

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

TODD D. CARPENTER (234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 756-6994
Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

BLOOD HURST & O'REARDON, LLP

TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
701 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 338-1100
Facsimile: (619) 338-1101
tblood@bholaw.com
toreardon@bholaw.com

Attorneys for Plaintiff and Class Counsel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SANDRA SEEGER, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

REXALL SUNDOWN, INC.,

Defendant.

Case No.: '17CV1243 JAH JMA

CLASS ACTION COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

1 Plaintiff Sandra Seegert (“Plaintiff”) brings this class action complaint
2 against Defendant Rexall Sundown, Inc. (“Defendant”), individually and on behalf
3 of all others similarly situated, and allege upon personal knowledge as to her acts
4 and experiences, and, as to all other matters, upon information and belief,
5 including investigation conducted by Plaintiff’s attorneys.

6 **NATURE OF THE ACTION**

7 1. This is a consumer protection class action arising out of Defendant’s
8 false and misleading advertising of its glucosamine products.

9 2. Defendant markets, sells and distributes a line of joint health dietary
10 supplements under the “Osteo Bi-Flex” brand name, and Defendant represents that
11 these products are beneficial to the joints of the consumers who use them.

12 3. Each of the Osteo Bi-Flex products at issue in Defendant’s joint
13 health product line, through their labeling and packaging, and through Defendant’s
14 other advertising and marketing materials, communicate the same substantive
15 message to consumers: that Osteo Bi-Flex provides meaningful joint health
16 benefits.

17 4. These representations are designed to induce consumers to believe
18 that Defendant’s Osteo Bi-Flex joint health products are capable of actually
19 providing meaningful joint benefits, and consumers purchase Defendant’s Osteo
20 Bi-Flex joint health products solely for the purpose of enjoying these purported
21 joint health benefits.

22 5. Defendant’s Osteo Bi-Flex products, however, are incapable of
23 supporting or benefiting the health of human joints because the main ingredients
24 in each of Defendant’s Osteo Bi-Flex products at issue, either alone or in
25 combination with other ingredients, cannot support or benefit joint health.
26 Accordingly, Defendant’s joint health representations are false, misleading and
27 deceptive, and its Osteo Bi-Flex joint health products are worthless.

28 6. Plaintiff brings this action individually and on behalf of all other

1 similarly situated consumers to halt the dissemination of Defendant's false and
2 misleading representations, correct the false and misleading perception
3 Defendant's representations have created in the minds of consumers, and to obtain
4 redress for those who have purchased Defendant's Osteo Bi-Flex products at issue.

5 **JURISDICTION AND VENUE**

6 7. The Court has original jurisdiction under to 28 U.S.C. § 1332(d)(2)
7 because the matter in controversy, exclusive of interest and costs, exceeds the sum
8 or value of \$5,000,000 and is a class action in which there are in excess of 100
9 class members, and some of the members of the class are citizens of states different
10 from Defendant.

11 8. This Court has personal jurisdiction over Defendant because
12 Defendant conducts business in California. Defendant has marketed, promoted,
13 distributed, and sold the Osteo Bi-Flex products at issue in California, rendering
14 exercise of jurisdiction by California courts permissible.

15 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and
16 (b) because a substantial part of the events and omissions giving rise to Plaintiff's
17 claims occurred in this district. Venue also is proper under 18 U.S.C. §1965(a)
18 because Defendant transacts substantial business in this district.

19 **PARTIES**

20 10. Plaintiff Sandra Seegert is a citizen of the State of California, and, at
21 all times relevant to this action, resided in San Diego County, California.

22 11. On February 20, 2017, Plaintiff saw Defendant's Osteo Bi-Flex
23 Triple Strength product at a Walgreens retail store.

24 12. In reliance on the Osteo Bi-Flex product's joint health
25 representations, Plaintiff purchased Defendant's Osteo Biflex Triple Strength
26 product for approximately \$31.99. By purchasing the falsely advertised product,
27 Plaintiff suffered injury-in-fact and lost money.

28 13. The Osteo Bi-Flex product Plaintiff purchased, like all of Defendant's

Osteo Bi-Flex products at issue, cannot provide the promised benefits. Had Plaintiff known the truth about Defendant's misrepresentations and omissions at the time of purchase, Plaintiff would not have purchased Defendant's Osteo Bi-Flex product.

