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8
9 *Counsel for Plaintiff Christina Mendez and the*
10 *putative Classes*

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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 CHRISTINA MENDEZ, individually
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 vs.

20 GLOBAL INSTITUTE OF STEM
21 CELL THERAPY AND RESEARCH,
22 USA, a California corp.; GIOSTAR
23 LABS, INC., a California corp.;
24 BIOSCIENCE AMERICAS, LLC, a
25 Wyoming corp.;
26 ANAND SRIVASTAVA, M.S.,
27 PH.D, an Individual;
28 DEVEN PATEL, an Individual;
SIDDHARTH BHAVSAR, an
Individual; and
SCOTT KIRKPATRICK, an
Individual;

Defendants.

CASE NO. '20CV0915 CAB BLM

CLASS ACTION COMPLAINT

1. Violations of Bus. & Prof. Code §17200 et seq. (UCL)
2. Violations of Bus. & Prof. Code §17500 et seq. (False Advertising)
3. Violations of Cal. Civ. Code §1750 et seq. (CLRA)
4. Breach of Express Warranty
5. Quasi-Contract
6. Breach of Fiduciary Duty
7. Fraudulent Concealment
8. Intentional Misrepresentation
9. Negligent Misrepresentation

Jury Trial Demanded

1 Plaintiff, Christina Mendez, on behalf of herself and all others similarly
2 situated, brings this class action against GLOBAL INSTITUTE OF STEM CELL
3 THERAPY AND RESEARCH, USA; GIOSTAR LABS, INC; BIOSCIENCE
4 AMERICAS LLC; ANAND SRIVASTAVA; DEVIN PATEL; SIDDHARTH
5 BHAVSAR and SCOTT KIRKPATRICK (collectively, “Defendants”) based on
6 Defendants’ scheme to wrongfully and unlawfully market and sell stem cell therapy
7 to consumers nationwide via misrepresentations and omissions, and hereby alleges
8 as follows:

9 **NATURE OF ACTION**

10 1. “Many people, especially ignorant people, want to punish you for
11 speaking the truth, for being correct, for being you. Never apologize for being
12 correct, or for being years ahead of your time. If you’re right and you know it,
13 [s]peak your mind. Even if you are a minority of one, the truth is still the truth.”

14 2. This quote from Mahatma Gandhi fronts the homepage of Defendants’
15 Giostar.com website, through which Defendants purport to offer stem cell therapy
16 for treatment of blood-related diseases and other medical conditions (“Treatment”),
17 and is emblematic of Defendants’ manipulation of ailing and vulnerable consumers
18 who are seeking treatment for degenerative and sometimes terminal medical
19 conditions.

20 3. In a twisted juxtaposition, Defendants have used Gandhi—a cultural
21 and religious icon—and a quote about truth-saying, to peddle their
22 misrepresentations and lies.

23 4. While Gandhi sought truth and change through nonviolent means, the
24 false statements and material omissions made by Defendants have dire and
25 sometimes fatal consequences.

26 5. In Plaintiff’s case, Defendants’ misrepresentations, false statements,
27 and material omissions induced her to undergo stem cell therapy for cancer
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1 treatment. Among other things, Defendants represented that the Treatment offered
2 would be a “cure-all” for Plaintiff’s disease.

3 6. Plaintiff, who was 29 when she was diagnosed with Stage II Hodgkin
4 lymphoma—one of the most treatable cancers—was symptom free for more than a
5 year and given a favorable prognosis prior to seeking Treatment by Defendants.

6 7. This all changed, however, after Defendants performed Treatment on
7 Plaintiff.

8 8. Defendants administered Treatment to Plaintiff without first requiring
9 that Plaintiff undergo chemotherapy or radiation to kill the cancer causing cells in
10 her body. Furthermore, on information and belief, Defendants failed to match the
11 cells injected into Plaintiff’s body to Plaintiff’s cells, causing rejection.

12 9. Following Treatment by Defendants, Plaintiff’s cancer rapidly
13 accelerated from Stage II to Stage IV, Plaintiff’s liver began to fail, and Plaintiff was
14 told by a medical expert that it was unlikely she would survive for more than a year.

15 10. The Treatment administered by Defendants—which cost tens of
16 thousands of dollars—precipitated Plaintiff’s fight for her life. As a result of the
17 rapid acceleration of the cancer and failure of her liver, Plaintiff was forced to
18 undergo surgery, blood transfusions and eight months of aggressive chemotherapy
19 before she entered remission. To this day, Plaintiff continues to be medically
20 monitored for a resurgence of the cancer and continues to undergo medical
21 procedures to try to prevent its return.

22 11. Through this class action, Plaintiff seeks to uphold the credo stated on
23 the homepage of Defendant’s website and expose the real truth about Defendants
24 and the Treatment they offer. Plaintiff seeks to prevent others from falling victim to
25 Defendants’ false statements and material omissions and from suffering as she did
26 based on Defendants’ misconduct.

1 12. Plaintiff brings this action individually and on behalf of those similarly
2 situated and seeks to represent a National Class and California Subclass (defined
3 *infra.*). Plaintiff seeks monetary damages in the amount charged by Defendants for
4 stem cell treatment, interest thereon, restitution, punitive damages, disgorgement of
5 all benefits Defendants have enjoyed from their unlawful and/or deceptive business
6 practices, reasonable attorneys' fees and costs, and equitable relief, as detailed
7 herein. In addition, Plaintiff seeks injunctive relief to stop Defendants' unlawful,
8 unfair and fraudulent conduct. Plaintiff makes these allegations based on her
9 personal knowledge as to herself and her own acts and observations and, otherwise,
10 on information and belief based on investigation of counsel.

11 **JURISDICTION AND VENUE**

12 13. This Court has original jurisdiction over this action pursuant to 28
13 U.S.C. §1332(d) because this is a class action in which: (1) there are over 100
14 members in the proposed classes; (2) members of the proposed classes have a
15 different citizenship from Defendants; and (3) the claims of the proposed class
16 members exceed \$5,000,000 in the aggregate.

17 14. This Court has personal jurisdiction over Defendants because
18 Defendants' contacts with the forum are continuous and substantial, and Defendants
19 intentionally availed themselves of the markets within California, including by
20 having their headquarters in California and marketing and selling stem cell treatment
21 and services to California consumers.

22 15. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
23 Defendants engage in continuous and systematic business activities within the State
24 of California and in this judicial district. Among other things, Defendants are
25 headquartered in San Diego, California. On their Giostar Website Defendants state
26 that their corporate headquarters are located at 4660 La Jolla Village Drive, Suite
27 100 & 200, San Diego, CA 92122, United States. In addition, payment by wire for
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1 treatment by Defendants is processed from a Giostar bank account at an address
2 located in San Diego, California. *See also* Declaration of Christina Mendez
3 Regarding Venue pursuant to Cal. Civ. Code §1780(d), attached as Exhibit A.

4 **PARTIES**

5 16. Plaintiff CHRISTINA MENDEZ (“Plaintiff”) is a resident of Orange
6 County, California who sought stem cell treatment through Defendants. Plaintiff
7 relied on Defendants’ Giostar Website and representations and false statements
8 made by Defendants, including that Treatment offered would improve or cure her
9 cancer. Plaintiff’s reliance on Defendants’ misrepresentations and false statements
10 is typical of all class members in this regard. The cost of Plaintiff’s Treatment was
11 \$22,500, which included three treatments, food, and transportation to and from the
12 local airport. The amount charged by Defendants for Plaintiff’s Treatment is
13 representative and typical of the amount charged by Defendants for stem cell
14 therapy.

15 17. Defendant GLOBAL INSTITUTE OF STEM CELL THERAPY AND
16 RESEARCH, USA (“GIOSTAR”) is an active California Corporation,
17 headquartered at 13278 Birch Tree Lane, Poway, CA 92064, in San Diego County,
18 State of California, which does business in the State of California. According to its
19 public statements, GIOSTAR was formed with the vision to provide affordable stem
20 cell based therapies to those suffering from degenerative or genetic diseases and
21 unable to afford today’s high cost of the treatment.

22 18. Defendant GIOSTAR LABS, INC., is an active California Corporation,
23 headquartered at 13278 Birch Tree Lane, Poway, CA 92064, in San Diego County,
24 State of California. GIOSTAR LABS is a subsidiary of GIOSTAR, which was
25 created to manufacture products for worldwide distribution. Defendant GIOSTAR
26 LABS, INC.’s products and services are located in and it is doing business in the
27 State of California.

