

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

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Phillip Stonehart and Moussa Kouyate, *on* :  
*behalf of themselves and all others similarly* :  
*situated,* :

Plaintiffs, :

vs. :

Now Health Group, Inc., :

Defendant. :

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Civil Action No.:

**CLASS ACTION COMPLAINT**

For this Class Action Complaint, Plaintiffs Phillip Stonehart and Moussa Kouyate, by undersigned counsel, state as follows:

**INTRODUCTION**

1. Defendant Now Health Group, Inc. (“Defendant” or “NHG”) formulates, manufactures, advertises and sells “Magnesium Citrate Softgels” dietary supplements (the “Magnesium Supplements” or “Supplements”) throughout the United States. The labels on the Supplements claim that one serving consisting of three (3) Softgel capsules contain 400 mg of elemental magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate.

2. But the Magnesium Supplements do not contain 400 mg of elemental magnesium in a 3-capsule serving and thus do not contain the quantity of magnesium that is advertised, and thus warranted, on each of the product’s labels. Indeed, it is impossible to fit 400 mg of elemental magnesium in three Softgel capsules; the magnesium that NHG contends that it uses – allegedly a “2,018 mg complex of Magnesium Citrate, Magnesium Glycinate and Magnesium Malate” per

serving of the Supplements – simply possesses far too low a concentration of magnesium to do so. Thus, the Supplements contain significantly less magnesium than what is claimed and displayed or magnesium from sources other than magnesium citrate, magnesium glycinate and magnesium malate.

3. In misstating the actual magnesium content of the Supplements, NHG violates federal law and regulations designed to prevent deceptive supplement labeling and breaches the express warranty created by its labeling. Defendant’s conduct also constitutes fraudulent concealment and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, et seq., and New York General Business Law §§ 349 & 350, Cal. Bus. & Prof. Code §§ 17200 *et seq.* Defendant’s prominent misrepresentations regarding its Magnesium Supplements form a pattern of unlawful and unfair business practices that visits harm on the consuming public.

### **PARTIES**

4. Plaintiff Phillip Stonehart (“Mr. Stonehart”) is and at all times relevant hereto was an adult individual residing in and domiciled in Bountiful, Utah. Mr. Stonehart’s sole and permanent home is in Bountiful, Utah, where he intends on remaining. In addition, Mr. Stonehart’s real and personal property is within the state of Utah; he is registered to vote in Utah; and he pays taxes in Utah. Mr. Stonehart has purchased NHG’s Supplements in Utah within the last four years, including at a Natural Grocers retail store located in Bountiful, Utah, as well as from Amazon in or around November 2023. Mr. Stonehart viewed the front and back label of Defendant’s Supplements on each occasion that he purchased the product during the Class Period. On April 9, 2024, Mr. Stonehart sent a pre-suit demand letter to Defendant via certified mail, as well as a separate copy to Defendant’s counsel, setting forth Mr. Kouyate’s claims that

Defendant's misrepresentations regarding its Supplements' magnesium content "is a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, constitutes fraudulent concealment, and is a breach of the Utah and Illinois implied warranty of merchantability and NOW's express warranty that its Magnesium Supplements contain 400 mg of magnesium per one serving." Mr. Stonehart's letter further demanded "on behalf of himself and all other similarly situated that NOW immediately cease the above unlawful practices, cease mislabeling and misbranding NOW's Magnesium Supplements, and provide Mr. Stonehart and all other United States purchasers of the Magnesium Supplements with full restitution of all improper revenues and ill-gotten profits derived from NOW's wrongful conduct to the fullest extent permitted by law. Further, NOW's misbranded Magnesium Supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional supplements like Mr. Stonehart are entitled to a restitution refund of the purchase price of the misbranded supplements. Therefore Mr. Stonehart demands NOW provide a full restitution to Mr. Stonehart and all similarly situated United States purchasers as set forth herein."

5. Plaintiff Moussa Kouyate ("Mr. Kouyate," and together with Mr. Stonehart, the "Plaintiffs") is and at all times relevant hereto was an adult individual residing in and domiciled in the Bronx, New York. Mr. Kouyate's sole and permanent home is in the Bronx, New York, where he intends on remaining. In addition, Mr. Kouyate is registered to vote in New York and pays taxes in New York. Mr. Kouyate has purchased NHG's Supplements in New York within the last four years, including at a Walmart retail store located in Valley Stream, New York. Mr. Kouyate viewed the front and back label of Defendant's Supplements on each occasion that he purchased the product during the Class Period. On April 25, 2024, Mr. Kouyate sent a pre-suit demand letter to Defendant via certified mail, as well as a separate copy to Defendant's counsel,

