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Attorneys for Plaintiff, Michael Dotson and all others similarly situated

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL DOTSON, individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

EURO PHARMA, INC. d/b/a
TERRY NATURALLY,

Defendant.

Case No. 2:20-CV-09651-AB-AGR

**THIRD AMENDED
CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*) and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Common Law Fraud
- (4) Violation of the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*)

Jury Trial Demanded

1 Plaintiff MICHAEL DOTSON (“Plaintiff”), individually and on behalf of all
2 other members of the public similarly situated, allege as follows:

3
4 **PRELIMINARY STATEMENTS**

5 1. This is an action for damages, and any other available legal or equitable
6 remedies, for violations of Unfair Competition Law (Cal. Business & Professions
7 Code §§ 17500 *et seq.*, Unfair Competition Law (Cal. Business & Professions Code
8 §§ 17200 *et seq.*, common law fraud, and the Consumer Legal Remedies Act (Cal.
9 Civ. Code § 1750 *et seq.*) resulting from the illegal actions of Defendant, in
10 intentionally labeling its curcumin and turmeric supplements as providing “pain
11 relief”, when Defendant’s products are supplements that do not remove, alleviate, or
12 reduce pain. Plaintiff alleges as follows upon personal knowledge as to himself and
13 his own acts and experiences, and, as to all other matters, upon information and
14 belief, including investigation conducted by his attorneys.

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18 **JURISDICTION AND VENUE**

19 2. This Court has jurisdiction pursuant to 28 U.S.C. §1332(d), because the
20 matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest
21 or costs and is a class action in which the members of the class are citizens of a State
22 different from the Defendant.
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1 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
2 a substantial part of the events giving rise to this claim occurred in this District, and
3 Defendant does business, inter alia, in the Central District of California.
4

5 **PARTIES**

6 4. Plaintiff is an individual and a citizen of California, who was at all
7 relevant times residing in Reseda, California.
8

9 5. Defendant is a Wisconsin corporation whose principal place of business
10 is located in Green Bay, Wisconsin.
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12 6. At all times relevant hereto, Defendant was engaged in the
13 manufacturing, marketing, and sale of vitamin and supplement products.
14

15 **FACTS COMMON TO ALL COUNTS**

16 7. Defendant manufactures, advertises, markets, sells, and distributes
17 curcumin products throughout California and the United States under brand name
18 “Curamin.”
19

20 8. During the Class Period the following list of products (the “Products”) were
21 advertised as providing “Safe, Effective Pain Relief” and “Safe, Effective,
22 Non-Addictive Pain Relief” when they do not provide pain relief:
23

- 24 a. Curamin: Extra Strength Pain Relief;
25 b. Curamin: Pain Relief;
26 c. Curamin: Stop Pain Now;
27

1 d. Curamin: Low Back Pain;

2 9. All of the Products listed in paragraph 8 above are substantially similar
3 because all of the Products are supplements, all of the Products rely on the inclusion
4 of curcumin and other similar or shared active ingredients, all of the Products are
5 claimed to share the same primary function of relieving pain, all of the Products are
6 labeled with affirmative statements including, “Safe, Effective Pain Relief” and
7 “Safe, Effective, Non-Addictive Pain Relief”, all purchasers are damaged the same
8 way, and all of the Products’ “Pain Relief” labeling is false for the same reason,
9 namely that the Products do not provide pain relief because they do not remove,
10 alleviate, or reduce pain.
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14 10. On or about September 3, 2020 Plaintiff purchased one of Defendant’s
15 Curamin Pain Relief products for the first time from Defendant’s website:
16 <https://www.terrbynaturallyvitamins.com>.
17

18 11. When purchasing the Curamin Pain Relief, Plaintiff relied on the large
19 white letters stating “Pain Relief” in the product’s name and the statement below
20 that name which read “Safe, Effective, Non-Addictive Pain Relief”, which led him
21 to believe he was purchasing a pain relief product similar to other over the counter
22 products advertised with “Pain Relief” statements.
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12. Plaintiff additionally noticed the mark next the “Pain Relief” title and upon further review noted a disclaimer in extremely small print on the back of the box stating, “Occasional muscle pain due to exercise or overuse.”