14. Rexall Sundown, Inc. is a Florida Corporation with its principal place of business located at 2100 Smithtown Avenue, Ronkonkoma, New York.

15. Defendant manufactures, advertises, markets, distributes, and/or sells the Osteo Bi-Flex products to tens of thousands of consumers in California and throughout the United States.

FACTUAL ALLEGATIONS

I. Defendant's Glucosamine Products

16. Defendant sells the glucosamine products at issue through its website, www.osteobiflex.com, and through various retail stores, including Walgreens, Walmart, and Costco.

17. Defendant's glucosamine products at issue are sold under the "Osteo Bi-Flex" brand name (collectively the "Osteo Bi-Flex Products"):

- Osteo Bi-Flex One Per Day;
- Osteo Bi-Flex Triple Strength;
- Osteo Bi-Flex Triple Strength MSM; and
- Osteo Bi-Flex Triple Strength with Vitamin D.

18. The main ingredient of each Osteo Bi-Flex Product is glucosamine hydrochloride.

19. Glucosamine hydrochloride is a combination of glucosamine (an amino sugar that is produced by the body and that can be isolated from shellfish) and hydrochloric acid.

20. Sometimes called degenerative joint disease or degenerative arthritis, osteoarthritis is the most common chronic condition of the joints, affecting approximately 27 million Americans. Osteoarthritis can affect any joint, but it

occurs most often in knees, hips, hands, and 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.

21. According to the Mayo Clinic, the signs and symptoms of osteoarthritis include joint pain, joint tenderness, joint stiffness, and the inability to move your joint through its full range of motion.¹

II. *Defendant's False and Deceptive Advertising*

22. Defendant, through its advertisements, including on the Osteo Bi-Flex Products' packaging and labeling, has consistently conveyed to consumers throughout the United States that its Osteo Bi-Flex Products support and promote joint health.

23. For instance, on the front label of each of the Osteo Bi-Flex Products, prominently and in all caps, Defendant claims "JOINT HEALTH."

24. To reinforce the overall joint health benefits message, the front label of the Osteo Bi-Flex One Per Day, Osteo Bi-Flex Triple Strength, and Osteo Bi-Flex Triple Strength with Vitamin D products states "**JOINT SHIELD**" and that it "Shows Improved Joint Comfort within **7 Days!**" Similarly, the front label of the Osteo Bi-Flex Triple Strength MSM product states that it "Supports Cartilage Health" and "Helps Strengthen Your Joints."

25. Throughout the Osteo Bi-Flex Products' labeling, Defendant repeats similar joint health benefit claims, including "Range Of Motion," "supports joint comfort," and "helps strengthen joints while helping to maintain joint cartilage essential for comfortable joint movement".

26. To add credibility and provide consumers with a "reason to believe" the joint health message, Defendant also labels the Osteo Bi-Flex Products as the

¹ <http://www.mayoclinic.com/health/osteoarthritis/DS00019/DSECTION=symptoms> (last visited March 15, 2013).

1 “#1 Pharmacist Recommended Brand.” These claims are deceitfully likely to
2 induce a placebo effect on consumers, irrespective of any health effect from the
3 Osteo Bi-Flex Products’ ingredients.

4 27. Based on these representations, it is clear that the Osteo Bi-Flex
5 Products are intended to induce a common belief in consumers that the Osteo Bi-
6 Flex Products are capable of providing meaningful joint health benefits.

7 **III. Scientific Studies Confirm That The Osteo Bi-Flex Products Are Not**
8 ***Effective And Defendant’s Joint Health Representations Are False,***
9 ***Deceptive And Misleading***

10 28. Despite Defendant’s representations, the ingredients in the Osteo Bi-
11 Flex Products are *not* effective at supporting or benefiting joint health.

12 **Randomized Clinical Trials**

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

18 30. The main ingredients in the Osteo Bi-Flex Products have been
19 extensively studied, and the well-conducted RCTs demonstrate that the
20 ingredients, alone or in combination, are not effective at producing joint health
21 benefits.

22 31. The leading series of studies testing glucosamine and chondroitin are
23 known as the “GAIT” studies. The GAIT studies were independently conducted,
24 and funded by the National Institutes of Health. The primary GAIT study cost over
25 \$12.5 million.