setting forth Mr. Kouyate's claims that Defendant's misrepresentations regarding its Supplements' magnesium content "is a violation of N.Y. GBL §§ 349 & 350, constitutes fraudulent concealment, and is a breach of the New York and Illinois implied warranty of merchantability and NOW's express warranty that its Magnesium Supplements contain 400 mg of magnesium per one serving." Mr. Kouyate's letter further demanded "on behalf of himself and all other similarly situated that NOW immediately cease the above unlawful practices, cease mislabeling and misbranding NOW's Magnesium Supplements, and provide Mr. Kouyate and all other United States purchasers of the Magnesium Supplements with full restitution of all improper revenues and ill-gotten profits derived from NOW's wrongful conduct to the fullest extent permitted by law. Further, NOW's misbranded Magnesium Supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional supplements like Mr. Kouyate are entitled to a restitution refund of the purchase price of the misbranded supplements. Therefore Mr. Kouyate demands NOW provide a full restitution to Mr. Kouyate and all similarly situated United States purchasers as set forth herein."

6. Defendant Now Health Group, Inc. ("NHG" or "Defendant") is an Illinois business entity with a principal place of business at 244 Knollwood Drive, Bloomingdale, Illinois 60108. From its Illinois headquarters NHG markets, advertises, distributes and sells its Supplements throughout the United States.

#### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005: (1) during the Class Period NHG sold its Magnesium Supplements to more than 100 people, (2) in the same period those sales, combined with Plaintiffs' requested injunctive relief, punitive damages and attorneys' fees, exceeds

\$5,000,000, and (iii) there is minimal diversity because Plaintiffs and Class Members, and Defendant are citizens of different states. As set forth above, Plaintiffs are citizens of Utah and New York, and Defendant is a citizen of Illinois.

8. Venue is proper in this District and this Court has personal jurisdiction over NHG because NHG is an Illinois business entity and its principal place of business is located in this District.

### **FACTUAL ALLEGATIONS**

*a. Defendant's Magnesium Supplements do not contain 400 mg of magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate as it falsely advertises.*

9. The amount and type of magnesium contained within Defendant's Magnesium Supplements is material to any consumer seeking to purchase the Magnesium Supplements.

10. Defendant purports to sell its Supplements in the form of a complex of magnesium citrate, magnesium glycinate and magnesium malate.

11. As set forth in the images below, NHG labels and advertises its Magnesium Supplements as containing 400mg of magnesium derived from magnesium citrate, magnesium glycinate and magnesium malate.

12. On the front label of the Supplements NHG states that the Supplements contain "Magnesium Citrate" "With Glycinate and Malate" which provides "Superior Bioavailability":



13. On the “Supplement Facts” label NHG claims that a single serving of 3 Softgels contains “400mg” of “Magnesium (elemental)” “from 2,018 mg complex of Magnesium Citrate, Magnesium Glycinate and Magnesium Malate”<sup>1</sup>:

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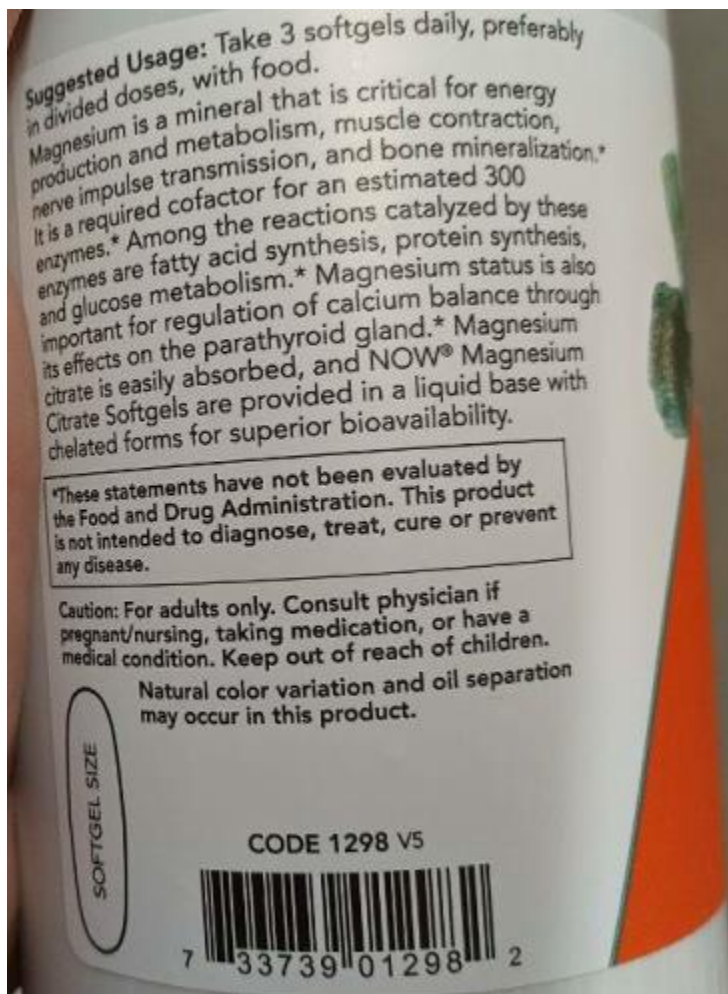
<sup>1</sup> See <https://ods.od.nih.gov/factsheets/Magnesium-HealthProfessional/> (the U.S. Department of Health & Human Services directs that “[t]he Supplement Facts panel on a dietary supplement label declares the amount of elemental magnesium in the product, not the weight of the entire magnesium-containing compound.”) (last visited May 21, 2024).



