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**UNITED STATES OF AMERICA  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

JEREMIAH DELGADO, individually  
and on behalf of all others similarly  
situated

Plaintiff(s),

v.

AMAZON.COM, INC.

Defendant.

Case No.:

**CLASS ACTION**

**CLASS ACTION COMPLAINT  
FOR:**

- (1) BREACH OF EXPRESS  
WARRANTY UNDER THE  
MAGNUSON MOSS  
WARRANTY ACT**
- (2) VIOLATION OF THE  
CALIFORNIA UNFAIR  
COMPETITION LAW  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE §  
17200, ET SEQ.**
- (3) VIOLATION OF THE  
CALIFORNIA CONSUMER  
LEGAL REMEDIES ACT,  
CALIFORNIA CIVIL CODE  
§ 1750, ET SEQ.**
- (4) VIOLATION OF THE  
CALIFORNIA FALSE AND  
MISLEADING  
ADVERTISING IN  
VIOLATION OF BUSINESS  
& PROFESSIONS CODE §  
17500, ET SEQ.**

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff Jeremiah Delgado (hereinafter “Plaintiff”), individually and on behalf of all others similarly situated, by and through undersigned counsel, and hereby bring Plaintiff’s Class Action Complaint against Amazon.com, Inc., (hereinafter referred to as “Defendant” or “Amazon”, alleging, upon personal knowledge as to Plaintiff’s individual actions and upon information and belief and/or counsel’s investigations as to all other matters, the following:

### STATEMENT OF JURISDICTION & VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), because (a) the aggregated claims of the putative members of each of the Classes exceed \$5 million, exclusive of interest and costs; (b) there are at least 100 members in each Class; and (c) at least one of the members of each of the proposed Classes is a citizen of a different state than Defendant.

2. This Court has personal jurisdiction over Defendant because Defendant, directly or through an agent, has transacted business and engaged in tortious and fraudulent conduct, by affirmative acts or omissions, in the State of California such that it reasonably anticipated being subject to personal jurisdiction before the courts of this State. Defendant’s agents have advertised, marketed, and/or sold USB Flash Drives in California, including in this District. Defendant has sufficient minimum contacts with this State, and/or sufficiently availed itself to the markets of this State through its advertising, marketing, and sale within this State to render the exercise of jurisdiction by this Court permissible. Further, this

1 Court has personal jurisdiction over Defendant because its Internet websites allow  
2 consumers to order and ship products anywhere in the United States, including this  
3 District. Defendant conducts business throughout the United States, including this  
4 District.  
5

6 3. Venue properly lies in this district pursuant to 28 U.S.C. § 1391  
7 because Plaintiff resides in and Defendant has transacted substantial business within  
8 this District within the meaning of 28 U.S.C. § 1391, and because a substantial part  
9 of the events giving rise to the claims alleged herein occurred in this District. Venue  
10 is also proper pursuant to 1781(d) because this Action being filed in the District  
11 Court located in the county where the transaction or any substantial portion thereof  
12 occurred. *See, Exhibit A*, Venue Affidavit of Jeremiah Delgado.  
13  
14

## 15 **I. INTRODUCTION**

16

17 4. This case challenges Defendant's practice of selling counterfeit  
18 glucosamine sulfate supplements. Simply stated, these products are marketed as  
19 glucosamine sulfate when, as a matter of fact, no glucosamine sulfate is found in  
20 the products.  
21

22 5. Plaintiff brings this class action on behalf of himself and all purchasers  
23 in California against Defendant of any products sold and/or supplied by Defendant  
24 that represent on their labeling that they contain Glucosamine Sulfate  
25 ("Glucosamine Sulfate Products"), for breach of express warranty, violations of the  
26 California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et*  
27  
28

1 *seq.*; violations of the California Consumers Legal Remedies Act (“CLRA”), Cal.  
2 Civ. Code §§ 1750, *et seq.*; and violations of the California False Advertising Law  
3 (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.* regarding its unfair, unlawful,  
4 unethical fraudulent, misleading, unconscionable, and/or deceptive sales and/or  
5 marketing of its Glucosamine Sulfate containing Supplements (“Glucosamine  
6 Sulfate Products”) (the “California Class”). Plaintiff also brings this class action on  
7  
8 behalf of himself and all purchasers nationwide of Defendant’s Glucosamine  
9 Sulfate Products for breach of warranty and unjust enrichment.  
10

11         6. The dietary supplement market in this country is massive, with  
12 consumers spending billions of dollars every year on these products. Glucosamine  
13 is one of the most commonly purchased dietary supplements, with annual revenue  
14 in the hundreds of millions of dollars.  
15

16         7. Glucosamine typically comes in two formulations: glucosamine  
17 sulfate (“Glucosamine Sulfate”) and glucosamine hydrochloride (“Glucosamine  
18 Hydrochloride”).  
19

20         8. Glucosamine Sulfate is clinically preferred and is believed to be more  
21 effective, and, accordingly, consumers typically choose Glucosamine Sulfate. It  
22 therefore sells for more than other glucosamine products.  
23

24         9. Simply stated, Amazon is selling dietary supplements that are not what  
25 they claim to be.  
26

27 **II. PARTIES**  
28

**A. Plaintiff**

10. Plaintiff Jeremiah Delgado (“Plaintiff”) is a citizen of the state of California, residing in Orange County, California. Plaintiff purchased a bottle of Solimo Glucosamine Sulfate 2KCl 1000mg, a dietary supplement manufactured, marketed, and/or sold by Defendant.