1 19. Defendant BIOSCIENCE AMERICAS, LLC is a Wyoming Limited
2 Liability Company, headquartered at 2122 E Highland Ave., #265, Phoenix, AZ
3 85016, Maricopa County, State of Arizona. According to a Fact Sheet published by
4 Defendant Bioscience Americas, LLC in 2016, it was “**a recognized leader** in
5 developing, marketing, and managing stem cell treatment centers” and it “is
6 developing a global network of stem cell treatment centers to generate high income
7 – creating a pre-IPO opportunity to offer exceptional returns.” See Exhibit B
8 attached hereto. Defendant BIOSCIENCE AMERICAS, LLC does business in the
9 County of San Diego, including by raising capital for Defendant GIOSTAR, as
10 described herein. In addition, on information and belief, Defendant BIOSCIENCE
11 AMERICAS, LLC does business in San Diego County by soliciting money from
12 investors located in San Diego and investing in corporations doing business in San
13 Diego County.

14 20. Defendant ANAND SRIVASTAVA, M.S., Ph.D. (“Defendant
15 Srivastava”) is an individual residing in San Diego County, State of California.
16 Defendant Srivastava is the Chairman, Co-Founder, owner, operator and/or
17 controller of GIOSTAR and GIOSTAR LABS, and is responsible for the conduct
18 alleged herein, including the false statements, misrepresentations and material
19 omissions. Defendant Srivastava has authorized and ratified the actions and
20 misconduct alleged herein and is, therefore, personally and directly liable to Plaintiff
21 and members of the Class at to all Causes of Action.

22 21. Defendant DEVEN PATEL is an individual residing in San Diego
23 County, State of California (“Defendant Patel”). Defendant Patel is the CEO,
24 President and Co-Founder of GIOSTAR and is responsible for the conduct alleged
25 herein, including the false statements, misrepresentations and material omissions.
26 Defendant Patel is also the CFO and Director of GIOSTAR LABS. Defendant Patel
27 has authorized and ratified the actions and misconduct alleged herein and is,
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1 therefore, personally and directly liable to Plaintiff and members of the Class as to
2 all Causes of Action.

3 22. Defendant SIDDHARTH BHAVSAR is an individual residing in San
4 Diego County, State of California (“Defendant Bhavsar”). Defendant Bhavsar is the
5 co-founder, CFO and COO of GIOSTAR and the Secretary and Director of
6 GIOSTAR LABS and is responsible for the conduct alleged herein, including the
7 false statements, misrepresentations and material omissions. Defendant Bhavsar has
8 authorized and ratified the actions and misconduct alleged herein and is, therefore,
9 personally and directly liable to Plaintiff and members of the Class as to all Causes
10 of Action.

11 23. Defendant SCOTT KIRKPATRICK is an individual residing in San
12 Diego County, State of California (“Defendant Kirkpatrick”). Defendant
13 Kirkpatrick is the CEO and Director of GIOSTAR LABS, and is responsible for the
14 conduct alleged herein, including the false statements, misrepresentations and
15 material omissions. Defendant Kirkpatrick has authorized and ratified the actions
16 and misconduct alleged herein and is, therefore, personally and directly liable to
17 Plaintiff and members of the Class as to all Causes of Action.

18 **FACTUAL ALLEGATIONS**

19 **Stem Cells and Stem Cell Therapy**

20 24. Stem cells are unspecified cells of the human body from which other
21 cells with specialized functions are generated. Stem cells can divide to form more
22 cells, which either become new stem cells or become specialized cells, such as blood
23 cells or bone cells.

24 25. Stem cells can come from embryos, amniotic fluid and umbilical cord
25 blood, and from adult stem cells. Adult stem cells are found in small numbers in
26 adult tissue, such as bone marrow or fat, and have a more limited ability to give rise
27 to specialized cells compared with embryonic cells.

1 26. Research regarding the ability of stem cell therapy to promote the repair
2 of diseased or injured tissue is ongoing.

3 27. In cases where research has been conducted with regard to the treatment
4 of disease through stem cells, researchers have performed stem cell transplants, also
5 known as bone marrow transplants. A bone marrow transplant may use cells from a
6 patient's own body, called an autologous transplant, or cells from a donor, called an
7 allogeneic transplant.

8 28. Haematopoietic stem cells (HSC), which give rise to other blood cells,
9 have also been studied for the treatment of disease. Target cells are generally derived
10 from bone marrow, peripheral blood or umbilical cord blood. HSC transplant may
11 remedy problems caused by inappropriate functioning of the haematopoietic system
12 because the transplanted cells have the potential to generate other blood related
13 function cells, such as erythrocytes and leukocytes.

14 29. There are numerous limitations, however, to HSC transplant. For
15 example, there are a limited number of transplantable cells without an efficient way
16 of gathering them. In addition, it is difficult to find an antigen-matched donor for
17 transplantation. Viral contamination and immunoreactions are also risks of
18 treatment. In short, HSC transplant is a dangerous procedure with substantial
19 potential consequences.

20 30. Stem cell transplants are generally ineffective to directly treat cancer.
21 Instead, stem cells may be used to restore blood-forming cells in patients whose cells
22 have been destroyed by high doses of chemotherapy or radiation. Specifically, when
23 a patient receives high doses of chemotherapy and/or radiation therapy to kill cancer
24 cells, those treatments also kill stem cells in the bone marrow. It is only after the
25 chemotherapy or radiation therapy is complete that stem cells should be introduced
26 to replace the stem cells that were destroyed.

1 31. To reduce the risks associated with a stem cell transplant, donor cells
2 must match the patient’s cells. If donor cells do not match the host cells, the white
3 blood cells from the donor may attack the host cells, which can result in organ
4 damage, including damage to the liver.

5 **The FDA Has Issued Warnings About False Stem Cell Claims**

6 32. The U.S. Food and Drug Administration (“FDA”) has the authority to
7 regulate stem cell products in the United States and, with limited exceptions, requires
8 that products go through the FDA review process to determine safety and
9 effectiveness through clinical trials.

10 33. The FDA has issued numerous warnings about the safety of stem cell
11 therapies.

12 34. The FDA has stated that it “is concerned that some patients seeking
13 cures and remedies are vulnerable to stem cell treatments that are illegal and
14 potentially harmful.”

15 35. In addition, although the FDA recognizes that “[a]ll medical treatments
16 have benefits and risks” it cautions that “unproven stem cell therapies can be
17 particularly unsafe.”

18 36. The FDA has stated that “some clinics may inappropriately advertise
19 stem cell clinical trials without submitting an IND (Investigational New Drug
20 Application). Some clinics also may falsely advertise that FDA review and approval
21 of the stem cell therapy is unnecessary. But when clinical trials are not conducted
22 under an IND, it means that the FDA has not reviewed the experimental therapy to
23 help make sure it is reasonably safe.”

24 37. According to the FDA, “[t]he only stem cell-based products that are
25 FDA-approved for use in the United States consist of blood-forming stem cells
26 (hematopoietic progenitor cells) derived from cord blood.”

1 **Defendants Make Numerous False Statements and Material Omissions**
2 **About the Stem Cell Therapy they Offer**

3 38. Defendants are the owners and operators of the Global Institute of Stem
4 Cell Therapy and Research (“Giostar”).

5 39. Defendants also own, operate and are responsible for the content of the
6 website located at giostar.com (the “Giostar Website”), through which Defendants
7 advertise “stem cell based therapy to aid those suffering from degenerative or genetic
8 diseases around the world.”

9 40. Under the Therapy page of the Giostar Website, Defendants offer
10 treatment for “blood-related diseases,” including blood-related cancers, and provide
11 information about “Stem Cell Therapy Under Development,” including for chronic
12 pain, muscular dystrophy, diabetes, and spinal cord injury, among others.

13 41. The Giostar Website exemplifies Defendants’ false statements,
14 misrepresentations and material omissions about the Treatment offered, which can
15 be summarized as follows: (1) Defendants misrepresent that the stem cell therapy
16 they perform can treat and cure disease, including genetic and blood-related disease;
17 (2) Defendants misrepresent the process by which patients will receive Treatment;
18 (3) Defendants misrepresent Defendant Srivastava’s affiliations with the medical
19 and research community by stating that he has connections with numerous doctors
20 and facilities, which he does not in fact have; (4) Defendants misrepresent Defendant
21 Srivastava’s medical and scientific qualifications, such that he appears to be
22 substantially more qualified than he actually is; and (5) Defendants misrepresent the
23 reach and breadth of their institution by claiming that they have advanced treatment
24 and research centers than they do not in fact have.