14. As reflected above, the Supplement Facts represent that the listed 400 mg of elemental magnesium derived from a 2,018 mg complex of magnesium citrate, magnesium glycinate and magnesium malate constitutes 95% of the recommended Daily Value of magnesium. Under 21 C.F.R. § 101.9(c)(8), addressing “[t]he requirements related to including a statement of the amount per serving of vitamins and minerals,” “[t]he quantitative amounts of vitamins and minerals, excluding sodium, shall be the amount of the vitamin or mineral included in one serving of the product, using the units of measurement and the levels of significance given in paragraph

(c)(8)(iv) of this section.” 21 C.F.R. § 101.9(c)(8)(iii). With respect to magnesium, the recommended Daily Value for adults and children four years and older is 420 milligrams (mg) of magnesium. 21 C.F.R. § 101.9(c)(8) (iv).

15. Elsewhere on the labels, NHG claims that “Magnesium citrate is easily absorbed” and that the Supplements “are provided in a liquid base with chelated forms for superior bioavailability.”



16. The above representations constitute an express warranty regarding the Magnesium Supplements’ magnesium content.



***b. It is impossible for three capsules of the Magnesium Supplements to contain 400 mg of elemental magnesium***

17. Defendant's representations are false and misleading.

18. It is impossible for three capsules of Defendant's Magnesium Supplements to contain the advertised and warranted 400 mg of elemental magnesium due to the magnesium content of magnesium citrate, magnesium glycinate and magnesium malate.

19. Indeed, magnesium citrate contains only 11.23% elemental magnesium<sup>2</sup>; magnesium glycinate contains only 14.1% elemental magnesium<sup>3</sup>; and magnesium malate contains 15.54% elemental magnesium.<sup>4</sup>

20. Thus, even if the Supplements contain only magnesium malate – the alleged source of magnesium containing the highest percentage of elemental magnesium – the complex would only contain 327.5 mg of magnesium, not 400 mg of magnesium as warranted on the Supplements' label ( $2,018 \times 0.1554 = 327.58$ ).

21. Further, if the Supplements contain *any* amount of magnesium citrate, magnesium glycinate, and magnesium malate, the actual amounts of elemental magnesium in one serving of the Supplements is even lower.<sup>5</sup>

22. In light of the foregoing, Defendant's representations that a three-capsule single serving of the Magnesium Supplements contains 400 mg of elemental magnesium from the

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<sup>2</sup> [https://en.wikipedia.org/wiki/Magnesium\\_citrate](https://en.wikipedia.org/wiki/Magnesium_citrate)

<sup>3</sup> *See, e.g.*, [https://en.wikipedia.org/wiki/Magnesium\\_glycinate](https://en.wikipedia.org/wiki/Magnesium_glycinate) (last visited December 7, 2023).

<sup>4</sup> <https://medium.com/@isotropeusa/magnesium-malate-supports-natural-energy-production-promotes-joint-health-9f4ba3573459>

<sup>5</sup> For instance, if the complex was comprised entirely of magnesium citrate there would be 236.7 mg of elemental magnesium in three capsules. If the complex was comprised entirely of magnesium glycinate there would be 297.2 mg of elemental magnesium in three capsules.

2,018mg complex of magnesium citrate, magnesium glycinate, and magnesium malate is false.

