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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA – NORTHERN DIVISION

PATRICIA BLAND, EDWARD WHITE, DONNA LUX, SUSAN CAIAZZO, SANDRA DENT, MARILYN SPENCER, MARY TRUDEAU, BEVERLEY AVERY, AND ANNETTE RAVINSKY, individually and on behalf of all others similarly situated, Plaintiffs, v. PREMIER NUTRITION CORPORATION, Defendant.	Case No. **CLASS ACTION** **SECOND AMENDED CLASS ACTION COMPLAINT** (*UNLIMITED MATTER*-Amount demanded exceeds $25,000) **DEMAND FOR JURY TRIAL**

BLOOD HURST & O' REARDON, LLP

Plaintiffs Patricia Bland, Edward White, Donna Lux, Susan Caiazzo, Sandra Dent, Marilyn Spencer, Mary Trudeau, Beverley Avery, and Annette Ravisnky, allege causes of action against Defendant Premier Nutrition Corporation n/k/a Premier Nutrition Company, LLC ("Premier" or "Defendant"), on behalf of themselves and all others similarly situated, alleges as follows:

NATURE OF THE ACTION

1. This is a consumer protection class action arising out of Defendant's false and deceptive advertising dietary supplements. Defendant markets, sells, and distributes "Joint Juice," a line of joint health dietary supplements.[1] Primarily through deceptive product labeling, Defendant promises that Joint Juice will support and nourish cartilage, lubricate joints, and improve joint comfort. These claimed health benefits are the only reason a consumer would purchase Joint Juice. Defendant's advertising claims, however, are false, misleading, and likely to deceive a reasonable person.

2. The false and misleading advertising messages are communicated on the labels of all Joint Juice-branded products and throughout Joint Juice marketing materials. Its labels prominently state the Product "helps keep cartilage lubricated and flexible," and that consumers should "drink daily for healthy, flexible joints."

3. Plaintiffs bring this action individually and on behalf of all other similarly situated consumers to halt Defendant's dissemination of this false and misleading advertising message, to correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased Joint Juice during the class period.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to Article VI, Section 10 of the California Constitution, because this case is not a cause given by statute to other trial courts.

[1] The Joint Juice line consists of all Joint Juice-branded products, including: (1) Joint Juice ready-to-drink supplement drink; (2) Joint Juice On-The-Go Drink Mix; and (3) Joint Juice Easy Shot Supplement (collectively, "Joint Juice"). Plaintiffs reserve the right to include other Joint Juice products as a result of discovery.

5. This Court has personal jurisdiction over Defendant because Defendant is authorized to and does conduct business in California. Defendant has marketed, promoted, distributed, and sold Joint Juice in California, and Defendant's headquarters and primary place of business is in California, rendering exercise of jurisdiction by California courts permissible.

6. Venue is proper in this Court because Defendant is headquartered in this County, Defendant transacts substantial business in this County, and a substantial part of the events or omissions giving rise to the claim occurred in this County.

PARTIES

7. Plaintiff Patricia Bland is a citizen of the State of California. At all times relevant to this action, she resided in Sherman Oaks, California. Plaintiff Bland was exposed to and saw Defendant's representations by reading the label of Joint Juice. In reliance on the joint health benefit representations, Plaintiff purchased in the State of California 6-packs of 8-ounce ready-to-drink bottles of Joint Juice on numerous occasions beginning in 2015 until approximately January of 2018. By purchasing the falsely advertised Joint Juice products, Plaintiff suffered injury-in-fact and lost money. Joint Juice does not provide the promised benefits. Had Plaintiff Bland known the truth about Defendant's misrepresentations and omissions at the time of her purchases, Plaintiff would not have purchased Joint Juice.

8. Plaintiff Edward White is a citizen of the State of California. At all times relevant to this action, he resided in San Leandro, California and Harbor City, California. Plaintiff White was exposed to and saw Defendant's representations by reading the label of Joint Juice at several California Costco Wholesale locations. In reliance on the joint health benefit representations, Plaintiff purchased in the State of California 30-packs of 8-ounce ready-to-drink bottles of Joint Juice on numerous occasions in 2016 until approximately November of 2018. By purchasing the falsely advertised Joint Juice products, Plaintiff White suffered injury-in-fact and lost money. Joint Juice does not provide the promised benefits. Had Plaintiff White known the truth about Defendant's misrepresentations and omissions at the time of his purchases, Plaintiff would not have purchased Joint Juice.

9. Donna Lux is a citizen of the State of Connecticut. At all times relevant to this action, she resided in Southington, Connecticut. Plaintiff Lux was exposed to and saw Defendant's representations by reading the label of the Joint Juice Products at a BJs store located in Southington, Connecticut. In addition, Plaintiff Lux saw print advertisements for Joint Juice. In reliance on the joint health benefit representations Plaintiff purchased Joint Juice from BJs beginning in or about the spring of 2014 and until near the end of 2014. By purchasing the falsely advertised products, Plaintiff suffered injury-in-fact and lost money.

10. Susan Caiazzo is a citizen of the State of Florida. At all times relevant to this action, she resided in Cape Coral, Florida. Beginning in approximately 2014, Plaintiff Caiazzo was exposed to and saw Defendant's representations by reading the label of the Joint Juice Products at a Costco store located in Cape Coral, Florida. In reliance on the joint health benefit representations Plaintiff purchased Joint Juice from Costco on numerous occasions for approximately one year beginning in or about 2014 and ending in 2015. By purchasing the falsely advertised products, Plaintiff Caiazzo suffered injury-in-fact and lost money.

11. Sandra Dent is a citizen of the State of Illinois. At all times relevant to this action, she resided in Maywood, Illinois. Beginning in 2012 or 2013, Plaintiff Dent was exposed to and saw Defendant's representations by reading the label of Joint Juice products at a Walmart store located in Forest Park, Illinois. Plaintiff Dent also saw Joint Juice products advertised on television and in print magazines. In reliance on the joint health benefit representations Plaintiff purchased Joint Juice from Walmart in Forest Park, Illinois on numerous occasions beginning in 2012 or 2013 up to approximately the spring of 2016. By purchasing the falsely advertised products, Plaintiff suffered injury-in-fact and lost money.

12. Marilyn Spencer is a citizen of the State of Maryland. At all times relevant to this action, she resided in Halethorpe, Maryland. Beginning in approximately 2013, Plaintiff Spencer was exposed to and saw Defendant's representations by reading the label of Joint Juice Products at a Sam's Club store located in Baltimore, Maryland. Plaintiff Spencer also saw Joint Juice advertised on television and saw the advertisements and testimonials regarding Joint Juice on Joint Juice's internet website. In reliance on the joint health benefit representations Plaintiff

purchased Joint Juice from Sam's Club in in Baltimore, Maryland on numerous occasions beginning in 2013 up to approximately the mid-part of 2016. By purchasing the falsely advertised products, Plaintiff suffered injury-in-fact and lost money.

13. Mary Trudeau is a citizen of the State of Massachusetts. At all times relevant to this action, she resided in Hingham, Massachusetts. Beginning in the later part of 2015, Plaintiff Trudeau was exposed to and saw Defendant's representations by reading the label of Joint Juice Products at a Walmart store located in Hadley, Massachusetts. In reliance on the joint health benefit representations Plaintiff purchased Joint Juice from Walmart on several occasions beginning in the later part of 2015 until the later part of 2016. By purchasing the falsely advertised Product, Plaintiff suffered injury-in-fact and lost money.

14. Beverley Avery is a citizen of the State of Michigan. At all times relevant to this action, she resided in Lapeer, Michigan. In 2013, Plaintiff Avery was exposed to and saw Defendant's representations by reading the label of the Joint Juice Products at a Costco store located in Auburn Hills, Michigan. In reliance on the joint health benefit representations, Plaintiff purchased 30-packs of 8-ounce ready-to-drink bottles of Joint Juice from Costco in Auburn Hills, Michigan on a couple of occasions in 2013. By purchasing the falsely advertised products, Plaintiff suffered injury-in-fact and lost money.

15. Annette Ravinsky is a citizen of the State of Pennsylvania. At all times relevant to this action, she resided in Philadelphia, Pennsylvania. Beginning in approximately 2011, Plaintiff Ravinsky was exposed to and saw Defendant's representations by reading the label of the Joint Juice products at a Walmart store located at 9475 Roosevelt Blvd., Philadelphia, PA 19114. In addition to that, Plaintiff Ravinsky was also exposed to and saw Defendant's representations by viewing television commercials on Joint Juice depicting athletes who used the Joint Juice. In reliance on the joint health benefit representations Plaintiff Ravinsky began purchasing six-packs of Joint Juice from Walmart in Philadelphia, Pennsylvania and continued to purchase Joint Juice from Walmart and from other retailers through approximately the end of 2013. By purchasing the falsely advertised Product, Plaintiff suffered injury-in-fact and lost money.

