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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA – NORTHERN DIVISION

PATRICIA BLAND, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PREMIER NUTRITION CORPORATION; and DOES 1-25, inclusive,

Defendant.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE §§ 1750, *et seq.*;**
2. **VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE §§ 17200, *et seq.*; and**
3. **UNJUST ENRICHMENT**

(*UNLIMITED MATTER*-Amount demanded exceeds $25,000)

DEMAND FOR JURY TRIAL

Plaintiff Patricia Bland alleges causes of action against Defendant Premier Nutrition Corporation ("Premier" or "Defendant"), on behalf of herself and all others similarly situated, alleges as follows:

NATURE OF THE ACTION

1. This is a consumer protection class action arising out of Defendant's false and deceptive advertising dietary supplements. Defendant markets, sells, and distributes "Joint Juice," a line of joint health dietary supplements.[1] Primarily through deceptive product labeling, Defendant promises that Joint Juice will support and nourish cartilage, lubricate joints, and improve joint comfort. These claimed health benefits are the only reason a consumer would purchase Joint Juice. Defendant's advertising claims, however, are false, misleading, and likely to deceive a reasonable person.

2. The false and misleading advertising messages are communicated on the labels of all Joint Juice-branded products and throughout Joint Juice marketing materials. It's labels prominently state the Product "helps keep cartilage lubricated and flexible," and that consumers should "drink daily for healthy, flexible joints."

3. Plaintiff brings this action individually and on behalf of all other similarly situated consumers to halt Defendant's dissemination of this false and misleading advertising message, to correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased Joint Juice during the class period.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to Article VI, Section 10 of the California Constitution, because this case is not a cause given by statute to other trial courts.

5. This Court has personal jurisdiction over Defendant because Defendant is authorized to and does conduct business in California. Defendant has marketed, promoted,

[1] The Joint Juice line consists of all Joint Juice-branded products, including: (1) Joint Juice ready-to-drink supplement drink; (2) Joint Juice On-The-Go Drink Mix; and (3) Joint Juice Easy Shot Supplement (collectively, "Joint Juice"). Plaintiff reserves the right to include other Joint Juice products as a result of discovery.

distributed, and sold Joint Juice in California, and Defendant's headquarters and primary place of business is in California, rendering exercise of jurisdiction by California courts permissible.

6. Venue is proper in this Court because Defendant is headquartered in this County, Defendant transacts substantial business in this County, and a substantial part of the events or omissions giving rise to the claim occurred in this County.

PARTIES

7. Plaintiff Patricia Bland is a citizen of the State of California. At all times relevant to this action, she resided in Sherman Oaks, California. Plaintiff Bland was exposed to and saw Defendant's representations by reading the label of Joint Juice. In reliance on the joint health benefit representations, Plaintiff purchased in the State of California 6-packs of 8-ounce ready-to-drink bottles of Joint Juice on numerous occasions beginning in 2015 until approximately January of 2018. By purchasing the falsely advertised Joint Juice products, Plaintiff suffered injury-in-fact and lost money. Joint Juice does not provide the promised benefits. Had Plaintiff Bland known the truth about Defendant's misrepresentations and omissions at the time of her purchases, Plaintiff would not have purchased Joint Juice.

8. Defendant Premier Nutrition Corporation ("Premier") f/k/a Joint Juice, Inc. is a corporation headquartered in Emeryville, California, and organized and existing under the laws of the state of Delaware. Premier's headquarters is located at 1222 67th Street, Suite 210, Emeryville, California, 94608. Prior to that, Premier was headquartered at 5905 Christie Avenue, Emeryville, California, 94608. As of August 2013, Premier became a wholly-owned subsidiary of Post Holdings, Inc. Premier is a manufacturer of nutritional supplements, including protein shakes, bars, and powders. Premier's primary brands include Premier Protein, Joint Juice, and PowerBar. Premier manufactures, advertises, markets, distributes, and sells Joint Juice to many thousands of consumers in California.

9. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the Defendants sued herein as Does 1 through 25, but is informed and believes that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names. Plaintiff

will amend this complaint to allege the true names and capacities of the Doe Defendants when ascertained.

10. Plaintiff is informed and believes that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

FACTUAL ALLEGATIONS

The Joint Juice Product and the Symptoms Joint Juice Purports to Treat

11. Since 1999, Defendant has distributed, marketed, and sold Joint Juice.

12. Joint Juice is sold through a variety of third-party retailers, including Costco, Sam's Club, Walgreens, CVS, Walmart, and Target. Defendant also sells Joint Juice directly to consumers through its website.

13. The Joint Juice products are available in: (1) drink mix packets, which retailed for approximately $22 for a thirty-count box; (2) eight-ounce "ready-to-drink" beverage bottles, which retail for approximately $30 for a thirty-pack, or approximately $6 for a six-pack; and (3) Easy Shot™ liquid concentrate bottles, which retailed for approximately $15 for a twenty-ounce bottle containing sixteen servings.

14. According to the package label, Joint Juice contains glucosamine hydrochloride and chondroitin sulfate. Each serving consists of 1,500 mg of glucosamine hydrochloride and 200 mg of chondroitin sulfate.

15. Glucosamine hydrochloride is a combination of glucosamine (an amino sugar compound produced by the body, and which can be isolated from shellfish) where the glucosamine is combined with hydrochloric acid. Glucosamine is one the most abundant monosaccharides (sugars) in the body.