23. To the extent that one serving of the Supplements do contain 400 mg of elemental magnesium, such magnesium is not derived from magnesium citrate, magnesium glycinate, and magnesium malate and instead must come from an alternative, undisclosed source of magnesium.

24. For instance, the magnesium may be derived from magnesium oxide, a cheaper heavy form of magnesium supplements commonly used in laxatives. Magnesium oxide contains a higher percentage of elemental magnesium than magnesium citrate, magnesium glycinate, and magnesium malate. It is less desirable to consumers because, *inter alia*, it is not absorbed by the body as well as other sources of magnesium and is inferior at raising their magnesium levels.

25. Whether the Supplements contain the oxide or not, they do not contain 400mg of elemental magnesium derived from 2,018mg of magnesium citrate, magnesium glycinate, and magnesium malate as advertised.

26. The above misrepresentations regarding the contents and ingredients of Defendant's Magnesium Supplements are unlawful under both state and federal law. The Federal Food, Drug, and Cosmetic Act ("FDCA"), passed by Congress in 1938, grants the Food and Drug Administration ("FDA") power to ensure "foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A). In 1990, Congress amended the FDCA with the Nutrition Labeling and Education Act ("NLEA"), which sought to clarify and strengthen the FDA's legal authority to require nutrition labeling on foods, and to establish the circumstances under which claims may be made about nutrients in foods. 21 U.S.C. §§ 343, et seq.

27. NHG's false and deceptive statements violate 21 U.S.C. § 343(a)(1), which deems food (including nutritional supplements) misbranded when the label contains a statement that is "false or misleading in any particular." Federal regulations also dictate the manner in which

Defendant must label its product and the methods it must use to determine the magnesium contents of its product. Defendant failed to ensure the accuracy of its Magnesium Supplements' labels in accordance with these federal regulations.

28. Utah law likewise prohibits the misbranding of food in a way that parallels the FDCA, deeming food misbranded if “its label is false or misleading in any way.” Utah Code Ann. § 4-5-201(2)(a).

29. In addition, New York prohibits the misbranding of food in a way that parallels the FDCA through New York's Agriculture and Marketing Law which provides in relevant part that food shall be deemed misbranded “[i]f its labeling is false or misleading in any particular,” and also incorporates the FDCA's labeling provisions found in 21 C.F.R. § 101. N.Y. Agric. & Mkts. Law § 201; N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1 (“the commissioner hereby adopts the current regulations as they appear in title 21 of the *Code of Federal Regulations* (revised as of April 1, 2013; U.S. Government Printing Office, Washington, DC 20402), in the area of food packaging and labeling as follows”).

30. NHG's representations regarding the magnesium contents of its Magnesium Supplements – including its representation that there are 400 mg of magnesium derived from a complex of 2,108 mg of the magnesium citrate, magnesium glycinate and magnesium malate in three (3) capsules – are material. Reasonable consumers of Magnesium Supplements base their purchasing decisions on the advertised and warranted amount of magnesium contain therein and the source from which such magnesium is derived. Consumers specifically prize magnesium derived from magnesium citrate, magnesium glycinate and magnesium malate over other sources of magnesium. Additionally, consumers reasonably rely of Defendant's label to accurately determine the identity, amount and source of any dietary ingredients included within the

Defendant's Magnesium Supplements. Accordingly, Plaintiffs and Class Members, as reasonable consumers, were materially misled by Defendant's representations regarding the true nature and composition of the Magnesium Supplements' magnesium contents.

31. Further, such misrepresentations also breach Defendant's express warranty that each serving of the Magnesium Supplements contains 400 mg of elemental magnesium from a complex of 2,108 mg of magnesium citrate, magnesium glycinate and magnesium malate.

32. The difference between the Magnesium Supplements promised and the products sold is significant and material because the sold products do not contain 400 mg of magnesium derived from a complex of 2,108 mg of magnesium citrate, magnesium glycinate and magnesium malate per serving of three (3) Softgel capsules. The amount and source of actual magnesium provided, and the measure of magnesium per serving, has real impacts on the benefits provided to consumers by the Magnesium Supplements and the actual value of the Supplements. Persons requiring a certain amount of magnesium derived from magnesium citrate, magnesium glycinate and magnesium malate are left to ingest less magnesium from those sources than Defendant states will be provided, and are left to ingest magnesium that is derived from sources of magnesium that are inferior and less desirable than the complex of magnesium citrate, magnesium glycinate and magnesium malate promised by the Defendant.