16. Defendant Premier Nutrition Corporation ("Premier") f/k/a Joint Juice, Inc. is a corporation headquartered in Emeryville, California, and organized and existing under the laws of the state of Delaware. Premier's headquarters is located at 1222 67th Street, Suite 210, Emeryville, California, 94608. Prior to that, Premier was headquartered at 5905 Christie Avenue, Emeryville, California, 94608. As of August 2013, Premier became a wholly-owned subsidiary of Post Holdings, Inc. Premier is a manufacturer of nutritional supplements, including protein shakes, bars, and powders. Premier's primary brands include Premier Protein, Joint Juice, and PowerBar. Premier manufactures, advertises, markets, distributes, and sells Joint Juice to many thousands of consumers in California.

FACTUAL ALLEGATIONS

The Joint Juice Product and the Symptoms Joint Juice Purports to Treat

17. Since 1999, Defendant has distributed, marketed, and sold Joint Juice.

18. Joint Juice is sold through a variety of third-party retailers, including Costco, Sam's Club, Walgreens, CVS, Walmart, and Target. Defendant also sells Joint Juice directly to consumers through its website.

19. The Joint Juice products are available in: (1) drink mix packets, which retailed for approximately $22 for a thirty-count box; (2) eight-ounce "ready-to-drink" beverage bottles, which retail for approximately $30 for a thirty-pack, or approximately $6 for a six-pack; and (3) Easy Shot™ liquid concentrate bottles, which retailed for approximately $15 for a twenty-ounce bottle containing sixteen servings.

20. According to the package label, Joint Juice contains glucosamine hydrochloride and chondroitin sulfate. Each serving consists of 1,500 mg of glucosamine hydrochloride and 200 mg of chondroitin sulfate.

21. Glucosamine hydrochloride is a combination of glucosamine (an amino sugar compound produced by the body, and which can be isolated from shellfish) where the glucosamine is combined with hydrochloric acid. Glucosamine is one the most abundant monosaccharides (sugars) in the body.

22. Defendant's target audience is people with osteoarthritis, including undiagnosed early stage osteoarthritis that commonly accompanies aging. Sometimes called degenerative joint disease or degenerative arthritis, osteoarthritis is the most common chronic condition of the joints, affecting about 27 million Americans. Osteoarthritis can affect any joint, but it occurs most often in knees, hips, hands, and the spine. According to the Arthritis Foundation, one in two adults will develop symptoms of osteoarthritis symptoms during their lives, and one in four adults will develop symptoms of hip osteoarthritis. The signs and symptoms of osteoarthritis include joint pain, joint tenderness, joint stiffness, and the inability to move ones joint through its full range of motion.[2] Symptoms may come and go, and can be mild, moderate or severe.[3] Osteoarthritis is slow developing disease, so many people live with the occasional aches, pains and stiffness it causes without the need to seek medical intervention. Instead, these consumers treat the symptoms themselves.

23. Many of those who purchase Joint Juice have not yet been diagnosed with osteoarthritis. Knowing this, Defendant expressly and impliedly advertises that Joint Juice treats and provides relief from the same symptoms experienced by those people whose arthritis has been diagnosed.

Defendant's False, Deceptive, and Misleading Advertising of Joint Juice

24. Since the launch of Joint Juice, Defendant, through its advertisements, including on the product packaging and labeling, has consistently conveyed to consumers that drinking Joint Juice supports and promotes joint health, reduces joint pain, reduces joint stiffness, helps to support and nourish cartilage, "lubricates" joints, and helps with "joint comfort."

25. Defendant asserts that glucosamine hydrochloride and chondroitin sulfate are the active ingredients in Joint Juice that will deliver the promised benefits.

[2] https://www.mayoclinic.org/diseases-conditions/osteoarthritis/symptoms-causes/dxc-20198250 (last visited December 19, 2018).

[3] https://www.arthritis.org/Documents/Sections/About-Arthritis/arthritis-facts-stats-figures.pdf (last visited December 19, 2018).

26. Defendant states on Joint Juice's packaging and in Joint Juice's marketing materials that Joint Juice helps to support and nourish cartilage, "lubricate" joints, and improve joint comfort without any limitation on which joints, for adults of all ages and without any limitation on what stages of joint related ailments.

27. In its advertising materials, including on its packaging and labeling, Defendant also represents that Joint Juice was "originally developed for pro athletes by orthopedic surgeon Kevin R. Stone, M.D. to keep joints healthy and flexible."

28. Defendant's marketing representations repeat and reinforce the claims made on the packaging and labeling for Joint Juice. For example, on its website, Defendant represents that "Research indicates that you should take a minimum of 1,500 mg of glucosamine daily got joint health. That's why we put 1,500 mg in every Joint Juice product" and "Glucosamine works to lubricate your joints by helping cartilage tissue absorb water. This helps cartilage perform its job of cushioning and mobility."[4]

29. Defendant's advertising deceptively reinforces the health benefits message through references to "expert stories," including from Dr. Kevin Stone, Joint Juice's founder and co-owner. According to an article written by Dr. Stone and posted on Defendant's website, "[t]aking glucosamine and chondroitin together – in the liquid formula found only in Joint Juice® products – ensure that you get a full day's supply of glucosamine (1,500 mg) and chondroitin to maintain healthy and happy joints."

30. Defendant's website also contains a prominent link to a "Joint Juice® joint health assessment." This marketing gimmick further reinforces the false and misleading representation that Joint Juice will provide the significant, advertised health benefits.

31. The Joint Juice packaging also prominently features the Arthritis Foundation logo because it attracts purchasers who suffer from arthritis and joint pain. To reinforce the message, the labels state "Joint Juice is proud to support the Arthritis Foundation's efforts to

[4] http://www.jointjuice.com/faq/general-information (last visited January 15, 2019).

help people take control of arthritis" or that Defendant "will donate a portion of the proceeds to the Arthritis Foundation … to help people take control of arthritis."

32. Since 2010, Joint Juice ready-to-drink packaging has remained materially identical, always focused on the promised joint health benefits: "A bottle a day keeps your joints in play," "**Drink Daily for Healthy, Flexible Joints**," "**HELPS KEEP CARTILAGE LUBRICATED AND FLEXIBLE**," and "For Healthy, Flexible Joints."

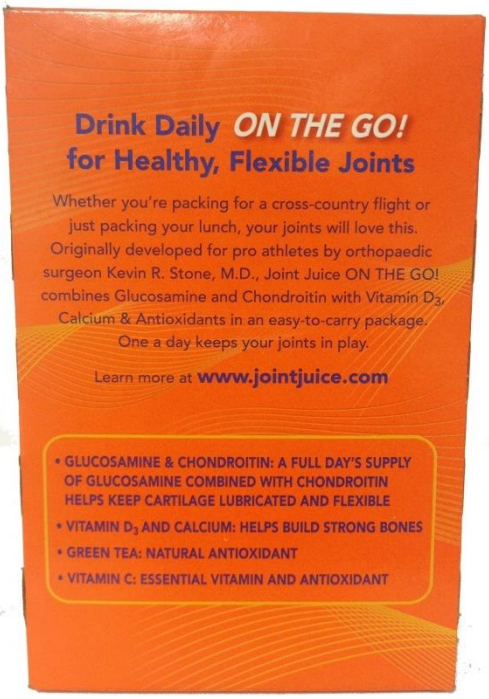
33. Joint Juice's packaging appears as follows:

EasyShot™ Liquid Concentrate (Front)

EasyShot™ Liquid Concentrate (Back)

Drink Mix Box (Front)

Drink Mix Box (Back)



8-Ounce Ready-to-Drink Beverage Bottle Six-Pack

Scientific Studies Confirm that Joint Juice Is Not Effective and Defendant's Health Benefits Message Is False and Deceptive

34. Despite Defendant's representations, glucosamine, alone or in combination with other ingredients including chondroitin sulfate, is not effective in providing the represented joint health benefits.

Randomized Clinical Trials

35. Randomized clinical trials ("RCTs") are "the gold standard for determining the relationship of an agent to a health outcome." Federal Judicial Center, *Reference Manual on Scientific Evidence*, 555 (3d ed. 2011). "Double-blinded" RCTs, where neither the trial participants nor the researchers know which participants received the active ingredient is considered the optimal strategy.

