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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON DIVISION**

TAMMY DEVANE, MICHELLE
BARBATO, PETER BARBATO, AND
SHARON MAROLDI,

Plaintiffs,

v.

CHURCH & DWIGHT CO, INC.,

Defendant.

Civil Action No.3:19-cv-09899-BRM

**CLASS ACTION COMPLAINT AND JURY
DEMAND**

AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Tammy DeVane, Michelle Barbato, Peter Barbato and Sharon Maroldi (“Plaintiffs”), bring this class action lawsuit on behalf of themselves and all others similarly situated against the Defendant Church & Dwight Co., Inc. (“Church & Dwight”).

INTRODUCTION

1. Church & Dwight is a large Delaware corporation which manufactures a wide variety of household products, including a line of multivitamins under the Vitafusion and L’il Critters brand names. As part of their labeling for these multivitamins, Church & Dwight prominently state on “L’il Critters Multivitamins,” “Vitafusion Women’s Complete Multivitamins,” and “Vitafusion Men’s Complete Multivitamins” (“the Products”) packaging and labels that they are “complete” and contain the “essential” nutrients. However, unbeknownst to Plaintiffs and consumers who purchased and ingested the Products, they each lack at least three

essential vitamins. Additionally, Church & Dwight expressly and falsely advertises the Vitafusion Men's Complete Multivitamin as including niacin (vitamin B3) when, in fact, it does not.

2. Despite the representations and warranties contained on the Products' packaging and labels, Church & Dwight's Products are not, in fact, "complete" by any definition of the word as they lack, at least, several of the essential vitamins identified by the FDA as being necessary for human health. Specifically, the Products each, at a minimum, lack vitamin K, thiamin (vitamin B-1), and riboflavin (vitamin B-2), while Vitafusion Men's Complete Multivitamins and L'il Critters Multivitamins additionally lack niacin (vitamin B-3).

3. Plaintiffs and other reasonable consumers interpret Church & Dwight's marketing of the Products as "complete" and containing the "essential nutrients" as meaning that the Products contain all the essential nutrients, including those missing from them.

4. Plaintiffs therefore bring the following claims on behalf of themselves, a New Jersey Subclass, a Florida Subclass, and a Nationwide Class of purchasers of the Products: (a) breach of express warranty, (b) breach of implied warranty, (c) violation of New Jersey Consumer Fraud Act; and (d) violation of Florida's Deceptive and Unfair Trade Practices Act.

PARTIES

5. Plaintiff Tammy DeVane is a person, domiciled and residing in the State of Florida. She is therefore a citizen of Florida.

6. Plaintiff Michelle Barbato is a person, domiciled and residing in the State of New Jersey. She is therefore a citizen of New Jersey.

7. Plaintiff Peter Barbato is a person, domiciled and residing in the State of New Jersey. He is therefore a citizen of New Jersey.

8. Plaintiff Sharon Maroldi is a person, domiciled and residing in the State of New

Jersey. She is therefore a citizen of New Jersey

9. Defendant Church & Dwight Co. is a Delaware corporation with its headquarters located at 500 Charles Ewing Boulevard, Ewing, New Jersey 08628. It is therefore a citizen of Delaware and New Jersey.

10. Church & Dwight is a major American manufacturer of household products that is best known for its Arm & Hammer line of products. It describes itself as “a \$3.5 billion company” and as one of the fastest growing Consumer Packaged Goods companies that has outpaced the Standard & Poor's by more than three times over the last 10 years.” Church & Dwight’s website identifies one of its “Guiding Principles” as being “compliance with ethical and applicable legal requirements,” and states that its Guiding Principles “complement [its] commitment to comply with all other applicable legal, government, regulatory and professional requirements.” Church & Dwight claims its reputation and integrity are “valuable corporate assets,” and, to that extent, “[a]ny violation of [its] Guiding Principles or any dishonest, unethical or illegal conduct will constitute grounds for disciplinary action up to and including termination.”

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Church & Dwight because it is both headquartered in and has its primary place of business in the State of New Jersey. Therefore, in accord with the Supreme Court’s holding in *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. ___, 137 S. Ct. 1773, 1775 (2017), this Court has general personal jurisdiction over the Plaintiffs’ claims.