1 **Defendants Misrepresent that Treatment Can Treat and Cure Disease**

2 42. Defendants misrepresent that the stem cell therapy they offer can treat
3 “[b]lood-related diseases” including sickle cell anemia, leukemia, lymphoma and
4 thalassemia.

5 43. The Treatment offered by Defendants, including the way in which it is
6 administered, does not treat or cure the diseases for which Defendants offer
7 Treatment.

8 44. In addition, stem cell therapy through donor or patient cells is not
9 approved by the FDA to treat any of the diseases or conditions listed on the Giostar
10 Website.

11 45. The Treatment of blood-related diseases offered by Defendants
12 generally consists of one or more rounds of intravenous injection of purported stem
13 cells, followed by one or more rounds of administration of “antioxidants”. There is
14 no guarantee that what is injected is actually viable stem cells, nor do Defendants
15 demonstrate that any injected donor cells are properly matched to patient cells.
16 Moreover, as in Plaintiff’s case, the injection administered by Defendants may be
17 contaminated.

18 46. By contrast, in limited clinical settings where stem cell therapy has been
19 effective for treatment of blood-related disease, the treatment was provided
20 following high doses of chemotherapy and/or radiation therapy and often after the
21 use of high doses of immunosuppressants to destroy the disease causing cells. Only
22 after these steps were performed were stem cells introduced, frequently with the
23 patient in isolation to minimize infection.

24 47. The administration of stem cells by Defendants to treat diseases such
25 as cancer, without first destroying the disease causing cells by chemotherapy or
26 radiation, is exceptionally dangerous and risks patient health and life.

1 48. Furthermore, the failure to use a patient’s own cells, or the injection of
2 cells from an unmatched donor, can cause rejection, including where the stem cells
3 attack a patient’s healthy tissue resulting in illness and death.

4 49. Despite the ineffectiveness of the treatment offered by Defendants, they
5 make numerous false and misleading statements and material omissions about their
6 ability to treat blood-related disease on the Giostar Website, including the following:

7 50. **Sickle Cell Anemia, Lymphoma and Thalassemia**. Defendants make
8 a similar false statement under the sickle cell anemia, lymphoma and thalassemia
9 webpages that: “We have mastered the technology for isolating maximum number
10 of viable stem cells allogeneically with the matched donor to treat various patients
11 with SCAD [Lymphona/ Thalassemia]. We are the licensed, private organization
12 with the excellent, well equipped state of the art facility to isolate, process and enrich
13 the viable number of stem cells, which can be re infused back into the patient’s
14 body.”

15 51. This statement is false and misleading. As described herein, on
16 information and belief, Defendants do not perform the necessary process for
17 ensuring matched donor cells. On information and belief, Defendants also are not
18 able to “enrich the viable number of stem cells.” Furthermore, Defendants are not
19 licensed to perform stem cell Treatment in the United States.

20 52. **Leukemia**. Defendants falsely state “GIOSTAR scientists have
21 successfully differentiated the blood stem cells, which can change the defective
22 blood stem cells of the body and make healthy blood cells to remove the cancerous
23 blood cells.”

24 53. **Lymphoma**. On the lymphoma page of Defendants’ website,
25 Defendants describe the disease and how stem cell treatment can help. Among other
26 things, Defendants state that the patient “has to undergo complete destruction of
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1 his/her own bone marrow and undergo infusion of bone marrow stem cells from
2 allogeneically matched donor.”

3 54. Despite recognition of the procedure for cancer cell destruction,
4 Defendants do not perform the destruction of the bone marrow, nor do they ensure
5 that the required process has been followed prior to administration of the Treatment.
6 In addition, on information and belief, Defendants do not infuse bone marrow stem
7 cells from an allogeneically matched donor.

8 55. **Thalassemia**. Defendants reiterate: “Various studies have suggested
9 that stem cells obtained from matched allogeneic donor can be very effective for the
10 condition, reversing it to be normal. The child has to undergo complete destruction
11 of his/her own bone marrow and undergo infusion of bone marrow stem cells from
12 allogeneically matched donor.” Again, Defendants fail to perform the recognized
13 steps for destruction and, on information and belief, Defendants do not infuse bone
14 marrow stem cells from an allogeneically matched donor..

15 56. Defendants also falsely claim: “once infused back in the body, these
16 cells are known to revamp the cellular system in bone marrow as well as in damaged
17 organs. Thus, the recovery period after the transplant, is found to be between 1 to 2
18 months; depending upon the child health, age and will power.”

19 57. Defendants’ representations about their ability to treat “blood-related
20 diseases” are false and materially misleading. In addition, Defendants omit critical
21 information concerning the viability of stem cell therapy for treatment of the listed
22 conditions, including the risks associated with such treatment.

23 **Defendants Make Material Misrepresentations About Their**
24 **Qualifications and Affiliations**

25 58. In numerous publications, including on the Medical Advisory page of
26 the Giostar website, Defendants made and continue to make false statements about
27 their own qualifications and their support and affiliations with reputable medical
28

1 institutions, including the following: (1) the statements about Defendant
2 Srivastava's education, academic appointments and clinical experience are patently
3 untrue; (2) Defendants' purported affiliations with luminaries and leading research
4 institutions do not exist; and (3) the institutions where Defendants have allegedly
5 established stem cell clinics deny that the clinics have been set up.¹

6 **Defendants' Representations About Defendant Srivastava's**
7 **Qualifications Are False**

8 59. Defendant Srivastava's co-founder, Defendant Patel, acknowledged in
9 an email that some descriptions of Defendant Srivastava's prior academic
10 appointments had been exaggerated, including the claims that Defendant Srivastava
11 had been an associate professor in the department of cellular and molecular biology
12 at UCLA's medical school, an associate professor at UC Irvine medical school, and
13 an assistant professor at UC San Diego medical school. According to the schools,
14 Defendant Srivastava did not hold a single one of these positions. *See* Exhibit C.

15 60. Despite Defendant Patel's recognition of the falsity of these claims, to
16 date and as late as May of 2020, the Giostar Website continues to make false claims
17 about Defendant Srivastava's qualifications and appointments, including as follows:
18 "Dr. Anand Srivastava has been associated with leading universities and research
19 institutions of USA. In affiliation with University of California San Diego Medical
20 College (UCSD), University of California Irvine Medical College (UCI), Salk
21 Research Institute, San Diego, Burnham Institute For Medical Research, San Diego,
22 University of California Los Angeles Medical College (UCLA), USA has developed
23 several research projects and has an extensive research experience in the field of

24 _____
25 ¹ The falsity of these claims is described in detail in an article published in the Los
26 Angeles Times on January 26, 2019, titled, "Column: A stem cell clinic touts its
27 links with leading scientists. Some say they have no such connections." A copy of
28 this article is attached hereto as Exhibit C.

1 Stem cell which is documented by several publications in revered scientific
2 journals.”

3 61. The Giostar Website continues to falsely state Defendant Srivastava’s
4 prior academic positions, including as a “Visiting Associate Researcher: Department
5 of Molecular, Cell and Development Biology, University of California Los Angeles
6 (UCLA), CA, USA”; “Associate Project Scientist: Department of Stem Cells and
7 Neurology, School of Medicine, University of California Irvine (UCI), Irvine, CA,
8 USA”; and “Assistant Project Scientist: Cancer Center, School of Medicine,
9 University of California San Diego (UCSD), La Jolla, CA, USA.”

10 62. In addition, “[t]he institutions where Srivastava says he set up stem-cell
11 research labs dispute his claim; they and other institutions where Srivastava says he
12 held faculty positions say those claims are untrue.” *See* Exh. C.