36. Glucosamine and chondroitin have been extensively studied in RCTs, and the well-conducted RCTs demonstrate that glucosamine and chondroitin, alone or in combination, are not effective at producing joint health benefits, including pain, stiffness, range of motion, flexibility, and cartilage benefits.

37. In the late 1990s, the National Institutes of Health ("NIH") funded the $12.5 million multicenter GAIT study. GAIT was the first large-scale multicenter clinical trial in the United States on glucosamine and chondroitin. The first GAIT publication examined results from 1,583 subjects randomized to receive one of five treatments over 6 months: (1) 1,500 mg glucosamine hydrochloride, (2) 1,200 mg chondroitin, (3) glucosamine plus chondroitin, (4) celecoxib, or (5) placebo. The GAIT I publication, published in 2006 in the New England Journal of Medicine (the "2006 GAIT Study"), reported that glucosamine and chondroitin were not effective in reducing pain. *See* Clegg, D. et al., *Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis*, 354 New England J. of Med. 795, 806 (2006) ("The analysis of the primary outcome measure did not show that either [glucosamine or chondroitin], alone or in combination, was efficacious.").

38. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage and were otherwise ineffective – even in patients with moderate to severe knee pain for which the 2006 reported results were inconclusive. *See* Sawitzke, A.D. et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum. 3183–91 (Oct. 2008) ("GAIT II"). The GAIT II publication, which was based on 572 subjects across nine sites, reported no difference in joint space width between those receiving glucosamine and chondroitin or placebo.

39. The 2010 GAIT III publication, with 662 subjects, also concluded glucosamine and chondroitin are no more effective in relieving pain than placebo. *See* Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee*: 2-Year Results From GAIT, 69(8) Ann Rhem. Dis. 1459-64 (Aug. 2010) ("GAIT III").

40. The GAIT studies are consistent with the reported results of prior and subsequent studies. For example, a 1999 study involving 100 subjects by Houpt et al., entitled *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*, 26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed no better than placebo at reducing pain at the conclusion of the eight week trial.

41. Likewise, a 2004 study by McAlindon et al., entitled *Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From and Internet-Based Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649-9 (Nov. 2004), concluded that "glucosamine was no more effective than placebo in treating symptoms of knee osteoarthritis" – in short, that glucosamine is ineffective. *Id*. at 646 ("we found no difference between the glucosamine and placebo groups in any of the outcome measures, at any of the assessment time points").

42. Many studies have also confirmed there is a significant "placebo" effect with respect to consumption of products represented to be effective in providing joint health benefits such as Joint Juice.

43. Indeed, more than 30% of persons who took placebos in these studies believed that they were experiencing joint health benefits when all they were taking was a placebo.

44. A 2004 study by Cibere et al., entitled *Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at least moderate improvement after starting glucosamine. These patients were divided into two groups – one that continued using glucosamine and one that was given a placebo. For six months, the primary outcome observed was the proportion of disease flares in the glucosamine and placebo groups. A secondary outcome was the time to disease flare. The study results reflected that there were no differences in either the primary or secondary outcomes for glucosamine and placebo. The authors concluded that the study provided no evidence of symptomatic benefit from continued use of glucosamine – in other words, any prior perceived benefits were due to the placebo effect and not glucosamine. *Id*. at 743 ("In this study, we found that knee OA disease flare occurred as frequently, as quickly, and as severely in patients who were randomized to continue receiving glucosamine compared with those who received placebo. As a result, the efficacy of glucosamine as a symptom-modifying drug in knee OA is not supported by our study.").

45. To similar effect, in the "Joints on Glucosamine" or "JOG" study, Dr. Kwoh and co-authors concluded that glucosamine was not effective in preventing the worsening of cartilage damage or impacting joint pain or joint function. *See* Kwoh CK et al., *Effect of Oral Glucosamine on Joint Structure in Individuals With Chronic Knee Pain: A Randomized, Placebo-Controlled Clinical Trial*, 66(4) Arthritis Rheumatol., 930-9 (2014). JOG was a 201-person, randomized clinical trial comparing those who consumed the same type of glucosamine in Joint Juice and those consuming a placebo. The JOG study examined subjects without arthritis. The JOG study concluded that glucosamine supplementation provided no joint health, structural, pain or physical function benefits: "There was no difference between the two groups" in terms of cartilage loss and "[t]here were no significant differences between the glucosamine and control groups from baseline to the 12-week assessment, the 12-week to 24-week assessment, or from baseline to 24 weeks for the WOMAC pain or function subscales or the total WOMAC score." *Id*. at 935.

46. Runhaar et al. (2015) also examined subjects not diagnosed with arthritis and found no benefits from glucosamine. Runhaar was an independently-analyzed double-blind, placebo-controlled, factorial design trial testing a diet-and-exercise program and 1500 mg oral glucosamine or placebo on 407 subjects. Runhaar et al., *Prevention of Knee Osteoarthritis in Overweight Females: The First Preventative Randomized Controlled Trial in Osteoarthritis*, Am J Med, 128(8):888-895 (2015). Researchers examined the impact of daily glucosamine consumption on the incidence of knee osteoarthritis, as well as on pain and physical function. After 2.5 years, no effect from glucosamine was found on subjects' overall quality of life or knee pain, physical function, or the incidence of knee osteoarthritis.

47. Based on data from 245 people without diagnosed osteoarthritis, de Vos et al. (2017) determined the impact of glucosamine consumption over an average time period of 6.6 years. de Vos et al., *Long-term effects of a lifestyle intervention and oral glucosamine sulphate in primary care on incident knee OA in overweight women*, Rheumatology, 56(8):1326-1334 (2017). Study participants consumed placebo or 1,500 mg daily glucosamine and periodically reported knee pain, physical activity and quality of life, and had their joint space width was

measured by radiograph. Based on six-year analysis, de Vos and co-researchers concluded that glucosamine consumption is not effective at preventing knee osteoarthritis as measured according to either joint space width changes or based on symptomatic changes that included impact on knee pain or joint stiffness.

48. Even studies not concerning the type of glucosamine in Joint Juice demonstrate that glucosamine does not provide the joint health benefits that Defendant represents. For example, a study by Rozendaal et al., entitled *Effect of Glucosamine Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of glucosamine on the symptoms and structural progression of hip osteoarthritis during two years of treatment, concluded that glucosamine was no better than placebo in reducing symptoms and progression of hip osteoarthritis.

49. In 2012, a report by Rovati et al. entitled *Crystalline glucosamine sulfate in the management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties*, Ther Adv Musculoskel Dis 4(3):167-180 (2012), noted that glucosamine hydrochloride "ha[s] never been shown to be effective."

50. On July 7, 2010, Wilkens et al. reported that there was no difference between placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that neither glucosamine nor placebo were effective in reducing pain related disability. The researchers also concluded that, "Based on our results, it seems unwise to recommend glucosamine to all patients" with low back pain and lumbar osteoarthritis. Wilkens et al., *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

Meta-Analyses and Scientific Review Articles

51. Well-conducted meta-analysis is at the top of the hierarchy of medical evidence. *See* Reference Manual on Scientific Evidence at 607. "Meta-analysis is a method of pooling study results to arrive at a single figure to represent the totality of the studies reviewed." *Id*.

52. At least eleven meta-analyses on the clinical effects of glucosamine and/or chondroitin have been performed, and all ten found that the pooled results from the well-

conducted, non-industry studies demonstrate glucosamine, alone or in combination with chondroitin, does not work. These eleven meta-analyses, which collectively reviewed the results from tens of clinical studies involving thousands of people, are: Towheed, 2005 (20 studies, 2,570 subjects); Towheed, 2009 (25 studies, 4,963 subjects); Vlad, 2007 (15 studies); McAlindon, 2000 (15 studies); Eriksen, 2014 (25 studies, 3,458 subjects); Wandel, 2010 (10 studies, 3,803 subjects); Reichenbach, 2007 (20 studies, 3,846 subjects); Wu, 2013 (19 studies, 3,159 subjects); Singh, 2015 (43 studies, 4,962 subjects); Kongtharvonskul, 2015 (31 studies); and Runhaar, 2017 (6 studies, 1,663 subjects).

53. For example, in their 2007 meta-analysis, Vlad et al. reviewed all studies involving glucosamine hydrochloride and concluded that "[g]lucosamine hydrochloride is not effective." *Glucosamine for Pain in Osteoarthritis*, 56:7 Arthritis Rheum. 2267-77 (2007); *see also id*. at 2275 ("we believe that there is sufficient information to conclude that glucosamine hydrochloride lacks efficacy for pain in OA").