12. Federal subject matter jurisdiction is based upon 28 U.S.C. § 1332 in that the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of the class is a citizen of a state different than that

of Church & Dwight.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1), because a substantial part of the events and omissions giving rise to this action occurred in this District as Church & Dwight owns and operates research, development, and corporate offices within this District and throughout New Jersey.

FACTS COMMON TO ALL CLAIMS

A. Vitamins B1, B2, B3 and K are “essential” nutrients required by the human body.

14. The FDA, in its 2009 publication “Fortify Your Knowledge About Vitamins,” identified “13 vitamins that the body absolutely needs,” including vitamin K, vitamin B-1 (thiamin), vitamin B-2 (riboflavin) and vitamin B-3 (niacin). These same vitamins were further identified by the FDA in its regulations as being “essential in human nutrition.” 21 C.F.R. 109(c)(8)(iv).

15. While the Plaintiffs do not rely solely upon the FDA’s publications to define or justify their understanding of what is a “complete” multivitamin nor what is “essential,” said publications provide at least an identifiable baseline of which vitamins should be included before a company can describe its product as a “complete” multivitamin. Indeed, the FDA does not “approve” or “review” the Products’ advertising and labels and does not seek to regulate it.

16. Every five years, the U.S. Department of Agriculture (“USDA”) and the U.S. Department of Health and Human Services (“DHHS”) publish the “Dietary Guidelines for Americans.”

17. The USDA and DHHS note that Americans as a whole “are not consuming healthy eating patterns.” These poor eating habits have resulted in “[m]ore than two-thirds of adults and nearly one-third of children and youth [in America] [being] overweight or obese.”

18. This failure to adhere to healthy eating patterns has, therefore, resulted in a large percentage of Americans finding it difficult to meet their daily recommended intake for many of the essential vitamins without needing to pile on additional calories.

19. Accordingly, while the USDA and the DHHS recommend that “[i]ndividuals should aim to meet their nutrient needs through healthy eating patterns that include nutrient-dense foods,” they also recognize that this is not always practical and note that “dietary supplements may be useful in providing one or more nutrients that otherwise may be consumed in less than recommended amounts.” Thus, Church & Dwight’s intentional and misleading marketing of their multivitamins as “complete” is harmful to Plaintiffs and consumers who seek to meet their nutrient needs believing that Church & Dwight’s multivitamins contain all the “essential” vitamins.

B. Church & Dwight markets its vitamin supplements as “complete multivitamins” despite knowing they do not contain many essential vitamins.

20. Each of the Products—as well as their labels—are substantially similar.

21. Church & Dwight advertises the Products as being “complete multivitamins” even though Church & Dwight knows they do not contain, at least, all the essential vitamins identified by the FDA, including any vitamin K, thiamin, riboflavin and—in the case of Vitafusion Men’s Complete Multivitamin and L’il Critters Gummy Vites Complete Multivitamin—niacin.

22. For example, Church & Dwight’s Vitafusion Men’s Complete Multivitamin is advertised as being a “complete multivitamin dietary supplement” but it lacks at least vitamin K, thiamin, riboflavin and niacin:



23. Additionally, Church & Dwight expressly and falsely advertises the Vitafusion Men's Complete Multivitamin as including niacin (Vitamin B3):¹

Products which include: Vitamin B3

 <p>PreNatal</p> <p>A daily multivitamin providing expectant mothers with the essential vitamins & minerals they need.</p> <p>Learn More ></p>	 <p>Men's Multivitamin</p> <p>A complete multivitamin, specially formulated to address the health needs of men.</p> <p>Learn More ></p>	 <p>Platinum 50+</p> <p>Essential vitamins & minerals specially formulated to address the health needs of aging adults.</p> <p>Learn More ></p>
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Despite advertising it as such, the Men's Multivitamin product does not contain any vitamin K, thiamin, riboflavin or niacin.²

24. Another example of this is Church & Dwight's Vitafusion Women's Complete Multivitamin product, which is also advertised as being a "complete multivitamin dietary supplement" but it lacks at least vitamin K, thiamin, and riboflavin:

¹ See <http://www.gummyvites.com/en/vitafusion/Supplement-Index?s=Vitamin%20B3> (last accessed June 25, 2019).

² See <http://www.gummyvites.com/-/media/VMS/vitafusion/Supplements/in/72012825.jpg> (last accessed June 25, 2019).



