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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 Fred Wallin, *on behalf of himself and all*
11 *others similarly situated,*

12 Plaintiff,

13 vs.

14 Naturelo Premium Supplements LLC,

15 Defendant.
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Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) Breach of Express Warranty;
- (2) Breach of Express Warranties Pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, et seq.;
- (3) Fraudulent Concealment;
- (4) Violation of Cal. Bus. & Prof. Code §§ 17500, et seq.;
- (5) Violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.; and
- (6) Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

1 For this Class Action Complaint, Plaintiff Fred Wallin, by undersigned
2 counsel, states as follows:
3

4 **INTRODUCTION**

5 1. Defendant Naturelo Premium Supplements LLC (“Defendant” or
6 “Naturelo”) formulates, manufactures and advertises and sells “premium” magnesium
7 dietary supplements throughout the United States, including in California, that
8 allegedly contain 200 mg of elemental magnesium per capsule. Naturelo claims that
9 its magnesium supplements have been “formulated to support healthy bones, heart, &
10 stress relief.” However, Naturelo markets its products in a systematically misleading
11 manner, stating that its products have ingredients, characteristics and benefits that they
12 do not.
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16 2. Indeed, because Defendant’s sales are driven by consumers seeking
17 magnesium supplementation, Naturelo prominently displays the total elemental
18 magnesium contents of its supplements (the “Magnesium Supplements” or the
19 “Supplements”) – purportedly 200 mg per capsule – on the front and back of each
20 product’s label.
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23 3. But the Magnesium Supplements do not contain 200 mg of elemental
24 magnesium in each capsule and thus do not contain the quantity of magnesium that is
25 advertised, and thus warranted, on each of the product’s labels. Instead, the
26 Supplements contain significantly less magnesium than what is claimed and
27 displayed, and as set forth below, it is physically impossible for the capsules
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1 Defendant uses for its Magnesium Supplement to contain the amount of claimed
2 elemental magnesium. In misstating the actual magnesium content of the
3 Supplements, Naturelo violates federal law and regulations designed to prevent
4 deceptive supplement labeling and breaches the express warranty created by its
5 labeling. Defendant's prominent misrepresentations regarding its Magnesium
6 Supplements form a pattern of unlawful and unfair business practices that visits harm
7 on the consuming public.
8
9

10 **PARTIES**

11
12 4. Plaintiff Fred Wallin ("Plaintiff") is and at all times relevant hereto was
13 an adult individual residing in Westlake Village, California. Plaintiff has purchased
14 Naturelo's Magnesium Supplements within the last four years. Plaintiff most recently
15 purchased Defendant's Naturelo Supplements from Amazon in or around February
16 2022, and previously purchased the Magnesium Supplements from a local pharmacy
17 within this District.
18

19
20 5. Defendant Naturelo Premium Supplements LLC ("Naturelo" or
21 "Defendant") is a Delaware limited liability company with a principal place of
22 business at 440 US Highway 22, Suite 210, Bridgewater, New Jersey 08807. Naturelo
23 manufactures, markets, advertises, distributes and sells a magnesium nutritional
24 supplement product throughout the United States.
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1 **JURISDICTION AND VENUE**

2 6. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005 because: (i) there are 100
4 or more class members, (ii) there is an aggregate amount in controversy exceeding
5 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because
6 Plaintiff and Class Members, and Defendant are citizens of different states.
7

8 7. Personal jurisdiction and venue are proper in this District because
9 Naturelo conducts business itself or through agent(s) in this District, by advertising,
10 marketing, distributing and/or manufacturing its products in this District, and because
11 Plaintiff resides in this District and Plaintiff purchased Defendant's products and was
12 exposed to Defendant's misrepresentations within this District.
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16 **FACTUAL ALLEGATIONS**

17 *a. Defendant misrepresents that one capsule of the Magnesium Supplement*
18 *contains 200 mg of elemental magnesium derived from magnesium glycinate*
19 *chelate*

20 8. The amount of elemental magnesium contained within Defendant's
21 Magnesium Supplements is material to any consumer seeking to purchase a
22 magnesium supplement.
23

24 9. Defendant appears to sell its Magnesium Supplements in the form of
25 magnesium glycinate chelate.
26

27 10. Naturelo advertises that "Magnesium is essential for helping both the
28 body and the mind to relax. It regulates the contraction and relaxation of

1 muscles, supporting healthy physical performance and helping to relieve tension and
2 discomfort. It even supports your heart and blood vessels, helping to maintain healthy
3 circulation and normal blood pressure. And magnesium plays an important role
4 in the nervous system's relaxation response, regulating important neurotransmitters
5 such as GABA and melatonin, which are essential for a calm mood and healthy
6 sleep.”¹
7