16. Defendant's target audience is people with osteoarthritis, including undiagnosed early stage osteoarthritis that commonly accompanies aging. Sometimes called degenerative joint disease or degenerative arthritis, osteoarthritis is the most common chronic condition of the joints, affecting about 27 million Americans. Osteoarthritis can affect any

joint, but it occurs most often in knees, hips, hands, and the spine. According to the Arthritis Foundation, one in two adults will develop symptoms of osteoarthritis symptoms during their lives, and one in four adults will develop symptoms of hip osteoarthritis. The signs and symptoms of osteoarthritis include joint pain, joint tenderness, joint stiffness, and the inability to move ones joint through its full range of motion.[2] Symptoms may come and go, and can be mild, moderate or severe.[3] Osteoarthritis is slow developing disease, so many people live with the occasional aches, pains and stiffness it causes without the need to seek medical intervention. Instead, these consumers treat the symptoms themselves.

17. Many of those who purchase Joint Juice have not yet been diagnosed with osteoarthritis. Knowing this, Defendant expressly and impliedly advertises that Joint Juice treats and provides relief from the same symptoms experienced by those people whose arthritis has been diagnosed.

Defendant's False, Deceptive, and Misleading Advertising of Joint Juice

18. Since the launch of Joint Juice, Defendant, through its advertisements, including on the product packaging and labeling, has consistently conveyed to consumers that drinking Joint Juice supports and promotes joint health, reduces joint pain, reduces joint stiffness, helps to support and nourish cartilage, "lubricates" joints, and helps with "joint comfort."

19. Defendant asserts that glucosamine hydrochloride and chondroitin sulfate are the active ingredients in Joint Juice that will deliver the promised benefits.

20. Defendant states on Joint Juice's packaging and in Joint Juice's marketing materials that Joint Juice helps to support and nourish cartilage, "lubricate" joints, and improve joint comfort without any limitation on which joints, for adults of all ages and without any limitation on what stages of joint related ailments.

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[2] https://www.mayoclinic.org/diseases-conditions/osteoarthritis/symptoms-causes/dxc-20198250 (last visited December 19, 2018).

[3] https://www.arthritis.org/Documents/Sections/About-Arthritis/arthritis-facts-stats-figures.pdf (last visited December 19, 2018).

21. In its advertising materials, including on its packaging and labeling, Defendant also represents that Joint Juice was "originally developed for pro athletes by orthopedic surgeon Kevin R. Stone, M.D. to keep joints healthy and flexible."

22. Defendant's marketing representations repeat and reinforce the claims made on the packaging and labeling for Joint Juice. For example, on its website, Defendant represents that "Research indicates that you should take a minimum of 1,500 mg of glucosamine daily got joint health. That's why we put 1,500 mg in every Joint Juice product" and "Glucosamine works to lubricate your joints by helping cartilage tissue absorb water. This helps cartilage perform its job of cushioning and mobility."[4]

23. Defendant's advertising deceptively reinforces the health benefits message through references to "expert stories," including from Dr. Kevin Stone, Joint Juice's founder and co-owner. According to an article written by Dr. Stone and posted on Defendant's website, "[t]aking glucosamine and chondroitin together – in the liquid formula found only in Joint Juice® products – ensure that you get a full day's supply of glucosamine (1,500 mg) and chondroitin to maintain healthy and happy joints."

24. Defendant's website also contains a prominent link to a "Joint Juice® joint health assessment." This marketing gimmick further reinforces the false and misleading representation that Joint Juice will provide the significant, advertised health benefits.

25. The Joint Juice packaging also prominently features the Arthritis Foundation logo because it attracts purchasers who suffer from arthritis and joint pain. To reinforce the message, the labels state "Joint Juice is proud to support the Arthritis Foundation's efforts to help people take control of arthritis" or that Defendant "will donate a portion of the proceeds to the Arthritis Foundation … to help people take control of arthritis."

26. Since 2010, Joint Juice ready-to-drink packaging has remained materially identical, always focused on the promised joint health benefits: "A bottle a day keeps your joints in play," "**Drink Daily for Healthy, Flexible Joints**," "**HELPS KEEP CARTILAGE LUBRICATED AND FLEXIBLE**," and "For Healthy, Flexible Joints."

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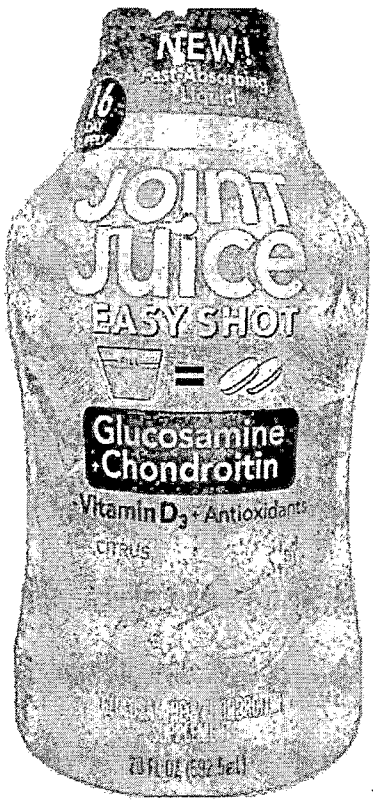
[4] http://www.jointjuice.com/faq/general-information (last visited January 15, 2019).