Despite this fact, however, the Women's Multivitamin product does not contain any vitamin K, thiamin, or riboflavin.³

25. Another example, Church & Dwight's L'il Critters Gummy Vites Complete Multivitamin, is advertised as a "complete multivitamin" but it lacks at least vitamin K, thiamin, riboflavin and niacin:



26. Church & Dwight affirmatively labels and advertises these Products as being "Complete" multivitamins containing the "Essential" vitamins and nutrients. Further, Church & Dwight's labels fail to inform consumers, including Plaintiffs and class members, that the Products

³ See <http://www.gummyvites.com/-/media/VMS/vitafusion/Supplements/in/WomensSuppFact.jpg> (last accessed June 25, 2019).

lack some of the essential vitamins as described herein. A review of the labeling of these Products makes clear that Church & Dwight failed to disclose that the Products lacked all the vitamins which Plaintiffs and consumers reasonably believed to be included in a product described as “complete” and what the FDA deems to be “essential in human nutrition.”

27. Indeed, Plaintiffs’ and consumers understanding of “complete” as meaning the product contains all the “essential” nutrients is justifiable because other companies who produce and market “Complete Multivitamins” include in their products each of the four vitamins missing from Church & Dwight’s allegedly “complete” multivitamins. For example, Walmart’s “equate” branded “Complete Multivitamin” includes “Vitamin K,” “Thiamin,” “Riboflavin,” and “Niacin.”

28. Notably, most other companies who leave out the four vitamins from their multivitamins are careful not to market them on their label as “complete” or containing all the “essential” nutrients. For example, the “ONE A DAY Men’s VitaCraves Gummies” are not marketed on their label as “complete” and do not contain the four vitamins missing from Church & Dwight’s “complete” multivitamins. Thus, Church & Dwight’s affirmative and intentional marketing of their multivitamins on their label being “complete,” when in fact they are not, is misleading, confusing, and harmful to Plaintiffs and consumers. As a result of Church & Dwight’s actions, Plaintiffs and consumers are left without an understanding of which multivitamin is in fact complete and each has, without prior knowledge of the true nature of the Product, bought a Product that in fact is not complete and is inferior and worth less.

FACTS SPECIFIC TO PLAINTIFF TAMMY DeVANE

29. Plaintiff Tammy DeVane purchased at asking price Church & Dwight’s L’il Critters Gummy Vites Complete Multivitamin products from both Walgreens and Wal-Mart for her grandchildren’s use during at least the previous six months, with refills approximately every

three months.

30. Prior to purchasing, Plaintiff Tammy DeVane visited Church & Dwight's website reviewing its advertising and marketing for various multivitamins including specifically L'il Critters Gummy Vites Complete Multivitamin. She relied upon Church & Dwight's advertisements and marketing that this product was a "complete multivitamin" containing "essential" nutrients.

31. Church & Dwight's online advertising, packaging, and labeling of this product represents and warrants that it is a "Complete Multivitamin." Such representation and warranty are displayed prominently in the center of the packaging and on pictures on Church & Dwight's website. Such representations were false, as the product does not constitute a "complete" multivitamin.

32. Based upon this representation and warranty, Plaintiff DeVane believed that the product was a complete multivitamin which contained all the vitamins her grandchildren needed in them. Such representation was false, as the product is not a "complete" multivitamin as described herein.

33. Such false representations rendered Church & Dwight's product entirely valueless to Plaintiff DeVane and were it not for this false representation and warranty, she would not have purchased Church & Dwight's product. Alternatively, because the product lacked all the essential vitamins, it was worth less than she paid.

34. Plaintiff DeVane's child ingested the product without knowledge that it lacked all the essential vitamins.

35. As a result of this representation and warranty, Plaintiff DeVane suffered actual and ascertainable damages in the amount of money she has spent purchasing Church & Dwight's

products.

**FACTS SPECIFIC TO PLAINTIFFS MICHELLE BARBATO
AND PETER BARBATO**

36. Plaintiffs Michelle and Peter Barbato purchased Church & Dwight's products at asking price multiple times over at least the last two years.

37. Plaintiff Michelle Barbato purchased both Church & Dwight's Vitafusion Complete Women's Multivitamin product for herself and Church & Dwight's L'il Critters Gummy Vites Complete Multivitamins for her minor children from Shoprite during this period. She and her child ingested their respective products.