9 11. Defendant further advertises that “magnesium glycinate chelate” is a
10 form of magnesium “that’s easy for your body to absorb without stomach distress and
11 enhances the natural calming benefits of magnesium.”²
12

13 12. Naturelo labels and advertises its Magnesium Supplements in a manner
14 that highlights the amount of elemental magnesium contained within. The
15 Supplements list the alleged elemental magnesium content on the front label as well as
16 on the back nutritional label. Such representations constitute an express warranty
17 regarding the Magnesium Supplements’ elemental magnesium content.
18

20 13. Indeed, as set forth in the images of the labels on the following pages,³
21 “MAGNESIUM” is prominently displayed on the front label in font larger and offset
22 from the other text on the label and the front label notes that there is “200 mg per
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26 ¹ See <https://naturelo.com/products/magnesium-glycinate-chelate> (last visited Feb. 12, 2022).

27 ² See *id.*

28 ³ All product images contained within this complaint were taken from Defendant’s website,
<https://naturelo.com/products/magnesium-glycinate-chelate>.

capsule.”

14. Moreover, the Supplement Facts on the back label describe two ingredients: “Magnesium (as Magnesium Glycinate Chelate)” and a “Magnesium-Rich Plants Blend,” comprised of spinach leaf, swiss chard leaf, okra fruit, quinoa grain, black bean, pumpkin fruit, sunflower seed, and flaxseed.”



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1 15. As set forth in the above images, the Magnesium Supplement labels
2 claim that there is 200 mg of elemental magnesium in each capsule derived from
3 magnesium glycinate chelate.

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5 16. The Supplement Facts, which are required to declare the amount of
6 elemental magnesium, note that one (1) capsule of Defendant's Magnesium
7 Supplement, which constitutes the recommended serving size, contains "200 mg" of
8 "Magnesium (as Magnesium Glycinate Chelate)." *See*
9 <https://ods.od.nih.gov/factsheets/Magnesium-HealthProfessional/> (the U.S.
10 Department of Health & Human Services directs that "[t]he Supplement Facts panel
11 on a dietary supplement label declares the amount of *elemental* magnesium in the
12 product, not the weight of the entire magnesium-containing compound.") (last visited
13 Feb. 17, 2022).

14
15 17. The Supplement Facts also note that the listed 200mg of elemental
16 magnesium derived from magnesium glycinate chelate constitutes 48% of the
17 recommended Daily Value of magnesium.⁴ Under 21 C.F.R. § 101.9(c)(8),
18 addressing "[t]he requirements related to including a statement of the amount per
19 serving of vitamins and minerals," "[t]he quantitative amounts of vitamins and
20 minerals, excluding sodium, shall be the amount of the vitamin or mineral included in
21 one serving of the product, using the units of measurement and the levels of
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28 ⁴ The Supplement Facts do not list the Daily Value of magnesium contained in the "Magnesium-Rich Plants Blend."

1 significance given in paragraph (c)(8)(iv) of this section.” 21 C.F.R. § 101.9(c)(8)(iii).

2 With respect to magnesium, the recommended Daily Value for adults and children
3
4 over four years is 420 milligrams (mg) of magnesium. 21 C.F.R. § 101.9(c)(8) (iv).

5 18. Thus, the Supplement Facts’ representation that one Magnesium
6
7 Supplement capsule allegedly contains 48% of the Daily Value of magnesium is
8
9 consistent with its representation that there is allegedly 200 milligrams of elemental
10
11 magnesium in each capsule (200mg is 48% of 420mg).

12 19. Further, the front label reinforces the false representations on the back
13
14 label by likewise claiming that there is “200 mg per capsule.”

15 ***b. Given the size of the capsules and the amount of elemental magnesium***
16 ***contained within magnesium glycinate chelate, it is impossible for one***
17 ***capsule of the Magnesium Supplement to contain 200 mg of elemental***
18 ***magnesium***

19 20. Defendant’s above representations are false and misleading.

20 21. It is impossible for one capsule of Defendant’s Magnesium Supplement
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22 to contain the advertised and warranted 200 mg of elemental magnesium in light of (1)
23
24 the amount of elemental magnesium contained in magnesium glycinate chelate and (2)
25
26 the maximum capacity of the capsules Defendant uses for its Magnesium
27
28 Supplements.

1 22. First, Defendant “use[s] Size 00 capsules” for its Magnesium
2 Supplements.⁵ While the amount of powder a capsule can contain may vary based on
3 the density of the powder contained therein, size 00 capsules hold approximately 735
4 mg of powder.⁶ On the highest end of the density spectrum, a size 00 capsule can
5 contain 1,092 mg of powder with a density of 1.2 g/ml; on the end of the spectrum,
6 size 00 capsules can fit up to 546 mg of powder with a density of 0.6 g/ml.⁷

9 23. Second, magnesium glycinate contains only 14.1% elemental magnesium
10 by mass.⁸ Accordingly, approximately 1,418 mg of magnesium glycinate is needed to
11 obtain 200 mg of elemental magnesium.