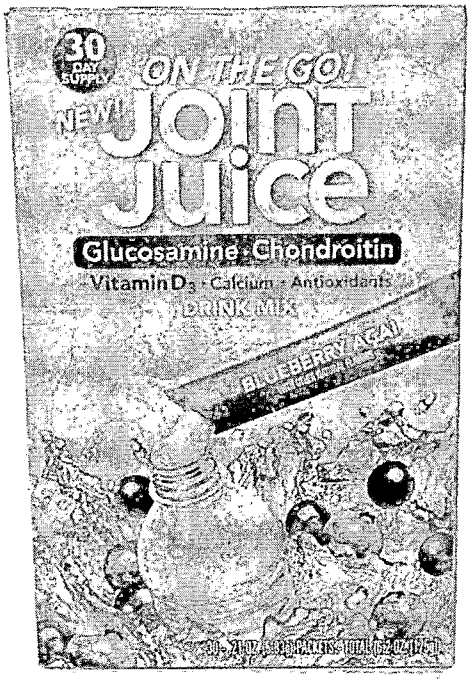
27. Joint Juice's packaging appears as follows:

EasyShot™ Liquid Concentrate (Front)

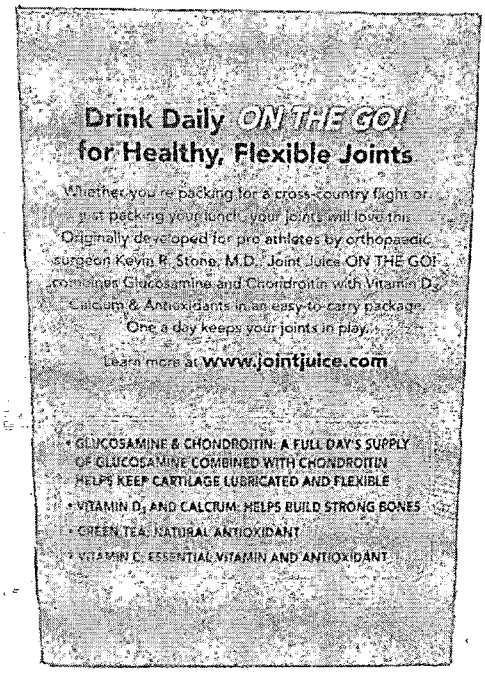


EasyShot™ Liquid Concentrate (Back)

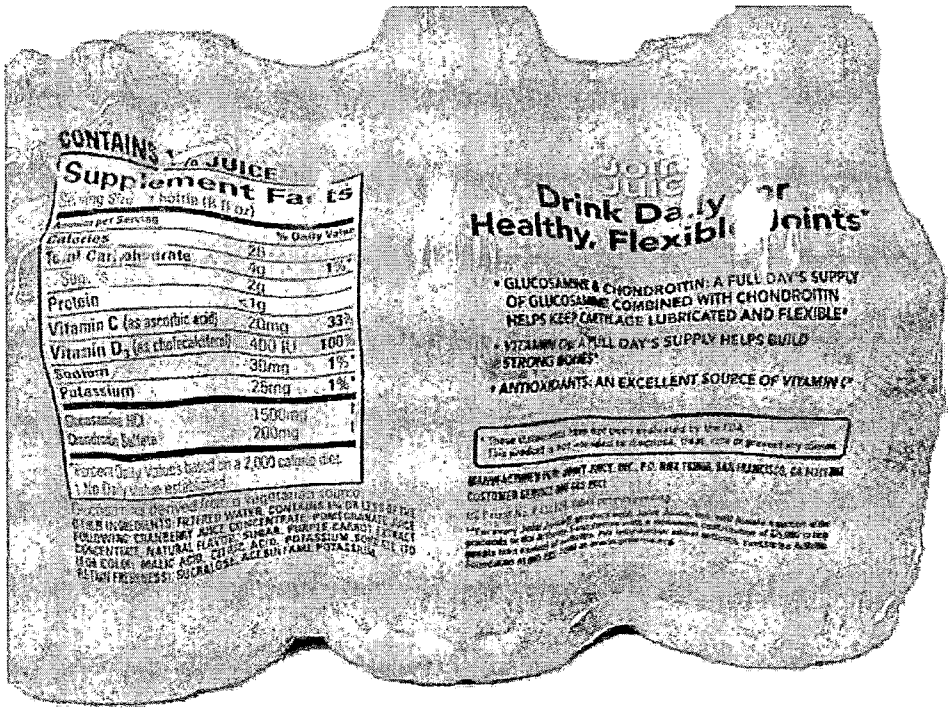
Drink Mix Box (Front)



Drink Mix Box (Back)