26 32. In 2006, results from the primary GAIT study – a 1,583-patient, 24-
27 month, multi-center RCT – were published in the New England Journal of
28 Medicine (the “2006 GAIT Study”). Authors of the 2006 GAIT Study concluded:

1 “[t]he analysis of the primary outcome measure did not show that either
2 [glucosamine or chondroitin], alone or in combination, was efficacious”
3 Clegg, D., *et al.*, *Glucosamine, Chondroitin Sulfate, and the Two in Combination*
4 *for Painful Knee Osteoarthritis*, 354 New England J. of Med. 795, 806 (2006).

5 33. In 2008, additional GAIT study findings were published. See
6 Sawitzke, A.D., *et al.*, *The Effect of Glucosamine and/or Chondroitin Sulfate on*
7 *the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum.
8 3183–91 (Oct. 2008). The 2008 GAIT publication explored the effects of
9 glucosamine and chondroitin on progressive loss of joint space width. The
10 researchers found “no significant differences in mean [joint space width] loss over
11 2 years between the treatment groups and the placebo group...” In other words,
12 glucosamine and chondroitin, alone or in combination do not work and do not
13 impact joint space width loss or otherwise rebuild cartilage.

14 34. In 2010, the NIH released a third set of results from the GAIT studies.
15 See Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin*
16 *Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat*
17 *Osteoarthritis Of The Knee: 2-Year Results From GAIT*, 69(8) Ann Rheum. Dis.
18 1459-64 (Aug. 2010). Authors of the 2010 GAIT report concluded that
19 glucosamine and chondroitin do not provide pain, function, stiffness or mobility
20 benefits. The authors also determined glucosamine and chondroitin do not benefit
21 those with moderate-to-severe knee pain – a *post-hac*, secondary analysis which
22 the original GAIT publication found inconclusive.

23 35. In addition to the GAIT studies, four other RCTs have examined a
24 combination of glucosamine and chondroitin sulfate versus placebo. Each of these
25 studies found glucosamine and chondroitin do not work.

26 36. In 2007, Messier *et al.*, published results from their 12-month,
27 double-blind RCT examining 89 subjects in the United States. Messier SP *et al.*,
28 *Glucosamine/chondroitin combined with exercise for the treatment of knee*

1 *osteoarthritis: a preliminary study*. *Osteoarthritis and Cartilage*, 15:1256-1266
2 (2007). Messier and co-authors concluded that daily consumption of a
3 combination of glucosamine hydrochloride and chondroitin sulfate (the same
4 ingredients in the Move Free Products) does not provide joint pain, function,
5 stiffness or mobility benefits.

6 37. In 2011, Notarnicola *et al.*, published results from their RCT
7 examining 60 subjects who consumed a daily combination of
8 methylsulfonylmethane (MSM) and boswellic acid or placebo. Notarnicola *et al.*,
9 *The “MESACA” Study: Methylsulfonylmethane and Boswellic Acids in the*
10 *Treatment of Gonarthrosis*, *Adv Ther*, 28(10):894-906 (2011). The primary
11 endpoint of this study was to assess the efficacy of MSM and boswellic acid in
12 terms of reducing pain and improving joint function. The researchers found that
13 daily consumption of MSM and boswellic acid did not reduce pain or improve
14 joint function.

15 38. Fransen *et al.* (2014) examined 605 subjects over a 2-year period.
16 Fransen M *et al.*, *Glucosamine and chondroitin for knee osteoarthritis: a double-*
17 *blind randomized placebo-controlled clinical trial evaluating single and*
18 *combination regimens*, *Ann Rheum Disease* 74(5):851-858 (2014). Fransen
19 concluded that glucosamine and chondroitin, alone or in combination, are no better
20 than placebo for reducing pain or improving physical function:

21 For the main symptomatic outcome ... no significant effect on
22 maximum knee pain over year 1 ... was demonstrated for the three
23 treatment allocations, compared with placebo. Over year 2 ... there
24 were no differences between the four allocations ... and there was no
25 significant difference in knee pain reduction between any of the
26 treatment groups and placebo after adjusting for baseline values.
27 Among the subgroup of 221 (37%) participants with severe knee pain
28 ... at baseline, there were no significant differences with respect to

1 their maximum knee pain or global assessment and score across
2 different treatment groups.

3 *Id.* at 3-4; *see also id.* at 5-6 (“there were no significant reductions in knee pain
4 detected for glucosamine or chondroitin alone, or in combination, over the 2-year
5 follow-up period versus placebo”) and *id.* at 4 (“[t]here were no significant
6 differences” for any secondary measures, including WOMAC pain or function).