13 24. Yet as set forth above, the size 00 capsules Defendant uses for its
14 Magnesium Supplement cannot physically fit 1,418 mg of powder regardless of its
15 density.

17 25. Therefore, *even if* the only ingredient in the Magnesium Supplements
18 were magnesium glycinate chelate and regardless of its density, there is necessarily
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23 ⁵ <https://naturelo.com/products/magnesium-glycinate-chelate> (“We use Size 00 capsules, which are
24 0.91 inches long by 0.33 inches wide (23 x 8 millimeters). Most people find that they go down easily
25 with a big gulp of water. However, if you have trouble swallowing, you can easily open the capsule
26 and sprinkle the powder onto your food or drink. Mixing the powder with a thick liquid such as
yogurt, applesauce, or a smoothie works best.”) (last visited Feb. 17, 2022).

27 ⁶ See, e.g., <https://capsuleconnection.com/capsule-sizing-info/> (last visited Feb. 17, 2022).

28 ⁷ See *id.*

⁸ See, e.g., https://en.wikipedia.org/wiki/Magnesium_glycinate (last visited Feb. 17, 2022).

1 less than 200mg of elemental magnesium in each capsule.^{9 10}

2 26. However, in addition to magnesium glycinate chelate and 30 mg of a
3
4 “Magnesium-Rich Plants Blend,” each capsule of the Magnesium Supplement also
5 contains non-active ingredients such as “Rice Flour (Brown)” and “Rice Bran Extract”
6 which further lowers the amount of elemental magnesium that can be contained within
7 the size 00 capsules that Defendant uses.

9 27. In light of the foregoing, Defendant’s representations that one capsule or
10 serving of the Magnesium Supplements contains 200mg of elemental magnesium is
11 false.
12

13 28. The above misrepresentations regarding the contents and ingredients of
14 Defendant’s Magnesium Supplements are unlawful under both state and federal law.
15 The Federal Food, Drug, and Cosmetic Act (“FDCA”), passed by Congress in 1938,
16 grants the Food and Drug Administration (“FDA”) power to ensure “foods are safe,
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21 ⁹ For instance, if the magnesium glycinate contained a high density of 1.2 g/ml, 1,092 mg of
22 magnesium glycinate chelate would fit within the size 00 capsule, containing approximately 154 mg
23 of elemental magnesium. On the other end of the spectrum, if the magnesium glycinate had a density
24 of 0.6 g/ml, 546 mg would fit within the size 00 capsule, containing approximately 77mg of
elemental magnesium. In both instances, significantly less than 200mg of elemental magnesium
derived from magnesium glycinate chelate can fit within a size 00 capsule.

25 ¹⁰ Tellingly, other size 00 capsule magnesium glycinate chelate supplements marketed and sold by
26 other companies purport to contain significantly less elemental magnesium than Naturelo’s
27 Magnesium Supplement. For instance, one such magnesium glycinate chelate supplement’s
28 Supplement Facts states that “Each (size 00) vegetarian capsule contains: Magnesium (as
magnesium glycinate) 120 mg.” See <https://www.pureencapsulationspro.com/magnesium-glycinate.html> (last visited Feb. 17, 2022).

1 wholesome, sanitary, and properly labeled.” 21 U.S.C. § 393(b)(2)(A). In 1990,
2 Congress amended the FDCA with the Nutrition Labeling and Education Act
3 (“NLEA”), which sought to clarify and strengthen the FDA’s legal authority to require
4 nutrition labeling on foods, and to establish the circumstances under which claims
5 may be made about nutrients in foods. 21 U.S.C. §§ 343, *et seq.*

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8 29. Naturelo’s false and deceptive statements violate 21 U.S.C. § 343(a)(1),
9 which deems food (including nutritional supplements) misbranded when the label
10 contains a statement that is “false or misleading in any particular.” Federal regulations
11 also dictate the manner in which Defendant must label its product and the methods it
12 must use to determine the magnesium contents of its product. Defendant failed to
13 ensure the accuracy of its Magnesium Supplements’ labels in accordance with these
14 federal regulations.