13. The following is a sample package of the product Plaintiff purchased:



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14. The following are sample pictures of the packages of Defendant's other challenged Products:



15. The following are examples of other over-the-counter product packaging using similar “pain relief” claims:



16. The term “Relief” in context to the term “pain” is commonly defined in the following ways: “removal or lightening of something oppressive, painful, or

distressing,”¹ “alleviation, ease, or deliverance through the removal of pain, distress, oppression, etc.,”² “the reduction or end of pain,”³ and “the reduction of pain or the effects of an illness.”⁴

17. The term “Pain Relief” is commonly defined as “Drugs or other methods of reducing or getting rid of pain; the act of reducing or getting rid of pain,”⁵ and “the alleviation of pain, typically by means of medication.”⁶

18. When purchasing pain relief products Plaintiff, like any reasonable consumer, believes that products labeled with “Pain Relief” statements will provide him with removal, alleviation, or reduction of pain. Reasonable consumers understand “pain relief” to mean that pain will be gotten rid of or alleviated as it is currently felt. In other words, Plaintiff and reasonable consumers do not interpret the statement “Pain Relief” to mean “Pain Preventative.”

19. After receiving the Curamin Pain Relief Plaintiff used the product as recommended by taking three capsules daily.

¹ Merriam-Webster, Definition of Relief, <https://www.merriam-webster.com/dictionary/relief>

² Dictionary.com, Definition of Relief, <https://www.dictionary.com/browse/relief>

³ Cambridge.org, Definition of Relief, <https://dictionary.cambridge.org/us/dictionary/english/relief>

⁴ Macmillan Dictionary, Definition of Relief, <https://www.macmillandictionary.com/us/dictionary/american/relief>

⁵ Cambridge.org, Definition of Pain Relief, <https://dictionary.cambridge.org/us/dictionary/english/pain-relief>

⁶ Lexico.com, Definition of Pain Relief, https://www.lexico.com/en/definition/pain_relief

1 20. Plaintiff used the product as directed by the Product's labeling for a
2 total of one week. During the week Plaintiff used the Curamin Pain Relief, he
3 exercised approximately half an hour per day, five days of the week.
4

5 21. After exercising Plaintiff experienced muscle soreness and pain.

6 22. Plaintiff used the Product on each day he exercised, however after
7 consuming the Product, the product did not remove, alleviate, get rid of, reduce, or
8 otherwise affect Plaintiff's exercise induced muscle soreness and pain.
9

10 23. After one week of using the Product without experiencing results,
11 Plaintiff stopped using the Product.
12

13 24. Persons, like Plaintiff herein, have an interest in purchasing products
14 that do not contain false and misleading claims with regards to the qualities of those
15 products.
16

17 25. By making false and misleading claims about the pain relieving effects
18 of its products Defendant impaired Plaintiff's ability to choose the type and quality
19 of products he chose to buy.
20

21 26. Therefore, Plaintiff has been deprived of his legally-protected interest
22 to obtain true and accurate information about his consumer products as required by
23 California and Federal law.
24

25 27. As a result, Plaintiff has been misled into purchasing products he would
26 not have otherwise purchased.
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1 28. Plaintiff purchased Defendant's Product because Defendant's
2 packaging claims that its Products provide "Safe, Effective, Non-addictive Pain
3 Relief."

4 29. Defendant's Products claim to provide "Safe, Effective, Non-Addictive
5 Pain Relief" based on the inclusion of curcumin.

6 30. Curcumin (1,7-bis(4-hydroxy-3-methoxyphenyl)-1,6-heptadiene-3,5-
7 dione), also called diferuloylmethane, is the main natural polyphenol found in the
8 rhizome of *Curcuma longa* (turmeric) and in others *Curcuma* spp.⁷

9 31. Studies of curcumin show that it's intended use is through extended
10 dietary supplementation which may result in enhanced recovery by reducing
11 inflammation and preventing muscle damage associated with exercise over long
12 periods of time spanning from weeks to months.⁸

13 32. In other words, studies of the active ingredients of the Products show
14 that the Products are preventative in nature.