33. Because Plaintiffs and Class Members purchased a product that contains less magnesium from magnesium citrate, magnesium glycinate and magnesium malate than advertised and warranted, Plaintiffs and Class Members have suffered an injury-in-fact and have paid a price premium for the Supplements. Misbranded nutritional supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional

supplements are entitled to a restitution refund of the purchase price of the misbranded nutritional supplements. Additionally, had Plaintiffs and Class Members known the true nature and composition of the magnesium content of the Magnesium Supplements, they would not have purchased such Products, or would have only paid for the magnesium from magnesium citrate, magnesium glycinate and magnesium malate actually delivered with the Supplements.

### **CLASS ACTION ALLEGATIONS**

#### **A. The Classes**

34. Plaintiffs bring this action on his own behalf and on behalf of the following Classes of persons pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3) an/or 23(c)(5):

**Nationwide Class:** All persons in the United States who purchased Defendant's Magnesium Supplements during the four year period preceding the filing of the complaint.

**New York Sub-Class:** All persons who purchased Defendant's Magnesium Supplements in New York during the four year period preceding the filing of the complaint.

**Utah Sub-Class:** All persons who purchased Defendant's Magnesium Supplements in Utah during the four year period preceding the filing of the complaint.

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

#### **B. Numerosity**

36. Upon information and belief, the Classes are so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Classes are unknown at this time, Plaintiffs believes, and on that basis alleges, that NHG has sold its Magnesium Supplements to thousands of New York and Utah purchasers during the Class Period, thousands of more persons around the country and therefore there are thousands of

members in the Classes.

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

37. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. These questions include:

- a. Whether Defendant labels, markets and otherwise advertises its Magnesium Supplements in a deceptive, false, or misleading manner by misstating the product's magnesium content;
- b. Whether Defendant's sale of the Magnesium Supplements constitutes unfair methods of competition and unfair or deceptive acts or practices including: whether Defendant misrepresents the source, sponsorship, approval, or certification of their Magnesium Supplements; whether Defendant misrepresents that the Magnesium Supplements have benefits which they do not have; whether Defendant represents that the Magnesium Supplements are of a particular standard or quality if it is of another; and whether Defendant advertises its Magnesium Supplements with intent not to sell them as advertised;
- c. Whether Defendant's sale of the Magnesium Supplements constitutes false, misleading and deceptive advertising;
- d. Whether Defendant's sale of the Magnesium Supplements violates New York General Business Law §§ 349 & 350, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*;
- e. Whether Defendant's sale of the Magnesium Supplements constitutes a breach of warranty;

- f. Whether Defendant concealed material facts concerning the Magnesium Supplements;
- g. Whether Defendant engaged in unconscionable commercial practices in failing to disclose material information concerning the Magnesium Supplements;
- h. The nature and extent of damages, restitution, equitable remedies, and other relief to which Plaintiffs and the Class are entitled; and
- i. Whether Plaintiffs and the Classes should be awarded attorneys' fees and the costs of suit.

**D. Typicality**

38. The Plaintiffs' claims are typical of the claims of the Classes since Plaintiffs purchased the Magnesium Supplements within the last four years, as did each member of the Class. Furthermore, Plaintiffs and all members of the Class sustained economic injuries arising out of Defendant's wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

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

39. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiffs nor their counsel has any interest which might cause them not to vigorously pursue this action.

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

40. A class action is the superior method for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive

litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court.

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

**FIRST CAUSE OF ACTION**

**Fraudulent Concealment**

**(Plaintiffs on behalf of the Nationwide Class or in the alternative the New York and Utah Subclasses)**

42. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

43. By failing to disclose and concealing the contents of the Magnesium Supplements from Plaintiffs and Class Members (i.e., the Magnesium Supplements do not include the amount of magnesium derived from a 2,018 mg complex of magnesium citrate, magnesium glycinate and magnesium malate advertised and warranted), Defendant concealed and suppressed material facts concerning the Magnesium Supplements.

44. Defendant knew or should have known that the Magnesium Supplements did not contain the amount of magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate advertised and warranted and were not suitable for their intended



use.

45. Defendant was under a duty to Plaintiffs and Class Members to disclose and/or not misrepresent the contents of the Magnesium Supplements because:

- a. Defendant was in a superior position to know the true state of facts about the magnesium contents of Defendant's Magnesium Supplements, including the type(s) of magnesium Defendant included in the Supplements;
- b. Plaintiffs and Class Members could not reasonably have been expected to learn or discover that the Magnesium Supplements do not contain the amount of magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate as advertised and warranted; and,
- c. Defendant knew that Plaintiffs and Class Members could not reasonably have been expected to learn about or discover the true magnesium contents of Defendant's Magnesium Supplements.