8-Ounce Ready-to-Drink Beverage Bottle Six-Pack



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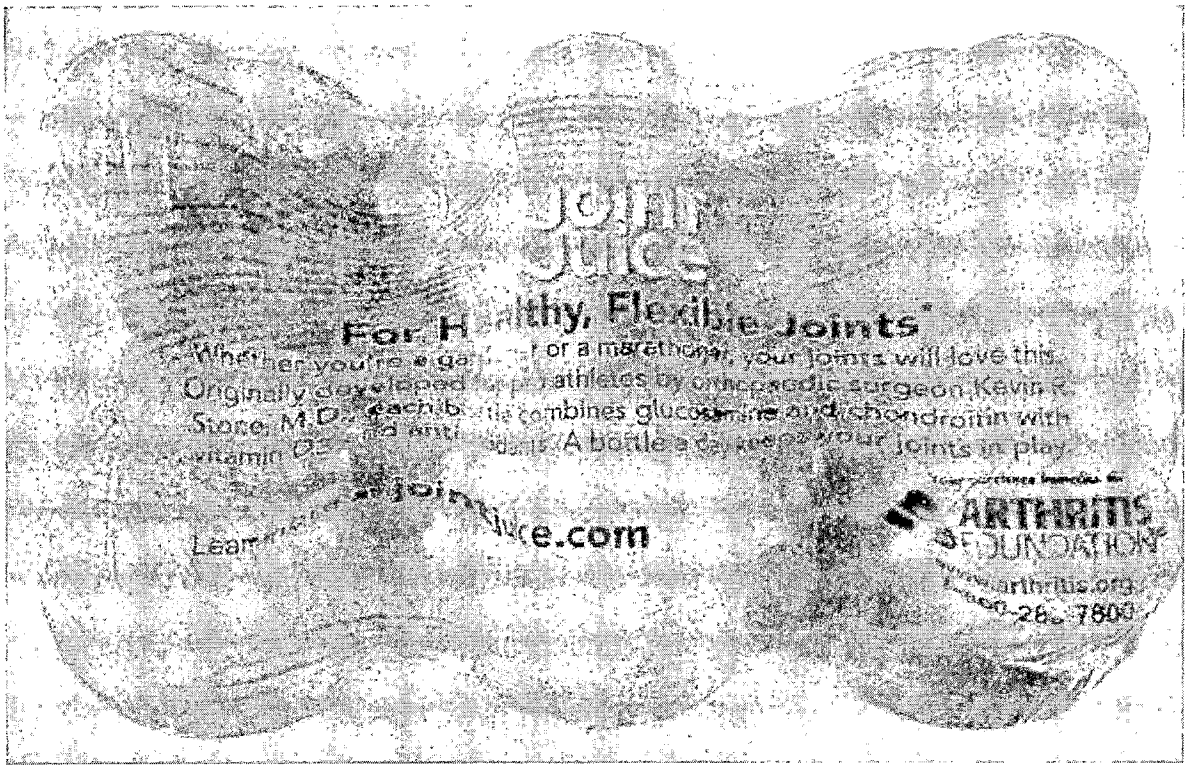

Scientific Studies Confirm that Joint Juice Is Not Effective and Defendant's Health Benefits Message Is False and Deceptive

28. Despite Defendant's representations, glucosamine, alone or in combination with other ingredients including chondroitin sulfate, is not effective in providing the represented joint health benefits.

Randomized Clinical Trials

29. Randomized clinical trials ("RCTs") are "the gold standard for determining the relationship of an agent to a health outcome." Federal Judicial Center, *Reference Manual on Scientific Evidence*, 555 (3d ed. 2011). "Double-blinded" RCTs, where neither the trial participants nor the researchers know which participants received the active ingredient is considered the optimal strategy.

30. Glucosamine and chondroitin have been extensively studied in RCTs, and the well-conducted RCTs demonstrate that glucosamine and chondroitin, alone or in combination, are not effective at producing joint health benefits, including pain, stiffness, range of motion, flexibility, and cartilage benefits.

31. In the late 1990s, the National Institutes of Health ("NIH") funded the $12.5 million multicenter GAIT study. GAIT was the first large-scale multicenter clinical trial in the United States on glucosamine and chondroitin. The first GAIT publication examined results from 1,583 subjects randomized to receive one of five treatments over 6 months: (1) 1,500 mg glucosamine hydrochloride, (2) 1,200 mg chondroitin, (3) glucosamine plus chondroitin, (4) celecoxib, or (5) placebo. The GAIT I publication, published in 2006 in the New England Journal of Medicine (the "2006 GAIT Study"), reported that glucosamine and chondroitin were not effective in reducing pain. *See* Clegg, D. et al., *Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis*, 354 New England J. of Med. 795, 806 (2006) ("The analysis of the primary outcome measure did not show that either [glucosamine or chondroitin], alone or in combination, was efficacious.").

32. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 reported results were inconclusive. *See* Sawitzke, A.D. et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum. 3183–91 (Oct. 2008) ("GAIT II"). The GAIT II publication, which was based on 572 subjects across nine sites, reported no difference in joint space width between those receiving glucosamine and chondroitin or placebo.

33. The 2010 GAIT III publication, with 662 subjects, also concluded glucosamine and chondroitin are no more effective in relieving pain than placebo. *See* Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee*: 2-Year Results From GAIT, 69(8) Ann Rhem. Dis. 1459-64 (Aug. 2010) ("GAIT III").

34. The GAIT studies are consistent with the reported results of prior and subsequent studies. For example, a 1999 study involving 100 subjects by Houpt et al., entitled *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*,

26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed no better than placebo at reducing pain at the conclusion of the eight week trial.

35. Likewise, a 2004 study by McAlindon et al., entitled *Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From and Internet-Based Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649-9 (Nov. 2004), concluded that "glucosamine was no more effective than placebo in treating symptoms of knee osteoarthritis" – in short, that glucosamine is ineffective. *Id.* at 646 ("we found no difference between the glucosamine and placebo groups in any of the outcome measures, at any of the assessment time points").

36. Many studies have also confirmed there is a significant "placebo" effect with respect to consumption of products represented to be effective in providing joint health benefits such as Joint Juice.

37. Indeed, more than 30% of persons who took placebos in these studies believed that they were experiencing joint health benefits when all they were taking was a placebo.

38. A 2004 study by Cibere et al., entitled *Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at least moderate improvement after starting glucosamine. These patients were divided into two groups – one that continued using glucosamine and one that was given a placebo. For six months, the primary outcome observed was the proportion of disease flares in the glucosamine and placebo groups. A secondary outcome was the time to disease flare. The study results reflected that there were no differences in either the primary or secondary outcomes for glucosamine and placebo. The authors concluded that the study provided no evidence of symptomatic benefit from continued use of glucosamine – in other words, any prior perceived benefits were due to the placebo effect and not glucosamine. *Id.* at 743 ("In this study, we found that knee OA disease flare occurred as frequently, as quickly, and as severely in patients who were randomized to continue receiving glucosamine compared with

those who received placebo. As a result, the efficacy of glucosamine as a symptom-modifying drug in knee OA is not supported by our study.").