13 63. For example, the Salk Research Institute in La Jolla, where Srivastava
14 claims he served on the faculty as a “senior scientist” and “directed [the] stem cell
15 core facility” says neither of these claims is true. *Id.*

16 64. Instead, according to the Salk Institute, Defendant Srivastava was hired
17 as a researcher for a single year in February 2008 before he was moved to an unpaid
18 collaborator position in February 2009, and ended his relationship with Salk that
19 March. *Id.*

20 65. As of May 2020, however, Defendants continue to misrepresent
21 Defendant Srivastava’s affiliations and prior appointments on the Giostar Website,
22 including by continuing to state that Defendant Srivastava was a “Senior Scientist:
23 Stem Cell Core Facility, The Salk Research Institute, La Jolla, CA, USA.”

24 **Defendants’ Representations About Institutional and Scientific**
25 **Affiliations Are False**

26 66. “The so-called Global Institute of Stem Cell Therapy and Research
27 boasts that its medical advisory board comprises ‘luminaries from Harvard,
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1 University of California, San Diego (UCSD), University of California Irvine (UCI)
2 and other leading institutions. It says on its website that its founder, Anand
3 Srivastava, is ‘credited with setting up the stem cell research labs at top research
4 institutions in [the] US including Salk Research Institute, Sanford-Burnham
5 Institute, UCI, UCSD.’ That could give prospective patients confidence that they
6 were in sound medical hands. But three prominent scientists listed as board members
7 say they have no connection with Giostar, and have repeatedly asked for their names
8 to be removed from its website. Of 11 others listed as members of the advisory board
9 as of Jan. 8, nine could not be reached or did not return calls or emails. One
10 confirmed that he was a board member but referred questions to Giostar. Another
11 acknowledged that he was a member, but said the board had never met and he had
12 only exchanged phone calls with Giostar principals.” *Id.*

13 67. Specifically, the “experts” Giostar touts or has touted as members of its
14 scientific and advisory board disclaim any relationship to Giostar. Dr. Evan Snyder,
15 for example, is director of the Center for Stem Cells and Regenerative Medicine at
16 the Sanford Burnham Prebys Medical Discovery Institute in La Jolla. Dr. Snyder
17 states that he has no connection to Giostar, and should never have been listed as a
18 board member. *Id.*

19 68. Furthermore, Dr. Snyder cast doubt on the validity of the claims made
20 by Giostar stating that he has “not seen data that the cells they’re using are useful
21 for [the] diseases [Giostar purports to treat].” *Id.*

22 69. Likewise, Dr. Ewa Carrier, an expert in blood and marrow
23 transplantation formerly at UC San Diego, disclaims any relationship to Giostar,
24 despite being listed as a board member. Dr. Carrier also stated that she does not
25 know about the work being conducted by Giostar and “didn’t want to be involved in
26 any entity doing clinical trials without FDA approval.” *Id.*

1 70. “A third scientist listed as a member of the advisory board . . . a
2 professor of ophthalmology at University Eye Hospital, Heidelberg, Germany, told
3 [the author] by email: ‘I have no relationship with this company. I have never been
4 contacted by Giostar and it seems they just took my name and placed it on their web
5 page.’ He says he does not work with stem cells.” *Id.*

6 **Defendants’ Representations About Stem Cell Labs Are False**

7 71. In addition “[t]he institutions where Srivastava says he set up stem-cell
8 research labs dispute his claim; they and other institutions where Srivastava says he
9 held faculty positions say those claims are untrue.” *Id.*

10 **Plaintiff’s Experience Demonstrates that Defendants are Lying to the**
11 **Public and Risking Consumer Health and Life**

12 72. In April of 2016, Plaintiff was diagnosed with stage II classical
13 Hodgkin lymphoma cancer. At that time she was 29 years old.

14 73. Stage 2 Hodgkin lymphoma is characterized as two or more affected
15 lymph nodes areas on the same side of the diaphragm.

16 74. Hodgkin lymphoma is considered one of the most treatable forms of
17 cancer if found in Stage I or Stage II. The five-year survival rate for Stage I or Stage
18 II is between 90%-95%.

19 75. Because she was reluctant to undergo chemotherapy or radiation
20 therapy for cancer treatment, Plaintiff sought alternative treatments.

21 76. Almost a year after her diagnosis, Plaintiff was pain free and symptom
22 free. Because she was doing well, she was told that stem cell therapy could be the
23 cure-all for her cancer.

24 77. Plaintiff was introduced to Defendants Patel and Srivastava to discuss
25 stem cell therapy as an option to treat her cancer. The treatment was described by
26 Defendants as a “cure-all,” as cutting-edge, and as revolutionizing the cancer
27 industry.
28

1 78. Plaintiff relied on Defendants' representations in deciding to undergo
2 Treatment, including the representations on Defendants' website that stem cell
3 therapy was an effective means to treat lymphoma.

4 79. In March of 2017, Plaintiff received the documents to undergo stem
5 cell therapy through Giostar.

6 80. The total cost for Plaintiff's stem cell therapy "Treatment Plan" was
7 \$22,500, which included three stem cell transplants, hotel stays in India on two
8 occasions, food, and transportation to and from the local airport.

9 81. Although Plaintiff was originally informed that the Treatment would
10 take place outside of the United States at a state of the art facility in Columbia, at the
11 last minute, Defendants changed the location of the treatment to India. Defendants
12 provided Plaintiff with travel information, including an address to use to obtain a
13 tourist visa to travel to India, which was placed under the name of Defendant Patel.

14 82. Plaintiff arrived in India on May 15, 2017. Although she was
15 previously told that Defendants would use Plaintiff's own stem cells to perform the
16 treatment, upon arrival she was informed that she was too thin for Defendants to use
17 her own stem cells and she would instead receive donor cells.

18 83. Plaintiff only received a blood test prior to receiving the donor cells,
19 yet, Defendants purported to match her cells to those of an outside donor.

20 84. Finding a close HLA match to transplant blood and bone marrow cells,
21 however, can be difficult, particularly where the donor cells are not obtained from a
22 relative. On information and belief, Defendants failed to conduct the required steps
23 to match Plaintiff's cells and did not provide cells from a matched donor.

24 85. On May 16, 2017, Plaintiff received her first round of stem cell therapy
25 and a round of antioxidants. Both were administered intravenously and the entire
26 treatment took approximately 3-6 hours.

27 86. On May 17, 2017, Plaintiff received a second round of antioxidants.
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1 87. Plaintiff subsequently returned to the United States.

2 88. On June 26, 2017, Plaintiff returned to India for her second and third
3 stem cell injections.

4 89. During the third round of treatment, the nurses were initially unable to
5 place the valve in Plaintiff's vein for the intravenous injection. Although they were
6 able to do so after multiple attempts, Plaintiff suffered bruising and a punctured vein.
7 When Plaintiff expressed concern about the inability to place the needle, she was
8 told that she was dehydrated.

9 90. Plaintiff did not feel well following the treatment.

10 91. Plaintiff returned to the United States following the treatment.

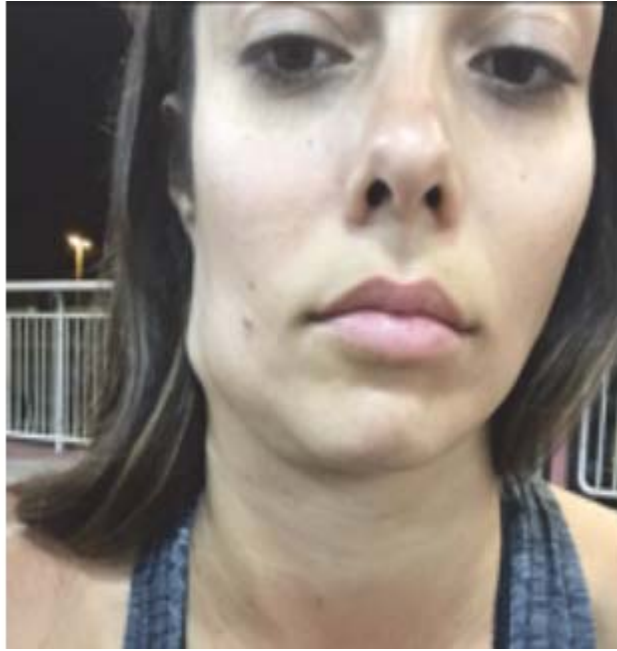
11 92. On or about July 4, 2017, Plaintiff began to experience pain and
12 swelling in her abdomen as well as swelling in her neck. In addition, she began to
13 demonstrate early symptoms of jaundice, although she was unaware of the meaning
14 behind the symptoms at that time.

