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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 v.
14

15 ONNIT LABS, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

16 Defendants.
17

Case No. **23STCV06839**

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CONSUMER
LEGAL REMEDIES ACT**

1 **I. INTRODUCTION**

2 **Defendant sells a supplement known as “Alpha Brain” (the “Product”) by falsely**
3 **claiming that it will support “memory, focus, and cognitive processing speed.” In reality,**
4 **Defendant’s claims have been proven false by overwhelming scientific evidence.**

5 **II. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over all causes of action asserted herein.

7 2. Venue is proper in this County in accordance with California Code of Civil Procedure
8 Section 394(b) because “none of the defendants reside in the state.” As such, venue is proper “in any
9 county that the plaintiff may designate in his or her complaint.”

10 3. Defendant is subject to jurisdiction under California’s “long-arm” statute found at
11 California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant
12 is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes
13 that Defendant generates a minimum of eight percent of its national website sales to Californians, such
14 that the website “is the equivalent of a physical store in California.” Since this case involves false
15 representations made in part on Defendant’s website, California courts can “properly exercise personal
16 jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v.*
17 *Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

18 **III. PARTIES**

19 4. Plaintiff is an individual and a consumer advocate who is a resident of California.

20 5. Defendant is a Delaware company that develops, manufactures, promotes, markets,
21 distributes and/or sells the Product to consumers nationwide. The above-named Defendant, along with
22 its affiliates and agents, are collectively referred to as “Defendants.”

23 6. The true names and capacities of the Defendants sued herein as DOE Defendants are
24 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff will
25 amend the Complaint to reflect the true names of the DOE Defendants when such identities become
26 known.

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IV. FACTS

7. Plaintiff is a consumer advocate with dual motivations for purchasing the Product. First, Plaintiff was genuinely interested in using the product as directed and obtaining the promised results, and Plaintiff's desire to obtain the advertised benefits of the Product was a substantial, meaningful factor in Plaintiff's decision to purchase the product. Second, Plaintiff is a "tester" who works to ensure that companies abide by the obligations imposed by California law. As someone who advances important public interests at the risk of vile personal attacks, Plaintiff should be "praised rather than vilified." *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

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



9. The accompanying marketing materials of the Product found at www.onnit.com/alphabrain/ claim: "The ultimate way to get 'in the zone,' Alpha BRAIN supports memory, focus, and cognitive processing speed."

10. Defendant's efficacy claims are not simply unsubstantiated, they have been proven to false by the overwhelming weight of scientific evidence. Numerous scientific studies conclusively prove that the ingredients in the Product do not and cannot the promised benefits.

1 11. If and when the Court deems it necessary (and subject to any protective order that may
2 be appropriate), Plaintiff will submit a non-exhaustive list of clinical studies demonstrating the falsity
3 of Defendant’s efficacy claims, along with a brief summary of the key findings of each study.

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

7 13. The “Who, What, When, Where, and How of the misconduct” is as follows:

- 8 a. **The “Who”:** The party responsible for promulgating the false efficacy claims is
9 Defendant Onnit Labs, Inc., of Austin, Texas.
- 10 b. **The “What”:** The claims on the label of Defendant’s product and accompanying
11 marketing materials that the product promotes supports “memory, focus, and cognitive
12 processing speed.”
- 13 c. **The “When”:** The false claims were made throughout the class period, and Plaintiff
14 purchased the product within the past six months;
- 15 d. **The “Where”:** Plaintiff purchased the product at GNC in California.
- 16 e. **The “How”:** By making demonstrably false claims that its product provides memory
17 benefits that it does not and cannot provide, Defendant has illegally collected millions
18 of dollars from unsuspecting consumers.

19 **V. CLASS ALLEGATIONS**

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

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

24 A. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the
25 number to be in the thousands, if not more. The exact identities of Class Members may be ascertained
26 by the records maintained by Defendant and its authorized retailers.

27 B. COMMONALITY: Common questions of fact and law exist as to all class members,
28 and predominate over any questions affecting only individual members of the Class. Such common

1 legal and factual questions, which do not vary between Class members, and which may be determined
2 without reference to the individual circumstances of any Class Member, include but are not limited to
3 the following:

- 4 i. Whether Defendant violated the law;
- 5 ii. The amount of damages; and
- 6 iii. The proper injunctive relief.

7 C. TYPICALITY: As a person who purchased the product for personal use and used it as
8 directed, Plaintiff is asserting claims that are typical of the Class.

9 D. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members
10 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals
11 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
12 would otherwise be improper are excluded.

13 E. SUPERIORITY: A class action is superior to other available methods of adjudication
14 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even
15 if every Class Member could afford individual litigation, the court system could not. It would be
16 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

17 **VI. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Violations of the Consumer Legal Remedies Act,**

20 **Cal. Civ. Code §§ 1750 et seq.**

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

23 16. California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et
24 seq., prohibits deceptive practices in connection with the conduct of a business that provides goods,
25 property, or services primarily for personal, family, or household purposes.

26 17. Defendant's false and misleading labeling and advertising was designed to, and did,
27 induce the purchase and use of the Product for personal, family, or household purposes by Plaintiff
28 and Class Members, and violated and continue to violate the following sections of the CLRA:

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

5 18. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised
6 Product to unwary consumers. Defendant's wrongful business practices constituted, and constitute, a
7 continuing course of conduct in violation of the CLRA.

8 19. By the filing of this action, Plaintiff hereby notifies Defendant of the particular alleged
9 violations of Section 1770 and demands that Defendant correct, repair, replace, or otherwise rectify
10 the goods or services alleged to be in violation of Section 1770. Notwithstanding anything to the
11 contrary herein, Plaintiff does not seek and will not seek damages under Section 1780 if an
12 appropriate classwide remedy is given within 30 days after receipt of the notice. In accordance with
13 Section 1770(d) and after 30 days, Plaintiff will amend this Complaint without leave of court to
14 include a request for damages if no such remedy is provided.


15 **VII. PRAYER FOR RELIEF**

16 Wherefore, Plaintiff prays for judgment against Defendant for:

- 17 i. Appropriate class certification and management orders;
- 18 ii. Actual, statutory and punitive damages;
- 19 iii. An award of attorneys' fees and costs; and
- 20 iv. All other relief at law or in equity as may be proper.

21
22 Dated: March 29, 2023

PACIFIC TRIAL ATTORNEYS, APC

23 By: 
24 Scott J. Ferrell
25 Attorneys for Plaintiff
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