54. Towheed 2009, a prestigious Cochrane Collaboration publication, reviewed 25 clinical studies with 4,963 subjects and found no benefits from glucosamine. *See Glucosamine therapy for treating osteoarthritis*, Cochrane Database of Systematic Reviews 2005, Issue 2. Art. No.: CD002946 (Updated and Published in Issue 4, 2009). Dr. Towheed and co-authors concluded, "The high quality studies showed that pain improved about the same whether people took glucosamine or fake pills." *Id*. at 2.

55. The 2010 meta-analysis by Wandel et al., entitled *Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-Analysis*, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and chondroitin, alone or in combination, and whether they relieved the symptoms or progression of arthritis of the knee or hip. The study authors reported that glucosamine and chondroitin, alone or in combination, did not reduce joint pain or have an impact on the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and their combination do not result in a relevant reduction of joint pain nor affect joint space narrowing compared with placebo." *Id*. at

8. The authors further concluded "[w]e believe it unlikely that future trials will show a clinically relevant benefit of any of the evaluated preparations." *Id*.

56. Eriksen, 2014, is a meta-analysis published in a journal of the American College of Rheumatology. It examined 25 placebo-controlled clinical studies involving glucosamine, including GAIT, concluding "We are confident that glucosamine by and large has no clinically important effect." Eriksen, Patrick, Else M. Bartels, Roy D. Altman, Henning Bliddal, Carsten Juhl, and Robin Christensen, *Risk of Bias and Brand Explain the Observed Inconsistency in Trials on Glucosamine for Symptomatic Relief of Osteoarthritis: A Meta-Analysis of Placebo-Controlled Trials*, ARTHRITIS CARE & RESEARCH 66, no. 12 (2014) at 1844-1855; *see also id*. ("[o]ur meta-analysis provides high-quality evidence that glucosamine in forms other than the one made by Rottapharm[] consistently does not reduce pain more than placebo").

57. In 2017, Runhaar and co-authors presented results from their meta-analysis of six glucosamine studies (examining 1,663 patients) where the original authors agreed to share their study data for critical re-analysis. Runhaar et al., Subgroup analyses of the effectiveness or oral glucosamine for knee and hip osteoarthritis: a systematic review and individual patient data meta-analysis from the OA trial bank. *Subgroup analyses of the effectiveness or oral glucosamine for knee and hip osteoarthritis: a systematic review and independent patient data meta-analysis from the OA trial bank*, Ann Rheum Dis, 76(11):1-8 (2017). Runhaar (2017) is an "individual patient data meta-analysis" or IPD, which is considered a gold standard of systematic review. The Runhaar IPD meta-analysis concluded that glucosamine has no effect on pain or physical function: "[T]he current IPD on the efficacy of glucosamine … did not identify a subgroup for which glucosamine showed any significant beneficial effects over placebo for pain or function in either the short term or long term."

Evidence-Based Professional Guidelines

58. The uniform consensus of clinical treatment protocols, sometimes referred to as clinical practice guidelines, is that glucosamine and chondroitin do not work, should not be used, and are not cost effective. Clinical treatment protocols are evidence-based, developed from an in-depth cross-review of studies and meta-analyses by experts in the field.

59. For example, the National Collaborating Centre for Chronic Conditions ("NCCCC") reported "the evidence to support the efficacy of glucosamine hydrochloride as a symptom modifier is poor" and the "evidence for efficacy of chondroitin was less convincing." NCCCC, *Osteoarthritis National Clinical Guideline for Care and Management of Adults*, Royal College of Physicians, London 2008. Consistent with its lack of efficacy findings, the NCCCC Guideline did not recommend the use of glucosamine or chondroitin for treating osteoarthritis. *Id*. at 33.

60. In December 2008, the American Academy of Orthopaedic Surgeons ("AAOS") published clinical practice guidelines for the *Treatment of osteoarthritis of the knee (nonarthroplasty*), and made a "strong" recommendation that "glucosamine and sulfate or hydrochloride not be prescribed for patients with symptomatic OA of the knee." Richmond et al., *Treatment of osteoarthritis of the knee (nonarthroplasty)*, J. Am. Acad. Orthop. Surg. Vol. 17 No. 9 591-600 (2009). This AAOS recommendation was based on a 2007 report from the Agency for Healthcare Research and Quality (AHRQ), which states that "the best available evidence found that glucosamine hydrochloride, chondroitin sulfate, or their combination did not have any clinical benefit in patients with primary OA of the knee." Samson et al., *Treatment of Primary and Secondary Osteoarthritis of the Knee, Agency for Healthcare Research and Quality*, 2007 Sep. 1. Report No. 157.

61. In 2009, a panel of scientists from the European Food Safety Authority ("EFSA") (a panel established by the European Union to provide independent scientific advice to improve food safety and consumer protection), reviewed nineteen studies submitted by an applicant, and concluded that "a cause and effect relationship has not been established between the consumption of glucosamine hydrochloride and a reduced rate of cartilage degeneration in individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine hydrochloride*

and reduced rate of cartilage degeneration and reduced risk of osteoarthritis, EFSA Journal (2009), 7(10):1358.

62. In a separate opinion from 2009, an EFSA panel examined the evidence for glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin sulfate and maintenance of joints. The claimed effect was "joint health," and the proposed claims included "helps to maintain healthy joint," "supports mobility," and "helps to keep joints supple and flexible." Based on its review of eleven human intervention studies, three meta-analyses, 21 reviews and background papers, two animal studies, one in vitro study, one short report, and one case report, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine (either as glucosamine hydrochloride or as glucosamine sulphate), either alone or in combination with chondroitin sulphate, and the maintenance of normal joints." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of health claims related to glucosamine alone or in combination with chondroitin sulphate and maintenance of joints and reduction of inflammation*, EFSA Journal (2009), 7(9):1264.

63. In 2012, EFSA examined the evidence glucosamine sulphate or glucosamine hydrochloride, and a claimed effect of "contributes to the maintenance of normal joint cartilage." Based on its review of 61 references provided by Merck Consumer Healthcare, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine and maintenance of normal joint cartilage in individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine and maintenance of normal joint cartilage*, EFSA Journal 2012, 10(5): 2691.

64. In 2013, the AAOS published updated clinical practice guidelines, and based on its review of twenty-one human studies, again made a "strong" recommendation that neither glucosamine nor chondroitin be used for patients with symptomatic osteoarthritis of the knee. *See* Treatment of Osteoarthritis of the Knee, Evidence-Based Guideline (2d Ed.), American Academy of Orthopaedic Surgeons (2013) at 262.

65. The American College of Rheumatology ("ACR"), and the United Kingdom National Institute for Health and Care Excellence ("NICE") also recommend against using glucosamine or chondroitin. *See* Hochberg, M.C. et al., American College of Rheumatology 2012 *Recommendations for the Use of Nonpharmacologic and Pharmacologic Therapies in Osteoarthritis of the Hand, Hip, and Knee*. Arthritis Care & Research 2012; 64(4):465-474; National Institute for Health and Care Excellence, Clinical Guidelines: Osteoarthritis Care and management in adults (February 2014).

66. The AAOS, ACR, NICE and AHRQ guidelines were based on systematic reviews and/or meta-analyses of all the available study data. For example, the ACR specifically cited its reliance on the GAIT study coupled with four meta-analyses that "failed to demonstrate clinically important efficacy for these agents": Towheed (2005); Vlad (2007); Reichenbach (2007); and Wandel (2010). The NICE authors' conclusion that practitioners should "not offer glucosamine or chondroitin products" was based on a review that included Towheed (2005), which included 25 glucosamine RCTs, Reichenbach (2007), which included 20 chondroitin RCTs, and seven studies that compared glucosamine plus chondroitin versus placebo. The 2007 AHRQ assessment was based on review of 21 glucosamine/chondroitin studies, including GAIT. The AAOS' 2013 "strong" recommendation against glucosamine and chondroitin was based on expert analysis and meta-analyses of 12 glucosamine studies, 8 chondroitin studies, and one study (GAIT) that assessed both.

The Impact of Defendant's Wrongful Conduct

67. Despite clinical studies that show the ingredients in Joint Juice are ineffective, Defendant conveyed and continues to convey one uniform health benefits message: Joint Juice supports and nourishes cartilage, "lubricates" joints, and improves joint comfort in all joints in the human body, for adults of all ages and for all manner and stages of joint-related ailments.

68. As the inventor, manufacturer, and distributor of Joint Juice, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in Joint Juice and Defendant is in a superior position to know whether Joint Juice works as advertised.

69. Specifically, Defendant knew, but failed to disclose, that Joint Juice does not provide the joint health benefits represented and that well-conducted, clinical studies have found the ingredients in Joint Juice to be ineffective in providing the joint health benefits represented by Defendant.