38. Prior to purchasing, Plaintiff Michelle Barbato visited Church & Dwight's website reviewing its advertising and marketing for various multivitamins including specifically L'il Critters Gummy Vites Complete Multivitamin and Vitafusion Complete Women's Multivitamin. She relied upon Church & Dwight's advertisements and marketing that these two products were a "complete multivitamin" containing "essential" nutrients.

39. Church & Dwight's online advertising, packaging, and labeling of these two products represent and warrant that they are a "Complete Multivitamin." Such representation and warranty are displayed prominently in the center of the packaging and on pictures on Church & Dwight's website. Such representations were false, as neither product constitutes a "complete" multivitamin.

40. Based upon this false representation and warranty, Plaintiff Michelle Barbato believed that the products were "complete multivitamins," which contained all the vitamins both she and her children would need.

41. Such false representations rendered Church & Dwight's product essentially

valueless to Plaintiff Michelle Barbato and were it not for this false representation and warranty, she would not have purchased Church & Dwight's product. Alternatively, because the product lacked all the essential vitamins, it was worth less than she paid.

42. Plaintiff Peter Barbato purchased Church & Dwight's Vitafusion Complete Men's Multivitamin product at asking price for himself from Shoprite during the previous two years.

43. Prior to purchasing, Plaintiff Peter Barbato visited Church & Dwight's website reviewing its advertising and marketing for various multivitamins including specifically Vitafusion Complete Men's Multivitamin. He relied upon Church & Dwight's advertisements and marketing that this product was a "complete multivitamin" containing "essential" nutrients.

44. Church & Dwight's online advertising, packaging, and labeling of this product represents and warrants that they are a "Complete Multivitamin." Such representation and warranty are displayed prominently in the center of the packaging and on pictures on Church & Dwight's website. Such representations were false, as the product does not constitute a "complete" multivitamin.

45. Based upon this false representation and warranty, Plaintiff Peter Barbato believed that the product was a complete multivitamin which contained all the vitamins he needed.

46. Said false representation rendered Church & Dwight's product essentially valueless to Plaintiff Peter Barbato and were it not for this false representation and warranty, he would not have purchased Church & Dwight's products. Alternatively, because the product lacked all the essential vitamins, it was worth less than he paid.

47. Plaintiffs Barbato and their child ingested their respective products without knowledge that they lacked all the essential vitamins.

48. As a result of the representations and warranties described herein, Plaintiffs

Michelle and Peter Barbato suffered actual and ascertainable damages in the amount of the money they have spent purchasing Church & Dwight's products.

FACTS SPECIFIC TO PLAINTIFF SHARON MAROLDI

49. Plaintiff Sharon Maroldi purchased Church & Dwight's L'il Critters Gummy Vites Complete Multivitamin products at asking price from Shoprite for her children multiple times over at least the past two years.

50. Prior to purchasing, Plaintiff Sharon Maroldi visited Church & Dwight's website reviewing its advertising and marketing for various multivitamins including specifically L'il Critters Gummy Vites Complete Multivitamin. She relied upon Church & Dwight's advertisements and marketing that this product was a "complete multivitamin" containing "essential" nutrients.

51. Church & Dwight's online advertising, packaging, and labeling of this product represents and warrants that it is a "Complete Multivitamin." Such representation and warranty are displayed prominently in the center of the packaging and on pictures on Church & Dwight's website. Such representations were false, as the product does not constitute a "complete" multivitamin.

52. Based upon this false representation and warranty, Plaintiff Maroldi believed that the product was a complete multivitamin which contained all the vitamins her children needed.

53. Said false representation rendered Church & Dwight's product essentially valueless to Plaintiff Sharon Maroldi and were it not for this false representation and warranty, she would not have purchased Church & Dwight's products.

54. Plaintiff Maroldi's child ingested the product without knowledge that it lacked all the essential vitamins.

55. As a result of this false representation and warranty, Plaintiff Maroldi suffered actual and ascertainable damages in the amount of money she has spent purchasing Church & Dwight's products.