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

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

48. Plaintiffs and the Classes relied on Defendant to disclose material information it knew, such as the defective nature and contents of the Magnesium Supplements, and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

49. By failing to disclose the true contents of the Magnesium Supplements, Defendant

knowingly and intentionally concealed material facts and breached its duty not to do so.

50. Had Plaintiffs and other Class Members known that Magnesium Supplements did not contain the amount of advertised and warranted magnesium from a complex of magnesium citrate, magnesium glycinate and magnesium malate, they would not have purchased the Magnesium Supplements or would have paid less for them.

51. As a result of Defendant's misconduct, Plaintiffs and the other Class Members have been harmed and have been injured.

52. Accordingly, Defendant is liable to Plaintiffs and Class Members for damages in an amount to be proven at trial.

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

54. Furthermore, as the intended and expected result of its fraud and conscious wrongdoing, Defendant has profited and benefited from Plaintiffs' and Class Members' purchases of falsely advertised and misbranded Magnesium Supplements. Defendant has voluntarily accepted and retained these profits and benefits with full knowledge and awareness that, as a result of Defendant's misconduct alleged herein, Plaintiffs and Class Members were not receiving Magnesium Supplements of the quality, nature, fitness, or value that had been represented by Defendant, and that a reasonable consumer would expect.

55. Defendant has been unjustly enriched by its fraudulent, deceptive, and otherwise unlawful conduct in connection with the sale of the Magnesium Supplements and by withholding

benefits from Plaintiffs and Class Members at the expense of these parties. Equity and good conscience militate against permitting Defendant to retain these profits and benefits, and Defendant should be required to make restitution of its ill-gotten gains resulting from the conduct alleged herein.

**SECOND CAUSE OF ACTION**

**Unjust Enrichment**

**(Plaintiffs on behalf of the Nationwide Class or in the alternative the New York and Utah Subclasses)**

56. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

57. As a result of Defendant's fraudulent acts, and omissions related to the magnesium contents of the Supplement, Defendant obtained monies which rightfully belong to Plaintiffs, and the Class Members to the detriment of Plaintiffs and Class Members.

58. Defendant appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiffs and the proposed Class Members who, without knowledge of the true contents of the Supplements, paid a higher price for Supplements, which actually had lower values. Defendant also received monies for Supplements that Plaintiffs and the Class Members would not have otherwise purchased or leased.

59. It would be inequitable and unjust for Defendant to retain these wrongfully obtained profits.

60. Defendant's retention of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience.

61. As a result of Defendant's unjust enrichment, Plaintiffs and Class Members have suffered damages.

62. Plaintiffs do not seek restitution under their Unjust Enrichment claim. Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

63. Additionally, Plaintiffs and Class Members seek injunctive relief enjoining Defendant from further deceptive distribution and sales practices with respect to the Supplement, enjoining Defendant from selling the Supplement with misleading information concerning the Supplement's true magnesium content. Money damages are not an adequate remedy for the above requested non-monetary injunctive relief.

**THIRD CAUSE OF ACTION**  
**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act**  
**(815 ILCS 505/1, ET SEQ. and 720 ILCS 295/1A)**  
**(Plaintiffs on behalf of the Nationwide Class)**

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

65. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including, but not limited to, the use of employment of any deception, fraud, false pretense, tales promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived, or damaged thereby.” 815 ILCS 505/2.

66. Defendant is a “person” as that term is defined in 815 ILCS 505/1(c).

67. Plaintiffs and class members are “consumers” as that term is defined in 815 ILCS 505/1(e).

68. The allegations set forth herein constitute false, misleading, or deceptive trade acts

or practices.

69. At all material times, Defendant engaged in a scheme of offering the Magnesium Supplements for sale to Plaintiffs, and other members of the Class by way of, inter alia, commercial marketing, and advertising, internet content, product packaging and labelling, and other promotional materials.

70. These materials, advertisements and other inducements misrepresented and/or omitted the true contents of the Magnesium Supplements as alleged herein, including the amount of magnesium contained in one serving of the Supplements. Such advertisements and inducements appear on the labels of Defendant's Magnesium Supplements and Defendant's website.

71. Defendant knew, or in the exercise of reasonable care should have known, that the statements regarding its Magnesium Supplements' magnesium content, and specifically the amount of magnesium contained in the Supplements, were false, misleading and/or deceptive.

72. Consumers, including Plaintiffs and members of the Class, necessarily and reasonably relied on Defendant's statements regarding the contents of its products. Consumers, including Plaintiffs and members of the Class, were among the intended targets of such representations.