7 39. Yang *et al.* (2015) analyzed 1,625 participants to estimate the
8 effectiveness of the combination of glucosamine and chondroitin in relieving knee
9 symptoms and slowing disease progression among patients with knee
10 osteoarthritis. Yang, *et al.*, entitled *Effects of glucosamine and chondroitin on*
11 *treating knee osteoarthritis: an analysis with marginal structural models*, Arthritis
12 & Rheumatology, Vol. 63, No. 3, 714-23 (March 2015). The researchers found
13 that glucosamine and chondroitin combinations provided no clinically significant
14 benefits in terms of reducing pain or stiffness, improving physical function or
15 mobility, or delay the progression of joint space narrowing or osteoarthritis.

16 40. A 2016 randomized, double-blind, placebo-controlled clinical trial by
17 Roman-Blas, *et al.*, entitled *Combined Treatment With Chondroitin Sulfate and*
18 *Glucosamine Sulfate Shows No Superiority Over Placebo for Reduction of Joint*
19 *Pain and Functional Impairment in Patients With Knee Osteoarthritis*, Arthritis &
20 Rheumatology, Vol 69, No. 1, 77-85 (Jan. 2017), concluded that a combination of
21 glucosamine and chondroitin was not superior to a placebo pill in terms of reducing
22 joint pain and functional impairment in patients with symptomatic knee
23 osteoarthritis over a six month period.

24 41. In 2016, Lugo *et al.*, also published the results from a study
25 comparing a combination of glucosamine and chondroitin versus placebo. Lugo
26 JP *et al.*, *Efficacy and tolerability of an undenatured type II collagen supplement*
27 *in modulating knee osteoarthritis symptoms: a multicenter randomized, double-*
28 *blind, placebo-controlled study*, Nutrition Journal (2016). Lugo was a multicenter,

1 double-blind RCT examining 190 subjects over 180 days. Lugo and co-authors
2 found that a combination of glucosamine hydrochloride and chondroitin sulfate
3 (the same ingredient combination in the Move Free Products) was no better than
4 placebo in terms of joint pain, stiffness, mobility or physical function.

5 42. The results from GAIT and these other clinical studies testing
6 glucosamine and chondroitin combinations versus placebo, are also consistent
7 with the reported results of prior and subsequent studies.

8 43. For example, a 1999 study involving 100 subjects by Houpt *et al.*,
9 entitled *Effect of glucosamine hydrochloride in the treatment of pain of*
10 *osteoarthritis of the knee*, 26(11) J. Rheumatol. 2423-30 (1999), found that
11 glucosamine hydrochloride performed no better than placebo at reducing pain at
12 the conclusion of the eight week trial.

13 44. Likewise, a 2004 study by McAlindon, *et al.*, entitled *Effectiveness*
14 *of Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-*
15 *Based Randomized Double-Blind Controlled Trial*, 117(9) Am. J. Med. 649-9
16 (Nov. 2004), concluded that “glucosamine was no more effective than placebo in
17 treating symptoms of knee osteoarthritis,” meaning glucosamine is ineffective. *Id.*
18 at 646 (“[W]e found no difference between the glucosamine and placebo groups
19 in any of the outcome measures, at any of the assessment time points.”).

20 45. Many studies have also confirmed there is a significant “placebo”
21 effect with respect to consumption of Move Free Products represented to be
22 effective in providing joint health benefits such as Defendant’s Move Free
23 Products.

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

27 47. A 2004 study by Cibere, *et al.*, entitled *Randomized, Double-Blind,*
28 *Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis,*

1 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of
2 glucosamine who claimed to have experienced at least moderate improvement
3 after starting glucosamine. These patients were divided into two groups – one
4 group that was given glucosamine and another group that was given a placebo. For
5 six months, the primary outcome observed was the proportion of disease flares in
6 the glucosamine and placebo groups. A secondary outcome was the time to disease
7 flare. The study results reflected that there were no differences in either the
8 primary or secondary outcomes for glucosamine and placebo. The authors
9 concluded that the study provided no evidence of symptomatic benefit from
10 continued use of glucosamine – in other words, any prior perceived benefits were
11 due to the placebo effect and **not** glucosamine. *Id.* at 743 (“In this study, we found
12 that knee OA disease flare occurred as frequently, as quickly, and as severely in
13 patients who were randomized to continue receiving glucosamine compared with
14 those who received placebo. As a result, the efficacy of glucosamine as a
15 symptom-modifying drug in knee OA is not supported by our study.”).