39. To similar effect, in the "Joints on Glucosamine" or "JOG" study, Dr. Kwoh and co-authors concluded that glucosamine was not effective in preventing the worsening of cartilage damage or impacting joint pain or joint function. *See* Kwoh CK et al., *Effect of Oral Glucosamine on Joint Structure in Individuals With Chronic Knee Pain: A Randomized, Placebo-Controlled Clinical Trial*, 66(4) Arthritis Rheumatol., 930-9 (2014). JOG was a 201-person, randomized clinical trial comparing those who consumed the same type of glucosamine in Joint Juice and those consuming a placebo. The JOG study examined subjects without arthritis. The JOG study concluded that glucosamine supplementation provided no joint health, structural, pain or physical function benefits: "There was no difference between the two groups" in terms of cartilage loss and "[t]here were no significant differences between the glucosamine and control groups from baseline to the 12-week assessment, the 12-week to 24-week assessment, or from baseline to 24 weeks for the WOMAC pain or function subscales or the total WOMAC score." *Id.* at 935.

40. Runhaar et al. (2015) also examined subjects not diagnosed with arthritis and found no benefits from glucosamine. Runhaar was an independently-analyzed double-blind, placebo-controlled, factorial design trial testing a diet-and-exercise program and 1500 mg oral glucosamine or placebo on 407 subjects. Runhaar et al., *Prevention of Knee Osteoarthritis in Overweight Females: The First Preventative Randomized Controlled Trial in Osteoarthritis*, Am J Med, 128(8):888-895 (2015). Researchers examined the impact of daily glucosamine consumption on the incidence of knee osteoarthritis, as well as on pain and physical function. After 2.5 years, no effect from glucosamine was found on subjects' overall quality of life or knee pain, physical function, or the incidence of knee osteoarthritis.

41. Based on data from 245 people without diagnosed osteoarthritis, de Vos et al. (2017) determined the impact of glucosamine consumption over an average time period of 6.6 years. de Vos et al., *Long-term effects of a lifestyle intervention and oral glucosamine sulphate in primary care on incident knee OA in overweight women*, Rheumatology, 56(8):1326-1334

(2017). Study participants consumed placebo or 1,500 mg daily glucosamine and periodically reported knee pain, physical activity and quality of life, and had their joint space width was measured by radiograph. Based on six-year analysis, de Vos and co-researchers concluded that glucosamine consumption is not effective at preventing knee osteoarthritis as measured according to either joint space width changes or based on symptomatic changes that included impact on knee pain or joint stiffness.

42. Even studies not concerning the type of glucosamine in Joint Juice demonstrate that glucosamine does not provide the joint health benefits that Defendant represents. For example, a study by Rozendaal et al., entitled *Effect of Glucosamine Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of glucosamine on the symptoms and structural progression of hip osteoarthritis during two years of treatment, concluded that glucosamine was no better than placebo in reducing symptoms and progression of hip osteoarthritis.

43. In 2012, a report by Rovati et al. entitled *Crystalline glucosamine sulfate in the management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties*, Ther Adv Musculoskel Dis 4(3):167-180 (2012), noted that glucosamine hydrochloride "ha[s] never been shown to be effective."

44. On July 7, 2010, Wilkens et al. reported that there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that neither glucosamine nor placebo were effective in reducing pain related disability. The researchers also concluded that, "Based on our results, it seems unwise to recommend glucosamine to all patients" with low back pain and lumbar osteoarthritis. Wilkens et al., *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

Meta-Analyses and Scientific Review Articles

45. Well-conducted meta-analysis is at the top of the hierarchy of medical evidence. *See* Reference Manual on Scientific Evidence at 607. "Meta-analysis is a method of

pooling study results to arrive at a single figure to represent the totality of the studies reviewed." *Id.*

46. At least eleven meta-analyses on the clinical effects of glucosamine and/or chondroitin have been performed, and all ten found that the pooled results from the well-conducted, non-industry studies demonstrate glucosamine, alone or in combination with chondroitin, does not work. These eleven meta-analyses, which collectively reviewed the results from tens of clinical studies involving thousands of people, are: Towheed, 2005 (20 studies, 2,570 subjects); Towheed, 2009 (25 studies, 4,963 subjects); Vlad, 2007 (15 studies); McAlindon, 2000 (15 studies); Eriksen, 2014 (25 studies, 3,458 subjects); Wandel, 2010 (10 studies, 3,803 subjects); Reichenbach, 2007 (20 studies, 3,846 subjects); Wu, 2013 (19 studies, 3,159 subjects); Singh, 2015 (43 studies, 4,962 subjects); Kongtharvonskul, 2015 (31 studies); and Runhaar, 2017 (6 studies, 1,663 subjects).

47. For example, in their 2007 meta-analysis, Vlad et al. reviewed all studies involving glucosamine hydrochloride and concluded that "[g]lucosamine hydrochloride is not effective." *Glucosamine for Pain in Osteoarthritis*, 56:7 Arthritis Rheum. 2267-77 (2007); *see also id.* at 2275 ("we believe that there is sufficient information to conclude that glucosamine hydrochloride lacks efficacy for pain in OA").

48. Towheed 2009, a prestigious Cochrane Collaboration publication, reviewed 25 clinical studies with 4,963 subjects and found no benefits from glucosamine. *See Glucosamine therapy for treating osteoarthritis*, Cochrane Database of Systematic Reviews 2005, Issue 2. Art. No.: CD002946 (Updated and Published in Issue 4, 2009). Dr. Towheed and co-authors concluded, "The high quality studies showed that pain improved about the same whether people took glucosamine or fake pills." *Id.* at 2.

