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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
NEUROBRANDS, LLC,
Defendant.

Case No. SC125676

COMPLAINT

CASE MANAGEMENT CONFERENCE

LISA HART COLE
Date

7/26/14
Depto
830AM

Plaintiff People of the State of California ("the People" or "Plaintiff") are informed and believe and so allege as follows:

INTRODUCTION

1. Defendant Neurobrands, LLC ("Neuro" or "Defendant") is a California-based company that makes and sells bottled drinks called Neuro Bliss, Neuro Sonic, Neuro Daily and

1 Neuro Sleep (collectively, "the Products"). In its marketing, Defendant claims that the Products
2 provide various benefits to consumers.

3 2. The People's investigation revealed that certain of Defendant's marketing claims for
4 the Products were misleading, overstated, or not backed by competent and reliable scientific
5 evidence as required by law.

6 3. The People bring this case so that the Court can enjoin and redress Defendant's
7 wrongful practices. The People are requesting injunctive relief, restitution, civil penalties, and other
8 equitable relief.

9
10 **PARTIES AND VENUE**

11 4. The People bring this action through the Los Angeles County District Attorney's
12 Office and the Santa Monica City Attorney's Office pursuant to Business and Professions Code
13 sections 17204 and 17535.

14 5. Defendant is a limited liability company formed in the state of California and
15 registered to do business in California. Defendant conducts its operations from locations in Los
16 Angeles County.

17 6. Whenever reference is made in this complaint to any act of Defendant, such
18 allegation shall be deemed to mean that Defendant and its officers, directors, agents, employees, or
19 representatives did or authorized such acts while engaged in the management, direction, or control of
20 the affairs of Defendant and while acting within the scope and course of their duties, with actual or
21 ostensible authority to perform the acts so alleged.

22 7. Venue is appropriate in this Court since all of the wrongful acts alleged below
23 occurred in Los Angeles County.

24
25 **FACTUAL ALLEGATIONS**

26 8. Defendant engaged in all of the acts alleged in this Complaint on a regular basis since
27 at least in or about 2009.

1 9. Defendant makes and sells drinks that come in a variety of flavors and names. Each
2 variety purports to help consumers in a different way. The specific varieties have changed over the
3 years. Currently Neuro sells four varieties of drinks: Neuro Sleep (marketed, among other things, as
4 a sleep aid), Neuro Daily (marketed, among other things, to support the immune system), Neuro
5 Bliss (marketed, among other things, as a relaxation aid), and Neuro Sonic (marketed, among other
6 things, to help increase energy and focus). Neuro has sold other drink varieties with other marketing
7 claims during the statutory period.

8 10. Neuro has used the following claims or similar variations, among others in the
9 marketing of its drinks, each of which has been misleading and unsubstantiated by competent and
10 reliable scientific evidence:

- 11 a. Supports memory
- 12 b. Provides fuel for the brain
- 13 c. Enhances mood
- 14 d. Daily dose of immunity
- 15 e. Relieves muscle cramps
- 16 f. Helps normalize sleep patterns
- 17 g. Promotes healthy aging
- 18 h. Provides mental energy
- 19 i. Deliver sustained focus
- 20 j. Strengthen your focus and creativity
- 21 k. Reduce(s) stress

22 11. Defendant has marketed certain of its drinks and represented them for use as
23 conventional foods within the meaning of 21 U.S.C. §312(ff)(2)(B) and the related federal rules and
24 guidelines. Despite the foregoing, Neuro has mislabeled certain of its drinks as “dietary
25 supplements” rather than as conventional foods.

26 12. Despite marketing and representing its drinks as conventional foods, Neuro has
27 included additives in them, and in amounts, that are not “generally recognized as safe” under the
28

1 applicable federal laws and regulations ("GRAS"); and that do not comply with the other
2 requirements of the federal laws and regulations.

3 13. Neuro has marketed its drinks in other misleading ways which have created the false
4 impression in consumers that the drinks have medicinal, therapeutic, or scientific properties.

5
6 **VIOLATIONS OF LAW**

7 14. Defendant's acts as described above violated various laws including the following.

8 15. False Advertising Law. By making untrue or misleading statements to induce
9 payments from consumers, Defendant violated Business and Professions Code section 17500.