16 48. A 2008 study by Rozendaal, *et al.*, entitled *Effect of Glucosamine*
17 *Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008), assessed
18 the effectiveness of glucosamine on the symptoms and structural progression of
19 hip osteoarthritis during two years of treatment. Rozendaal and co-authors
20 examined 222 subjects and concluded that glucosamine was no better than placebo
21 in reducing pain, improving physical function, or impacting the structural
22 progression of osteoarthritis.

23 49. On July 7, 2010, Wilkens, *et al.*, reported that there was no difference
24 between placebo and glucosamine for the treatment of low back pain and lumbar
25 osteoarthritis and that neither glucosamine nor placebo were effective in reducing
26 pain related disability. The researchers also concluded that, “Based on our results,
27 it seems unwise to recommend glucosamine to all patients” with low back pain
28 and lumbar osteoarthritis. Wilkens, *et al.*, *Effect of Glucosamine on Pain-Related*

1 *Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar*
2 *Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

3 50. Kwoh *et al.* (2014) is a report from a randomized, placebo-controlled
4 clinical trial measuring the effect of oral glucosamine hydrochloride on joint
5 degradation, and secondarily, pain and function in 201 individuals. Kwoh, *et al.*,
6 *Effect of Oral Glucosamine on Joint Structure in Individuals With Chronic Knee*
7 *Pain*, Arthritis & Rheumatology, Vol 66, No. 4, 930-39 (Apr. 2014). Kwoh, which
8 studied a mix of subjects with and without osteoarthritis, concluded that
9 glucosamine supplementation provided no structural, pain or function benefits.

10 51. Runhaar *et al.* (2015) was an independently-analyzed double-blind,
11 placebo-controlled, factorial design trial testing a diet-and-exercise program and
12 1500mg oral glucosamine or placebo on the incidence of knee osteoarthritis among
13 407 women at high-risk for knee osteoarthritis. Runhaar *et al.*, *Prevention of Knee*
14 *Osteoarthritis in Overweight Females: The First Preventative Randomized*
15 *Controlled Trial in Osteoarthritis*, Am J Med, 128(8):888-895 (2015).
16 Researchers examined the impact of daily glucosamine consumption on the
17 incidence of knee osteoarthritis, as well as on pain and physical function. After 2.5
18 years, no effect from glucosamine was found on subjects' overall quality of life or
19 knee pain, physical function, or the incidence of knee osteoarthritis.

20 52. A 2017 study by Roman-Blas, *et al.*, entitled *The combined therapy*
21 *with chondroitin sulfate plus glucosamine sulfate or chondroitin sulfate plus*
22 *glucosamine hydrochloride does not improve joint damage in an experimental*
23 *model of knee osteoarthritis in rabbits*, European Journal of Pharmacology, Vol.
24 794 8-14 (Jan. 2017), concluded that the combination of chondroitin sulfate and
25 glucosamine sulfate and the combination of chondroitin sulfate and glucosamine
26 hydrochloride failed to improve structural damage or ameliorate the inflammatory
27 profile of joint tissues.

28 ///

Meta-analyses and Scientific Review Articles

53. Well-conducted meta-analyses are considered a higher level of evidence than individual clinical trials as they provide a method to evaluate the aggregated results of all relevant studies according to their pooled effects and methodological quality.

54. In a 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 (“[W]e believe that there is sufficient information to conclude that glucosamine hydrochloride lacks efficacy for pain in OA.”).

55. A 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. This independent research team 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. In 2011, Miller and Clegg, after surveying the clinical study history of glucosamine and chondroitin, concluded that, “[t]he cost-effectiveness of these dietary supplements alone or in combination in the treatment of OA has not been demonstrated in North America.” Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*, *Rheum. Dis. Clin. N. Am.* 37 103-118 (2011).

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

5 58. The recent meta-analysis by Eriksen *et al.* (2014) included 25
6 glucosamine trials, which collectively involved 3,458 patients. Eriksen, P *et al.*,
7 *Risk of bias and brand explain the observed inconsistency in trials on glucosamine*
8 *for symptomatic relief of osteoarthritis: A meta-analysis of placebo-controlled*
9 *trials*, *Arthritis Care & Research* 66:1844-1855 (2014). Eriksen and co-authors
10 found that “[i]n accordance with a previous analysis, we found that glucosamine
11 hydrochloride had no effect on pain” and “glucosamine by and large has no
12 clinically important effect.”