11. Plaintiff purchased the dietary supplement “Glucosamine Sulfate 2KCl 1000 mg”. The product is marketed as “Glucosamine Sulfate 2KCl 1000 mg”. Defendant represents in writing that each two-capsule serving contains 1000mg of Glucosamine Sulfate. However, laboratory testing confirms that the product Plaintiff purchased does not, in fact, contain any Glucosamine Sulfate.

**B. Defendant**

12. Defendant Amazon.com, Inc. is incorporated in the State of Delaware and has its principal place of business in the State of Washington. Defendant manufactures, markets and sells various Solimo and 365 Everyday Value dietary supplements to consumers nationwide.

#### IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13. Glucosamine is a popular dietary supplement that consumers generally take in order to preserve joint health or to help treat the symptoms of joint pain, osteoarthritis, and rheumatoid arthritis.

14. Glucosamine supplements are commercially available in the forms of Glucosamine Sulfate, Glucosamine Hydrochloride, and N-acetyl glucosamine. Glucosamine Sulfate has demonstrated clinical effectiveness for certain conditions, while other forms of glucosamine have not. Indeed, the Mayo Clinic explicitly notes that “[t]hese supplements are not considered interchangeable.”<sup>1</sup>

15. Thus, the common perception of Glucosamine Sulfate is that it performs better than Glucosamine Hydrochloride or placebo treatments.

16. Accordingly, retailers such as Defendant promote Glucosamine Sulfate over Glucosamine Hydrochloride.

#### C. The Dietary Supplement Industry Has Taken Advantage of the Lack of Regulation to the Detriment of Consumers

17. Dietary supplements fall under the umbrella of food, not drugs.<sup>2</sup> Therefore, dietary supplements are not subject to the Federal laws or strict United States Food and Drug Administration (FDA) regulations that apply to drugs. While supplement manufacturers are subject to certain provisions of the Dietary

<sup>1</sup> See <https://www.mayoclinic.org/drugs-supplements-glucosamine/art-20362874> as accessed December 14, 2020.

<sup>2</sup> 21 U.S.C. § 321(ff)(1)(C). For purposes of the Federal Food, Drug, and Cosmetic Act, “a dietary supplement shall be deemed to be a food....” *Id.* § 321(ff).

1 Supplement Health and Education Act of 1994 (“DSHEA”), dietary supplement  
2 firms are not required to prove to the FDA that their products work or are safe before  
3 they sell them.<sup>3</sup> Rather, manufacturers of a “product ... intended to supplement the  
4 diet that bears or contains [...] (D) an amino acid; (E) a dietary substance for use  
5 by man to supplement the diet by increasing the total dietary intake; (F) a  
6 concentrate, metabolite, constituent, extract, or combination of any ingredient  
7 described in clause (A), (B), (C), (D), or (E)”<sup>4</sup> and/or “means a product that is  
8 labeled as a dietary supplement” are generally left to self-police their compliance  
9 with DSHEA.  
10  
11

12  
13 18. 21 U.S.C. § 343(s) provides that a food “shall be deemed to be  
14 misbranded” if it is a dietary supplement and fails to list “the name of each  
15 ingredient” in the dietary supplement, the “quantity of each such ingredient,” or  
16 “the label or labeling of the supplement fails to identify any part of the plant from  
17 which the ingredient is derived,” or, if the supplement is either covered by the  
18 specifications of an official compendium, is represented as conforming to the  
19 specifications of an official compendium, and fails to so conform, or, for  
20 supplements that aren’t covered by an official compendium, if it “fails to have the  
21 identity and strength that the supplement is represented to have.”  
22  
23  
24  
25

26 <sup>3</sup> [http://articles.chicagotribune.com/2012-06-30/news/ct-met-supplement-inspections-](http://articles.chicagotribune.com/2012-06-30/news/ct-met-supplement-inspections-20120630_1_dietary-supplements-inspections-american-herbal-products-association/2)  
27 [20120630\\_1\\_dietary-supplements-inspections-american-herbal-products-association/2](http://articles.chicagotribune.com/2012-06-30/news/ct-met-supplement-inspections-20120630_1_dietary-supplements-inspections-american-herbal-products-association/2)  
28 <sup>4</sup> 21 U.S.C. § 321(ff). For purposes of the Federal Food, Drug, and Cosmetic Act, “a dietary supplement shall be deemed to be a food [...]” *Id.* § 321(ff).

1           19. 21 U.S.C. § 342(g)(1) provides that a food shall be deemed to be  
2 adulterated “[i]f it is a dietary supplement and it has been prepared [or] packed ...  
3 under conditions that do not meet current good manufacturing practice  
4 regulations....”

6           20. Current implementing regulations promulgated by the FDA under  
7 DSHEA require dietary supplement manufacturers, packagers, and labelers  
8 (“Manufacturer”) to “implement a system of production and process controls that  
9 covers all stages of manufacturing, packaging, labeling, and holding of the dietary  
10 supplement to ensure the quality of the dietary supplement....”