10 16. Claim Substantiation Law. By making untrue or misleading advertising claims that
11 purport to be based on factual, objective, or clinical evidence and purport to be based on any fact,
12 Defendant violated Business and Professions Code section 17508.

13 17. Federal food safety and consumer protection laws and regulations. Defendant's acts
14 and practices described above violated federal laws and regulations governing food safety, claim
15 substantiation, and related consumer protections, including 21 U.S.C. §312(ff)(2)(B) (dietary
16 supplement cannot be "represented for use as a conventional food"); 21 U.S.C. §343(a)(1) (product
17 is "misbranded" if its marketing is false or misleading in any particular); 21 C.F.R. §§170.3(i),
18 170.30(a)-(c) (GRAS regulations); FDA "Guidance For Industry Distinguishing Liquid Dietary
19 Supplements from Beverages" (2014) and FTC's "Dietary Supplements: An Advertising Guide For
20 Industry" (2001) (substantiation standards including competent and reliable scientific evidence).

21
22 **FIRST CAUSE OF ACTION**

23 **(Untrue Or Misleading Representations – Business & Professions Code §17500)**

24 18. The People incorporate and re-allege the allegations of the preceding paragraphs.

25 19. Defendant's representations alleged above were untrue or misleading when made and
26 were known, or by the exercise of reasonable care should have been known, to be untrue or
27 misleading.

1 20. Each such representation violated Business and Professions Code section 17500.
2 21. Unless enjoined by this Court, Defendant will continue to make untrue or misleading
3 statements in violation of Business and Professions Code section 17500.
4 22. Pursuant to Business and Professions Code section 17536, Defendant is liable for a
5 civil penalty of up to \$2,500.00 for each violation of section 17500.
6

7 **SECOND CAUSE OF ACTION**
8 **(Unfair Competition – Business & Professions Code §17200)**

9 23. The People incorporate and reallege the allegations of the preceding paragraphs.
10 24. Defendant has committed acts of unfair competition as defined by Business and
11 Professions Code section 17200 by engaging in unlawful, unfair and fraudulent acts and practices
12 with respect to its customers. The acts and practices were “unlawful” pursuant to section 17200 in
13 that they violated the respective laws described above. The acts were “unfair” pursuant to section
14 17200 both to consumers and to competitors. The acts were “fraudulent” pursuant to section 17200
15 in that they were likely to deceive members of the public and were performed with that intent.
16 25. The business practices described above present a continuing threat to members of the
17 public in that Defendant continues to advertise and to collect money from consumers across the
18 United States. Unless enjoined by the Court, Defendant will continue its wrongful practices.
19 26. Pursuant to Business and Professions Code section 17203 and pursuant to the Court’s
20 equitable powers, the Court may issue a preliminary and permanent injunction and issue such other
21 orders as may be necessary to prevent future acts of unfair competition by Defendant.
22 27. Pursuant to Business and Professions Code section 17203 and pursuant to the Court’s
23 equitable powers, the Court may make such orders as may be necessary to restore to any person any
24 interest in money or property which may have been acquired through Defendant’s unfair
25 competition.
26 28. Pursuant to Business and Professions Code section 17206, the Court must assess a
27 civil penalty of up to \$2,500.00 for each act of unfair competition.
28

1 **WHEREFORE, THE PEOPLE PRAY FOR JUDGMENT AS FOLLOWS:**

- 2 1. A preliminary and permanent injunction to prevent future acts of unfair competition;
- 3 2. Civil penalties of \$2,500.00 for each act of unfair competition, pursuant to Business
- 4 and Professions Code section 17206;
- 5 3. Additional civil penalties of \$2,500.00 for each act of unfair competition committed
- 6 against a senior citizen, pursuant to California Business and Professions Code section 17206.1(a)(1);
- 7 4. Civil penalties of \$2,500.00 for each act of false advertising, pursuant to Business and
- 8 Professions Code section 17536;
- 9 5. Restitution of all monies wrongfully obtained from customers of the defendants;
- 10 6. Costs of suit; and
- 11 7. Other relief that the Court deems proper.

12 Dated: April 8, 2016

JACKIE LACEY
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KATHLEEN TUTTLE
Deputy District Attorney

MARSHA JONES MOUTRIE
Santa Monica City Attorney

18 by 
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