15 33. Defendant does not adequately inform consumers that the Products are
16 preventative supplements that do not provide "pain relief" as they do not remove,
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24 ⁷ Susan J. Hewlings, Douglas S. Kalman, Curcumin: a review of its effects on human
25 health, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664031/#B11-foods-06-](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664031/#B11-foods-06-00092)
26 00092

27 ⁸ Id.

1 alleviate, or reduce pain, but instead may help to prevent future pain from future
2 exercises through dietary supplementation.

3 34. As nothing more than dietary supplements, the Products do not remove,
4 alleviate, or reduce pain as consumers currently feel it, and therefore the Products’
5 “Safe, Effective, Non-Addictive Pain Relief” and “Safe, Effective Pain Relief”
6 labels are deceptive to reasonable consumers.
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9 35. Plaintiff would not have been able to understand that the Products do
10 not remove, alleviate, or reduce pain prior to consuming them.

11 36. Furthermore, due to Defendant’s intentional, deceitful practice of
12 falsely labeling the Products as providing “Safe, Effective, Non-addictive Pain
13 Relief”, Plaintiff could not have known that the Products do not remove, alleviate,
14 or reduce pain.
15

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17 37. Plaintiff was unaware that the Products do not remove, alleviate, or
18 reduce pain when he purchased the Curamin Pain Relief product.

19 38. Plaintiff and the Class were deceived into paying money for products
20 they did not want because the Products were labeled as providing “Safe, Effective
21 Pain Relief” and “Safe, Effective, Non-Addictive Pain Relief”.
22

23 39. Worse than the lost money, Plaintiff, the Class, and Sub-Class were
24 deprived of their protected interest to choose the products they ingest.
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1 40. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should
2 have known that the Products' express labeling stating "Safe, Effective Pain Relief"
3 and "Safe, Effective, Non-Addictive Pain Relief" was false, deceptive, and
4 misleading, and that Plaintiff, the Class, and Sub-Class members would not be able
5 to tell the Products do not remove, alleviate, or reduce pain unless Defendant
6 expressly told them, as required by law.
7

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9 41. Defendant employs professionals to create the formulas of Defendant's
10 dietary supplement products. Therefore, Defendant through its employees knew or
11 should have known that the Products are dietary supplements that do not remove,
12 alleviate, or reduce pain, but may prevent future pain from future exercise, therefore
13 the Products' "Safe, Effective, Non-Addictive Pain Relief" and "Safe, Effective Pain
14 Relief" labels are deceptive to reasonable consumers
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17 42. Defendant knew that labeling dietary supplements as providing "Safe,
18 Effective, Non-Addictive Pain Relief" would be deceptive to reasonable consumers
19 based on the common parlance of the term "Pain Relief."
20

21 43. As a result of Defendants' acts and omissions outlined above, Plaintiff
22 has suffered concrete and particularized injuries and harm, which include, but are
23 not limited to, the following:
24

- 25 a. Lost money;
 - 26 b. Wasting Plaintiff's time; and
- 27
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- 1 c. Stress, aggravation, frustration, loss of trust, loss of serenity, and
2 loss of confidence in product labeling.

3 **CLASS ALLEGATIONS**

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5 44. Plaintiff brings this action on behalf of himself and all others similarly
6 situated, as a member of the proposed class (the “Class”), defined as follows:

7 All persons within the United States who purchased the
8 Products within four years prior to the filing of the original
9 Complaint through to the date of class certification.

10 45. Plaintiff also brings this action on behalf of himself and all others
11 similarly situated, as a member of the proposed sub-class (the “Sub-Class”), defined
12 as follows:

13
14 All persons within California who purchased the Products
15 within four years prior to the filing of the original
16 Complaint through to the date of class certification.