13 59. A 2016 scientific review by Vasiliadis, *et al.*, entitled *Glucosamine*
14 *and chondroitin for the treatment of osteoarthritis*, *World J. Orthop.*, Vol. 8, Issue
15 1 (Jan. 18, 2017), concluded that “[t]here is currently no convincing information
16 on the efficacy of [glucosamine] or [chondroitin] as treatment options in
17 [osteoarthritis], *id.* at 8, and “when only the information from best quality trials is
18 considered, then none of these supplements seem to demonstrate any superiority
19 [as compared to placebos],” *id.* at 6.

20 60. In 2017, Runhaar and co-authors presented results from their meta-
21 analysis of six glucosamine studies (1,663 patients) where the original authors
22 agreed to share their study data for critical re-analysis. Runhaar *et al.*, *No*
23 *Treatment Effects of Oral Glucosamine for Subgroups of Knee and Hip*
24 *Osteoarthritis Patients: An Individual Patient Data Meta-Analysis from the OA*
25 *Trial Bank*, *Osteoarthritis and Cartilage*, Vol. 25 (2017). Runhaar 2017 is an
26 “individual patient data meta-analysis” or IPD, which is considered a gold standard
27 of systematic review. The Runhaar IPD meta-analysis concluded that glucosamine
28 has no effect on pain or physical function.

Professional Guidelines

61. Professional guidelines are also consistent in their recommendation against using glucosamine or chondroitin.

62. 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.

63. In December 2008, the American Academy of Orthopaedic Surgeons published clinical practice guidelines for the “Treatment of Osteoarthritis of the Knee (Non-Arthroplasty),” and recommended 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 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.

64. 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

1 glucosamine hydrochloride and a reduced rate of cartilage degeneration in
2 individuals without osteoarthritis.” EFSA Panel on Dietetic Products, Nutrition
3 and Allergies, *Scientific Opinion on the substantiation of a health claim related to*
4 *glucosamine hydrochloride and reduced rate of cartilage degeneration and*
5 *reduced risk of osteoarthritis*, EFSA Journal (2009), 7(10):1358.

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

21 66. In 2012, EFSA examined the evidence glucosamine sulphate or
22 glucosamine hydrochloride, and a claimed effect of “contributes to the
23 maintenance of normal joint cartilage.” Based on its review of 61 references
24 provided by Merck Consumer Healthcare, the EFSA panel concluded that “a cause
25 and effect relationship has not been established between the consumption of
26 glucosamine and maintenance of normal joint cartilage in individuals without
27 osteoarthritis.” EFSA Panel on Dietetic Products, Nutrition and Allergies,
28 *Scientific Opinion on the substantiation of a health claim related to glucosamine*

1 *and maintenance of normal joint cartilage*, EFSA Journal 2012, 10(5): 2691.

2 67. In 2008 and 2013, the American Academy of Orthopaedic Surgeons
3 (“AAOS”) made a “strong” recommendation that neither glucosamine nor
4 chondroitin be used for patients with symptomatic osteoarthritis of the knee. See
5 American Academy of Orthopaedic Surgeons, *Treatment of Osteoarthritis of the*
6 *Knee: Evidence-Based Guideline* (2d ed. 2013). “Twenty-one studies were
7 included as evidence for this recommendation.”

8 68. Likewise, the American College of Rheumatology (“ACR”), the
9 United Kingdom National Institute for Health and Care Excellence (“NICE”), and
10 the Agency for Healthcare Research and Quality (“AHRQ”) (one of the agencies
11 within the United States Department of Health and Human Services) each
12 published clinical guidelines for the treatment of osteoarthritis based on a critical
13 review of published clinical research, including for glucosamine and chondroitin.
14 These professional groups also recommend against using glucosamine or
15 chondroitin for managing the pain, reduced function, and quality of life issues
16 associated with osteoarthritis. Hochberg MC *et al.*, *American College of*
17 *Rheumatology 2012 Recommendations for the Use of Nonpharmacologic and*
18 *Pharmacologic Therapies in Osteoarthritis of the Hand, Hip, and Knee*, *Arthritis*
19 *Care & Research*, 64(4):465-474 (2012); NICE National Institute for Health and
20 Care Excellence. *Osteoarthritis: Care and management in adults*. Clinical
21 guideline 177. Methods, evidence and recommendations (February 2014); Samson
22 DJ *et al.*, *Treatment of Primary and Secondary Osteoarthritis of the Knee.*
23 *Evidence Report/Technology Assessment*, Number 157. Prepared for Agency for
24 Healthcare Research and Quality, U.S. Department of Health and Human Services,
25 Publication No. 07-E012 (2007).