70. Plaintiffs have been and will continue to be deceived or misled by Defendant's false and deceptive joint health benefit representations. Plaintiffs purchased Joint Juice during the Class period and in doing so, read and considered Joint Juice's label and based their decision to purchase Joint Juice on the joint health benefit representations on Joint Juice's labeling. Defendant's joint health benefit representations and omissions were a material factor in influencing Plaintiffs' decision to purchase Joint Juice.

71. The only purpose for purchasing Joint Juice is to obtain the represented joint health benefits. Although it does not provide the represented, significant health benefits, Joint Juice retails for approximately $9 per six-pack.[5]

CLASS DEFINITION AND ALLEGATIONS

72. Plaintiffs bring this action on behalf of themselves and all others similarly situated and seek certification of a Class of purchasers from the indicated states, with the Class defined as:

> All people who purchased any Joint Juice product during the applicable Class periods, as follows:
>
> i. California on or after March 1, 2009, until December 31, 2022;
> ii. Connecticut on or after November 18, 2013, until December 31, 2022;
> iii. Florida on or after November 18, 2012, until December 31, 2022;
> iv. Illinois on or after November 21, 2013, until December 31, 2022;
> v. Maryland on or after December 12, 2013, until December 31, 2022;
> vi. Massachusetts on or after January 1, 2013, until December 31, 2022;
> vii. Michigan on or after December 12, 2010, until December 31, 2022; or
> viii. Pennsylvania on or after November 18, 2010, until December 31, 2022.

[5] At Walmart's online store, a six-pack of 8-ounce bottles costs $10.13. https://www.walmart.com/ip/Joint-Juice-Glucosamine-Chondroitin-Blend-Blueberry-Acai-4-6pk-8oz/14292593 (last visited January 15, 2019); *see also* http://shop.jointjuice.com/Joint-Juice-ReadytoDrink-Supplement--Blueberry-Acai/p/JTJ-042203&c=JointJuice@Drinks (6-pack of 8-ounce bottles retails for $8.94 on jointjuice.com) (last visited January 15, 2019).

73. Excluded from the Class are the Defendant, its parents, subsidiaries, affiliates, officers, and directors; those who purchased Joint Juice for the purpose of resale; all persons who make a timely election to be excluded from the Class; the judge to whom this case is assigned and any immediate family members thereof; and those who assert claims for personal injury.

74. Certification of Plaintiffs' claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

75. Members of the Class are so numerous and geographically dispersed that joinder of all class members is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiffs but is believed to be in the thousands.

76. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

(a) Whether the representations discussed herein that Defendant made about its Joint Juice products were or are true, misleading, or likely to deceive;

(b) Whether Defendant's conduct violates public policy;

(c) Whether Defendant engaged in false or misleading advertising;

(d) Whether Defendant's conduct constitutes violations of the laws asserted herein;

(e) Whether Plaintiffs and the other Class members have been injured, and the proper measure of their losses as a result of those injuries; and

(f) Whether Plaintiffs and the other Class members are entitled to injunctive, declaratory, or other equitable relief.

77. The claims asserted by Plaintiffs in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendant, and

the relief sought is common. Plaintiffs and Class members suffered uniform damages caused by their purchase of the Joint Juice products marketed and sold by Defendant.

78. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in both consumer protection and class litigation.

79. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

80. In the alternative, the Class also may be certified because Defendant has acted or refused to act on grounds generally applicable to the Class thereby making final declaratory and/or injunctive relief with respect to the members of the Class as a whole, appropriate.

81. Plaintiffs seek preliminary and permanent injunctive and equitable relief on behalf of the Class, on grounds generally applicable to the Class, to enjoin and prevent Defendant from engaging in the acts described, and to require Defendant to provide full restitution to Plaintiffs and Class members.

82. Unless the Class is certified, Defendant will retain monies that were taken from Plaintiffs and Class members as a result of Defendant's wrongful conduct. Unless a classwide injunction is issued, Defendant will continue to commit the violations alleged and the members of the Class and the general public will continue to be misled.

CLAIMS ALLEGED

COUNT I

Violation of Business & Professions Code §§ 17200, *et seq.*

(On behalf of Bland, White and a California Class)

83. Plaintiffs Bland, White and all California Class Members incorporate the preceding paragraphs as if fully set forth herein.

84. As alleged herein, Plaintiffs have suffered injury in fact and lost money or property as a result of Defendant's conduct because they purchased one of Defendant's falsely advertised Joint Juice products in reliance on the false advertisements.

85. The Unfair Competition Law, Business & Professions Code §§ 17200, *et seq*. ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. In the course of conducting business, Defendant committed unlawful business practices by, among other things, making the representations (which also constitutes advertising within the meaning of § 17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§ 17200, *et seq*., 17500, *et seq*., and the common law.

86. Plaintiffs, individually and on behalf of the other Class members, reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

87. In the course of conducting business, Defendant committed "unfair" business practices by, among other things, making the representations (which also constitute advertising within the meaning of § 17200) and omissions of material facts regarding Joint Juice in its advertising campaign, including Joint Juice's packaging and labeling, as set forth more fully herein. There is no societal benefit from false advertising – only harm. Plaintiffs and the other Class members paid for a valueless product that does not confer the benefits it promises. While Plaintiffs and the other Class members were harmed, Defendant was unjustly enriched by its false misrepresentations and omissions. As a result, Defendant's conduct is "unfair," as it

offended an established public policy. Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

88. Further, as set forth in this Complaint, Plaintiffs allege violations of consumer protection, unfair competition, and truth in advertising laws in California and other states, resulting in harm to consumers. Defendant's acts and omissions also violate and offend the public policy against engaging in false and misleading advertising, unfair competition, and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §§ 17200, *et seq*.

89. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein. Business & Professions Code §§ 17200, *et seq*., also prohibits any "fraudulent business act or practice." In the course of conducting business, Defendant committed "fraudulent business act or practices" by, among other things, making the representations (which also constitute advertising within the meaning of § 17200) and omissions of material facts regarding Joint Juice in its advertising campaign, including on Joint Juice's packaging and labeling, as set forth more fully herein. Defendant made the misrepresentations and omissions regarding the efficacy of Joint Juice, among other ways, by misrepresenting on each and every Joint Juice product's packaging and labeling that Joint Juice is effective when taken as directed, when, in fact, the representations are false and deceptive, and Joint Juice does not confer the promised health benefits.

90. Defendant's actions, claims, omissions, and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §§ 17200, *et seq*.

91. Plaintiffs and the other members of the Class have in fact been deceived as a result of their reliance on Defendant's material representations and omissions, which are described above. This reliance has caused harm to Plaintiffs and the other members of the Class, each of whom purchased Defendant's Joint Juice products. Plaintiffs and the other Class members have suffered injury in fact and lost money as a result of purchasing Joint Juice and Defendant's unlawful, unfair, and fraudulent practices.

92. Defendant knew, or should have known, that its material representations and omissions would be likely to deceive the consuming public and result in consumers purchasing Joint Juice products and, indeed, intended to deceive consumers.

93. As a result of its deception, Defendant has been able to reap unjust revenue and profit.

94. Unless restrained and enjoined, Defendant will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

95. Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, seek restitution from Defendant of all money obtained from Plaintiffs and the other members of the Class collected as a result of unfair competition, an injunction prohibiting Defendant from continuing such practices, corrective advertising, and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

COUNT II

Violation of the Consumers Legal Remedies Act – Civil Code §§ 1750, *et seq.*

(On behalf of Bland, White and a California Class)

96. Plaintiffs Bland, White and all California Class Members incorporate the preceding paragraphs as if fully set forth herein.

97. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq*. (the "Act") and similar laws in other states. Plaintiffs are consumers as defined by California Civil Code § 1761(d). Joint Juice is a "good" within the meaning of the Act.

98. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the Class which were intended to result in, and did result in, the sale of its Joint Juice products:

> (5) Representing that [Joint Juice has] . . . approval, characteristics, . . . uses [and] benefits . . . which [it does] not have . . . .

* * *

(7) Representing that [Joint Juice is] of a particular standard, quality or grade . . . if [it is] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [Joint Juice has] been supplied in accordance with a previous representation when [it has] not.

99. Defendant violated the Act by representing and failing to disclose material facts on its Joint Juice products' labeling and associated advertising, as described above, when it knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

100. Pursuant to California Civil Code § 1782(d), Plaintiffs, individually and on behalf of the other members of the Class, seek a Court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

101. Pursuant to § 1782 of the Act, Plaintiffs notified Defendant in writing by certified mail of the particular violations of § 1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit A.