CLASS ALLEGATIONS

56. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure Rule 23. The Class which Plaintiffs seek to represent is composed of and defined as:

a. All persons in the United States (except citizens of California) who purchased L'il Critters Complete Multivitamins, Vitafusion Women's Complete Multivitamins, or Vitafusion Men's Complete Multivitamins (the "Class").

b. A subclass of all Class members who purchased L'il Critters Complete Multivitamins in Florida (the "Florida Subclass").

c. A subclass of all Class members who purchased L'il Critters Complete Multivitamins, Vitafusion Women's Complete Multivitamins, or Vitafusion Men's Complete Multivitamins in New Jersey (the "New Jersey Subclass").

57. Excluded from the Class and both Sub-Classes are persons who purchased such multivitamins for resale and employees of Church & Dwight.

58. Plaintiffs reserve the right to create additional subclasses or classes, if necessary, and to revise these definitions to maintain a cohesive class that does not require individual inquiries to determine Church & Dwight's liability.

COMMON QUESTIONS OF LAW AND FACT PREDOMINATE

59. There are common questions of law and fact which are of general interest to the class. These common questions of law and fact predominate over any questions affecting only individual members of the class. Such common questions include, but are not limited to, the

following:

- a. Whether Church & Dwight's Products actually contained all of the "essential" vitamins, including thiamin, riboflavin, niacin and vitamin K;
- b. Whether the deliberate and deceitful marketing and labeling of Church & Dwight's Products violated the New Jersey Consumer Fraud Act;
- c. Whether the deliberate and deceitful marketing and labeling of Church & Dwight's Products violated Florida's Deceptive and Unfair Trade Practices Act;
- d. Whether Church & Dwight warranted that the Products were "complete" and "essential" multivitamins; and
- e. Whether Church & Dwight breached these warranties.

TYPICALITY AND NUMEROSITY

60. The claims of the named Plaintiffs are typical of the claims of the Class.

61. Based on information and belief, the total number of members of each putative Class and Sub-Class exceeds 100 members and is so numerous that separate joinder of each member is impracticable. The precise number of Class members and their identities are unknown to Plaintiffs at this time but may be ascertained through discovery. Class members may be notified of the pendency of this action by mail and/or publication via the distribution records of Church & Dwight and its third-party retailer partners.

ADEQUATE REPRESENTATION

62. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interest antagonistic to those of other Class members. Plaintiffs have retained class counsel competent to prosecute class actions and such class counsel is financially able to represent the Class and Sub-Classes.

SUPERIORITY

63. The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the classes is impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiffs and the putative Class and Sub-Classes, rather than on an individual basis. The Class action mechanism provides the benefit of unitary adjudication, economies of scale and comprehensive supervision by a single court.

64. Questions of law and fact predominate over any questions affecting only individual members.

COUNT ONE
BREACH OF EXPRESS WARRANTY UNDER NEW JERSEY LAW

65. Plaintiffs adopt, re-assert and incorporate all of the foregoing allegations as if fully set forth herein.

66. Plaintiffs Michelle Barbato, Peter Barbato and Sharon Maroldi bring this Count for themselves and the New Jersey Subclass.

67. Pursuant to N.J.S.A § 12A:2-313, an express warranty is created by the seller of a good by “[a]ny description of the goods which is made part of the basis of the bargain . . . that the goods shall conform to the description.”

68. Church & Dwight expressly warranted, through its labeling and advertisement of the Products, that they were “complete multivitamins.”

69. However, all of the Products lack in thiamin, riboflavin, and Vitamin K, and Vitafusion Men’s Complete Multivitamins and L’il Critters Multivitamins lack niacin.

70. Additionally, Church & Dwight expressly warranted that the Vitafusion Men’s Complete Multivitamin includes niacin (Vitamin B3). It does not.

71. Therefore, Church & Dwight breached the express warranty which accompanied the Products by selling products that failed to conform to the descriptions of the Products upon their labeling and advertisements.

72. As a direct and proximate result of Church & Dwight's breach of the express warranty, Plaintiffs and class members have been injured as: (a) the Products, as described herein, do not have the characteristics as promised and warranted by Church & Dwight; and (b) the Plaintiffs would not have purchased the Products if they had known of the true facts of the Products.

COUNT TWO
BREACH OF IMPLIED WARRANTY UNDER NEW JERSEY LAW

73. Plaintiffs adopt, re-assert and incorporate all of the foregoing allegations as if fully set forth herein.

74. Plaintiffs Michelle Barbato, Peter Barbato and Sharon Maroldi bring this Count for themselves and the New Jersey Subclass.