73. The above acts of Defendant, in disseminating said misleading and deceptive statements to consumers, including Plaintiff and members of the Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and amount of the ingredients in Defendant's Magnesium Supplements, including the true amount of magnesium, and constitute unfair and deceptive acts and practices and materially misleading advertising.

74. Plaintiffs and Class members were harmed and suffered injury as a result of Defendant's conduct. Defendant has been unjustly enriched at the expense of Plaintiff and the

members of the Class.

75. Accordingly, Plaintiffs and members of the Class seek damages including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded nutritional supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional supplements are entitled to a restitution refund of the purchase price of the misbranded supplements.

76. Defendant's violations present a continuing risk to Plaintiffs as well as the other Class Members and the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

#### **FOURTH CAUSE OF ACTION**

#### **Breach of Express Warranty Pursuant to Utah Code Ann. § 70A-2-313 (Plaintiff Stonehart On Behalf of the Utah Class)**

77. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

78. Mr. Stonehart and each member of the Utah Class formed a contract with Defendant at the time Plaintiffs and the other members of the Utah Class purchased one or more of Defendant's Magnesium Supplements. The terms of that contract include the promises and affirmations of fact made by Defendant on the packaging of the Magnesium Supplements regarding the products' magnesium content, and specifically that one serving of the product contains 400 mg of magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate.

79. The Magnesium Supplements' packaging constitute express warranties, became

part of the basis of the bargain, and are part of a standardized contract between Mr. Stonehart and the members of the Utah Class on the one hand, and Defendant on the other.

80. All conditions precedent to Defendant's liability under this contract have been performed by Mr. Stonehart and the Utah Class.

81. Defendant breached the terms of this contract, including the express warranties, with Mr. Stonehart and the Utah Class by not providing the products that could provide the benefits promised, i.e. that the Supplements contain the warranted amount of magnesium from a complex of magnesium citrate, magnesium glycinate and magnesium malate as magnesium glycinate, as alleged above.

82. As a result of Defendant's breach of its contract, Mr. Stonehart and the Utah Class have been damaged in the amount of the different purchase price of any and all of the Magnesium Supplements they purchased and the price of a product which provides the benefits and contents as warranted.

**FIFTH CAUSE OF ACTION**

**Breach of Implied Warranty of Merchantability Pursuant to Utah Code Ann. § 70A-2-314  
(Plaintiff Stonehart On Behalf of the Utah Class)**

83. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

84. Defendant is a merchant with respect to the Magnesium Supplements.

85. The Magnesium Supplements were subject to implied warranties of merchantability running from the Defendant to Plaintiffs and Class Members.

86. An implied warranty that the Magnesium Supplements were merchantable arose by operation of law as part of the sale of the Magnesium Supplements.

87. Defendant breached the implied warranty of merchantability in that the Magnesium

Supplements do not contain the amount of advertised magnesium derived from complex of magnesium citrate, magnesium glycinate and magnesium malate, do not provide the benefits associated with the warranted and advertised 400 mg of magnesium from a complex of magnesium citrate, magnesium glycinate and magnesium malate, and thus were not in merchantable condition when Mr. Stonehart and Utah Class Members purchased them, or at any time thereafter, and they were unfit for the ordinary purposes for which such nutritional supplements are used.

88. Defendant has breached the implied warranty of merchantability because the Magnesium Supplements when sold would not pass without objection in the trade.

89. As a result of Defendant's breach of the applicable implied warranties, purchasers of the Magnesium Supplements suffered an ascertainable loss, were harmed, and suffered actual damages.

**SIXTH CAUSE OF ACTION**  
**Breach of Express Warranty Pursuant to N.Y. UCC § 2-313**  
**(Plaintiff Kouyate On Behalf of the New York Class)**

90. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

91. Mr. Kouyate and each member of the New York Class formed a contract with Defendant at the time Mr. Kouyate and the other members of the New York Class purchased one or more of Defendant's Magnesium Supplements. The terms of that contract include the promises and affirmations of fact made by Defendant on the packaging of the Magnesium Supplements regarding the products' magnesium content, and specifically that one serving of the product contains 400 mg of magnesium derived from a complex of magnesium citrate, magnesium glycinate and magnesium malate.

92. The Magnesium Supplements' packaging constitute express warranties, became



part of the basis of the bargain, and are part of a standardized contract between Plaintiff Kouyate and the members of the New York Class on the one hand, and Defendant on the other.

93. All conditions precedent to Defendant's liability under this contract have been performed by Mr. Kouyate and the New York Class.