15 93. Plaintiff tried to reach Defendants Patel and Srivastava to discuss her
16 symptoms and concerns, but was unsuccessful.

17 94. Plaintiff eventually reached out to another doctor, who was able to put
18 her in touch with Defendant Srivastava.

19 95. When Plaintiff expressed her concerns about how she was feeling,
20 Defendant Srivastava blamed Plaintiff's diet, saying that it was too clean. Defendant
21 Srivastava also told Plaintiff to trust the process of the Treatment, that it would take
22 time for the cells to take effect, and not to take any action.

23 96. On or about August 25, 2017, Plaintiff again informed Dr. Srivastava
24 about the swelling in her neck and provided him with a photo of the swelling, which
25 appeared as follows:
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97. On August 28, 2017, Dr. Srivastava responded and told Plaintiff to have blood work performed. He also stated that sometimes the Treatment can cause swelling because the immune cells accumulate in the area to suppress or kill the “bad cells.”

98. At that time, and in reliance on Defendants’ representations, Plaintiff believed that the swelling and pain could be side effects of the stem cell treatment, and that she needed to give the treatment more time to take effect.

99. Plaintiff’s condition continued to worsen.

100. On October 27, 2017, Plaintiff went to the emergency room and was hospitalized for three days.

101. Plaintiff was diagnosed with Stage IV Hodgkin lymphoma and liver failure. Plaintiff was informed that it was likely she would die within a year.

102. At the time, Plaintiff resided in Nevada, but was unable to find a local doctor who would treat her. Plaintiff ended up having to relocate to Los Angeles in order to receive medical treatment.

103. Plaintiff was informed that her best chance for survival was to undergo chemotherapy.

1 104. First, however, due to Plaintiff's severe jaundice, she had to undergo
2 surgery in order to have stents placed in her bile duct to lower her bilirubin levels.
3 Plaintiff was informed that if the procedure did not lower her levels, she would be
4 placed on dialysis. The doctor stated that this would be a last resort before hospice.

5 105. On December 4, 2017, Plaintiff began chemotherapy. She was given
6 intravenous treatment and pills for eight days every 21 days, followed by shots.

7 106. The chemotherapy resulted in burns on Plaintiff's stomach and thighs
8 and Plaintiff suffered allergic reactions and had to have blood transfusions.

9 107. Plaintiff suffered, among other things, nausea, hair loss, fluid retention,
10 scarring, memory loss and extreme fatigue.

11 108. Plaintiff underwent aggressive chemotherapy for eight months before
12 she entered remission.

13 109. The effects of Defendants' misconduct, however, are ongoing.

14 110. From March through September of 2019, Plaintiff had to undergo
15 immunotherapy and it is likely she may have to undergo additional immunotherapy
16 treatment.

17 111. During the immunotherapy treatment, one of the doctors informed
18 Plaintiff that the stem cell therapy was not performed correctly and could have killed
19 her. Specifically, Plaintiff was told that stem cell therapy cannot be administered
20 where a cancer patient has not first undergone chemotherapy because the stem cells
21 cause the cancer cells to metastasize and replicate. The doctors also informed her
22 that the blood that was transfused by Defendants was likely contaminated.

23 112. Accordingly, the Treatment administered by Defendants escalated
24 Plaintiff's Stage II cancer to Stage IV over an extremely short period of time.

25 113. Plaintiff lives in fear that the cancer will return and, based on the rapid
26 escalation and deterioration of her condition due to the Treatment performed by
27 Defendants, that Plaintiff will not be able to fight the cancer again. In addition,
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1 Plaintiff spent more than a year of her life receiving aggressive and invasive medical
2 treatment, which has not only had dire consequences on her overall health, but on
3 her ability to work and on her family.

4 **Defendants Seek To Profit From their Misconduct**

5 114. In a 2015 press release, Defendant Bioscience Americas, LLC
6 announced that it had retained JCF Capital Advisor, LLC, a San Diego capital
7 advisory firm, to assist in the implementation of an international growth plan.

8 115. In a 2016 Fact Sheet, in addition to reiterating misrepresentations
9 described herein, Defendant Bioscience Americas, LLC makes clear that it is
10 participating in the stem cell therapy business purely for financial gain: “With a
11 booming market for healthcare worldwide, soaring demand for medical care, and a
12 rapidly aging population, Bioscience Americas is developing a global network of
13 stem cell treatment centers to generate high income – creating a pre-IPO opportunity
14 to offer exceptional returns.” *See* Exh. B.

15 116. Under the heading “Investment Strategy,” Defendant states: that it is
16 focused on “[m]eet[ing] the growing demand for treatment in underserved markets
17 to generate high income, with quarterly distributions to investors” and that its “exit
18 strategy” is to “resell high-performing treatment centers at a significant profit to
19 institutional investors or take the company public through an IPO.” *Id.*

20 117. Defendants, including Defendant Bioscience Americas, LLC, view
21 stem cell therapy as an economic opportunity, rather than a medical endeavor.
22 Defendants have compromised consumer health and safety for their own financial
23 gain, to the detriment of Plaintiff and Class members.

24 **CLASS DEFINITION AND CLASS ALLEGATIONS**

25 118. Plaintiff brings this action as a class action pursuant to Federal Rules of
26 Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself, on behalf of all others
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1 similarly situated, and as a member the Classes defined as follows (collectively, the
2 “Class”):

3 All citizens of the United States who, within the relevant
4 statute of limitations periods, received stem cell therapy from
5 Defendants (“Nationwide Class”);

6 All citizens of California who, within the relevant statute of
7 limitations periods, received stem cell therapy from
8 Defendants (“California Subclass”).

9 119. Excluded from the Class are: (i) Defendants, their assigns, successors,
10 and legal representatives; (ii) any entities in which Defendants have controlling
11 interest; (iii) federal, state, and/or local governments, including, but not limited to,
12 their departments, agencies, divisions, bureaus, boards, sections, groups, counsels,
13 and/or subdivisions; (iv) all persons presently in bankruptcy proceedings or who
14 obtained a bankruptcy discharge in the last three years; and (v) any judicial officer
15 presiding over this matter and person within the third degree of consanguinity to
16 such judicial officer.

17 120. Plaintiff reserves the right to amend or otherwise alter the class
18 definitions presented to the Court at the appropriate time, or to propose or eliminate
19 sub-classes, in response to facts learned through discovery, legal arguments
20 advanced by Defendants, or otherwise.

21 121. This action is properly maintainable as a class action pursuant to
22 Federal Rule of Civil Procedure 23 for the reasons set forth below.

23 122. **Numerosity:** Members of the Class are so numerous that joinder of all
24 members is impracticable. According to Defendants, they “successfully treated”
25 4,000 patients between 2011 and 2016. Upon information and belief, the
26 Nationwide Class consists of thousands of patients, dispersed throughout the United
27 States, who received Treatment from Defendants, and the California Subclass
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1 consists of hundreds or thousands of patients from California, who received
2 Treatment from Defendants. Accordingly, it would be impracticable to join all
3 members of the Class before the Court.

4 123. **Common Questions Predominate:** There are numerous and
5 substantial questions of law or fact common to all members of the Class that
6 predominate over any individual issues. Included within the common questions of
7 law or fact are:

- 8 a. Whether Defendants' representations and omissions about stem
9 cell therapy are, or any single representation or omission is, false,
10 misleading and/or deceptive;
- 11 b. Whether Defendants engaged in unlawful, unfair or deceptive
12 business practices in violation of Cal. Bus. & Prof. Code §
13 17200, *et seq.*;
- 14 c. Whether Defendants engaged in deceptive advertising practices
15 in violation of Cal. Bus. & Prof. Code § 17500, *et seq.*;
- 16 d. Whether Defendants violated the Consumers Legal Remedies
17 Act, Cal. Civ. Code § 1750, *et seq.*;
- 18 e. Whether Defendants committed a breach of express warranty;
- 19 f. Whether Defendants breached a fiduciary duty to Plaintiff and
20 Class members;
- 21 g. Whether Defendants engaged in fraud;
- 22 h. Whether Defendants made intentional and/or negligent
23 misrepresentations;
- 24 i. Whether Plaintiff and the Class are entitled to equitable and/or
25 injunctive relief;
- 26 j. Whether Plaintiff and the Class have sustained damage as a result
27 of Defendants' unlawful conduct;
- 28

1 k. The proper measure of damages sustained by Plaintiff and the
2 Class; and

3 l. Whether Defendants were unjustly enriched by their unlawful
4 practices.