49. The 2010 meta-analysis by Wandel et al., entitled *Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis*, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and chondroitin, alone or in combination, and whether they relieved the symptoms or progression of arthritis of the knee or hip. The study authors reported that glucosamine and chondroitin,

alone or in combination, did not reduce joint pain or have an impact on the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and their combination do not result in a relevant reduction of joint pain nor affect joint space narrowing compared with placebo." *Id.* at 8. The authors further concluded "[w]e believe it unlikely that future trials will show a clinically relevant benefit of any of the evaluated preparations." *Id.*

50. Eriksen, 2014, is a meta-analysis published in a journal of the American College of Rheumatology. It examined 25 placebo-controlled clinical studies involving glucosamine, including GAIT, concluding "We are confident that glucosamine by and large has no clinically important effect." Eriksen, Patrick, Else M. Bartels, Roy D. Altman, Henning Bliddal, Carsten Juhl, and Robin Christensen, *Risk of Bias and Brand Explain the Observed Inconsistency in Trials on Glucosamine for Symptomatic Relief of Osteoarthritis: A Meta-Analysis of Placebo-Controlled Trials*, ARTHRITIS CARE & RESEARCH 66, no. 12 (2014) at 1844-1855; *see also id.* ("[o]ur meta-analysis provides high-quality evidence that glucosamine in forms other than the one made by Rottapharm[] consistently does not reduce pain more than placebo").

51. In 2017, Runhaar and co-authors presented results from their meta-analysis of six glucosamine studies (examining 1,663 patients) where the original authors agreed to share their study data for critical re-analysis. Runhaar et al., Subgroup analyses of the effectiveness or oral glucosamine for knee and hip osteoarthritis: a systematic review and individual patient data meta-analysis from the OA trial bank. *Subgroup analyses of the effectiveness or oral glucosamine for knee and hip osteoarthritis: a systematic review and independent patient data meta-analysis from the OA trial bank*, Ann Rheum Dis, 76(11):1-8 (2017). Runhaar (2017) is an "individual patient data meta-analysis" or IPD, which is considered a gold standard of systematic review. The Runhaar IPD meta-analysis concluded that glucosamine has no effect on pain or physical function: "[T]he current IPD on the efficacy of glucosamine … did not identify a subgroup for which glucosamine showed any significant beneficial effects over placebo for pain or function in either the short term or long term."

Evidence-Based Professional Guidelines

52. The uniform consensus of clinical treatment protocols, sometimes referred to as clinical practice guidelines, is that glucosamine and chondroitin do not work, should not be used, and are not cost effective. Clinical treatment protocols are evidence-based, developed from an in-depth cross-review of studies and meta-analyses by experts in the field.

53. For example, the National Collaborating Centre for Chronic Conditions ("NCCCC") reported "the evidence to support the efficacy of glucosamine hydrochloride as a symptom modifier is poor" and the "evidence for efficacy of chondroitin was less convincing." NCCCC, *Osteoarthritis National Clinical Guideline for Care and Management of Adults*, Royal College of Physicians, London 2008. Consistent with its lack of efficacy findings, the NCCCC Guideline did not recommend the use of glucosamine or chondroitin for treating osteoarthritis. *Id.* at 33.

54. In December 2008, the American Academy of Orthopaedic Surgeons ("AAOS") published clinical practice guidelines for the *Treatment of osteoarthritis of the knee (nonarthroplasty)*, and made a "strong" recommendation that "glucosamine and sulfate or hydrochloride not be prescribed for patients with symptomatic OA of the knee." Richmond et al., *Treatment of osteoarthritis of the knee (nonarthroplasty)*, J. Am. Acad. Orthop. Surg. Vol. 17 No. 9 591-600 (2009). This AAOS recommendation was based on a 2007 report from the Agency for Healthcare Research and Quality (AHRQ), which states that "the best available evidence found that glucosamine hydrochloride, chondroitin sulfate, or their combination did not have any clinical benefit in patients with primary OA of the knee." Samson et al., *Treatment of Primary and Secondary Osteoarthritis of the Knee, Agency for Healthcare Research and Quality*, 2007 Sep. 1. Report No. 157.

55. In 2009, a panel of scientists from the European Food Safety Authority ("EFSA") (a panel established by the European Union to provide independent scientific advice to improve food safety and consumer protection), reviewed nineteen studies submitted by an applicant, and concluded that "a cause and effect relationship has not been established between the consumption of glucosamine hydrochloride and a reduced rate of cartilage degeneration in

individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine hydrochloride and reduced rate of cartilage degeneration and reduced risk of osteoarthritis*, EFSA Journal (2009), 7(10):1358.

56. In a separate opinion from 2009, an EFSA panel examined the evidence for glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin sulfate and maintenance of joints. The claimed effect was "joint health," and the proposed claims included "helps to maintain healthy joint," "supports mobility," and "helps to keep joints supple and flexible." Based on its review of eleven human intervention studies, three meta-analyses, 21 reviews and background papers, two animal studies, one in vitro study, one short report, and one case report, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine (either as glucosamine hydrochloride or as glucosamine sulphate), either alone or in combination with chondroitin sulphate, and the maintenance of normal joints." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of health claims related to glucosamine alone or in combination with chondroitin sulphate and maintenance of joints and reduction of inflammation*, EFSA Journal (2009), 7(9):1264.

57. In 2012, EFSA examined the evidence glucosamine sulphate or glucosamine hydrochloride, and a claimed effect of "contributes to the maintenance of normal joint cartilage." Based on its review of 61 references provided by Merck Consumer Healthcare, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine and maintenance of normal joint cartilage in individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine and maintenance of normal joint cartilage*, EFSA Journal 2012, 10(5): 2691.

