyloban are false, illegal and misleading. Plaintiff and members of the class were entitled to trust the Defendant's labeling and marketing representations and advertisements with respect to the product. The product delivered by Defendant to plaintiff and members of the putative class was misrepresented and sold in violation of governing federal law.

29. Defendant's advertisements, promises and representations concerning Amyloban are illegal, false and constitute a deception; a misrepresentation; an unconscionable trade practice; a sharp and deceitful marketplace practice, and are a false promise.

30. Defendant's advertisements, promises and representations concerning Amyloban result in nationwide consumers who purchased it, being subjected to misrepresentation, false promise, fraud, deceit, trickery and false and deceptive advertising.

31. Defendant has made affirmative misrepresentations in connection with the sale, marketing and/or advertisement of its product, Amyloban.

32. Plaintiff and members of the putative class suffered ascertainable loss in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' unlawful conduct as aforesaid. Plaintiff and members of the putative class

paid hard earned money and received from Defendant, in exchange, a product which was marketed in violation of governing federal law. Indeed, there was a substantial difference between the price (\$89.99) paid by consumers, including plaintiff, for the Defendant's product, and the represented value of the product.

33. Here, plaintiff and members of the class suffered ascertainable loss when they received, for their money, an illegal product less than, and different from, the product promised by Defendant. The Defendant's product failed to measure up to the consumers' reasonable expectations based on the representations made by Defendant. Thus, purchasers of said product were injured and suffered loss.

34. For their money, plaintiff and members of the class received something less than, and different from, what they reasonably expected in view of Defendant's representations. As a result, they suffered ascertainable loss.

35. Defendant marketed and sold Amyloban - and consumers purchased it - on the premise that the product was lawfully sold to deliver specified benefit. Thus, there is a causal relationship between the Defendant's misrepresentations of lawful efficacy and the loss suffered by plaintiff and class members.

CLASS ALLEGATIONS

36. Plaintiff brings this suit as a class action individually and in behalf of others similarly situated pursuant to New Jersey Court Rule 4:32. Subject to additional information obtained through further investigation and/or discovery, the definition of the Class may be expanded or narrowed. The proposed Class consists of all nationwide purchasers of Amyloban during the six year period preceding the filing of this suit.

37. This action has been brought and may properly be maintained as a class action pursuant to New Jersey Court Rule 4:32.

Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. The Class is comprised of consumers throughout the United States.

Commonality: Common questions of law and fact exist as to all members of the Class. These common questions predominate over the questions affecting only individual Class members, and include:

- a. Whether Defendant made affirmative misrepresentations in violation of the New Jersey Consumer Fraud Act;
- b. Whether Defendant marketed Amyloban in violation of federal law; and,
- c. The appropriate measure of damages sustained by the Plaintiff and/or other members of the Class.

Typicality: Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Class, purchased Amyloban after exposure to the same misrepresentations and/or omissions in Defendants' advertising and received a product less than and different from the promised product. Plaintiff is advancing claims and legal theories typical to the Class.

Adequacy: Plaintiff's claims are made in a representative capacity on behalf of all members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

32. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class. Should the Court require same as a condition to class certification, Plaintiff is prepared to surrender the role of counsel for the putative class. Alternatively, a suitable alternative class representative will be identified.

33. This suit may be maintained as a class action because Defendant has acted, and/or have refused to act, on grounds generally applicable to the Class, thereby making final relief appropriate.

34. Plaintiff does not presently seek injunctive relief.

35. **Superiority:** In addition, this suit may be maintained as a class action because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The claims asserted herein are applicable to all consumers throughout the United States who purchased Amyloban. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually effectively and cost-efficiently to redress Defendant's wrongful conduct. Individual litigation would enhance delay and expense to all parties. The class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I

36. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

37. Defendant's conduct constitutes an unconscionable commercial practice in

violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

38. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT II

39. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

40. Defendant's conduct constitutes deception in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

41. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT III

42. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

43. Defendant's conduct constitutes fraud in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

44. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A. 56:8-19*, and any other and further relief as the Court deems just and proper.

COUNT IV

45. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

46. Defendant's conduct constitutes false pretense, false promise and/or misrepresentation, in violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-2*.

47. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT V

48. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

49. Defendant's conduct constitutes knowing concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of any merchandise in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

50. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

JURY DEMAND

Demand is hereby made for trial by jury as to all issues.

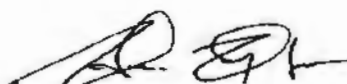
TRIAL COUNSEL DESIGNATION

Pursuant to Rule 4:25-4, the Court is respectfully advised that Harold M. Hoffman, Esq., is hereby designated as trial counsel in behalf of plaintiff.

CERTIFICATION PURSUANT TO RULE 4:5-1

Harold M. Hoffman, counsel for plaintiff, hereby certifies that the matter in controversy is not the subject of any other known pending action in this or any other Court or any pending arbitration, nor is any other action or arbitration known to be contemplated. At this time, no other known party, other than members of the class, are anticipated for joinder.