5 124. **Typicality:** Plaintiff's claims are typical of the claims of the members
6 of the Class she seeks to represent because Plaintiff, like the Class members, relied
7 on Defendants' misrepresentations and false statements in deciding to undergo
8 Treatment by Defendants. Defendants' unlawful, unfair and/or fraudulent actions
9 concern the same business practices described herein irrespective of where they
10 occurred or were experienced. Plaintiff and the Class sustained similar injuries
11 arising out of Defendants' conduct. Plaintiff's and Class member's claims arise
12 from the same practices and course of conduct and are based on the same legal
13 theories.

14 125. **Adequacy:** Plaintiff is an adequate representative of the Class she
15 seeks to represent because her interests do not conflict with the interests of the
16 members of the Class Plaintiff seeks to represent. Plaintiff will fairly and adequately
17 protect the interests of the members of the Class and has retained counsel
18 experienced and competent in the prosecution of complex class actions, including
19 complex questions that arise in consumer protection litigation.

20 126. **Superiority and Substantial Benefit:** A class action is superior to
21 other methods for the fair and efficient adjudication of this controversy, since
22 individual joinder of all members of the Class is impracticable and no other group
23 method of adjudication of all claims asserted herein is more efficient and
24 manageable for at least the following reasons:

25 a. The claims presented in this case predominate over any questions
26 of law or fact, if any exists at all, affecting any individual
27 member of the Class;

- 1 b. Absent a Class, the members of the Class will continue to suffer
2 damage and Defendants' unlawful conduct will continue without
3 remedy while Defendants profit from and enjoy their ill-gotten
4 gains;
- 5 c. When the liability of Defendants has been adjudicated, claims of
6 all members of the Class can be administered efficiently and/or
7 determined uniformly by the Court; and
- 8 d. This action presents no difficulty that would impede its
9 management by the Court as a class action, which is the best
10 available means by which Plaintiff and Class members can seek
11 redress for the harm caused to them by Defendants.

12 127. Because Plaintiff seeks relief for all members of the Class, the
13 prosecution of separate actions by individual members would create a risk of
14 inconsistent or varying adjudications with respect to individual members of the
15 Class, which would establish incompatible standards of conduct for Defendants.

16 128. The prerequisites to maintaining a class action for injunctive or
17 equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted
18 or refused to act on grounds generally applicable to the Class, thereby making
19 appropriate final injunctive or equitable relief with respect to the Class as a whole.

20 129. The prerequisites to maintaining a class action pursuant to Fed. R. Civ.
21 P. 23(b)(3) are also met as questions of law or fact common to Class members
22 predominate over any questions affecting only individual members, and a class
23 action is superior to other available methods for fairly and efficiently adjudicating
24 the controversy.

25 130. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are
26 likely to be encountered in the management of this action that would preclude its
27 maintenance as a class action.

FIRST CAUSE OF ACTION
Unfair and Unlawful Business Acts and Practices
(Business and Professions Code § 17200, *et seq.*)
(*On Behalf of Plaintiff and the California Subclass*)

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4 131. Plaintiff re-alleges and incorporates by reference the allegations
5 contained in the preceding paragraphs of this complaint, as though fully set forth
6 herein.

7 132. Defendants’ conduct constitutes an unfair business act and practice
8 pursuant to California Business & Professions Code §§ 17200, *et seq.* (the “UCL”).
9 The UCL provides, in pertinent part: “Unfair competition shall mean and include
10 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
11 misleading advertising”

12 133. Plaintiff brings this claim seeking equitable and injunctive relief to stop
13 Defendants’ misconduct, as complained of herein, and to seek restitution of the
14 amounts Defendants acquired through the unfair, unlawful, and fraudulent business
15 practices described herein.

16 134. Defendants’ knowing conduct, as alleged herein, constitutes an “unfair”
17 and/or “fraudulent” business practice, as set forth in California Business &
18 Professions Code §§ 17200-17208.

19 135. Defendants’ conduct was and continues to be unfair and fraudulent
20 because, directly or through its agents and employees, Defendants made uniform
21 materially false representations and omissions.

22 136. As described herein, Defendants misrepresented, among other things:
23 the viability of the Treatment they offer to treat and cure disease and medical
24 conditions; Defendants’ qualifications; Defendants’ affiliations, including in the
25 medical and scientific community; and the specialization and breadth of Defendants’
26 treatment centers.

27 137. Defendants also made materially false representations and omissions
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1 by failing to adequately disclose the risks associated with the Treatment, including:
2 the risk that the Treatment would exacerbate or escalate the condition Defendants
3 were purporting to treat; the risks associated with the manner by which patients
4 would be treated, including the obtaining, matching and injection of stem cells; and
5 the risk that the samples used would be contaminated.

6 138. Defendants’ conduct also constitutes an unfair and unlawful business
7 act and practice because, as alleged herein, Defendants fail to comply with United
8 States treatment requirements, despite being headquartered in the United States.²

9 139. Defendants are aware that the representations and omissions they have
10 made were and continue to be false and misleading.

11 140. Defendants had an improper motive—to derive financial gain at the
12 expense of accuracy or truthfulness and at the expense of patient health and safety—
13 in their practices related to their false and misleading representations and material
14 omissions, including by administration of stem cell therapy.

15 141. There were reasonable alternatives available to Defendants to further
16 Defendants’ legitimate business interests, other than the conduct described herein.

17 142. Defendants’ misrepresentations of material facts, as set forth herein,
18 also constitute an “unlawful” practice because they violate California Civil Code §§
19 1572, 1573, 1709, 1710, 1711, and 1770 and the laws and regulations cited herein,
20 as well as the common law.

21 143. Defendants’ conduct in making the misrepresentations and omissions
22 described herein constitutes a knowing failure to adopt policies in accordance with
23 and/or adherence to applicable laws, as set forth herein, all of which are binding

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25 ² Plaintiff does not allege any claims based on a substantive violation of FDA law or
26 regulation and only references these requirements to the extent they provide a
27 predicate basis for liability under state and common law, as set forth herein.

1 upon and burdensome to their competitors. This conduct engenders an unfair
2 competitive advantage for Defendants, thereby constituting an unfair business
3 practice under California Business & Professions Code §§ 17200-17208.

4 144. In addition, Defendants' conduct was, and continues to be, unfair in that
5 their injury to countless recipients of the Treatment is substantial, and is not
6 outweighed by any countervailing benefits to consumers or to competitors.

7 145. Moreover, Plaintiff and members of the California Subclass could not
8 have reasonably avoided such injury. Defendants' uniform, material
9 misrepresentations and omissions regarding the Treatment were likely to deceive,
10 and Defendants knew or should have known that their misrepresentations and
11 omissions were untrue and misleading. Plaintiff decided to undergo the Treatment
12 in reliance on the misrepresentations and false statements made by Defendants, and
13 without knowledge of Defendants' misrepresentations and omissions.

14 146. Plaintiff and members of the California Subclass have been directly and
15 proximately injured by Defendants' conduct in ways including, but not limited to,
16 the monies paid to Defendants, interest lost on those monies, and consumers'
17 unwitting support of a business enterprise that promotes deception and undue greed
18 to the detriment of consumers, such as Plaintiff and California Subclass members.

19 147. As a result of the business acts and practices described above, Plaintiff
20 and members of the California Subclass, pursuant to § 17203, are entitled to an Order
21 enjoining such future wrongful conduct on the part of Defendants.

22 148. As a result of the business acts and practices described above, Plaintiff
23 and members of the California Subclass, pursuant to § 17203, are also entitled to
24 such other Orders and judgments that may be necessary to disgorge Defendants' ill-
25 gotten gains and to restore to any person in interest any money paid for the Treatment
26 as a result of the wrongful conduct of Defendants.

27 149. Pursuant to Civil Code § 3287(a), Plaintiff and the California Subclass
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1 are further entitled to pre-judgment interest as a direct and proximate result of
2 Defendants’ unfair and fraudulent business conduct. The amount on which interest
3 is to be calculated is a sum certain and capable of calculation, and Plaintiff and the
4 California Subclass are entitled to interest in an amount according to proof.