75. Church & Dwight, as the designer, manufacturer, marketer, distributor and/or seller of the Products, impliedly warranted that the Products are "complete multivitamins."

76. Pursuant to N.J.S.A § 12A:2-314, an implied warranty of merchantability exists in any product sold, such that any good sold must conform to the promises or affirmations of fact made on the container or label.

77. Church & Dwight's product labeling promised or affirmed that the Products were "complete multivitamins."

78. However, all of the Products lack in thiamin, riboflavin, and Vitamin K, and Vitafusion Men's Complete Multivitamins and L'il Critters Multivitamins lack niacin.

79. Additionally, Church & Dwight promised or affirmed that the Vitafusion Men's

Complete Multivitamin includes niacin (Vitamin B3). It does not.

80. Church & Dwight breached the implied warranty implied in the contract for the sale of the Products because the goods do not conform to the promises or affirmations of fact made on their labels.

81. Due to Church & Dwight's breach, Plaintiffs and members of the putative class members, did not receive the goods as impliedly warranted by Church & Dwight to be merchantable.

82. Therefore, Church & Dwight breached the implied warranty of merchantability by selling the Products that failed to conform to the promises or affirmations of fact made on their containers and labels, to wit that they represent "complete multivitamins."

83. As a direct and proximate result of Church & Dwight's breach of the implied warranty, Plaintiffs and class members have been injured as: (a) the Products do not have the characteristics as promised and warranted by Church & Dwight; and (b) Plaintiffs would not have purchased the Products if they had known of the true facts of the product.

COUNT THREE
VIOLATION OF NEW JERSEY'S CONSUMER FRAUD ACT

84. Plaintiffs adopt, re-assert and incorporate all of the foregoing allegations as if fully set forth herein.

85. Plaintiffs, each Class Member, and Church & Dwight are "persons" within the meaning of N.J.S.A. § 56:8-1.

86. The New Jersey Consumer Fraud Act ("CFA") provides that Church & Dwight has a duty not to engage in "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in

connection with the sale or advertisement of any merchandise . . .” N.J.S.A. § 56:8-2.

87. The business activities of Church & Dwight described above constitute the sale or advertisement of merchandise within the meaning of the CFA. See N.J.S.A. § 56:8-1.

88. As described herein, Church & Dwight has engaged in unconscionable commercial practices or deceptive acts or practices where its conduct regarding the marketing of the Products as “complete multivitamins” lacked honesty in fact, fair dealing, and good faith or because it had the capacity to mislead consumers acting reasonably. As such, its conduct violates the CFA.

89. Additionally, Church & Dwight promised or affirmed that the Vitafusion Men’s Complete Multivitamin includes niacin (Vitamin B3). It does not.

90. NJSA 56:8-2.11 provides that “Any person violating the provisions of the [CFA] act shall be liable for a refund of all monies acquired by means of any practice declared herein to be unlawful.”

91. Due to Church & Dwight’s violation of the CFA, Plaintiffs, Class Members and New Jersey Sub-Class Members have suffered ascertainable losses, and unless restrained, said individuals and others in the future will continue to suffer injury and harm.

92. As a direct and proximate result of Church & Dwight’s violation of the CFA, Plaintiffs and class members have suffered ascertainable injuries, including: (a) the Products do not have the characteristics as promised and advertised by Church & Dwight; and (b) the Products were rendered essentially valueless to Plaintiffs and the class members and they would not have purchased the Products had they known of said Products’ true facts as described herein.

COUNT FOUR – FLORIDA SUB-CLASS ONLY
VIOLATION OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT

93. Plaintiffs adopt, re-assert and incorporate all of the foregoing allegations as if fully

set forth herein.

94. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

95. The stated purpose of the FDUTPA is to "protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

96. Plaintiff DeVane, and each member of the Florida Subclass, qualify as "consumers" under the FDUTPA (Fla. Stat. § 501.203(7)), and each has been harmed by Church & Dwight's unconscionable, deceptive, and unfair acts and practices of mislabeling their multivitamin products as "complete," while knowing that they did not contain certain essential vitamins which the U.S. government recommends children receive. Church & Dwight's misrepresentations, omissions and deceptive practices as set forth above and throughout this Class Action Complaint, are likely to mislead reasonable customers under the circumstances.