13           21. Manufacturers must establish “component specifications ... to ensure  
14 ... the purity, strength and composition of dietary supplements manufactured using  
15 the components....”

17           22. Manufacturers are required to test each component used in the  
18 manufacture of dietary supplements, including on each incoming shipment of  
19 components prior to their use in the manufacture of dietary supplements,<sup>22</sup> and  
20 again on each finished batch.

22           **Amazon represents that the Affected Products are What they Purport to Be.**

23           23. Defendant makes representations on the labels of each of the following  
24 dietary supplement products – Glucosamine Sulfate (“Affected Products”) –  
25 regarding the ingredients in the Affected Products.  
26

27           24. A Solimo Label is reproduced below:  
28

**Supplement Facts**

Serving Size 1 Tablet

| Amount Per Serving               | % Daily Value |
|----------------------------------|---------------|
| Total Carbohydrate < 1 g         | < 1%*         |
| Glucosamine Sulfate              |               |
| Potassium Chloride 1000 mg (1 g) | **            |

**WARNING:** Pregnant or nursing women, individuals taking medication(s) or persons who have a health condition should consult their physician before using this product.

**Keep out of the reach of children.**

Store at 15° - 30°C (59° - 86°F).

**Safety-sealed. Do not use if printed seal under cap is cut, torn, or missing.**

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**INGREDIENTS:** Glucosamine Sulfate Potassium Chloride, Povidone, Microcrystalline Cellulose. Contains 2% or less of carboxymethylcellulose sodium, hydroxypropyl methylcellulose, magnesium stearate, polydextrose, polyethylene glycol, polyvinyl alcohol, silica, talc, titanium dioxide (color). **Contains: Crustacean Shellfish (crab, shrimp).**

**DISTRIBUTED BY:** Amazon.com Services, Inc. 410 Terry Avenue N., Seattle, WA 98109

**DIRECTIONS:** Adults - Take one tablet daily with food as a dietary supplement.

25. Throughout the Class Period, the packaging for Defendant's products has consistently included "Supplement Facts" representing that each capsule contains a specific amount of a particular supplement.

26. Defendant's Glucosamine Sulfate 2KCL 1000 mg product is represented to contain 1000 milligrams of "Glucosamine Sulfate Potassium Chloride" per serving.

27. The "Supplement Facts" for this product also list Ingredients as follows: "Glucosamine Sulfate Potassium Chloride, Povidone, Microcrystalline Cellulose, contains 2% or less of carboxymethylcellulos, magnesium stearate, polydextrose, polyethylene glycol, polyvinyl alcohol, silica, talc, titanium dioxide (color). Contains: Crustacean Shellfish (crab, shrimp)."

28. A reasonable consumer would expect, as Plaintiffs did, that the label statements regarding the identity, quantity, and purity of the Affected Products would be truthful and not deceptive or misleading.

**Plaintiffs and the Class and Subclass Would  
Not Have Purchased the Affected Products Had They Known the Truth.**

29. Defendant failed to disclose on its labels or otherwise that the Affected Products do not contain the ingredients represented on the Affected Products' labels or that the Affected Products contain adulterants or undisclosed substances.

30. The actual contents of the Affected Products are important to Plaintiff and members of the Class and Subclass. Defendant's failure to disclose that the Affected Products do not contain the ingredients as represented on the labels and that the Affected Products contain adulterants or undisclosed substances affected Plaintiff's and Class and Subclass members' purchasing decisions in that they would not have purchased the Affected Products had Defendant disclosed the true facts concerning their actual ingredients and composition.

31. Defendant recognizes or should have recognized the materiality and importance of the quality and safety of its products to its customers.

32. Plaintiffs and the Class and Subclass were misled and deceived by Defendant's material misrepresentations and/or omissions and were damaged and injured as a result of Defendant's conduct because:

a. They would not have purchased the Affected Products had they known that the Affected Products did not contain the ingredients as represented on the labels, and/or contained adulterants or undisclosed substances; and/or

1           b.     They did not receive the benefit of the bargain and/or suffered out of  
2 pocket loss due to the misrepresentations and omissions in the Affected Products'  
3 labeling, as described above; and/or  
4

5           c.     The Affected Products were worthless and had no value due to  
6 Defendant's misrepresentations, omissions, untrue, misleading, unethical, unfair,  
7 and/or deceptive statements and mislabeling, as described above.  
8

9           33.    Plaintiff and the Class and Subclass would not have purchased the  
10 Affected Products had they known the truth.  
11

12           34.    Defendant failed to disclose on its labels or otherwise that the Affected  
13 Products do not contain the ingredients represented on the Affected Products' labels  
14 or that the Affected Products contain adulterants or undisclosed substances.  
15

16           35.    The actual contents of the Affected Products are important to Plaintiffs  
17 and members of the Class. Defendant's failure to disclose that the Affected Products  
18 do not contain the ingredients as represented on the labels and that the Affected  
19 Products contain adulterants or undisclosed substances affected Plaintiffs' and  
20 Class members' purchasing decisions in that they would not have purchased the  
21 Affected Products had Defendant disclosed the true facts concerning their actual  
22 ingredients and composition.  
23  
24

25       **V.     PLAINTIFF'S EXPERIENCE WITH DEFENDANT'S PRODUCT**  
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27  
28

1           36. Defendant sells products that are represented to include Glucosamine  
2 Sulfate to the public in California and nationwide, through Amazon.com and at  
3 Whole Foods Markets.