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17 30. California prohibits the misbranding of food in a way that parallels the
18 FDCA through the “Sherman Food, Drug, and Cosmetic Law,” Cal. Health & Safety
19 Code § 109875, *et seq.* (the “Sherman Law”). The Sherman Law explicitly
20 incorporates by reference “[a]ll food labeling regulations and any amendments to
21 those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or
22 adopted on or after that date” as the food labeling regulations of Cal. Health & Safety
23 Code § 110100(a). Accordingly, the Sherman Law also provides that food or
24 nutritional supplements are misbranded if its labeling is “false or misleading in any
25 particular.” *Id.*

1 31. Naturelo’s representations regarding the elemental magnesium contents
2 of its Magnesium Supplement are material. Reasonable consumers of magnesium
3 supplements base their purchasing decisions on the advertised and warranted amount
4 of elemental magnesium contain therein. Additionally, consumers reasonably rely of
5 Defendant’s label to accurately determine the identity and amount of any dietary
6 ingredients included within the Defendant’s Magnesium Supplements. Accordingly,
7 Plaintiff and Class Members, as reasonable consumers, were materially misled by
8 Defendant’s representations regarding the true nature of the Magnesium Supplements’
9 elemental magnesium contents.
10

11 32. Further, such misrepresentations also breach Defendant’s express
12 warranty that each Magnesium Supplement contains elemental magnesium in the
13 amount listed on its label (200 mg).
14

15 33. The difference between the Magnesium Supplements promised and the
16 products sold is significant and material. The amount of actual elemental magnesium
17 provided, and the measure of elemental magnesium per serving/capsule, has real
18 impacts on the benefits provided to consumers by the Magnesium Supplements and
19 the actual value of the Supplements. Persons requiring a certain amount of magnesium
20 supplementation – whether to “support[] healthy muscle and nerve function to help
21 relieve tension and discomfort for healthy physical performance, recovery, and
22 relaxation” or to “support[] the parasympathetic nervous system and help[] regulate
23 melatonin and GABA for a healthy stress response, calm mood, and better sleep,” as
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1 Naturelo claims¹¹ – are left to ingest less elemental magnesium than Defendant states
2 will be provided.
3

4 34. Because Plaintiff and Class Members purchased a product that contains
5 less elemental magnesium than advertised and warranted, Plaintiff and Class Members
6 have suffered an injury-in-fact. Misbranded nutritional supplements cannot legally be
7 manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional
8 supplements have no economic value and are worthless as a matter of law, and
9 purchasers of misbranded nutritional supplements are entitled to a restitution refund of
10 the purchase price of the misbranded nutritional supplements. Additionally, had
11 Plaintiff and Class Members known the true nature of the elemental magnesium
12 content of the Magnesium Supplements, they would not have purchased such
13 Products, or would have only paid for the elemental magnesium actually delivered
14 with the Supplements.
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19 **CLASS ACTION ALLEGATIONS**

20 **A. The Classes**

21 35. Plaintiff brings this action on his own behalf and on behalf of the
22 following Classes of persons pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3)
23 an/or 23(c)(5):
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¹¹ See <https://naturelo.com/products/magnesium-glycinate-chelate> (last visited Feb. 17, 2022).

1 **Nationwide Class:** All persons in the United States who, within four (4) years
2 of the filing of this Complaint, purchased Defendant's Magnesium
3 Supplements.

4 **California Sub-Class:** All persons residing in California who, within four
5 (4) years of the filing of this Complaint, purchased Defendant's
6 Magnesium Supplements.

7 36. Any legal entity, Defendant and its employees or agents are excluded
8 from the Class.

9 **B. Numerosity**

10 37. Upon information and belief, the Classes are so numerous that joinder of
11 all members is impracticable. While the exact number and identities of individual
12 members of the Class are unknown at this time, Plaintiff believes, and on that basis
13 allege, that there are thousands of members of the Nationwide Class and California
14 Sub-Class.
15 Sub-Class.

16 **C. Common Questions of Law and Fact**

17 38. There are questions of law and fact common to the Class that
18 predominate over any questions affecting only individual Class members. These
19 questions include:
20 questions include:
21 questions include:
22 questions include:

- 23 a. Whether Defendant labels, markets and otherwise advertises its
24 Magnesium Supplements in a deceptive, false, or misleading manner by
25 misstating the product's elemental magnesium content;
26 b. Whether Defendant's sale of the Magnesium Supplements constitutes
27 unfair methods of competition and unfair or deceptive acts or practices in
28 unfair methods of competition and unfair or deceptive acts or practices in

1 violation of, *inter alia*, Cal. Bus. & Prof. Code §§ 1770 *et seq.*, including:
2 whether Defendant misrepresents the source, sponsorship, approval, or
3 certification of their Magnesium Supplements; whether Defendant
4 misrepresents that the Magnesium Supplements have benefits which they
5 do not have; whether Defendant represents that the Magnesium
6 Supplements are of a particular standard or quality if it is of another; and
7 whether Defendant advertises its Magnesium Supplements with intent not
8 to sell them as advertised;
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12 c. Whether Defendant's sale of the Magnesium Supplements constitutes
13 misleading and deceptive advertising under, *inter alia*, Cal. Bus. & Prof.
14 Code § 17500;
15

