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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 RUTH MARTIN, individually and on
12 behalf of all other similarly situated,

13 Plaintiff,

14 v.

15 DOCTOR'S BEST, INC. a Delaware
16 corporation and DOES 1 THROUGH 10,
inclusive,

17 Defendants.
18

Case No. 8:23-cv-00378-FWS-KES

Case Assigned to Hon. Fred W. Slaughter

**FIRST AMENDED CLASS ACTION
COMPLAINT**

Complaint Removed: March 03, 2023
Trial Date: None Set

1 **I. INTRODUCTION**

2 **Defendant sells a supplement called “Natural Brain Enhancer” (the**
3 **“Product”) by falsely claiming that it will support “attention, learning, and**
4 **memory.” In reality, Defendant’s claims have been proven false by overwhelming**
5 **scientific evidence.**

6 **II. JURISDICTION**

7 1. Defendant invoked this Court’s jurisdiction under the Class Action
8 Fairness Act and removed the matter to this Court.

9 **III. PARTIES**

10 2. Plaintiff is a resident and citizen of California.

11 3. Defendant is incorporated in Delaware and has its principal place of
12 business in Tustin, California. Defendant develops, manufactures, promotes, markets,
13 distributes and/or sells the Product to consumers nationwide.

14 4. The above-named Defendant, along with its affiliates and agents, are
15 collectively referred to as “Defendants.” The true names and capacities of the
16 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently
17 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of
18 the Defendants designated herein as a DOE is legally responsible for the unlawful acts
19 alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the
20 true names and capacities of the DOE Defendants when such identities become known.

21 5. Plaintiff is informed and believes that at all relevant times, every
22 Defendant was acting as an agent and/or employee of each of the other Defendants and
23 was acting within the course and scope of said agency and/or employment with the full
24 knowledge and consent of each of the other Defendants, and that each of the acts and/or
25 omissions was made known to, and ratified by, each of the other Defendants.

26 **IV. FACTS**

27 6. Plaintiff is a consumer advocate with dual motivations for purchasing the
28 Product. First, Plaintiff was genuinely interested in using the product as directed and

1 obtaining the promised results, and Plaintiff’s desire to obtain the advertised benefits of
 2 the Product was a substantial, meaningful factor in Plaintiff’s decision to purchase the
 3 product. Second, Plaintiff is a “tester” who works to ensure that companies abide by
 4 the obligations imposed by California law. As someone who advances important public
 5 interests at the risk of vile personal attacks, Plaintiff should be “praised rather than
 6 vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

7 7. The front and back labels of the Product are as follows:



8 8. The accompanying marketing materials of the Product, found at
 9 [https://drbvitamins.com/products/doctor-s-best-natural-brain-enhancers-with-alphasize-](https://drbvitamins.com/products/doctor-s-best-natural-brain-enhancers-with-alphasize-and-serinaid-60-veggie-caps-21289)
 10 [and-serinaid-60-veggie-caps-21289](https://drbvitamins.com/products/doctor-s-best-natural-brain-enhancers-with-alphasize-and-serinaid-60-veggie-caps-21289), claim that the Product will support “attention,
 11 learning, and memory.”

12 9. Defendant’s efficacy claims are not simply unsubstantiated, they have been
 13 proven false by the overwhelming weight of scientific evidence. Numerous scientific
 14 studies conclusively prove that the ingredients in the Product – Calcium,
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1 Glycerophosphocholine, and Phosphatidylserine – do not and cannot the promised
2 benefits.

3 10. A non-exclusive list of clinical studies disproving the challenged efficacy
4 claims, along with a brief summary of the key findings of each study, is attached hereto
5 as **Exhibit “A”**.

6 11. Plaintiff purchased the Product in substantial part based upon the above-
7 referenced efficacy claims. Plaintiff used the Product as directed but did not experience
8 any of the benefits promised by the Product.

9 12. The “Who, What, When, Where, and How of the misconduct” is as
10 follows:

- 11 a. **The “Who”**: The party responsible for promulgating the false
12 efficacy claims is Defendant Dr’s Best, Inc. of Tustin, California.
- 13 b. **The “What”**: The claims on the label of Defendant’s product that
14 the product promotes “attention, learning, and memory” and help
15 “cope with occasional stress.”
- 16 c. **The “When”**: The false claims were made throughout the class
17 period, and Plaintiff purchased the product in the Spring of 2022;
- 18 d. **The “Where”**: Plaintiff purchased the product at Wal-Mart in
19 California.
- 20 e. **The “How”**: By making demonstrably false claims that its product
21 provides memory benefits that it does not and cannot provide,
22 Defendant has illegally collected millions of dollars from
23 unsuspecting consumers.

24 V. CLASS ALLEGATIONS

25 13. Plaintiff brings this action individually and on behalf of all others similarly
26 situated (the “Class”) defined as follows:

27 **All persons within the United States who purchased the Product**
28 **for personal use during the Class Period.**

1 21. Plaintiff realleges and incorporates the allegations elsewhere in the
2 Complaint as if set forth in full herein.

3 22. California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§
4 1750, et seq., prohibits deceptive practices in connection with the conduct of a business
5 that provides goods, property, or services primarily for personal, family, or household
6 purposes.

7 23. Defendant’s false and misleading labeling and advertising was designed to,
8 and did, induce the purchase and use of the Product for personal, family, or household
9 purposes by Plaintiff and Class Members, and violated and continue to violate the
10 following sections of the CLRA:

- 11 i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits
12 which they do not have; and
- 13 ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or
14 grade if they are of another.

15 24. Defendant profited from the sale of the falsely, deceptively, and
16 unlawfully advertised Product to unwary consumers. Defendant’s wrongful business
17 practices constitute a continuing course of conduct in violation of the CLRA.

18 25. More than 30 days ago and in accordance with section 1782 of the CLRA,
19 Plaintiff notified Defendant in writing of its violations and demanded that Defendant
20 rectify the actions described above. Defendant refused Plaintiff’s request.

21 **VII. PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for judgment against Defendant for:

- 23 i. Appropriate class certification and management orders;
- 24 ii. Actual, statutory and punitive damages;

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iii. An award of attorneys' fees and costs; and

iv. All other relief at law or in equity as may be proper.

Dated: March 15, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott. J. Ferrell
Attorneys for Plaintiff

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