17 46. Defendants, their employees and agents are excluded from the Class
18 and Sub-Class. Plaintiff does not know the number of members in the Class and Sub-
19 Class, but believes the members number in the thousands, if not more. Thus, this
20 matter should be certified as a Class Action to assist in the expeditious litigation of
21 the matter.
22

23 47. The Class and Sub-Class are so numerous that the individual joinder of
24 all of their members is impractical. While the exact number and identities of their
25 members are unknown to Plaintiff at this time and can only be ascertained through
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1 appropriate discovery, Plaintiff is informed and believes and thereon alleges that the
2 Class and Sub-Class include thousands, if not millions of members. Plaintiff alleges
3 that the class members may be ascertained by the records maintained by Defendant.
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5 48. This suit is properly maintainable as a class action pursuant to Fed. R.
6 Civ. P. 23(a) because the Class and Sub-Class are so numerous that joinder of their
7 members is impractical and the disposition of their claims in the Class Action will
8 provide substantial benefits both to the parties and the Court.
9

10 49. There are questions of law and fact common to the Class affecting the
11 parties to be represented. The questions of law and fact common to the Class
12 predominate over questions which may affect individual class members and include,
13 but are not necessarily limited to, the following:
14

- 15 a. Whether the Defendant intentionally, negligently, or recklessly
16 disseminated false and misleading information by including the
17 statements “pain relief” or “effective pain relief” on the front of
18 the Products’ packaging;
19
- 20 b. Whether the Class and Sub-Class members were aware that the
21 Products do not remove, alleviate, or reduce pain;
22
- 23 c. Whether the Products remove, alleviate, or reduce pain;
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- 25 d. Whether Defendant’s conduct was unfair and deceptive;
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- 27 e. Whether the statement “pain relief” is misleading or false;
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1 f. Whether there should be a tolling of the statute of limitations;
2 and

3 g. Whether the Class and Sub-Class are entitled to restitution, actual
4 damages, punitive damages, and attorney fees and costs.
5

6 50. As a resident of the United States and the State of California who
7 purchased the Products, Plaintiff is asserting claims that are typical of the Class and
8 Sub-Class.
9

10 51. Plaintiff has no interests adverse or antagonistic to the interests of the
11 other members of the Class and Sub-Class.
12

13 52. Plaintiff will fairly and adequately protect the interests of the members
14 of the Class and Sub-Class. Plaintiff has retained attorneys experienced in the
15 prosecution of class actions.
16

17 53. A class action is superior to other available methods of fair and efficient
18 adjudication of this controversy, since individual litigation of the claims of all Class
19 and Sub-Class members is impracticable. Even if every Class and Sub-Class member
20 could afford individual litigation, the court system could not. It would be unduly
21 burdensome to the courts in which individual litigation of numerous issues would
22 proceed. Individualized litigation would also present the potential for varying,
23 inconsistent or contradictory judgments and would magnify the delay and expense
24 to all parties, and to the court system, resulting from multiple trials of the same
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1 complex factual issues. By contrast, the conduct of this action as a class action
2 presents fewer management difficulties, conserves the resources of the parties and
3 of the court system and protects the rights of each class member. Class treatment
4 will also permit the adjudication of relatively small claims by many class members
5 who could not otherwise afford to seek legal redress for the wrongs complained of
6 herein.
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9 54. The prosecution of separate actions by individual members of the Class
10 and Sub-Class would create a risk of adjudications with respect to them that would,
11 as a practical matter, be dispositive of the interests of the other class members not
12 parties to such adjudications or that would substantially impair or impede the ability
13 of such non-party class members to protect their interests.
14

15 55. Plaintiff's claims and injuries are identical to the claims and injuries of
16 all class and sub-class members, because all claims and injuries of all class and sub-
17 class members are based on the same false labeling and same legal theory. All
18 allegations arise from the identical, false, affirmative written statements made by
19 Defendants when they claimed the Products provide "pain relief" when in reality the
20 Products do not relieve pain.
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23 56. Defendants have acted or refused to act in respect generally applicable
24 to the Class and Sub-Class thereby making appropriate final relief with regard to the
25 members of the Class and Sub-Class as a whole.
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57. The size and definition of the Class and Sub-Class can be identified through records held by retailers carrying and reselling the Products, and by Defendant's own records.

FIRST CAUSE OF ACTION
Violation of the California False Advertising Act
(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)

41. Plaintiff incorporates by reference each allegation set forth above.

42. Pursuant to California Business and Professions Code section 17500, *et seq.*, it is unlawful to engage in advertising "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...or...to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

43. California Business and Professions Code section 17500, *et seq.*'s prohibition against false advertising extends to the use of false or misleading written statements.