4  
5           37. Defendant's various Glucosamine Sulfate Products include those sold  
6 under the Solimo and 365 Everyday Value brands.

7  
8           38. Defendant's Glucosamine Sulfate products prominently display the  
9 words "Glucosamine Sulfate" on the front of label, in addition to the Supplement  
10 Facts panel. As such, a reasonable person would believe that the product contains  
11 Glucosamine Sulfate in particular.

12  
13           39. At various times in the past, Plaintiff purchased Amazon's Solimo-  
14 branded Glucosamine Sulfate. He did so in reliance on the accuracy of its label, and  
15 specifically Defendant's representation that it contained Glucosamine Sulfate.

16  
17           40. Exemplars of Defendant's products have been tested by Plaintiff's  
18 counsel. The lab's findings concluded that the primary composition of the capsules  
19 consisted of Glucosamine Hydrochloride and Potassium Sulfate. The analysis found  
20 no trace of Glucosamine Sulfate, contrary to the claims on the product label.

21  
22           41. Plaintiff suffered damage and detriment as a result of Defendant's  
23 misrepresentations. Plaintiff purchased Solimo Glucosamine Sulfate, one of  
24 Defendant's Glucosamine Sulfate Products, because he believed it contained  
25 Glucosamine Sulfate. Had the product label truthfully disclosed that it did not  
26  
27  
28

1 contain Glucosamine Sulfate, Plaintiff would not have been willing to pay any sum  
2 of money for the product, and would not have purchased the product.

### 3 **VI. CLASS ACTION ALLEGATIONS**

4  
5 42. Plaintiffs bring this action and seek to certify and maintain it as a class  
6 action under Fed. R. Civ. P. 23, individually and on behalf of the following Class:

7 All individuals and entities in the United States who purchased  
8 SOLIMO Glucosamine Sulfate products within the applicable  
9 statutes of limitations preceding the filing of this lawsuit. (the  
10 “Nationwide Class”)

11 43. Excluded from the Classes are: (a) Defendant and any entities in which  
12 Defendant have a controlling interest; (b) Any entities in which Defendant’s  
13 officers, directors, or employees are employed and any of the legal representatives,  
14 heirs, successors, or assigns of Defendant; (c) All current employees of Defendant;  
15 (d) The Judge(s) to whom this case or any transferred case is assigned and any  
16 member of the Judges’ immediate family and any other judicial officer assigned to  
17 this case or any transferred case; (f) All governmental entities; (g) anyone who  
18 makes a timely election to be excluded from the Class.  
19  
20

21 44. Plaintiff similarly seeks to represent a Subclass defined as:

22 All individuals in California who purchased SOLIMO  
23 Glucosamine Sulfate products within the applicable statutes of  
24 limitations preceding the filing of this lawsuit. (the “California  
25 Subclass”)

26 45. Excluded from the Subclass are: (a) Defendant and any entities in  
27 which Defendant has a controlling interest; (b) Any entities in which Defendant’s  
28

1 officers, directors, or employees are employed and any of the legal representatives,  
2 heirs, successors, or assigns of Defendant; (c) All current employees of Defendant;  
3 (d) The Judge(s) to whom this case or any transferred case is assigned and any  
4 member of the Judges' immediate family and any other judicial officer assigned to  
5 this case or any transferred case; (f) All governmental entities; (g) anyone who  
6 makes a timely election to be excluded from the Class.  
7

8  
9 46. All Class allegations herein apply to the Class and Subclass equally.

10 47. Plaintiff reserves the right to modify or amend the definitions of the  
11 proposed Class and Subclass and/or to add Subclasses if necessary before the Court  
12 determines whether certification is appropriate and as the Court may otherwise  
13 allow.  
14

15 48. This case is properly brought as a class action under Fed. R. Civ. P.  
16 23(a), (b)(2), (b)(3), and (c)(4), and all requirements therein are met for the reasons  
17 set forth herein.  
18

19 49. The claims of all Class members derive directly from a single course  
20 of conduct by the Defendant. Defendant has and continues to engage in uniform and  
21 standardized conduct toward the Class members. Defendant does not differentiates,  
22 in degree of care or candor, in their actions or inactions, or the content of their  
23 statements or omissions, among individual Class members. Accordingly, Plaintiff  
24 brings this lawsuit as a class action on Plaintiff's own behalf and on behalf of all  
25 other persons similarly situated pursuant under Fed. R. Civ. P. 23. This action  
26  
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1 satisfies the numerosity, commonality, typicality, adequacy, predominance, and  
2 superiority requirements of these provisions.