102. Defendant has failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiffs further seek claims for actual, punitive and statutory damages, as appropriate.

103. Defendant's conduct is fraudulent, wanton, and malicious.

104. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

COUNT III

Violation of the Connecticut Unfair Trade Practices Act

(On behalf of Lux and a Connecticut Class)

105. Plaintiff Lux and all Connecticut Class Members incorporate the preceding paragraphs as if fully set forth herein.

106. This cause of action is brought pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. §42-110a, et seq. ("CUTPA).

107. Plaintiff Lux is a person as defined by Conn. Gen. Stat. Ann. §42-110a(3). Premier Nutrition Corporation is engaged in trade or commerce within the meaning of the CUTPA, §42-110a(4).

108. Connecticut's Unfair Trade Practices Act declares unlawful "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. Ann. §42-110b(a).

109. The Act also states that in construing the prohibition against unfair methods of competition and unfair or deceptive acts or practices, the court shall "be guided by interpretations given by the Federal Trade Commission and the federal courts to section 5(a)(1) of the Federal Trade Commission Act." Conn. Gen. Stat. Ann. §42-110b(b).

110. Defendant's unfair and deceptive practices as alleged above are likely to mislead – and have misled – the consumer acting reasonably in the circumstances, and violate the CUTPA. Defendant's conduct was willful and malicious.

111. Plaintiff Lux and the Class have suffered an ascertainable loss of money as a result of Defendant's unfair and deceptive practices and acts of false advertising in that they paid for Joint Juice.

112. The harm suffered by Plaintiff Lux and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as more fully described herein.

113. Pursuant to Conn. Gen. Stat. Ann. §42-110g(a), Plaintiff Lux and the Class seek an order for restitution and damages and equitable relief and will also seek punitive damages.

114. Additionally, pursuant to Conn. Gen. Stat. Ann. §42-110g(d), Plaintiff Lux and the Class make claims for reasonable attorneys' fees and costs.

COUNT IV

Violation of the Florida Deceptive and Unfair Trade Practices Act

Florida Stat. §501.201, *et seq.*

(On behalf of Caiazzo and a Florida Class)

115. Plaintiff Caiazzo and all Florida Class Members incorporate the preceding paragraphs as if fully set forth herein.

116. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"). The stated purpose of the FDUTPA is to "protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.202(2).

117. Plaintiff Caiazzo is a consumer as defined by Fla. Stat. §501.203. Joint Juice is a good within the meaning of the FDUTPA. Premier Nutrition Corporation is engaged in trade or commerce within the meaning of the FDUTPA.

118. Florida Statute §501.204(1) declares unlawful "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." The FDUTPA also prohibits false and misleading advertising.

119. Florida Statute § 501.204(2) states that "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act." Defendant's unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably in the circumstances, and violate Fla. Stat. § 500.04 and 21 U.S.C. § 343.

120. Defendant has violated the FDUTPA by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

121. Plaintiff Caiazzo and the Class have been aggrieved by Defendant's unfair and deceptive practices and acts of false advertising in that they paid for Joint Juice.

122. The harm suffered by Plaintiff Caiazzo and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as more fully described herein.

123. Pursuant to Fla. Stat. § 501.211(1), Plaintiff Caiazzo and the Class seek an order for restitution, disgorgement, and damages.

124. Additionally, pursuant to Fla. Stat. §§ 501.211(2) and 501.2105, Plaintiff Caiazzo and the Class make claims for damages, attorneys' fees and costs.

COUNT V

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act

815 ILCS 505/1, *et seq.*

(On behalf of Dent and the Illinois Class)

125. Plaintiff Dent and all Illinois Class Members incorporate the preceding paragraphs as if fully set forth herein.

126. Plaintiff Dent and the Class members are consumers within the meaning of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "Illinois Consumer Fraud Act").

127. The Illinois Consumer Fraud Act prohibits:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.
>
> 815 ILCS 505/2.

128. As a result of the deceptive and misleading promises and omissions made by Defendant on the Joint Juice labels and throughout the Joint Juice marketing campaign, as described above, Defendant has deceived Plaintiff Dent and the Class members.

129. Defendant intentionally engaged in these unfair and deceptive acts and made false or misleading representations, intending that Plaintiff Dent and the Class members rely on the deception. Defendant's conduct was willful or malicious.

130. Defendant's deceptive conduct occurred in the course of engaging in trade or commerce.

131. Plaintiff Dent and the Class have purchased Joint Juice and suffered actual damages, proximately caused by Defendant's unfair and deceptive acts and practices.

132. Plaintiff Dent and the Class make claims for damages, punitive damages, attorneys' fees and costs pursuant to 815 ILCS 505/10a. Additionally, Plaintiff Dent and the Class seek injunctive relief to stop the ongoing deceptive advertising and for a corrective advertising campaign.

COUNT VI

Violation of Maryland Consumer Protection Act

Md. Comm. Law Code, §§13-101, *et seq.*

(On behalf of Spencer and the Maryland Class)

135. Plaintiff Spencer and all Maryland Class Members incorporate the preceding paragraphs as if fully set forth herein.

136. Plaintiff Spencer and the Class members are consumers within the meaning of the Maryland Consumer Protection Act (the "Consumer Protection Act"). Md. Comm. Law §13-101(c). Joint Juice is a consumer good within the meaning of the Consumer Protection Act. Md. Comm. Law §13-101(d). Defendant is a merchant within the meaning of the Consumer Protection Act. Md. Comm. Law §13-101(g).

137. In enacting the Consumer Protection Act, the General Assembly of Maryland found that "consumer protection is one of the major issues which confront all levels of

government, and that there has been mounting concern over the increase of deceptive practices in connection with sales of merchandise." Md. Comm. Law §13-102(a)(1). The General Assembly further found "that improved enforcement procedures are necessary to help alleviate the growing problem of deceptive consumer practices." Md. Comm. Law §13-102(a)(3).

138. The purpose of Maryland's Consumer Protection Act is to "take strong protective and preventive measures to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland. It is the purpose of this title to accomplish these ends and thereby maintain the health and welfare of the citizens of the State." Md. Comm. Law §13-102(b)(3).

139. Unfair or deceptive practices under the Maryland Consumer Protection Act, §13-301(1), (2), (3), (5) and (9) include:

- "False, . . . or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;"
- "Representations that: (i) Consumer goods . . . have a . . . characteristic, ingredient, use, benefit or quality which they do not have;"
- "Failure to state a material fact if the failure deceives or tends to deceive;"
- "Advertisement or offer of consumer goods . . . without intent to sell . . . them as advertised . . .;
- "Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with: (i) The promotion or sale of any consumer goods . . . .

140. Defendant's misrepresentations and omissions regarding Joint Juice as alleged above concern material facts. As a result of the deceptive and misleading promises and omissions made by Defendant on the Joint Juice labels and throughout the Joint Juice marketing campaign, as described above, Defendant violated Maryland's Consumer Protection Act and has also deceived and misled Plaintiff Spencer and the Class members.

141. Plaintiff Spencer and the Class have purchased Joint Juice and suffered damages and loss of money as a result of Defendant's unfair and deceptive practices.

142. Plaintiff Spencer and the Class are entitled to damages in an amount to be determined at trial and an award of reasonable attorneys' fees. Md. Comm. Law § 13-408.

COUNT VII

Violation of Massachusetts' Consumer Protection Act

Mass. Gen. Laws 93A §1, *et seq.*

(On behalf of Trudeau and the Massachusetts Class)

143. Plaintiff Trudeau incorporates the preceding paragraphs as if fully set forth herein.

144. This cause of action is brought pursuant to Massachusetts' Consumer Protection Act, Mass. Gen. Laws 93A §1, *et seq.* (the "Consumer Protection Act"). Plaintiff Trudeau is a person within the meaning of the Consumer Protection Act. Mass. Gen. Laws 93A §1(a). Defendant is engaged in trade or commerce as defined by the Consumer Protection Act. Mass. Gen. Laws 93A §1(b).

145. The Consumer Protection Act, Mass. Gen. Laws 93A §2, declares that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

146. Defendant violated the Consumer Protection Act by representing through its advertisements of Joint Juice the efficacy of Joint Juice when such representations and advertisements were unsubstantiated, false, and misleading.

147. Defendant's conduct, including misrepresenting the efficacy of Joint Juice in the course of commerce, inflicted real injury and damage upon Plaintiff Trudeau and the Class.