44. Defendant misled consumers by making misrepresentations and untrue statements about the Class Products, namely, Defendant sold the Products advertised as providing pain relief fully knowing the Products do not relieve pain, and made false representations to Plaintiff and other putative class members in order to solicit these transactions.

45. Specifically, Defendant wrote on the packages of these Products that they provide pain relief.

46. Defendant knew that their representations and omissions were untrue and misleading, and deliberately made the aforementioned representations and

1 omissions in order to deceive reasonable consumers like Plaintiff and other Class
2 Members.

3 47. As a direct and proximate result of Defendant's misleading and false
4 advertising, Plaintiff and the other Class Members have suffered injury in fact and
5 have lost money or property. Plaintiff reasonably relied upon Defendant's
6 representations regarding the Products, namely that they provide pain relief. In
7 reasonable reliance on Defendant's false advertisements, Plaintiff and other Class
8 Members purchased the Products. In turn Plaintiff and other Class Members ended
9 up with supplement products that turned out to actually be different than advertised,
10 and therefore Plaintiff and other Class Members have suffered injury in fact.

11 48. Plaintiff alleges that these false and misleading written representations
12 made by Defendant constitute a "scheme with the intent not to sell that personal
13 property or those services, professional or otherwise, so advertised at the price
14 stated therein, or as so advertised."

15 49. Defendant advertised to Plaintiff and other putative class members,
16 through written representations and omissions made by Defendant and its
17 employees, that the Class Products would provide pain relief.

18 50. Defendant knew that the Class Products do not provide pain relief.

19 51. Thus, Defendant knowingly sold Class Products to Plaintiff and other
20 putative class members that do not provide pain relief contrary to the Products
21 packaging.

22 **SECOND CAUSE OF ACTION**
23 **Violation of Unfair Business Practices Act**
24 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

25 52. Plaintiff incorporates by reference each allegation set forth above.

26 53. Actions for relief under the unfair competition law may be based on
27 any business act or practice that is within the broad definition of the UCL. Such
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1 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
2 acts and practices. A plaintiff is required to provide evidence of a causal
3 connection between a defendant's business practices and the alleged harm--that is,
4 evidence that the defendant's conduct caused or was likely to cause substantial
5 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
6 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory
7 definition of unfair competition covers any single act of misconduct, as well as
8 ongoing misconduct.

9 UNFAIR

10 54. California Business & Professions Code § 17200 prohibits any “unfair
11 ... business act or practice.” Defendant’s acts, omissions, misrepresentations, and
12 practices as alleged herein also constitute “unfair” business acts and practices
13 within the meaning of the UCL in that its conduct is substantially injurious to
14 consumers, offends public policy, and is immoral, unethical, oppressive, and
15 unscrupulous as the gravity of the conduct outweighs any alleged benefits
16 attributable to such conduct. There were reasonably available alternatives to
17 further Defendant’s legitimate business interests, other than the conduct described
18 herein. Plaintiff reserves the right to allege further conduct which constitutes other
19 unfair business acts or practices. Such conduct is ongoing and continues to this
20 date.

21 55. In order to satisfy the “unfair” prong of the UCL, a consumer must
22 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
23 benefits to consumers or competition; and, (3) is not one that consumers themselves
24 could reasonably have avoided.

25 56. Here, Defendant’s conduct has caused and continues to cause
26 substantial injury to Plaintiff and members of the Class. Plaintiff and members of
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1 the Class have suffered injury in fact due to Defendant's decision to sell them
2 falsely labeled products (Class Products). Thus, Defendant's conduct has caused
3 substantial injury to Plaintiff and the members of the Sub-Class.

4 57. Moreover, Defendant's conduct as alleged herein solely benefits
5 Defendant while providing no benefit of any kind to any consumer. Such deception
6 utilized by Defendant convinced Plaintiff and members of the Class that the Class
7 Products provided pain relief, in order to induce them to spend money on said Class
8 Products. In fact, knowing that Class Products, do not provide pain relief, unfairly
9 profited from their sale, in that Defendant knew that the expected benefit that
10 Plaintiff would receive from this feature is nonexistent, when this is typically never
11 the case in situations involving qualities said to be contained with a product. Thus,
12 the injury suffered by Plaintiff and the members of the Sub-Class is not outweighed
13 by any countervailing benefits to consumers.