3 50. Certification of Plaintiff's claims is appropriate because Plaintiff can  
4 prove the elements of Plaintiff's claims on a class-wide basis using the same  
5 evidence as would be used to prove those elements in individual actions alleging  
6 the same claim.  
7

8 51. **Numerosity - Fed. R. Civ. P. 23(a)(1).** The Class and Subclass are so  
9 numerous that joinder of all members is impracticable. While the exact number is  
10 not known at this time, it is generally ascertainable by appropriate discovery.  
11 Moreover, glucosamine sulfate supplements are among the most common and  
12 popular supplements, and, thus, it is believed the Class includes many thousands of  
13 members. The numerosity requirement is, therefore, satisfied. Undoubtedly,  
14 individual joinder in this case is impracticable.  
15  
16  
17

18 52. **Ascertainability.** The Class and Subclass are each ascertainable  
19 because its members can be readily identified using receipts, purchase records,  
20 business records, and other information kept by Defendant and/or third parties in  
21 the usual course of business and within their control or Plaintiff and the Class  
22 themselves. Plaintiff anticipates providing appropriate notice to the Class to be  
23 approved by the Court after class certification, or pursuant to court order.  
24  
25

26 53. **Commonality and Predominance - Fed. R. Civ. P. 23(a)(2) and**  
27 **(b)(3).** There are several questions of law and fact common to the claims of  
28

1 Plaintiffs and the members of the Class and Subclass. All of the members of the  
2 Class' and Subclass' claims are based upon the same facts and circumstances, i.e.,  
3 the marketing and sales practices of Defendant's products. Fed. R. Civ. P. 23(a)(3),  
4  
5 The questions of law and fact common to the members of the Class and Subclass  
6 predominate over any questions affecting only individual members of the Class and  
7 Subclass. The resolution of common questions in this case will resolve the claims  
8 of both Plaintiff and the Class and Subclass. Common questions include, but are not  
9 limited to, the following:  
10

11 a. Whether Defendant unfairly, unethically, unlawfully, falsely,  
12 deceptively, misleadingly, unconscionably, and/or confusingly misrepresented the  
13 nature of their products;  
14

15 b. Whether Defendant unfairly, unethically, unlawfully, falsely,  
16 deceptively, misleadingly, unconscionably, and/or confusingly misrepresented the  
17 contents of its products;  
18

19 c. Whether Defendant unfairly, unethically, unlawfully, falsely,  
20 fraudulently, deceptively, misleadingly, unconscionably, and/or confusingly  
21 induced Plaintiff and the Members of the Class and Subclass into purchasing its  
22 products;  
23

24 d. Whether Defendant engaged in unfair, unlawful, fraudulent, unethical,  
25 unconscionable, and/or deceptive trade practices by inducing Plaintiff and the Class  
26 and Subclass to purchase its product on terms that were knowingly misleading and  
27  
28

1 inaccurate;

2 e. Whether Defendant's marketing, sales, and/or other business practices  
3 are unfair, deceptive, unlawful, fraudulent, unconscionable, and/or unethical;  
4

5 f. Whether the Affected Products were sold in containers with packaging  
6 identifying them as containing a particular dietary supplement, i.e., Glucosamine  
7 Sulfate;  
8

9 g. Whether, contrary to the product packaging, the Affected Products did  
10 not  
11 contain the dietary supplement identified on the packaging, i.e., Glucosamine  
12 Sulfate;  
13

14 h. Whether the Affected Products contained ingredients that were not  
15 disclosed on the packaging;  
16

17 i. Whether Defendant manufactured and/or sold the Affected Products;

18 j. Whether a reasonable consumer would be misled or deceived by the  
19 Affected Products' packaging;  
20

21 k. Whether Defendant breached express or implied warranties;

22 l. Whether Defendant had a duty to disclose the actual contents of its  
23 products prior to sale;  
24

25 m. Whether Defendant violated the applicable consumer protection  
26 statutes;  
27

28 n. Whether Defendant concealed material facts in its advertising

1 materials and agreement and/or failed to adequately disclose to Plaintiff material  
2 facts;

3 o. Whether Defendant has engaged in deceptive acts or practices in  
4 connection with the sales, marketing, and/or manufacturing of the its products;

5 p. Expressly disclaiming damages under the CLRA, whether Plaintiff and  
6 the Class and Subclass are entitled to compensatory, actual, and/or statutory  
7 damages as a result of Defendant's unfair, unlawful, unethical, deceptive,  
8 unconscionable, and/or fraudulent conduct; and,

9 q. Whether Plaintiff and the Class and Subclass are entitled to injunctive,  
10 declaratory relief, or other equitable relief.

11  
12  
13  
14 54. **Typicality - Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claims are typical of  
15 the claims of the Class and Subclass. The claims of the Plaintiffs and the respective  
16 Class and Subclass are based on the same legal theories and arise from the same  
17 unlawful and willful conduct of Defendant, resulting in the same injury to the  
18 Plaintiffs and the respective Class and Subclass. Plaintiffs and all members of the  
19 Class and Subclass are similarly affected by Defendant's wrongful conduct and  
20 were damaged in the same way. Plaintiffs' interests coincide with, and are not  
21 antagonistic to, those of the other Class and Subclass members. Plaintiffs have been  
22 damaged by the same wrongdoing set forth in this Complaint. Plaintiffs, like other  
23 members of the Classes, purchased one or more Affected Products that did not  
24 contain the primary ingredients listed and the packaging and that such supplements  
25  
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1 were supposed to contain and/or contained ingredients that were not disclosed on  
2 the packaging or label. Plaintiffs were subject to, and were financially harmed by,  
3 a common policy and practice applied by each Defendant to the respective Class  
4 members.  
5