16 d. Whether Defendant's sale of the Magnesium Supplements constitutes
17 "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter*
18 *alia*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, including: whether
19 Defendant's sale of the Magnesium Supplements constitutes "unlawful" or
20 "unfair" business practices by violating the public policies set out in Cal.
21 Bus. & Prof. Code §§ 1770 *et seq.*, Cal. Bus. & Prof. Code §§ 17500 and
22 other California and federal statutes and regulations; whether Defendant's
23 sale of the Magnesium Supplements is immoral, unethical, oppressive,
24 unscrupulous or substantially injurious to consumers; and whether
25 Defendant's sale of the Magnesium Supplements constitutes an "unfair"
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1 business practice because consumer injury outweighs any countervailing
2 benefits to consumers or competition, and because such injury could not
3 be reasonably avoided by consumers;
4

5 e. The nature and extent of damages, restitution, equitable remedies, and
6 declaratory and injunctive relief to which Plaintiff and the Class are
7 entitled; and
8

9 f. Whether Plaintiff and the Class should be awarded attorneys' fees and the
10 costs of suit.
11

12 **D. Typicality**

13 39. The Plaintiff's claims are typical of the claims of the Class since Plaintiff
14 purchased the Magnesium Supplements within the last four years, as did each member
15 of the Class. Furthermore, Plaintiff and all members of the Classes sustained
16 economic injuries arising out of Defendant's wrongful conduct. Plaintiff is advancing
17 the same claims and legal theories on behalf of himself and all absent Class members.
18

19 **E. Protecting the Interests of the Class Members**

20 40. Plaintiff will fairly and adequately protect the interests of the Class and
21 have retained counsel experienced in handling class actions and claims involving
22 unlawful business practices. Neither Plaintiff nor his counsel has any interest which
23 might cause them not to vigorously pursue this action.
24

25 **F. Proceeding Via Class Action is Superior and Advisable**

26 41. A class action is the superior method for the fair and efficient
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1 adjudication of this controversy. The injury suffered by each individual Class
2 member is relatively small in comparison to the burden and expense of individual
3 prosecution of the complex and extensive litigation necessitated by Defendant's
4 conduct. It would be virtually impossible for members of the Class individually to
5 redress effectively the wrongs done to them. Even if the members of the Class could
6 afford such individual litigation, the court system could not. Individualized litigation
7 presents a potential for inconsistent or contradictory judgments. Individualized
8 litigation increases the delay and expense to all parties, and to the court system,
9 presented by the complex legal and factual issues of the case. By contrast, the class
10 action device presents far fewer management difficulties, and provides the benefits of
11 single adjudication, an economy of scale, and comprehensive supervision by a single
12 court.

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18 42. Defendant has acted, and refused to act, on grounds generally applicable
19 to the Class, thereby making appropriate final equitable relief with respect to the Class
20 as a whole.

21
22 **FIRST CAUSE OF ACTION**
23 **Breach of Express Warranty**
(On Behalf of the Nationwide Class)

24
25 43. Plaintiff hereby incorporates by reference the allegations contained in the
26 preceding paragraphs of this Complaint.

27
28 44. Plaintiff and each member of the Class formed a contract with Defendant
at the time Plaintiff and the other members of the Class purchased one or more of

1 Defendant's Magnesium Supplements. The terms of that contract include the promises
2 and affirmations of fact made by Defendant on the packaging of the Magnesium
3 Supplements regarding the products' elemental magnesium content.
4

5 45. The Magnesium Supplements' packaging constitute express warranties,
6 became part of the basis of the bargain, and are part of a standardized contract
7 between Plaintiff and the members of the Nationwide Class on the one hand, and
8 Defendant on the other.
9

10 46. All conditions precedent to Defendant's liability under this contract have
11 been performed by Plaintiff and the Class.
12

13 47. Defendant breached the terms of this contract, including the express
14 warranties, with Plaintiff and the Class by not providing the products that could
15 provide the benefits promised, i.e. that the Supplements contain the warranted amount
16 of elemental magnesium, as alleged above.
17

18 48. As a result of Defendant's breach of its contract, Plaintiff and the Class
19 have been damaged in the amount of the different purchase price of any and all of the
20 Magnesium Supplements they purchased and the price of a product which provides
21 the benefits and contents as warranted.
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SECOND CAUSE OF ACTION

**Breach of Express Warranties Pursuant to the Magnuson-Moss Warranty Act,
15 U.S.C. §2301, *et seq.*
(On behalf of the Nationwide Class)**

49. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

50. This claim is brought by Plaintiff on behalf of himself and the Nationwide Class solely for breach of federal law. This claim is not based on any violation of state law.

51. The Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq., creates a private federal cause of action for breach of a “written warranty” as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

52. The Magnesium Supplements are “consumer products” as that term is defined by 15 U.S.C. § 2301(1), as they constitute tangible personal property which is distributed in commerce and which is normally used for personal, family or household purposes.