14 58. Finally, the injury suffered by Plaintiff and members of the Class and
15 Sub-Class is not an injury that these consumers could reasonably have avoided.
16 After Defendant, falsely represented that Class Products would relieve pain, the
17 Plaintiff, Class members, and Sub-Class Members suffered injury in fact due to
18 Defendant's sale of Class Products to them. Defendant failed to take reasonable
19 steps to inform Plaintiff and class members that the Class Products do not provide
20 pain relief, including intentionally mislabeling the Products by labeling them as
21 providing pain relief. As such, Defendant took advantage of Defendant's position
22 of perceived power in order to deceive Plaintiff and the Class members to purchase
23 products that do not provide pain relief. Therefore, the injury suffered by Plaintiff
24 and members of the Class is not an injury which these consumers could reasonably
25 have avoided.

26 59. Thus, Defendant's conduct has violated the "unfair" prong of
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1 California Business & Professions Code § 17200.

2 **FRAUDULENT**

3 60. California Business & Professions Code § 17200 prohibits any
4 “fraudulent ... business act or practice.” In order to prevail under the “fraudulent”
5 prong of the UCL, a consumer must allege that the fraudulent business practice
6 was likely to deceive members of the public.

7 61. The test for “fraud” as contemplated by California Business and
8 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
9 common law fraud, a § 17200 violation can be established even if no one was
10 actually deceived, relied upon the fraudulent practice, or sustained any damage.

11 62. Here, not only were Plaintiff and the Class members likely to be
12 deceived, but these consumers were actually deceived by Defendant. Such
13 deception is evidenced by the fact that Plaintiff agreed to purchase Class Products
14 under the basic assumption that they relieved pain even though the Products do not
15 provide pain relief. Plaintiff’s reliance upon Defendant’s deceptive statements is
16 reasonable due to the unequal bargaining powers of Defendant and Plaintiff. For
17 the same reason, it is likely that Defendant’s fraudulent business practice would
18 deceive other members of the public.

19 63. As explained above, Defendant deceived Plaintiff and other Class
20 Members by representing the Class Products as providing pain relief when the
21 Products do not provide pain relief.

22 64. Thus, Defendant’s conduct has violated the “fraudulent” prong of
23 California Business & Professions Code § 17200.

24 **UNLAWFUL**

25 65. California Business and Professions Code Section 17200, et seq.
26 prohibits “any unlawful...business act or practice.”
27

1 66. As explained above, Defendant deceived Plaintiff and other Class
2 Members by representing the Class Products as providing pain relief when the
3 Products do not provide pain relief.

4 67. Defendant used false advertising, marketing, and misrepresentations
5 to induce Plaintiff and Class Members to purchase the Class Products, in violation
6 of California Business and Professions Code Section 17500, et seq. Had Defendant
7 not falsely advertised, marketed or misrepresented the Class Products, Plaintiff and
8 Class Members would not have purchased the Class Products. Defendant's conduct
9 therefore caused and continues to cause economic harm to Plaintiff and Class
10 Members.

11 68. These representations by Defendant are therefore an "unlawful"
12 business practice or act under Business and Professions Code Section 17200 *et seq.*

13 69. Defendant has thus engaged in unlawful, unfair, and fraudulent
14 business acts entitling Plaintiff and Class Members to judgment and equitable relief
15 against Defendant, as set forth in the Prayer for Relief. Additionally, pursuant to
16 Business and Professions Code section 17203, Plaintiff and Class Members seek
17 an order requiring Defendant to immediately cease such acts of unlawful, unfair,
18 and fraudulent business practices and requiring Defendant to correct its actions.

19
20 **THRID CAUSE OF ACTION**
21 **COMMON LAW FRAUD**

22 70. Plaintiff incorporates all of the allegations and statements made
23 above as if fully reiterated herein.

24 71. Through its false statements on the Products' packaging that the
25 Products provide pain relief, Defendant made false statements of material fact.