6       **55. Adequacy - Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate Class and  
7 Subclass representatives because Plaintiffs have retained counsel competent and  
8 experienced in complex class action litigation; neither Plaintiffs nor Plaintiffs'  
9 counsel have any interest adverse to those of the other members of the Class and  
10 Subclass; Plaintiffs are knowledgeable about the subject matter of this action and  
11 will assist counsel to vigorously prosecute this litigation and has or can acquire  
12 adequate financial resources to assure that the interests of the Class and Subclass  
13 will not be harmed. The interests of the members of Class and Subclass will be  
14 fairly and adequately protected by Plaintiffs and Plaintiffs' counsel. As such,  
15 Plaintiffs meets the adequacy requirement.  
16  
17  
18

19       **56. Superiority - Fed. R. Civ. P. 23(b)(3).** The class action is superior to  
20 other available means for the fair and efficient adjudication of this dispute. The  
21 injury suffered by each member of the Class, while meaningful on an individual  
22 basis, is not of such magnitude as to make the prosecution of individual actions  
23 against Defendant economically feasible. Even if members of the Class and  
24 Subclass themselves could afford such individualized litigation, the court system  
25 could not. In addition to the burden and expense of managing many actions,  
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1 individualized litigation presents a potential for inconsistent or contradictory  
2 judgments. Individualized litigation increases the delay and expense to all parties  
3 and the court system presented by the legal and factual issues of the case. A class  
4 action would achieve substantial economies of time, effort and expense, and would  
5 assure uniformity of decision as to persons similarly situated without sacrificing  
6 procedural fairness. By contrast, the class action device presents far fewer  
7 management difficulties and provides the benefits of single uniform adjudication,  
8 economy of scale, and comprehensive supervision by a single court. The  
9 prosecution of separate actions by the individual members of the Class and Subclass  
10 would create a risk of inconsistent or varying adjudication with respect to individual  
11 members of the Class. The prosecution of separate actions by individual members  
12 of the Class and Subclass would create a risk of adjudications with respect to them  
13 which would, as a practical matter, be dispositive of the interests of other members  
14 of the Class and Subclass not parties to the adjudications, or substantially impair or  
15 impede their ability to protect their interests.

21 **57. Policies Generally Applicable to the Class and Subclass. Fed. R.**  
22 **Civ. P. 23(b)(2).** Defendant has acted or refused to act on grounds generally  
23 applicable to the Class and Subclass, thereby requiring the Court's imposition of  
24 uniform relief to ensure compatible standards of conduct toward the members of  
25 the Class and Subclass, and making final injunctive relief appropriate with respect  
26 to the Class and Subclass as a whole. Defendant's practices challenged herein apply

1 to and affect the members of the Class and Subclass uniformly, and Plaintiffs'  
 2 challenge of those practices hinge on Defendant's conduct with respect to the Class  
 3 and Subclass as a whole, not on facts or law applicable only to Plaintiffs.  
 4

5 **58. Injunctive and Declaratory Relief is Appropriate - Fed. R. Civ. P.**  
 6 **23(b)(1).** Defendant has acted, or refused to act on, grounds generally applicable  
 7 to the Class and Subclass, thereby making appropriate final and injunctive relief  
 8 with respect to the members of the Class and Subclass as a whole.  
 9

10 **59. Certification of Particular Issues. Fed. R. Civ. P. 23(c)(4).** Issue  
 11 certification is also appropriate with respect to any or all of the common issues  
 12 identified herein.  
 13

14 **60. Notice to Class:** Plaintiff anticipates notice being effectuated using  
 15 primarily direct electronic means, based upon customer identification and contact  
 16 information contained in Defendant's business records and databases, to be  
 17 supplemented with a targeted online notice campaign. Plaintiff will engage the  
 18 services of a specialist with class action notice campaigns and reserves the right to  
 19 supplement this intended approach as circumstances dictate, per their guidance.  
 20  
 21

## 22 **VII. TOLLING OF STATUTE OF LIMITATIONS**

23 **61.** Any applicable statute of limitations has been tolled by the  
 24 Defendant's knowing and active concealment of its deceptive practices. Plaintiffs  
 25 and members of the Class could not have reasonably discovered the true extent of  
 26 the Defendant's deception with regard to the Affected Products, until very recently.  
 27  
 28



as described herein.

66. Defendant's conduct as described herein violates the Magnuson Moss Warranty Act ("Magnuson Moss Act"), 15 U.S.C. §§2304-2312.

67. Plaintiff purchased Glucosamine Sulfate products manufactured, marketed and sold by Defendant.

68. Defendant breached the essential terms of its express warranties by charging Plaintiff and members of the Class without providing the product promised, as set forth herein.

69. Plaintiff and members of the Class have products that are not worth what they paid for them and have otherwise sustained damages as a direct and proximate result of Defendant's breach of the agreement.

**COUNT II**  
**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
**(California Business & Professions Code §§ 17200, *et seq.*)**  
**(On Behalf of Plaintiff and the Class)**

70. Plaintiff realleges and incorporates by reference all preceding allegations as though fully set forth herein.

71. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, defines unfair business competition to include any "unfair," "unlawful," or "fraudulent" business act or practice. The Act also provides for injunctive relief, restitution, and disgorgement of profits for violations.