53. Plaintiff and members of the Class are “consumers” as defined by 15 U.S.C. § 2301(3), since they are buyers of the Magnesium Supplements for purposes other than resale.

54. Defendant is an entity engaged in the business of making and selling dietary supplements available, either directly or indirectly, to consumers such as Plaintiff and the Class. As such, Defendant is a “supplier” as defined in 15 U.S.C. §

1 2301(4).

2 55. Through its labeling, Defendant gave and offered a written warranty to
3 consumers relating to the elemental magnesium contents of the Magnesium
4 Supplements. As a result, Defendant is a “warrantor” within the meaning of 15 U.S.C.
5 § 2301(5).
6
7

8 56. Defendant provided a “written warranty” within the meaning of 15
9 U.S.C. § 2301(6) for the Magnesium Supplements as containing a specific amount of
10 elemental magnesium. These affirmations of fact regarding the nature and quantity of
11 the ingredients in the Magnesium Supplements constituted, and were intended to
12 convey to purchasers, a written promise that the ingredients in the products were free
13 of a particular type of defect (i.e., the Magnesium Supplements would include a
14 particular ingredient in a certain amount). As such, these written promises and
15 affirmations were part of the basis of Plaintiff’s and the Class’s bargain with
16 Defendant in purchasing the Magnesium Supplements.
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20 57. Defendant breached the written warranty by failing to provide and supply
21 the Magnesium Supplements as promised. Specifically, the Magnesium Supplements
22 did not contain the amount of elemental magnesium warranted, and thus were
23 defective.
24
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26 58. Plaintiff and members of the Class were injured by Defendant’s failure to
27 comply with its obligations under the written warranty since Plaintiff and members of
28 the Class paid for products that did not have the promised ingredients of a particular

1 quality and amount, did not receive the defect-free magnesium supplement that was
2 promised to them and that they bargained for, and paid a premium for the Magnesium
3 Supplements when they could have instead purchased other less expensive alternative
4 magnesium supplements.
5

6 59. Plaintiff and the Class therefore for this claim seek and are entitled to
7 recover “damages and other legal and equitable relief” and “costs and expenses
8 (including attorneys’ fees based upon actual time expended)” as provided in 15 U.S.C.
9 § 2310(d).
10
11

12 **THIRD CAUSE OF ACTION**
13 **Fraudulent Concealment**
14 **(On behalf of the Nationwide Class)**

15 60. Plaintiff incorporates by reference all allegations contained in this
16 Complaint as though fully stated herein.
17

18 61. By failing to disclose and concealing the defective nature of the
19 Magnesium Supplements from Plaintiff and Class Members (i.e., the Magnesium
20 Supplements do not include the amount of elemental magnesium derived from
21 magnesium glycinate chelate advertised and warranted), Defendant concealed and
22 suppressed material facts concerning the Magnesium Supplements.
23

24 62. Defendant knew or should have known that the Magnesium Supplements
25 did not contain the amount of elemental magnesium advertised and warranted and
26 were not suitable for their intended use.
27

28 63. Defendant was under a duty to Plaintiff and the Class Members to

1 disclose the defective nature of the Magnesium Supplements because:

- 2 a. Defendant was in a superior position to know the true state of facts about
3 the magnesium contents of Defendant's Magnesium Supplements;
4
5 b. Plaintiff and the Class Members could not reasonably have been expected
6 to learn or discover that the Magnesium Supplements do not contain the
7 amount of elemental magnesium advertised and warranted; and,
8
9 c. Defendant knew that Plaintiff and the Class Members could not reasonably
10 have been expected to learn about or discover the true magnesium contents
11 of Defendant's Magnesium Supplements.
12

13 64. On information and belief, Defendant still has not made full and adequate
14 disclosures, and continues to defraud consumers by concealing material information
15 regarding the contents of the Magnesium Supplements.
16

17 65. The facts concealed or not disclosed by Defendant to Plaintiff and Class
18 Members are material in that a reasonable person would have considered them to be
19 important in deciding whether or not to purchase the Magnesium Supplements.
20

21 66. Plaintiff and the Class relied on Defendant to disclose material
22 information it knew, such as the defective nature and contents of the Magnesium
23 Supplements, and not to induce them into a transaction they would not have entered
24 had the Defendant disclosed this information.
25

26 67. By failing to disclose the true contents of the Magnesium Supplements,
27 Defendant knowingly and intentionally concealed material facts and breached its duty
28

1 not to do so.