148. Thus, as a result of Defendant's unlawful conduct, Plaintiff Trudeau and the Class are entitled to judgment, full restitution and damages or twenty-five dollars, whichever is greater, or up to three but not less than two times such amount for a willful or knowing violation, or for a bad faith refusal to grant relief upon demand. Mass. Gen. Laws 93A §9(3). Plaintiff and the Class are also entitled to and seek equitable relief, including an injunction requiring

Defendant to cease its deceptive advertising and to conduct a corrective advertising campaign. Mass. Gen. Laws 93A §9(1).

149. Plaintiff Trudeau and Class members also seek attorneys' fees and costs pursuant to Mass. Gen. Laws 93A §9(3A).

150. Defendant has willfully or knowingly engaged in the unfair and deceptive acts and practices that constitute violations of the Consumer Protection Act or refused in bad faith to grant relief upon demand.

151. At least thirty days prior to filing the complaint, Defendant was notified in writing of the demand for relief and described the unfair and deceptive acts and practices relied on and the injury suffered. Mass. Gen. Laws 93A §9(3).

COUNT VIII

Violation of Michigan Consumer Protection Act

Mich. Comp. Laws §§ 445.901, *et seq.*

(On behalf of Avery and the Michigan Class)

152. Plaintiff Avery and all Michigan Class Members incorporate the preceding paragraphs as if fully set forth herein.

153. This cause of action is brought pursuant to the Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901, *et seq*. ("Consumer Protection Act"). The purpose of the Consumer Protection Act is to protect consumers in their purchases of goods which are used for personal, family or household purposes.

154. Plaintiff Avery is a person as defined by Mich. Comp. Laws § 445.902(d). Premier Nutrition Corporation is engaged in trade or commerce within the meaning of the Consumer Protection Act. Mich. Comp. Laws § 445.902(g).

155. Mich. Comp. Laws § 445.903 declares unlawful "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of any trade or commerce."

156. Unfair, unconscionable, or deceptive methods, acts, or practices under Mich. Comp. Laws § 445.903 include:

(c) Representing that goods . . . [have] characteristics, ingredients, uses, benefits, . . . that they do[] not have.

* * *

(g) Advertising or representing good or services with intent not to dispose of those goods or served as advertised or represented.

* * *

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

* * *

(bb) Making a representation of fact or statement of fact material to a transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

* * *

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

159. Defendant has violated the Consumer Protection Act by engaging in the unfair, unconscionable and deceptive practices as described herein.

160. Plaintiff Avery and the Class have been damaged by Defendant's unfair and deceptive practices in that they bought and paid money for Joint Juice as a result of Defendant's unfair and deceptive practices.

161. Pursuant to Mich. Comp. Laws § 445.911, Plaintiff Avery and the Class seek an order for damages, injunctive relief and declaratory relief.

162. Additionally, Plaintiff Avery and the Class seek and order for payment by Defendant of reasonable attorneys' fees and costs.

COUNT IX

Breach of Implied Warranty of Merchantability

(On behalf of Avery and the Michigan Class)

163. Plaintiff Avery incorporates the preceding paragraphs as if fully set forth herein.

164. Defendant is and was, at all relevant times, a merchant with respect to Joint Juice, and manufactured, distributed, warrantied and/or sold Joint Juice.

165. A warranty that the Joint Juice Products were in merchantable condition, including being fit for the ordinary purposes for which they were sold was implied by law in the instant transactions. *See* MCLS § 440.2314(1).

166. Plaintiff and the other Class members purchased the Joint Juice Products manufactured, advertised, and sold by Defendant.

167. At all relevant times, there was a duty imposed on Defendant by the implied warranty of merchantability set forth in section 440.2314 of the Michigan Compiled Laws, which provides, in relevant part:

> (2) Goods to be merchantable must be at least such as
>
> (a) pass without objection in the trade under the contract description; and
>
> (b) in the case of fungible goods, are of fair average quality within the description; and
>
> (c) are fit for the ordinary purpose for which such goods are used; and
>
> (e) are adequately contained, packaged, and labeled as the agreement may require; and
>
> (f) conform to the promises or affirmations of fact made on the container or label if any.

168. Notwithstanding Defendant's aforementioned duty, the Joint Juice Products were not in merchantable condition at the time they were sold and thereafter because they were not fit for the ordinary, intended, anticipated, or reasonably foreseeable purpose for which the Joint Juice Products are used – to provide joint health benefits. The Joint Juice Products left Defendant's possession and control compromised of ingredients that rendered them at all times

thereafter unmerchantable, and unfit for their ordinary, intended, anticipated, or reasonably foreseeable use as joint health supplements.

169. The Joint Juice Products were manufactured with ingredients that do not provide the advertised joint health benefits, rendering the Joint Juice Products unfit for their ordinary, intended, anticipated, or reasonably foreseeable purpose. This rendered the Joint Juice Products unsuitable for their ordinary use and incapable of performing the tasks they were designed, advertised, and sold to perform.

170. As discussed above, Joint Juice does not perform as advertised. As a result, the Joint Juice Products do not conform to Defendant's promises or affirmations of fact made on the Products' label, are not adequately labeled, and are not of fair or average quality. Indeed, the only purpose for purchasing Joint Juice is to obtain the represented joint health benefits, and a reasonable consumer would not purchase the Joint Juice Products if they knew the Products did not function as advertised. Thus, the Joint Juice Products do not pass without objection in the trade.

171. All conditions precedent, including notice have occurred or been performed.

172. As a direct and foreseeable result of purchasing the Joint Juice Products, which contain ingredients that do not provide the advertised joint health benefits, Plaintiff and the other Class members have suffered out-of-pocket losses.

173. Plaintiff and the Class are entitled to damages, equitable relief as the court deems necessary and proper, and attorney's fees and reimbursement of expenses. *See* MCLS §440.2714.

COUNT X

Violation of the Magnuson-Moss Warranty Act

15 U.S.C. §§ 2301, *et seq.*

(On behalf of Avery and the Michigan Class)

174. Plaintiff Avery and all Michigan Class Members incorporate the preceding paragraphs as if fully set forth herein.

175. The Magnuson-Moss Warranty Act provides for a civil action by consumers for failure to comply with a written warranty or an implied warranty. *See* 15 U.S.C. § 2310(d)(1)(A).

176. The Joint Juice Products are "consumer products" as the term is defined under 15 U.S.C. § 2301(1).

177. Plaintiff and the other Class members are "consumers" as defined in 15 U.S.C. § 2301.

178. Defendant is a "supplier" and "warrantor" under 15 U.S.C. § 2301.

179. Defendant breached the implied warranty of merchantability as alleged herein. The Joint Juice Products were manufactured with ingredients that do not provide the advertised joint health benefits, rendering the Joint Juice Products unfit for their advertised, ordinary purpose. This rendered the Joint Juice Products unsuitable for their ordinary use and incapable of performing the tasks they were designed, advertised, and sold to perform.

180. All conditions precedent have occurred or been performed. Plaintiff and the other Class members were damaged as a result of Defendant's breach of the implied warranty of merchantability because Defendant did not provide Joint Juice in a manner that conformed to Defendant's affirmations and/or promises, and because the Joint Juice Products are not fit for their ordinary purpose or otherwise merchantable.

181. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum or value of $25.00. In addition, the amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

182. As a direct and foreseeable result of purchasing the Joint Juice Products, which contain ingredients that do not provide the advertised joint health benefits, Plaintiff and the other Class members have suffered out-of-pocket losses, the full amount of which will be proven at trial.

183. Pursuant to 15 U.S.C § 2310(d)(1)-(2), Plaintiff and the Class are entitled to damages, equitable relief as the court deems necessary and proper, and attorney's fees and reimbursement of expenses.

COUNT XI

Violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law

73 Pa. Stat. §§ 201-1, *et seq.*

(On behalf of Ravinsky and a Pennsylvania Class)

184. Plaintiff Ravinsky and all Pennsylvania Class Members incorporate the preceding paragraphs as if fully set forth herein.

185. This cause of action is brought pursuant to Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. §§ 201-1, *et seq.* (the "CPL").

186. Plaintiff Ravinsky is a person as defined by 73 Pa. Stat. § 201-2(2). Defendant's conduct as alleged herein involves trade or commerce as defined in 73 Pa. Stat. § 201-2(3).

187. Plaintiff Ravinsky and members of the Class relied upon Defendant's joint health representations in purchasing Joint Juice and Defendant intended that they so rely on the joint health representations.