72. Defendant's unlawful, unfair, and/or fraudulent business acts and

1 practices, as described herein, were and are in violation of the UCL. Defendant's  
2 conduct violates the UCL in the following ways:

- 3 a. By knowingly and intentionally concealing from Plaintiff and the  
4 other members of the Class material information concerning its  
5 product contents as set forth above;  
6  
7 b. By violating the FTC;  
8  
9 c. By breaching the terms of the Contract or other agreement;  
10  
11 d. By violating other California laws, including Cal. Bus. & Prof.  
12 Code § 17500, *et seq.*, and Cal. Corp. Code § 25000, *et seq.*  
13 (described below); and/or  
14 e. Violating other statutory law.

15 73. Defendant's omissions alleged herein caused Plaintiff and the other  
16 Class members to purchase the Glucosamine Sulfate products. Had they been aware  
17 of the information omitted by Defendant, Plaintiff and the other Class members  
18 would not have purchased Defendant's products or would have purchased them  
19 only at a reduced price.  
20  
21

22 74. Defendant's practice is also immoral, unethical, oppressive, or  
23 unscrupulous and causes injury to consumers which outweigh its benefits.  
24

25 75. Accordingly, Plaintiff and the Class members have suffered injury in  
26 fact, including lost money as a result of Defendant's unlawful, unfair, and  
27 fraudulent business acts and/or practices.  
28

76. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by Defendant, under Cal. Bus. & Prof. Code § 17200.

77. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiff and the Class members any money Defendant acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345; and for such other relief set forth below.

**COUNT III**  
**VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES**  
**ACT, CALIFORNIA CIVIL CODE § 1750, ET SEQ.**  
**(On Behalf of Plaintiff and the Class)**

78. Plaintiff hereby restates and incorporates all paragraphs of Plaintiff's Class Action Complaint against Defendant as if fully set forth herein.

79. This cause of action is brought pursuant to Civil Code § 1750, *et seq.*, the Consumers Legal Remedies Act ("CLRA"), on behalf of a Class as defined herein.

80. Defendant is a "person" within the meaning of Cal. Civ. Code sections 1761(c) and 1770.

81. Plaintiff and members of the proposed Class are "consumers" within the meaning of Cal Civ. Code §§ 1761(d) and 1770.

82. Defendant's Glucosamine Sulfate products are "goods" or "services"

1 as defined by Cal. Civ. Code § 1761(a).

2 83. As described above, Defendant violated the CLRA in at least the  
3 following respects:

4 a. in violation of § 1770(a)(5), by representing that their “goods or  
5 services have sponsorship, approval, characteristics, ingredients,  
6 uses, benefits, or quantities that they do not have”;

7 b. in violation of § 1770(a)(6), by representing that Defendant’s  
8 “goods or services are of a particular standard, quality, or grade, or  
9 that goods are of a particular style or model, if they are of another”;

10 c. in violation of § 1770(a)(9), by “advertising goods or services with  
11 intent not to sell them as advertised”;

12 d. in violation of § 1770(a)(16), by “representing that the subject of a  
13 transaction has been supplied in accordance with a previous  
14 representation when it has not”;

15 e. for other such violations of the CLRA that discovery will uncover.

16 84. Defendant’s actions as described herein were done with conscious  
17 disregard of Plaintiff’s rights and Defendant was wanton and malicious in its  
18 concealment of the same.

19 85. Plaintiff and the Class have suffered injury in fact and have lost money  
20 as a result of Defendant’s false representations and material omissions in the  
21 marketing and advertisement of the Glucosamine Sulfate.

1           86. Defendant's unfair or unlawful acts, practices, representations,  
2 omissions, and/or courses of conduct, as described herein, were undertaken by  
3 Defendant in a transaction intended to result in, and which did result in, the sale or  
4 lease of goods or services to consumers.  
5

6           87. As a direct and proximate result of Defendant's violations of law,  
7 Plaintiff and the Class have been injured.  
8

9           88. Contemporaneous with the filing of this Complaint, Plaintiff will send  
10 Defendant a CLRA notification and demand letter via certified mail, return receipt  
11 requested.  
12

13           89. The notice letter will set forth the relevant facts and notifies each  
14 Defendant of its CLRA violations, and request that each Defendant promptly  
15 remedy those violations.  
16

17           90. Under the CLRA, a plaintiff may, without prior notification, file a  
18 complaint alleging violations of the CLRA that seeks injunctive relief *only*. Then,  
19 if the Defendant does not remedy the CLRA violations within 30 days of  
20 notification, the Plaintiff may amend his CLRA causes of action without leave of  
21 court to add claims for damages.  
22

23           91. At this time, Plaintiff expressly disclaims any and all damages under  
24 CLRA. Plaintiff, individually and on behalf of the class, will amend this complaint  
25 to add damages claims if Defendant do not remedy their violations as to Plaintiff  
26 and the Class Members within the statutory period.  
27  
28

1           92. Under the CLRA, Plaintiff are entitled to a permanent injunction  
2 prohibiting practices that violate the CLRA. Plaintiffs, individually and as a  
3 member of the Class, has no adequate remedy at law for the future unlawful acts,  
4 methods, or practices as set forth above.  
5