94. Defendant breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing the products that could provide the benefits promised, i.e. that the Supplements contain the warranted amount of magnesium from a complex of magnesium citrate, magnesium glycinate and magnesium malate as magnesium glycinate, as alleged above.

95. As a result of Defendant's breach of its contract, Mr. Kouyate and the New York Class have been damaged in the amount of the different purchase price of any and all of the Magnesium Supplements they purchased and the price of a product which provides the benefits and contents as warranted.

**SEVENTH CAUSE OF ACTION**  
**Violation of New York General Business Law §§ 349 & 350, et seq.**  
**(Plaintiff Kouyate On Behalf of the New York Class)**

96. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

97. New York's GBL §§ 349 and 350 prohibit "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state" and materially misleading advertising, respectively. GBL §§ 349(a), 350.

98. New York's Agriculture and Marketing Law provides in relevant part that food shall be deemed misbranded "[i]f its labeling is false or misleading in any particular," and also incorporates the FDCA's labeling provisions found in 21 C.F.R. § 101. 🚩 N.Y. Agric. & Mkts.

Law § 201; N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1

99. At all material times, Defendant engaged in a scheme of offering the Magnesium Supplements for sale to Plaintiff Kouyate, and other members of the New York Class by way of, inter alia, commercial marketing, and advertising, internet content, product packaging and labelling, and other promotional materials.

100. These materials, advertisements and other inducements misrepresented and/or omitted the true contents and benefits of the Magnesium Supplements as alleged herein. Such advertisements and inducements appear on the labels of Defendant's Magnesium Supplements and Defendant's website.

101. Defendant knew, or in the exercise of reasonable care should have known, that the statements regarding its Magnesium Supplements' magnesium content, and specifically the amount of magnesium contained in the Supplements, were false, misleading and/or deceptive.

102. Consumers, including Plaintiff Kouyate and members of the New York Class, necessarily and reasonably relied on Defendant's statements regarding the contents of its products. Consumers, including Plaintiff Kouyate and members of the New York Class, were among the intended targets of such representations.

103. The above acts of Defendant, in disseminating said misleading and deceptive statements to consumers, including Plaintiff Kouyate and members of the New York Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and amount of the ingredients in Defendant's Magnesium Supplements, including the true source and amount of magnesium, and constitute unfair and deceptive acts and practices and materially misleading advertising.

104. Plaintiff Kouyate and New York Class members were harmed and suffered injury

as a result of Defendant's conduct. Defendant has been unjustly enriched at the expense of Plaintiffs and the members of the Class.

105. Accordingly, Plaintiff Kouyate and members of the New York Class seek damages including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded nutritional supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional supplements are entitled to a restitution refund of the purchase price of the misbranded supplements.

**EIGHTH CAUSE OF ACTION**

**Breach of Implied Warranty of Merchantability Pursuant to N.Y. U.C.C. LAW § 2-314  
(Plaintiff Kouyate On Behalf of the New York Class)**

106. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

107. Defendant is a merchant with respect to the Magnesium Supplements.

108. The Magnesium Supplements were subject to implied warranties of merchantability running from the Defendant to Plaintiffs and Class Members.

109. An implied warranty that the Magnesium Supplements were merchantable arose by operation of law as part of the sale of the Magnesium Supplements.

110. Defendant breached the implied warranty of merchantability in that the Magnesium Supplements do not contain the amount of advertised magnesium derived from complex of magnesium citrate, magnesium glycinate and magnesium malate, do not provide the benefits associated with the warranted and advertised 400 mg of magnesium from a complex of magnesium citrate, magnesium glycinate and magnesium malate, and thus were not in merchantable condition

when Plaintiffs and Class Members purchased them, or at any time thereafter, and they were unfit for the ordinary purposes for which such nutritional supplements are used.

111. Defendant has breached the implied warranty of merchantability because the Magnesium Supplements when sold would not pass without objection in the trade.

112. As a result of Defendant's breach of the applicable implied warranties, purchasers of the Magnesium Supplements suffered an ascertainable loss, were harmed, and suffered actual damages.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for judgment against Defendant as follows:

- a. An order certifying the proposed Classes, designating Plaintiffs as named representatives of the Classes, and designating the undersigned as Class Counsel;
- b. An order awarding Plaintiffs and class members their actual damages, incidental and consequential damages, punitive damages, statutory damages and/or other form of monetary relief provided by law;
- c. An order awarding Plaintiffs and the class 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: May 29, 2024

PLAINTIFFS, Phillip Stonehart and Moussa Kouyate

By: /s/ Sergei Lemberg  
Sergei Lemberg

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