188. Defendant violated and continues to violate the CPA by engaging in the following practices prohibited by 73 Pa. Stat. § 201-2(4) in transactions with Plaintiff Ravinsky and other members of the Class which were intended to result in and did result in the sale of Joint Juice to Plaintiff Ravinsky and Class members:

(v) by "[r]epresenting that goods or services have . . . characteristics, ingredients, uses, [or] benefits . . . that they do not have";

(vii) by "[r]epresenting that goods or services are of a particular standard, quality or grade . . . if they are of another";

(ix) by "[a]dvertising goods or services with intent not to sell them as advertised"; and

(xxi) by "[e]ngaging in other . . . deceptive conduct which creates a likelihood of confusion or of misunderstanding.

189. As a direct and proximate result of Defendant's violation of 73 Pa. Stat. §§ 201-1, *et seq.*, Plaintiff Ravinsky and the Class suffered actual damages, the full amount of which will be proven at trial.

190. Pursuant to 73 Pa. Stat. § 201-9.2(a), Plaintiff Ravinsky and the Class also seek treble damages, other such relief as the court deems necessary and proper, and attorneys' fees and costs.

COUNT XII

Breach of Express Warranty

(On behalf of Ravinsky and a Pennsylvania Class)

191. Plaintiff Ravinsky and all Pennsylvania Class Members incorporate the preceding paragraphs as if fully set forth herein.

192. Defendant, by affirmation of fact and/or promises set forth in its promotions, advertisements, packaging and/or labeling for Joint Juice created an express warranty that the Joint Juice would conform to the affirmation and/or promises.

193. The affirmations of fact and/or promises, which related to the joint health benefits of Joint Juice, are express warranties, became part of the basis of the bargain, and are part of a standardized contract between Plaintiff Ravinsky and the members of the Class on the one hand and Joint Juice on the other.

194. Plaintiff Ravinsky and the Class members performed all conditions precedent under the contract between the Parties.

195. Defendant breached the terms of the express warranty between the Parties including the express warranties related to the joint benefits of Joint Juice with Plaintiff Ravinsky and the Class by not providing Joint Juice in a manner that conformed to the affirmations and/or promises.

196. Defendant's breach of this express warranty has directly and proximately caused Plaintiff Ravinsky and members of the Class to suffer damages in the amount of the purchase price of Joint Juice.

197. Within a reasonable time of discovering the breach of express warranty by Defendant, Plaintiff Ravinsky through counsel notified Defendant of the breach of warranty.

COUNT XIII

Breach of Implied Warranty of Merchantability

(On behalf of Ravinsky and a Pennsylvania Class)

198. Plaintiff Ravinsky and all Pennsylvania Class Members incorporate the preceding paragraphs as if fully set forth herein.

199. Defendant is and was, at all relevant times, a merchant with respect to Joint Juice, and manufactured, distributed, warrantied and/or sold Joint Juice.

200. A warranty that the Joint Juice Products were in merchantable condition and fit for the ordinary purposes for which they were sold was implied by law in the instant transactions.

201. Plaintiff and the other Class members purchased the Joint Juice Products manufactured, advertised, and sold by Defendant.

202. At all relevant times, there was a duty imposed on Defendant by the implied warranty of merchantability set forth in section 2314 of the Pennsylvania Commercial Code, which provides, in relevant part:

> (b) Merchantability standards for goods. – Goods to be merchantable must be at least such as:
>
> (1) pass without objection in the trade under the contract description;
>
> (2) in the case of fungible goods, are of fair average quality within the description;
>
> (3) are fit for the ordinary purpose for which such goods are used;
>
> (5) are adequately contained, packaged, and labeled as the agreement may require; and
>
> (6) conform to the promises or affirmations of fact made on the container or label if any.

203. Notwithstanding Defendant's aforementioned duty, the Joint Juice Products were not in merchantable condition at the time they were sold and thereafter because they were not fit for the ordinary purpose for which the Joint Juice Products are used – to provide joint health benefits. The Joint Juice Products left Defendant's possession and control compromised of

ingredients that rendered them at all times thereafter unmerchantable, and unfit for their ordinary, advertised use as joint health supplements.

204. The Joint Juice Products were manufactured with ingredients that do not provide the advertised joint health benefits, rendering the Joint Juice Products unfit for their advertised, ordinary purpose. This rendered the Joint Juice Products unsuitable for their ordinary use and incapable of performing the tasks they were designed, advertised, and sold to perform.

205. As discussed above, Joint Juice does not perform as advertised. As a result, the Joint Juice Products do not conform to Defendant's promises or affirmations of fact made on the Products' label, are not adequately labeled, and are not of fair or average quality. Indeed, the only purpose for purchasing Joint Juice is to obtain the represented joint health benefits, and a reasonable consumer would not purchase the Joint Juice Products if they knew the Products did not function as advertised. Thus, the Joint Juice Products do not pass without objection in the trade.

206. All conditions precedent, including notice have occurred or been performed.

207. As a direct and foreseeable result of purchasing the Joint Juice Products, which contain ingredients that do not provide the advertised joint health benefits, Plaintiff and the other Class members have suffered out-of-pocket losses.

COUNT XIV

Violation of the Magnuson-Moss Warranty Act

15 U.S.C. §§ 2301, *et seq.*

(On behalf of Ravinsky and a Pennsylvania Class)

208. Plaintiff Ravinsky and all Pennsylvania Class Members incorporate the preceding paragraphs as if fully set forth herein.

209. The Magnuson-Moss Warranty Act provides for a civil action by consumers for failure to comply with a written warranty or an implied warranty. *See* 15 U.S.C. § 2310(d)(1)(A).

210. The Joint Juice Products are "consumer products" as the term is defined under 15 U.S.C. § 2301(1).

211. Plaintiff and the other Class members are "consumers" as defined in 15 U.S.C. § 2301.

212. Defendant is a "supplier" and "warrantor" under 15 U.S.C. § 2301.

213. Defendant breached the implied warranty of merchantability as alleged herein. The Joint Juice Products were manufactured with ingredients that do not provide the advertised joint health benefits, rendering the Joint Juice Products unfit for their advertised, ordinary purpose. This rendered the Joint Juice Products unsuitable for their ordinary use and incapable of performing the tasks they were designed, advertised, and sold to perform.

214. Defendant breached the terms of the express warranty as alleged herein, including the express warranties related to the joint benefits of Joint Juice with Plaintiff Ravinsky and the Class by not providing Joint Juice in a manner that conformed to the affirmations and/or promises.

215. All conditions precedent have occurred or been performed. Plaintiff and the other Class members were damaged as a result of Defendant's breaches of written and implied warranties because Defendant did not provide Joint Juice in a manner that conformed to Defendant's affirmations and/or promises, and because the Joint Juice Products are not fit for their ordinary purpose or otherwise merchantable.

216. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum or value of $25.00. In addition, the amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

217. As a direct and foreseeable result of purchasing the Joint Juice Products, which contain ingredients that do not provide the advertised joint health benefits, Plaintiff and the other Class members have suffered out-of-pocket losses, the full amount of which will be proven at trial.

218. Pursuant to 15 U.S.C §2310(d)(1)-(2), Plaintiff and the Class are entitled to damages, equitable relief as the court deems necessary and proper, and attorney's fees and reimbursement of expenses.

COUNT XV

Unjust Enrichment

(On behalf of Plaintiffs Avery and Ravinsky, the Michigan Class, and Pennsylvania Class)

219. Plaintiffs Beverley Avery, Anette Ravinsky, and all members of the Michigan Class and Pennsylvania Class incorporate the preceding paragraphs as if fully set forth herein.

220. Defendant has been unjustly enriched to Plaintiffs' and the Class members' detriment as a result of its unlawful and wrongful retention of money conferred by Plaintiffs and the Class members, such that Defendant's retention of their money would be inequitable.

221. Defendant's unlawful and wrongful acts, as alleged above, enabled Defendant to unlawfully receive monies it would not have otherwise obtained.

222. Plaintiffs and the Class members have conferred benefits on Defendant, which Defendant has knowingly accepted and retained.

223. Defendant's retention of the benefits conferred by Plaintiffs and the Class members would be against fundamental principles of justice, equity, and good conscience.

224. Plaintiffs and the Class members seek to disgorge Defendant's unlawfully retained profits and other benefits resulting from its unlawful conduct, and seek restitution and rescission for the benefit of Plaintiffs and the Class members.

225. Plaintiffs and the Class members are entitled to the imposition of a constructive trust upon Defendant, such that its unjustly retained profits and other benefits are distributed equitably by the Court to and for the benefit of Plaintiffs and the Class members.

JURY DEMAND

Plaintiffs demand trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Class, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

A. Declaring Certifying the class as requested herein;

B. Awarding Plaintiffs and the proposed Class members actual and punitive damages;

C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiffs and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendant to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs; and

G. Providing such further relief as may be just and proper.

Respectfully submitted,

Dated: October 23, 2025

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