2 68. Had Plaintiff and other Class Members known that Magnesium
3 Supplements did not contain the amount of advertised and warranted elemental
4 magnesium, they would not have purchased the Magnesium Supplements or would
5 have paid less for them.
6
7

8 69. As a result of Defendant's misconduct, Plaintiff and the other Class
9 Members have been harmed and have been injured.
10

11 70. Accordingly, Defendant is liable to Plaintiff and Class Members for
12 damages in an amount to be proven at trial.
13

14 71. Defendant's actions and omissions were done maliciously, oppressively,
15 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the
16 Class's rights and well-being, to enrich Defendant. Defendant's conduct warrants an
17 assessment of punitive damages in an amount sufficient to deter such conduct in the
18 future, which amount is to be determined according to proof.
19

20 72. Furthermore, as the intended and expected result of its fraud and
21 conscious wrongdoing, Defendant has profited and benefited from Plaintiff's and
22 Class Members' purchase of falsely advertised and misbranded Magnesium
23 Supplements. Defendant has voluntarily accepted and retained these profits and
24 benefits with full knowledge and awareness that, as a result of Defendant's
25 misconduct alleged herein, Plaintiff and Class Members were not receiving
26 magnesium supplements of the quality, nature, fitness, or value that had been
27
28

1 represented by Defendant, and that a reasonable consumer would expect.

2 73. Defendant has been unjustly enriched by its fraudulent, deceptive, and
3 otherwise unlawful conduct in connection with the sale of the Magnesium
4 Supplements and by withholding benefits from Plaintiff and Class Members at the
5 expense of these parties. Equity and good conscience militate against permitting
6 Defendant to retain these profits and benefits, and Defendant should be required to
7 make restitution of its ill-gotten gains resulting from the conduct alleged herein.
8
9

10 **FOURTH CAUSE OF ACTION**

11 **Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*- Untrue, Misleading and**
12 **Deceptive Advertising**
13 **(On Behalf of the California Sub-class)**

14 74. Plaintiff incorporates by reference all of the above paragraphs of this
15 Complaint as though fully stated herein.
16

17 75. At all material times, Defendant engaged in a scheme of offering the
18 Magnesium Supplements for sale to Plaintiff, and other members of the Class by way
19 of, *inter alia*, commercial marketing, and advertising, internet content, product
20 packaging and labelling, and other promotional materials.
21

22 76. These materials, advertisements and other inducements misrepresented
23 and/or omitted the true contents and benefits of the Magnesium Supplements as
24 alleged herein. Such advertisements and inducements appear on the labels of
25 Defendant's Magnesium Supplements and Defendant's website.
26
27

28 77. Defendant's advertisements and other inducements come within the

1 definition of advertising as contained in Cal. Bus. Prof. Code §§ 17500, et seq., in that
2 such promotional materials were intended as inducements to purchase Defendant's
3 Magnesium Supplements and are statements disseminated by Defendant to Plaintiff
4 and other members of the Class.
5

6 78. Defendant knew, or in the exercise of reasonable care should have
7 known, that the statements regarding its Magnesium Supplements' elemental
8 magnesium content were false, misleading and/or deceptive.
9

10 79. Consumers, including Plaintiff and members of the Class, necessarily and
11 reasonably relied on Defendant's statements regarding the contents of its products.
12 Consumers, including Plaintiff and members of the Class, were among the intended
13 targets of such representations.
14

15 80. The above acts of Defendant, in disseminating said misleading and
16 deceptive statements throughout the State of California and nationwide to consumers,
17 including Plaintiff and members of the Class, were and are likely to deceive
18 reasonable consumers by obfuscating the true nature and amount of the ingredients in
19 Defendant's Magnesium Supplements, including the true source and amount of
20 elemental magnesium, and thus were violations of Cal. Bus. Prof. Code §§ 17500, et
21 seq.
22

23 81. Plaintiff and Class members were harmed and suffered injury as a result
24 of Defendant's violations of the Cal. Bus. Prof. Code §§ 17500, et seq. Defendant has
25 been unjustly enriched at the expense of Plaintiff and the members of the Class.
26

1 California Class members is “transaction” as defined by California Civil Code
2 §1761(e).
3

4 88. By labeling their Magnesium Supplements as containing a specific
5 amount of elemental magnesium when in fact these products contained less than the
6 advertised amount of magnesium, Defendant violated California Civil Code §§
7 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship,
8 approval, and/or certification of its Magnesium Supplements.
9

10 89. As a result of Defendant’s conduct, Plaintiff and California Class
11 members were harmed and suffered actual damages as a result of Defendant's unfair
12 competition and deceptive acts and practices. Had Defendant disclosed the true nature
13 and/or not falsely represented its Magnesium Supplements’ elemental magnesium
14 content, Plaintiff and the California Sub-Class would not have been misled into
15 purchasing Defendant’s Magnesium Supplements, or, alternatively, would have paid
16 significantly less for them.
17

18 90. Additionally, misbranded nutritional supplements cannot legally be
19 manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional
20 supplements have no economic value and are worthless as a matter of law, and
21 purchasers of misbranded nutritional supplements are entitled to a refund of the
22 purchase price of the misbrand nutritional supplements.
23