6           93. Defendant's practices, acts and courses of conduct in connection with  
7 the sale of its Glucosamine Sulfate products, as described above, are likely to  
8 mislead a reasonable consumer acting reasonably under the circumstances to his or  
9 her detriment. As a result of Defendant's acts and practices as alleged in this  
10 Complaint, Plaintiff and the Class are entitled to injunctive relief prohibiting  
11 Defendant from continuing in the future the unlawful, unfair, or fraudulent practice  
12 as described herein.  
13  
14

15           94. Plaintiff and the Class reasonably believed and/or depended on the  
16 materially false and/or misleading information provided by, or omitted by,  
17 Defendant with respect to Defendant's products.  
18

19           95. By reason of the foregoing, Defendant's unlawful methods, acts, or  
20 practices as described herein have caused damage to Plaintiff and the Class  
21 Members, entitling them to injunctive relief.  
22

23           96. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiff demands judgment  
24 against Defendant under the CLRA for injunctive and equitable relief only to enjoin  
25 the practices described herein.  
26

27           97. Plaintiff, individually and as a member of the Class, has no adequate  
28

remedy at law for the future unlawful acts, methods, or practices as set forth above.

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

99. In bringing this action, Plaintiff has engaged the services of attorneys and has incurred reasonable legal expenses in an amount to be proved at trial.

100. Plaintiff is also entitled to recover their attorneys' fees, costs, and expenses.

**COUNT IV**  
**VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
**(California Business & Professions Code §§ 17500, *et seq.*)**  
**(On Behalf of Plaintiff and the Class)**

101. Plaintiff realleges and incorporates by reference all preceding allegations as though fully set forth herein.

102. Cal. Bus. & Prof. Code § 17500 provides:

It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise,. . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

103. Defendant caused to be made or disseminated throughout the United States, through advertising, marketing and other publications, statements, including

1 statements included in its general advertising and on its website that omitted  
2 material information from consumers and members of the Class.

3 104. Defendant knew or should have known through the exercise of  
4 reasonable care that the omitted information was material to consumers, including  
5 Plaintiff and the other Class members.  
6

7 105. Defendant has violated Cal. Bus. & Prof. Code § 17500 because their  
8 representations and omissions regarding the Glucosamine Sulfate products were  
9 material and likely to deceive a reasonable consumer.  
10

11 106. Plaintiff and the other Class members have suffered an injury in fact,  
12 including the loss of money or property, as a result of Defendant's unfair, unlawful,  
13 and/or deceptive practices. By purchasing the Glucosamine Sulfate products,  
14 Plaintiff and the other Class members relied on the representations by Defendant  
15 from which Defendant misrepresented and/or omitted material information as  
16 described herein. Had Plaintiff and the other Class members been aware of the  
17 incorrect and/or omitted information, they would not have purchased the  
18 Glucosamine Sulfate products or would have paid less for them. Plaintiff and other  
19 Class members bestowed a benefit upon Defendant but did not receive the benefit  
20 of their bargain.  
21  
22  
23  
24

25 107. All of the wrongful conduct alleged herein occurred in the conduct of  
26 Defendant's business. Defendant's wrongful conduct is part of a pattern or  
27 generalized course of conduct that is still perpetuated and repeated, in the state of  
28

1 California and elsewhere.

2 108. Plaintiff, individually and on behalf of the other Class members,  
3 request that this Court enter such orders or judgments as may be necessary to enjoin  
4 Defendant from continuing its unfair, unlawful, and/or deceptive practices and to  
5 restore to Plaintiff and the other Class members any money Defendant acquired by  
6 unfair competition, including restitution and/or restitutionary disgorgement, and for  
7 such other relief set forth below.  
8  
9

#### 10 **VIII. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and the Class and Subclass pray for judgment as  
12 follow:  
13

14 A. For an order certifying the proposed class, appointing Plaintiff and  
15 Plaintiff's counsel to represent the proposed Class and Subclass, appointing counsel  
16 for Plaintiff as lead counsel for the Class and Subclass;  
17

18 B. An order awarding declaratory relief and temporarily and permanently  
19 enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and/or  
20 unfair business practices alleged in this Complaint;  
21

22 C. Appropriate injunctive relief;

23 D. Expressly disclaiming any and all damages under Civil Code § 1750,  
24 *et seq.*, "the CLRA", for an order awarding restitution, disgorgement, actual  
25 damages, statutory damages, exemplary damages, treble damages, and punitive  
26 damages under applicable law, compensatory damages for economic loss,  
27  
28

1 diminished value, and out-of-pocket costs in an amount to be determined at trial;

2 E. A declaration that Defendant is financially responsible for all Class  
3 and Subclass notice and the administration of Class and Subclass relief;

4  
5 F. An order awarding any applicable statutory and civil penalties;

6 G. An order requiring Defendant to pay both pre- and post-judgment  
7 interest on any amounts awarded;

8  
9 H. An award of costs, expenses, and attorneys' fees as permitted by law;  
10 and

11 I. Such other or further relief as the Court may deem appropriate, just,  
12 and proper under the circumstances.  
13

14 **IX. DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial for all claims so triable.

16  
17 DATED: March 12, 2021

LAW OFFICE OF FRANCIS J. FLYNN, JR.

18 /s/ Francis J. Flynn, Jr.

19 Francis J. "Casey" Flynn, Jr.

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24 **PROPOSED CLASS**