58. In 2013, the AAOS published updated clinical practice guidelines, and based on its review of twenty-one human studies, again made a "strong" recommendation that neither glucosamine nor chondroitin be used for patients with symptomatic osteoarthritis of the knee.

See Treatment of Osteoarthritis of the Knee, Evidence-Based Guideline (2d Ed.), American Academy of Orthopaedic Surgeons (2013) at 262.

59. The American College of Rheumatology ("ACR"), and the United Kingdom National Institute for Health and Care Excellence ("NICE") also recommend against using glucosamine or chondroitin. *See* Hochberg, M.C. et al., American College of Rheumatology 2012 *Recommendations for the Use of Nonpharmacologic and Pharmacologic Therapies in Osteoarthritis of the Hand, Hip, and Knee*. Arthritis Care & Research 2012; 64(4):465-474; National Institute for Health and Care Excellence, Clinical Guidelines: Osteoarthritis Care and management in adults (February 2014).

60. The AAOS, ACR, NICE and AHRQ guidelines were based on systematic reviews and/or meta-analyses of all the available study data. For example, the ACR specifically cited its reliance on the GAIT study coupled with four meta-analyses that "failed to demonstrate clinically important efficacy for these agents": Towheed (2005); Vlad (2007); Reichenbach (2007); and Wandel (2010). The NICE authors' conclusion that practitioners should "not offer glucosamine or chondroitin products" was based on a review that included Towheed (2005), which included 25 glucosamine RCTs, Reichenbach (2007), which included 20 chondroitin RCTs, and seven studies that compared glucosamine plus chondroitin versus placebo. The 2007 AHRQ assessment was based on review of 21 glucosamine/chondroitin studies, including GAIT. The AAOS' 2013 "strong" recommendation against glucosamine and chondroitin was based on expert analysis and meta-analyses of 12 glucosamine studies, 8 chondroitin studies, and one study (GAIT) that assessed both.

The Impact of Defendant's Wrongful Conduct

61. Despite clinical studies that show the ingredients in Joint Juice are ineffective, Defendant conveyed and continues to convey one uniform health benefits message: Joint Juice supports and nourishes cartilage, "lubricates" joints, and improves joint comfort in all joints in the human body, for adults of all ages and for all manner and stages of joint-related ailments.

62. As the inventor, manufacturer, and distributor of Joint Juice, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained

in Joint Juice and Defendant is in a superior position to know whether Joint Juice works as advertised.

63. Specifically, Defendant knew, but failed to disclose, that Joint Juice does not provide the joint health benefits represented and that well-conducted, clinical studies have found the ingredients in Joint Juice to be ineffective in providing the joint health benefits represented by Defendant.

64. Plaintiff has been and will continue to be deceived or misled by Defendant's false and deceptive joint health benefit representations. Plaintiff purchased Joint Juice during the Class period and in doing so, read and considered Joint Juice's label and based her decision to purchase Joint Juice on the joint health benefit representations on Joint Juice's labeling. Defendant's joint health benefit representations and omissions were a material factor in influencing Plaintiff's decision to purchase Joint Juice.

65. The only purpose for purchasing Joint Juice is to obtain the represented joint health benefits. Although it does not provide the represented, significant health benefits, Joint Juice retails for approximately $9 per six-pack.[5]

CLASS DEFINITION AND ALLEGATIONS

66. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Civil Code § 1781, and seeks certification of the following Class:

> All persons who purchased in California any Joint Juice product between June 21, 2016 and the date notice is disseminated.

67. Excluded from the Class are the Defendant, its parents, subsidiaries, affiliates, officers, and directors; those who purchased Joint Juice for the purpose of resale; all persons who make a timely election to be excluded from the Class; the judge to whom this case is assigned and any immediate family members thereof; and those who assert claims for personal injury.

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[5] At Walmart's online store, a six-pack of 8-ounce bottles costs $10.13. https://www.walmart.com/ip/Joint-Juice-Glucosamine-Chondroitin-Blend-Blueberry-Acai-4-6pk-8oz/14292593 (last visited January 15, 2019); *see also* http://shop.jointjuice.com/Joint-Juice-ReadytoDrink-Supplement--Blueberry-Acai/p/JTJ-042203&c=JointJuice@Drinks (6-pack of 8-ounce bottles retails for $8.94 on jointjuice.com) (last visited January 15, 2019).

68. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of her claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

69. Members of the Class are so numerous and geographically dispersed that joinder of all class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff but is believed to be in the thousands.

70. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

(a) Whether the representations discussed herein that Defendant made about its Joint Juice products were or are true, misleading, or likely to deceive;

(b) Whether Defendant's conduct violates public policy;

(c) Whether Defendant engaged in false or misleading advertising;

(d) Whether Defendant's conduct constitutes violations of the laws asserted herein;

(e) Whether Plaintiff and the other Class members have been injured, and the proper measure of their losses as a result of those injuries; and

(f) Whether Plaintiff and the other Class members are entitled to injunctive, declaratory, or other equitable relief.

71. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendant, and the relief sought is common. Plaintiff and Class members suffered uniform damages caused by their purchase of the Joint Juice products marketed and sold by Defendant.

72. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class litigation.

73. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, 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.

74. In the alternative, the Class also may be certified because Defendant has acted or refused to act on grounds generally applicable to the Class thereby making final declaratory and/or injunctive relief with respect to the members of the Class as a whole, appropriate.

75. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent Defendant from engaging in the acts described, and to require Defendant to provide full restitution to Plaintiff and Class members.