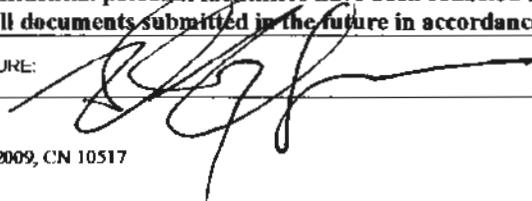
I certify that the foregoing is true to the best of my knowledge. I am aware that if any of the foregoing is wilfully false, I am subject to punishment.



HAROLD M. HOFFMAN, ESQ.

Dated: January 19, 2016

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT (CIS)		Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), If information above the black bar is not completed or if attorney's signature is not affixed.	
		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
		CHG/CK NO.	
		AMOUNT:	
		OVERPAYMENT:	
		BATCH NUMBER:	
ATTORNEY/PRO SE NAME HAROLD M. HOFFMAN, ESQ.	TELEPHONE NUMBER (201) 569-0086	COUNTY OF VENUE Bergen	
FIRM NAME (If applicable)		DOCKET NUMBER (When available) L-608-16	
OFFICE ADDRESS 240 GRAND AVENUE, ENGLEWOOD, NJ 07631-4352 hoffman.esq@verizon.net		DOCUMENT TYPE COMPLAINT	
NAME OF PARTY (e.g., John Doe, Plaintiff) HAROLD M. HOFFMAN, Individually and on behalf of those similarly situated		CAPTION HAROLD M. HOFFMAN, Individually and on behalf of those similarly situated v. MUSHROOM WISDOM, INC.	
CASE TYPE NUMBER (See reverse side for listing) 699	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION: This case is brought as a putative class action seeking recovery in behalf of a class of consumer purchasers and alleges that defendant(s) engaged in deceptive and unconscionable commercial practices in violation of the New Jersey Consumer Fraud Act.			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE:		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).			
ATTORNEY SIGNATURE: 			

SIDE 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 508 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 699 TORT – OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES
- 620 FALSE CLAIMS ACT

Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- 280 Zelnorm
- 285 Stryker Trident Hip Implants

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 279 GADOLINIUM |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 271 ACCUTANE | 282 FOSAMAX |
| 272 BEXTRA/CELEBREX | 283 DIGITEK |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 284 NUVARING |
| 275 ORTHO EVRA | 286 LEVAQUIN |
| 277 MAHWAH TOXIC DUMP SITE | 601 ASBESTOS |
| 278 ZOMETHA/AREDDIA | 619 VIOXX |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category.

Verbal Threshold

Putative Class Action

Title 59

EXHIBIT B

Richard D. Kraus, Esq. (RK4561)
SBN 033241983
rdkraus@earthlink.net
One University Plaza, Suite 14
Hackensack, NJ 07601
P: (201) 487-2870
F: (201) 343-8517

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HAROLD M. HOFFMAN, individually
and on behalf of those similarly situated,

Plaintiffs,

v.

MUSHROOM WISDOM, INC.,

Defendant.

Civil Action No.
Judge:

Document electronically filed

**DECLARATION OF DONNA
NOONAN**

**DECLARATION OF DONNA NOONAN IN SUPPORT OF MUSHROOM
WISDOM INC.'S NOTICE OF REMOVAL**

I, Donna Noonan, a representative of Mushroom Wisdom, Inc. (“Mushroom Wisdom”) declare as follows:

1. I am the President of Mushroom Wisdom, a corporation organized and existing under the laws of the State of Delaware. The principal place of business for Mushroom Wisdom is 1 Madison St., East Rutherford, New Jersey

07073.

2. I have read and reviewed the Complaint in the above captioned matter and make this Declaration based on my own personal knowledge.

3. Mushroom Wisdom sells products throughout the United States. The large majority of its sales are to consumers located outside of New Jersey.

4. The Complaint in the above-captioned case seeks recovery for Mushroom Wisdom sales through the past six (6) years.

5. During the relevant period in question, at least ninety percent (90%) of Mushroom Wisdom sales were to consumers not located in New Jersey. At most ten percent (10%) of relevant products sales were to entities or consumers within the state of New Jersey.

6. The Complaint in the above-captioned case seeks recovery for “treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney’s fees, civil penalties mandated by N.J.S.A. 56:8-19, and other and further relief as the Court deems just and proper.” *See, e.g.*, Complaint at 14–17.

7. When considering Mushroom Wisdom’s gross sales of product, together with potential (and reasonable) attorney fees, treble damages, and civil penalties at issue in the Complaint, the amount in controversy in this case clearly exceeds five million dollars.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on Feb 2, 2016.

By: 
Donna Noonan

EXHIBIT C

RICHARD D. KRAUS

ATTORNEY AT LAW

SUITE 14
ONE UNIVERSITY PLAZA
HACKENSACK, NEW JERSEY 07601
(201) 487-2870
FAX: (201) 343-8517
rdkraus@earthlink.net

Via Fed Ex

February 12, 2016

Clerk of the Superior Court of New Jersey
Bergen County Justice Center - Civil Division
10 Main Street, Room 115
Hackensack, NJ 07601

Re: Harold M. Hoffman, et al v. Mushroom Wisdom, Inc.
Docket No. BER-L-608-16

Dear Sir or Madam:

I represent Defendant Mushroom Wisdom, Inc. in the above-referenced matter. I enclose herewith for filing an original and two (2) copies of Defendant's Notice of Filing Notice of Removal of this matter to the United States District Court for the District of New Jersey. Please return a stamped "Filed" copy to me in the pre-paid, self-addressed envelope enclosed.