5 **SECOND CAUSE OF ACTION**
6 **Deceptive Advertising Practices**
7 **(California Business & Professions Code §§ 17500, et seq.)**
8 **(On Behalf of Plaintiff and the California Subclass)**

9 150. Plaintiff re-alleges and incorporates by reference the allegations
10 contained in the preceding paragraphs of this complaint, as though fully set forth
11 herein.

12 151. California Business & Professions Code § 17500 prohibits “unfair,
13 deceptive, untrue or misleading advertising”

14 152. As described herein, Defendants violated § 17500 by, among other
15 things making material false and uniform misrepresentations concerning: the
16 viability of the Treatment they offer to treat and cure disease and medical conditions;
17 Defendants’ qualifications; Defendants’ affiliations, including in the medical and
18 scientific community; and the specialization and breadth of Defendants’ treatment
19 centers.

20 153. Defendants also made materially false representations and omissions
21 by failing to adequately disclose the risks associated with the Treatment, including:
22 the risk that the Treatment would exacerbate or escalate the condition Defendants
23 were purporting to treat; the risks associated with the manner by which patients
24 would be treated, including the obtaining, matching and injection of stem cells; and
25 the risk that the samples used would be contaminated.

26 154. Defendants’ deceptive practices were designed to induce reasonable
27 consumers like Plaintiff to purchase and receive Treatment from Defendants.
28 Defendants’ uniform, material misrepresentations and omissions regarding the

1 Treatment were likely to deceive, and Defendants knew or should have known that
2 their uniform misrepresentations and omissions were untrue and/or misleading.
3 Plaintiff made the decision to undergo Treatment from Defendants in reliance on the
4 false and misleading representations made by Defendants, and without knowledge
5 of Defendants' misrepresentations and omissions.

6 155. Plaintiff and members of the California Subclass have been directly and
7 proximately injured by Defendants' conduct in ways including, but not limited to,
8 the monies paid to Defendants, interest lost on those monies, and consumers'
9 unwitting support of a business enterprise that promotes deception and undue greed
10 to the detriment of consumers, such as Plaintiff and Subclass members.

11 156. The above acts of Defendants were and are likely to deceive reasonable
12 consumers in violation of § 17500.

13 157. In making the statements and omissions alleged herein, Defendants
14 knew or should have known that the statements and representations were untrue or
15 misleading, and acted in violation of § 17500.

16 158. Defendants continue to engage in unlawful, unfair and deceptive
17 practices in violation of §17500.

18 159. As a direct and proximate result of Defendants' unlawful conduct in
19 violation of § 17500, Plaintiff and members of the California Subclass, pursuant to
20 § 17535, are entitled to an Order of this Court enjoining such future wrongful
21 conduct on the part of Defendants, and requiring Defendants to disclose the true
22 nature of their misrepresentations and omissions.

23 160. Plaintiff and members of the California Subclass also request an Order
24 requiring Defendants to disgorge their ill-gotten gains and/or award full restitution
25 of all monies wrongfully acquired by Defendants by means of such acts of false
26 advertising, plus interests and attorneys' fees.

THIRD CAUSE OF ACTION
Consumer Legal Remedies Act
(Cal. Civ. Code § 1750, *et seq.*)
(On Behalf of Plaintiff and the California Subclass)

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4 161. Plaintiff re-alleges and incorporates by reference the allegations
5 contained in the preceding paragraphs of this complaint, as though fully set forth
6 herein.

7 162. Plaintiff brings this action pursuant to California’s Consumer Legal
8 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

9 163. The CLRA provides that “unfair methods of competition and unfair or
10 deceptive acts or practices undertaken by any person in a transaction intended to
11 result or which results in the sale or lease of goods or services to any consumer are
12 unlawful.”

13 164. The Treatment constitutes “goods or services,” as defined by the CLRA
14 in California Civil Code §1761(a).

15 165. Defendants are a “person,” as defined by the CLRA in California Civil
16 Code §1761(c).

17 166. Plaintiff and members of the California Subclass are “consumers” as
18 defined by the CLRA in California Civil Code §1761(d).

19 167. Purchase of the Treatment is a “transaction[.]” as defined by the CLRA
20 in California Civil Code §1761(e).

21 168. As described herein, Defendants violated Section 1770(a)(5) by
22 representing that the Treatment provided to consumers have “characteristics, . . .
23 uses [or] benefits . . . which [they] do not have”.

24 169. Similarly, Defendants violated section 1770(a)(7) by representing that
25 the Treatment provided to consumers “are of a particular standard, quality, or grade
26 . . . if they are of another” by, among other things, falsely representing that the
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1 Treatment can treat and/or cure disease and other medical conditions, the method by
2 which the Treatment will be provided, and the quality of the Treatment administered.

3 170. In addition, as described herein, Defendants violated section 1770(a)(9)
4 by advertising the Treatment to consumers “with intent not to sell [it] as advertised”.

5 171. Defendants’ uniform, material, misrepresentations and omissions
6 regarding the Treatment were likely to deceive, and Defendants knew or should have
7 known that their misrepresentations and omissions were untrue and misleading.

8 172. Plaintiff and members of the California Subclass could not have
9 reasonably avoided injury. Plaintiff and members of the California Subclass were
10 unaware of the existence of facts that Defendants suppressed and failed to disclose
11 and Plaintiff and members of the California Subclass would not have purchased or
12 chosen to undergo the Treatment had they known the truth.

13 173. Plaintiff and members of the California Subclass have been directly and
14 proximately injured by Defendants’ conduct in ways including, but not limited to,
15 the monies paid to Defendants and interest lost on those monies.

16 174. Given that Defendants’ conduct violated § 1770(a)(5), Plaintiff and
17 members of the California Subclass are entitled to seek and seek injunctive relief to
18 put an end to Defendants’ violations of the CLRA.

19 175. Moreover, Defendants’ conduct is malicious, fraudulent, and wanton in
20 that Defendants intentionally misled and withheld material information from
21 consumers to make and increase sales.

22 176. Pursuant to California Civil Code § 1782(a), on April 28, 2020, Plaintiff
23 on her own behalf, and on behalf of members of the California Subclass, notified
24 Defendants of the alleged violations of the Consumer Legal Remedies Act by letter
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1 setting forth Plaintiff's claims.³

2 177. Plaintiff further requests that the Court enjoin Defendants from
3 continuing to employ the unlawful methods, acts, and practices alleged herein
4 pursuant to § 1780(a)(2).

5 **FOURTH CAUSE OF ACTION**
6 **Breach of Express Warranty**
7 ***(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)***

8 178. Plaintiff re-alleges and incorporates by reference the allegations
9 contained in the preceding paragraphs of this Complaint, as though fully set forth
10 herein.

11 179. By advertising and selling the Treatment at issue, Defendants made
12 promises and affirmations of fact, including through their Giostar Website, as
13 described herein. This advertising constitutes express warranties and became part
14 of the basis of the bargain between Plaintiff and members of the Class, and
15 Defendants.

16 180. Defendants, through their advertising, created express warranties,
17 including that the Treatment would treat and/or cure blood-related diseases and other
18 medical conditions. As described herein, Defendants made promises and
19 affirmations of fact that:

- 20 • "We have mastered the technology for isolating maximum number of
21 viable stem cells allogeneically with the matched donor to treat various
22 patients with SCAD. We are the licensed, private organization with the

23 ³ Once the 30-day statutory period has run, Plaintiff will seek to amend her
24 Complaint to seek compensatory, monetary and punitive damages, in addition to
25 equitable and injunctive relief, and will request that this Court enter such Orders or
26 judgments as may be necessary to restore to any person in interest any money which
27 may have been acquired by means of such unfair business practices, and for such
28 other relief as is provided in California Civil Code § 1780.

1 excellent, well equipped state of the art facility to isolate, process and
2 enrich the viable number of stem cells, which can be re infused back
3 into the patient’s body.”

- 4 • “GIOSTAR scientists have successfully differentiated the blood stem
5 cells, which can change the defective blood stem cells of the body and
6 make healthy blood cells to remove the cancerous blood cells.”
- 7 • “[O]nce infused back in the body, these cells are known to revamp the
8 cellular system in bone marrow as well as in damaged organs. Thus, the
9 recovery period after the transplant, is found to be between 1 to 2
10 months; depending upon the child health, age and will power.”

11 181. In addition, Defendants made promises and affirmations of fact about
12 their qualifications and affiliations, including with respect to: (1) Defendant
13 Srivastava’s education, academic appointments and clinical experience; (2)
14 Giostar’s affiliations with luminaries and leading research institutions; and (3) the
15 institutions where Giostar has established stem cell clinics.