76. Unless the Class is certified, Defendant will retain monies that were taken from Plaintiff and Class members as a result of Defendant's wrongful conduct. Unless a classwide injunction is issued, Defendant will continue to commit the violations alleged and the members of the Class and the general public will continue to be misled.

CLAIMS ALLEGED

COUNT I

Violation of Business & Professions Code §§ 17200, *et seq.*

77. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

78. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because she purchased one of Defendant's falsely

advertised Joint Juice products in reliance on the false advertisements.

79. The Unfair Competition Law, Business & Professions Code §§ 17200, *et seq.* ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. In the course of conducting business, Defendant committed unlawful business practices by, among other things, making the representations (which also constitutes advertising within the meaning of § 17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, and the common law.

80. Plaintiff, individually and on behalf of the other Class members, reserves the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

81. In the course of conducting business, Defendant committed "unfair" business practices by, among other things, making the representations (which also constitute advertising within the meaning of § 17200) and omissions of material facts regarding Joint Juice in its advertising campaign, including Joint Juice's packaging and labeling, as set forth more fully herein. There is no societal benefit from false advertising – only harm. Plaintiff and the other Class members paid for a valueless product that does not confer the benefits it promises. While Plaintiff and the other Class members were harmed, Defendant was unjustly enriched by its false misrepresentations and omissions. As a result, Defendant's conduct is "unfair," as it offended an established public policy. Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

82. Further, as set forth in this Complaint, Plaintiff alleges violations of consumer protection, unfair competition, and truth in advertising laws in California and other states, resulting in harm to consumers. Defendant's acts and omissions also violate and offend the public policy against engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §§ 17200, *et seq.*

83. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Business & Professions Code §§ 17200, *et seq.*, also prohibits any "fraudulent business act or practice." In the course of conducting business, Defendant committed "fraudulent business act or practices" by, among other things, making the representations (which also constitute advertising within the meaning of § 17200) and omissions of material facts regarding Joint Juice in its advertising campaign, including on Joint Juice's packaging and labeling, as set forth more fully herein. Defendant made the misrepresentations and omissions regarding the efficacy of Joint Juice, among other ways, by misrepresenting on each and every Joint Juice product's packaging and labeling that Joint Juice is effective when taken as directed, when, in fact, the representations are false and deceptive, and Joint Juice does not confer the promised health benefits.

84. Defendant's actions, claims, omissions, and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §§ 17200, *et seq.*

85. Plaintiff and the other members of the Class have in fact been deceived as a result of their reliance on Defendant's material representations and omissions, which are described above. This reliance has caused harm to Plaintiff and the other members of the Class, each of whom purchased Defendant's Joint Juice products. Plaintiff and the other Class members have suffered injury in fact and lost money as a result of purchasing Joint Juice and Defendant's unlawful, unfair, and fraudulent practices.

86. Defendant knew, or should have known, that its material representations and omissions would be likely to deceive the consuming public and result in consumers purchasing Joint Juice products and, indeed, intended to deceive consumers.

87. As a result of its deception, Defendant has been able to reap unjust revenue and profit.

88. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

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

COUNT II

Violation of the Consumers Legal Remedies Act – Civil Code §§ 1750, *et seq.*

90. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

91. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq*. (the "Act") and similar laws in other states. Plaintiff is a consumer as defined by California Civil Code § 1761(d). Joint Juice is a "good" within the meaning of the Act.

92. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of its Joint Juice products:

> (5) Representing that [Joint Juice has] . . . approval, characteristics, . . . uses [and] benefits . . . which [it does] not have . . . .
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> * * *
>
> (7) Representing that [Joint Juice is] of a particular standard, quality or grade . . . if [it is] of another.
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> * * *
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> (9) Advertising goods . . . with intent not to sell them as advertised.
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> * * *
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> (16) Representing that [Joint Juice has] been supplied in accordance with a previous representation when [it has] not.

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93. Defendant violated the Act by representing and failing to disclose material facts on its Joint Juice products' labeling and associated advertising, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

94. Pursuant to California Civil Code § 1782(d), Plaintiff, individually and on behalf of the other members of the Class, seeks a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

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

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

97. Defendant's conduct is fraudulent, wanton, and malicious.

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

COUNT III

Unjust Enrichment

99. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

100. Defendant has been unjustly enriched to Plaintiff's and the Class members' detriment as a result of its unlawful and wrongful retention of money conferred by Plaintiff and the Class members, such that Defendant's retention of their money would be inequitable.

101. Defendant's unlawful and wrongful acts, as alleged above, enabled Defendant to unlawfully receive monies it would not have otherwise obtained.

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102. Plaintiff and the Class members have conferred benefits on Defendant, which Defendant has knowingly accepted and retained.

103. Defendant's retention of the benefits conferred by Plaintiff and the Class members would be against fundamental principles of justice, equity, and good conscience.

104. Plaintiff and the Class members seek to disgorge Defendant's unlawfully retained profits and other benefits resulting from its unlawful conduct, and seek restitution and rescission for the benefit of Plaintiff and the Class members.

105. Plaintiff and the Class members are entitled to the imposition of a constructive trust upon Defendant, such that its unjustly retained profits and other benefits are distributed equitably by the Court to and for the benefit of Plaintiff and the Class members.

JURY DEMAND

Plaintiff demands trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

A. Declaring Certifying the class as requested herein;

B. Awarding plaintiff and the proposed Class members actual and punitive damages;

C. Awarding restitution and disgorgement of Defendant's revenues to plaintiff and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendant to engage in a corrective advertising campaign;

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F. Awarding attorneys' fees and costs; and

G. Providing such further relief as may be just and proper.

Respectfully submitted,

Dated: January 15, 2019

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