26 72. At the time Defendant made its statements that the Products provide
27 pain relief to Plaintiff, it knew, or reasonably should have known, that the
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1 statements described above were false.

2 73. At the time Defendant made the statement to Plaintiff, it intended to
3 induce Plaintiff to purchase the Products.

4 74. Plaintiff relied upon the truth of the statements described above and
5 purchased the Products, only to find that the Products do not provide pain relief.

6 75. As a result of their reasonable reliance upon Defendant's false
7 statements of material fact as set forth above, Plaintiff and other members of the
8 Class and Sub-Class have suffered concrete and particularized injuries, harm and
9 damages which include, but are not limited to, the loss of money spent on
10 products they did not want to buy, and stress, aggravation, frustration,
11 inconvenience, emotional distress, mental anguish, and similar categories of
12 damages.

13 **FOURTH CAUSE OF ACTION**
14 **Violation of Consumer Legal Remedies Act**
15 **Cal. Civ. Code § 1750, *et seq.***

16 76. Plaintiffs incorporate all of the allegations and statements made
17 above as if fully reiterated herein.

18 77. Defendants' actions as detailed above constitute a violation of the
19 Consumer Legal Remedies Act, Cal. Civ. Code § 1770, to the extent that
20 Defendants violated the following provisions of the CLRA:

- 21 a. Representing that goods or services have sponsorship, approval,
22 characteristics, ingredients, uses, benefits, or quantities which they
23 do not have or that a person has a sponsorship, approval, status,
24 affiliation, or connection which he or she does not have; Cal. Civ.
25 Code § 1770(5);
- 26 b. Representing that goods or services are of a particular standard,
27 quality, or grade, or that goods are of a particular style or model, if
28

1 they are of another; Cal. Civ. Code § 1770(7);

2 c. Advertising goods or services with intent not to sell them as
3 advertised; Cal. Civ. Code §1770(9);

4 d. Representing that a transaction confers or involves rights, remedies,
5 or obligations which it does not have or involve, or which are
6 prohibited by law; Cal. Civ. Code §1770(14); and

7 e. Representing that the subject of a transaction has been supplied in
8 accordance with a previous representation when it has not; Cal. Civ.
9 Code §1770(16);

10 78. On or about October 21, 2020, through his Counsel of record, using
11 certified mail with a return receipt requested, Plaintiff served Defendant with
12 notice of its violations of the CLRA, and asked that Defendants correct, repair,
13 replace, or otherwise rectify the goods and services alleged to be in violation of
14 the CLRA; this correspondence advised Defendants that they must take such
15 action within thirty (30) calendar days, and pointed Defendants to the provisions
16 of the CLRA that Plaintiffs believe to have been violated by Defendants.
17 Defendants have not replied to this notice letter with a letter dated November 20,
18 2020, and thus refused to adequately correct, repair, replace, or otherwise rectify
19 the issues raised therein.

20 21 MISCELLANEOUS

22 79. Plaintiff and Class Members allege that they have fully complied with
23 all contractual and other legal obligations and fully complied with all conditions
24 precedent to bringing this action or all such obligations or conditions are excused.

25 REQUEST FOR JURY TRIAL

26 80. Plaintiff requests a trial by jury as to all claims so triable.

PRAYER FOR RELIEF

81. Plaintiff, on behalf of herself and the Class, requests the following relief:

- (a) An order certifying the Class and appointing Plaintiff as Representative of the Class;
- (a) An order certifying the undersigned counsel as Class Counsel;
- (b) An order requiring Euro Pharma Inc., at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (c) An order requiring Euro Pharma Inc. to engage in corrective advertising regarding the conduct discussed above;
- (d) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members from the sale of mislabeled Class Products during the relevant class period;
- (e) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (f) Any and all statutory enhanced damages;
- (g) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (h) Pre- and post-judgment interest; and
- (i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

1 Dated: June 11, 2021

Respectfully submitted,

2 LAW OFFICES OF TODD M. FRIEDMAN , PC

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4 By: /s Todd. M. Friedman

5 TODD M. FRIEDMAN, ESQ.

6 Attorney for Plaintiff Michael Dotson