16 182. The express warranties appear on the Giostar Website and specifically
17 relate to the goods and services being sold.

18 183. As described herein, and despite Defendants’ express warranties, the
19 Treatment was and is not what Defendants represented it to be. In addition,
20 Defendants’ affiliations and qualification are not as Defendants have represented.

21 184. Accordingly, Defendants breached express warranties because the
22 Treatment and Defendants’ qualifications to perform and provide such Treatment do
23 not conform to Defendants’ affirmations and promises.

24 185. Plaintiff provided Defendants with pre-suit notice of the breach of
25 warranty, including but not limited to by the April 28, 2020 letter.

26 186. Plaintiff and members of the Class paid for and underwent Treatment
27 by Defendants.

1 187. As a direct and proximate result of Defendants’ breach of express
2 warranty, Plaintiff and members of the Class were harmed, including in the amount
3 of the price paid for Treatment. Further, Plaintiff and members of the Class have
4 suffered and continue to suffer economic losses and other general and specific
5 damages including, but not limited to, the amount paid for Treatment, and any
6 interest that would have accrued on those monies, in an amount to be proven at trial.

7 **FIFTH CAUSE OF ACTION**
8 **QUASI-CONTRACT**

9 *(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)*

10 188. Plaintiff repeats and re-alleges the allegations of the preceding
11 paragraphs as if fully set forth herein.

12 189. By purchasing Treatment, Plaintiff and members of the Class conferred
13 a benefit on Defendants in the form of the purchase price of the Treatment.

14 190. Defendants had knowledge of such benefits.

15 191. Defendants appreciated the benefit because, were consumers not to
16 purchase the Treatment, Defendants would not generate revenue from the sales of
17 the Treatment.

18 192. Defendants’ acceptance and retention of the benefit is inequitable and
19 unjust because the benefit was obtained by Defendants’ fraudulent and misleading
20 representations and omissions and unlawful conduct.

21 193. Equity cannot in good conscience permit Defendants to be
22 economically enriched for such actions at the expense of Plaintiff and members of
23 the Class, and therefore restitution and/or disgorgement of such economic
24 enrichment is required.

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**SIXTH CAUSE OF ACTION
Breach of Fiduciary Duty**

(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)

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3 194. Plaintiff repeats and re-alleges the allegations of the preceding
4 paragraphs as if fully set forth herein.

5 195. A fiduciary, healthcare relationship existed between Plaintiff and
6 members of the Class and Defendants, including based on a patient/provider
7 relationship for the Treatment sought by Plaintiff and Class members.

8 196. Defendants owed an duty to Plaintiff and Class members to act with the
9 utmost good faith and in the best interests of Plaintiff and the Class.

10 197. Defendants breached their fiduciary duty as described herein, including
11 by making material misrepresentations and omissions concerning: the viability of
12 the Treatment they offer to treat and cure disease and other medical conditions; the
13 manner in which the Treatment would be performed; Defendants' qualifications;
14 Defendants' affiliations, including in the medical and scientific community; the
15 specialization and breadth of Defendants' treatment centers; and the risks associated
16 with Treatment.

17 198. In addition, Defendants breached their fiduciary duty by compromising
18 Plaintiff and Class member's health and safety based on Defendants' desire for
19 personal, financial gain.

20 199. As described herein, Defendants breached their duty of good faith and
21 fair dealing.

22 200. Defendants' actions were intentional, reckless, oppressive and wanton.

23 201. As a direct result of Defendants' misconduct, Plaintiff and Class
24 members were injured in ways including, but not limited to, the monies paid to
25 Defendants and interest lost on those monies.

**SEVENTH CAUSE OF ACTION
Fraudulent Concealment**

(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)

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3 202. Plaintiff repeats and re-alleges the allegations of the preceding
4 paragraphs as if fully set forth herein.

5 203. A fiduciary, healthcare relationship existed between Plaintiff and
6 members of the Class and Defendants, including based on a patient/provider
7 relationship for the Treatment sought by Plaintiff and Class members.

8 204. Defendants had a fiduciary duty to disclose all information material to
9 Plaintiff's and Class member's decision to undergo Treatment by Defendants.

10 205. As alleged herein, Defendants intentionally failed to disclose certain
11 facts to Plaintiff and Class members about the Treatment, including facts related to:
12 the viability of the Treatment they offer to treat and cure disease and other medical
13 conditions; the manner in which the Treatment would be performed; Defendants'
14 qualifications; Defendants' affiliations, including in the medical and scientific
15 community; the specialization and breadth of Defendants' treatment centers; and the
16 risks associated with Treatment.

17 206. Plaintiff and members of the Class could not have readily discovered
18 the facts that Defendants failed to disclose. Among other things, Plaintiff and
19 members of the Class reasonably relied on Defendant Srivastava's representations
20 as a medical professional, including that the Treatment would remedy the medical
21 conditions for which it was sought.

22 207. Plaintiff and members of the Class did not know of the concealed facts.

23 208. Defendants intended to deceive Plaintiff and members of the Class by
24 concealing the facts about the Treatment, as described herein.

1 209. Had the omitted and concealed information been disclosed, Plaintiff
2 and members of the Class would have acted differently, including by not seeking to
3 obtain Treatment, or seeking Treatment under different terms.

4 210. As a direct result of Defendants' misconduct, Plaintiff and Class
5 members were injured in ways including, but not limited to, the monies paid to
6 Defendants and interest lost on those monies.

7 211. Defendants' concealment was a substantial factor in causing Plaintiff
8 and class Members harm.

9 **EIGHTH CAUSE OF ACTION**
10 **Intentional Misrepresentation**
11 ***(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)***

12 212. Plaintiff repeats and re-alleges the allegations of the preceding
13 paragraphs as if fully set forth herein.

14 213. As described herein, Defendants made intentional misrepresentations
15 including related to: the viability of the Treatment they offer to treat and cure disease
16 and other medical conditions; the manner in which the Treatment would be
17 performed; Defendants' qualifications; Defendants' affiliations, including in the
18 medical and scientific community; the specialization and breadth of Defendants'
19 treatment centers; and the risks associated with Treatment.

20 214. Plaintiff and members of the Class did not know of the falsity of
21 Defendants' representations and believed them to be true.

22 215. Plaintiff and members of the Class could not have readily discovered
23 the facts that Defendants failed to disclose. Among other things, Plaintiff and
24 members of the Class reasonably relied on Defendant Srivastava's representations
25 as a medical professional, including that the Treatment would remedy the medical
26 conditions for which it was sought.
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1 216. Defendants made these misrepresentations with wanton and reckless
2 disregard for Plaintiff's and Class member's health and safety and for Defendants'
3 own personal gain.

4 217. As a direct result of Defendants' misrepresentations, Plaintiff and
5 members of the Class were harmed as described herein.

6 **NINTH CAUSE OF ACTION**
7 **Negligent Misrepresentation**
8 ***(On Behalf of Plaintiff, the Nationwide Class, and California Subclass)***

9 218. Plaintiff repeats and re-alleges the allegations of the preceding
10 paragraphs as if fully set forth herein.

11 219. As described herein, Defendants made negligent misrepresentations
12 including related to: the viability of the Treatment they offer to treat and cure disease
13 and other medical conditions; the manner in which the Treatment would be
14 performed; Defendants' qualifications; Defendants' affiliations, including in the
15 medical and scientific community; the specialization and breadth of Defendants'
16 treatment centers; and the risks associated with Treatment.

17 220. Plaintiff and members of the Class did not know of the falsity of
18 Defendants' representations and believed them to be true.

19 221. Plaintiff and members of the Class could not have readily discovered
20 the facts that Defendants failed to disclose. Among other things, Plaintiff and
21 members of the Class reasonably relied on Defendant Srivastava's representations
22 as a medical professional, including that the Treatment would remedy the medical
23 conditions for which it was sought.

24 222. Defendants made these misrepresentations with wanton and reckless
25 disregard for Plaintiff's and Class member's health and safety and for Defendants'
26 own personal gain.

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DATED: May 15, 2020

KAMBERLAW, LLP

By: /s/ Naomi B. Spector
Naomi B. Spector, Esq.

*Attorneys for Plaintiff and the putative
Classes*