97. As a direct and proximate result of Church & Dwight's violation of the FDUTPA, Plaintiff DeVane and class members have been injured as: (a) the Products do not have the characteristics as promised and advertised by Church & Dwight; (b) the Products were rendered entirely valueless to Plaintiff DeVane and the class members and they would not have purchased the Product had they known of the true facts of the Product. Accordingly, Plaintiffs and the class members have been damaged by purchasing the Products which are either worthless or worth less than paid.

COUNT V
BREACH OF COMMON LAW EXPRESS WARRANTY

98. Plaintiffs adopt, re-assert and incorporate all the foregoing allegations as if fully set forth herein.

99. For each Product, Church & Dwight expressly warranted that each was a “complete multivitamin” and that the Vitafusion Men’s Complete Multivitamin includes niacin (Vitamin B3).

100. No Product is a “complete multivitamin” and the Vitafusion Men’s Complete Multivitamin does not include niacin.

101. Church & Dwight breached their warranties by offering for sale and selling the Products which do not conform to the promises made.

102. Church & Dwight’s breach of the warranty proximately caused Plaintiffs and the Class to suffer damages as they did not receive the Products promised and which are less valuable than they would have been had the Products been as promised.

COUNT VI
BREACH OF COMMON LAW IMPLIED WARRANTY

103. Plaintiffs adopt, re-assert and incorporate all of the foregoing allegations as if fully set forth herein.

104. For each Product, Church & Dwight impliedly warranted that each was merchantable and fit for the ordinary use of a complete multivitamin and not otherwise injurious to consumers.

105. Plaintiffs who purchased the Products and other consumers who purchased the Products are entitled to the benefit of the bargain: a complete multivitamin containing the essential nutrients.

106. Because the Products lack all the essential nutrients and are not complete

multivitamins, the Products were not fit for their ordinary purpose and are not merchantable.

107. Church & Dwight's breach of the implied warranty proximately caused Plaintiffs and the Class to suffer damages as they did not receive the Products which are fit for their ordinary purpose and that are merchantable.

COUNT VII
EQUITABLE AND INJUNCTION RELIEF

108. Plaintiffs adopt, re-assert and incorporate all the foregoing allegations as if fully set forth herein.

109. Plaintiffs and members of the Class, and the consuming public will suffer irreparable harm if Church & Dwight is not ordered to stop and desist from falsely advertising the Products as "complete" and the Vitafusion Men's Complete Multivitamin as containing niacin.

110. Church & Dwight is under a continuing duty to inform its customers of the nature and existence of the true nature of the Products.

111. Such irreparable harm includes, but is not limited to, ingesting something that is not as advertised and does not contain the promised ingredients.

WHEREFORE, Plaintiffs pray for judgment on behalf of themselves and on behalf of all other Class members as follows:

A. Certifying the national class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as class representatives, and appointing W. Lewis Garrison and Taylor C. Bartlett as class counsel;

B. Certifying the New Jersey sub-class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs Sharon Maroldi, Michelle Barbato, and Peter Barbato as class representatives, and appointing W. Lewis Garrison and Taylor C. Bartlett as class counsel;

C. Certifying the Florida sub-class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiff Tammy DeVane as class representative, and appointing W. Lewis Garrison and Taylor C. Bartlett as class counsel;

D. Entering a final decree and order declaring that Church & Dwight(1) breached the express and implied warranties associated with the Products; (2) violated the New Jersey Consumer Fraud Act; and (3) violated the Florida Deceptive and Unfair Trade Practices Act.

E. Awarding reasonable costs and attorneys' fees to Plaintiffs and their counsel;

F. Awarding applicable pre-judgment and post-judgment interest; and

G. Awarding such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

The Plaintiffs hereby demand a trial by jury on all Counts and as to all issues.

Date: June 27, 2019

Respectfully submitted,
HENINGER GARRISON DAVIS, LLC

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*Application for admission *pro hac vice* to be filed

Attorneys for Plaintiffs

LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, the Plaintiffs certify that they are unaware of any other litigation that concerns the general matter in controversy.

/s/ Taylor C. Bartlett

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed via the Court's CM/ECF electronic filing system which automatically provides electronic notice to all counsel of record.

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