Please do not hesitate to contact me with any questions.

Very truly yours



Richard D. Kraus

cc w/enc: Peter A. Arhangelsky, Esq. (via electronic mail)
Harold M. Hoffman, Esq. (via electronic mail and Fed Ex)

Richard D. Kraus, Esq.
Attorney ID No. 033241983
One University Plaza, Suite 14
Hackensack, NJ 07601
P: (201) 487-2870

Attorney for Defendant

HAROLD M. HOFFMAN, individually and on
behalf of those similarly situated,

Plaintiffs,

v.

MUSHROOM WISDOM, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION BERGEN COUNTY

Docket No. BER-L-608-16

**NOTICE OF FILING NOTICE OF
REMOVAL TO THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

TO: Clerk of Court
Superior Court of New Jersey
Bergen County
10 Main Street
Hackensack, New Jersey 07601-7699

PLEASE TAKE NOTICE that Defendant Mushroom Wisdom, Inc. has this day filed a Notice of Removal, a copy of which is attached hereto as Exhibit A, in the above-entitled action with the Clerk of the United States District Court for the District of New Jersey, effecting the removal of this action from the Superior Court of New Jersey, Law Division, Bergen County.

DATED: February 12, 2016

Richard D. Kraus, Esq.
Attorney for Defendant

Richard D. Kraus, Esq. (RK4561)
SBN 033241983
rdkraus@earthlink.net
One University Plaza, Suite 14
Hackensack, NJ 07601
P: (201) 487-2870
F: (201) 343-8517

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HAROLD M. HOFFMAN, individually
and on behalf of those similarly situated,

Plaintiffs,

v.

MUSHROOM WISDOM, INC.,

Defendant.

Civil Action No.
Judge:

Document electronically filed

**DECLARATION PURSUANT
TO LOCAL CIVIL RULE 11.2**

I, Richard D. Kraus, Esq., admitted to the bars of the State of New Jersey and this Court, counsel for Defendant Mushroom Wisdom, Inc. in the above-captioned matter, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I certify under penalty of perjury that the foregoing is true and correct.

DATED: February 12, 2016

Respectfully submitted,

By: s/ Richard D. Kraus
Richard D. Kraus, Esq. (RK4561)
SBN 033241983
rdkraus@earthlink.net
One University Plaza, Suite 14
Hackensack, NJ 07601
P: (201) 487-2870
F: (201) 343-8517

Richard D. Kraus, Esq. (RK4561)
SBN 033241983
rdkraus@earthlink.net
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Hackensack, NJ 07601
P: (201) 487-2870
F: (201) 343-8517

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HAROLD M. HOFFMAN, individually
and on behalf of those similarly situated,

Plaintiffs,

v.

MUSHROOM WISDOM, INC.,

Defendant.

Civil Action No.
Judge:

Document electronically filed

CERTIFICATE OF SERVICE

I, Richard D. Kraus, an attorney admitted to practice before this Court, certify that on February 12, 2016, I electronically filed the following documents on behalf of defendant Mushroom Wisdom, Inc.:

- Notice of Removal with accompanying exhibits;
- Corporate Disclosure Statement Pursuant to Federal Rule of Civil Procedure 7.1;
- Statement pursuant to Local Civil Rule 11.2;

- Civil Cover Sheet; and
- Certificate of Service

Service was also made on this date upon the following counsel in accordance with the Federal Rules of Civil Procedure and the District of New Jersey's Local Rules on Service:

Harold M. Hoffman
240 Grand Avenue
Englewood, NJ 07631
Hoffman.esq@verizon.net

DATED: February 12, 2016

Respectfully submitted,

By: s/ Richard D. Kraus
Richard D. Kraus, Esq. (RK4561)
SBN 033241983
rdkraus@earthlink.net
One University Plaza, Suite 14
Hackensack, NJ 07601
P: (201) 487-2870
F: (201) 343-8517

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

Harold M. Hoffman, individually and on behalf of those similarly situated

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number) Harold M. Hoffman 240 Grand Avenue, Englewood, NJ 07631 (201) 569-10086; hoffman.esq@verizon.net

DEFENDANTS

Mushroom Wisdom, Inc.

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

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

Attorneys (If Known) Richard D. Kraus One University Plaza, Suite 14, Hackensack, NJ 07601 (201) 487-2870; rdkraus@earthlink.net

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

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

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

- 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 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): 21 U.S.C. s. 301 et seq. Brief description of cause: Whether Defendant violated federal law resulting in a violation of New Jersey law

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 February 12, 2016

SIGNATURE OF ATTORNEY OF RECORD s/ Richard D. Kraus

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.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.