24 91. Plaintiff, on behalf of himself and all other similarly situated California
25 consumers, and as appropriate, on behalf of the general public of the state of
26

1 California, seeks injunctive relief prohibiting Defendant continuing these unlawful
2 practices pursuant to California Civil Code § 1782(a)(2).
3

4 92. Plaintiff provided Defendant with notice of its alleged violations of the
5 CLRA pursuant to California Civil Code § 1782(a) via certified mail, demanding that
6 Defendant correct such violations.
7

8 93. If Defendant fails to respond to Plaintiff CLRA notice within 30 days,
9 Plaintiff may amend this Complaint to seek all available damages under the CLRA for
10 all violations complained of herein, including, but not limited to, statutory damages,
11 punitive damages, attorney's fees and cost and any other relief that the Court deems
12 proper.
13
14

15 **SIXTH CAUSE OF ACTION**
16 **Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§**
17 **17200, et seq.**
(On Behalf of the California Sub-Class)

18 94. Plaintiff incorporates by reference all allegations contained in this
19 Complaint as though fully stated herein.
20

21 95. The Sherman Law, Cal. Health & Safety Code §§ 109875 et seq., broadly
22 prohibits the misbranding of any food or drug products.
23

24 96. Defendant is a person within the meaning of Cal. Health & Safety Code
25 § 109995.
26

27 97. Additionally, California has adopted as its own, and as the Sherman Law
28 expressly incorporates, "[a]ll food labeling regulations and any amendments to those

1 regulations adopted pursuant to the federal act, in effect on January 1, 1993, or
2 adopted on or after that date" as "the food labeling regulations of this state." Cal.
3 Health & Safety Code § 110100(a). Federal statutes and regulations, including, but
4 not limited to, 21 U.S.C. §§ 321, 343, prohibit the mislabeling and misbranding of
5 food products, including nutritional supplements. See 21 U.S.C. § 321(ff) ("a dietary
6 supplement shall be deemed to be a food within the meaning of this chapter."). .
7

8
9 98. Federal statutes and regulations prohibit misleading consumers by
10 misrepresenting a product's nutritional ingredients and including an ingredient or an
11 amount of an ingredient on the Magnesium Supplements' nutritional labels that is not
12 actually included in the products themselves.
13

14
15 99. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits
16 mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or
17 certification of food products, as noted above.
18

19 100. The business practices alleged above are unlawful under Business and
20 Professional Code §§ 17500, et seq., California Civil Code §§ 1770(a)(2), (5), (7) and
21 (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive,
22 and/or misleading marketing, advertisement, packaging and labelling of food products
23 and dietary supplements.
24

25
26 101. As a result of Defendant's above unlawful, unfair and fraudulent acts and
27 practices, Plaintiff and members of the Class have suffered a substantial injury by
28 virtue of buying a product that misrepresented and/or omitted the true contents and

1 benefits of the Magnesium Supplements' magnesium contents. Had Plaintiff and
2 members of the Class known that Defendant's materials, advertisement and other
3 inducements misrepresented and/or omitted the true contents and benefits of the
4 Magnesium Supplements, they would not have purchased said products. Likewise,
5 Defendant's misleading and deceptive practices caused Plaintiff to purchase
6 Defendant's Magnesium Supplements and/or pay more than they would have
7 otherwise had they know the true nature of the contents of the Magnesium
8 Supplements.
9

10
11
12 102. As a result of Defendant's above unlawful, unfair and fraudulent acts and
13 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
14 appropriate, on behalf of the general public, seeks injunctive relief prohibiting
15 Defendant from continuing these wrongful practices, and such other equitable relief,
16 including full restitution of all improper revenues and ill-gotten profits derived from
17 Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded
18 nutritional supplements cannot legally be manufactured, held, advertised, distributed
19 or sold. Thus, misbranded nutritional supplements have no economic value and are
20 worthless as a matter of law, and purchasers of misbranded nutritional supplements
21 are entitled to a restitution refund of the purchase price of the misbranded product.
22
23
24
25

26 **DEMAND FOR RELIEF**

27 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,
28 pray for judgment against Defendant as follows:

- a. An order certifying the proposed Classes, designating Plaintiff as named representative of the Classes, and designating the undersigned as Class Counsel;
- b. An order awarding Plaintiff and class members their actual damages, incidental and consequential damages, punitive damages, and/or other form of monetary relief provided by law;
- c. An order awarding Plaintiff and the classes restitution, disgorgement, or other equitable relief as the Court deems proper;
- d. An order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;
- e. Reasonable attorneys' fees and costs;
- f. Pre-judgment and post-judgment interest, as provided by law;
- g. Such other and further relief as this Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: February 24, 2022

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorneys for Plaintiff