26 69. The AAOS, ACR, NICE and AHRQ guidelines were based on
27 systematic reviews and/or meta-analyses of all of the available study data. For
28 example, the ACR specifically cited its reliance on the GAIT study coupled with

1 four meta-analyses that “failed to demonstrate clinically important efficacy for
2 these agents”: Towheed, 2005; Vlad, 2007; Reichenbach, 2007; and Wandel,
3 2010. The NICE authors’ conclusion that practitioners should “not offer
4 glucosamine or chondroitin products” was based on a review that included
5 Towheed 2005, which included 25 glucosamine RCTs, Reichenbach, 2007, which
6 included 22 chondroitin RCTs, and seven studies that compared glucosamine plus
7 chondroitin versus placebo. The 2007 AHRQ assessment was based on review of
8 21 glucosamine/chondroitin studies, including GAIT. The AAOS’ 2013 “strong”
9 recommendation against glucosamine and chondroitin was based on expert
10 analysis and meta-analyses of 12 glucosamine studies, 8 chondroitin studies, and
11 one study (GAIT) that assessed both.

12 ***The Impact of Defendant’s Wrongful Conduct***

13 70. Despite clinical studies demonstrating the Osteo Bi-Flex Products’
14 ineffectiveness, Defendant conveyed and continues to convey one uniform joint
15 health message: that the Osteo Bi-Flex Products are joint health supplements
16 capable of supporting and benefiting joint health.

17 71. As the inventor, manufacturer, and distributor of the Osteo Bi-Flex
18 Products, Defendant possesses specialized knowledge regarding their content and
19 effects of their ingredients, and Defendant is in a superior position to know
20 whether the Osteo Bi-Flex Products work as advertised.

21 72. Specifically, Defendant knew, but failed to disclose, or should have
22 known, that the Osteo Bi-Flex Products cannot benefit joint health and that well-
23 conducted, clinical studies have found the Osteo Bi-Flex Products’ primary
24 ingredients unable to support or benefit joint health.

25 73. Plaintiff and the class members have been and will continue to be
26 deceived or misled by Defendant’s false and deceptive joint health representations.

27 74. Defendant’s joint health representations and omissions were a
28 material factor in influencing Plaintiff’s and the class members’ decision to

1 purchase the Osteo Bi-Flex Products. In fact, the only purpose for purchasing the
2 Osteo Bi-Flex Products is to obtain the represented joint health benefits.

3 75. Defendant's conduct has injured Plaintiff and the class members
4 because Defendant's Osteo Bi-Flex Products are worthless and cannot support or
5 benefit joint health in any way.

6 76. Had Plaintiff and the class members known the true nature of
7 Defendant's Osteo Bi-Flex Products, they would not have purchased the Products
8 and would not have paid the prices they paid for the Products.

9 77. Plaintiff and each class member were harmed by purchasing
10 Defendant's Osteo Bi-Flex Products because they are not capable of providing
11 their advertised benefits. As a result, Plaintiff and each class member lost money
12 and property by way of purchasing Defendant's ineffective and worthless joint
13 health supplements.

14 **CLASS DEFINITION AND ALLEGATIONS**

15 78. Plaintiff, pursuant to Fed. R. Civ. Pro. 23(b)(2) and 23(b)(3), asserts
16 this action on behalf of the following class: "All persons who purchased in the
17 state of California any of the Osteo Bi-Flex Products, within the applicable statute
18 of limitations, for personal use until the date notice is disseminated."

19 79. Excluded from each Class is Defendant, its parents, subsidiaries,
20 affiliates, officers, and directors, those who purchased the Osteo Bi-Flex Products
21 for resale, all persons who make a timely election to be excluded from the Class,
22 the judge to whom this case is assigned and any immediate family members
23 thereof, and those who assert claims for personal injury.

24 80. Certification of Plaintiff's claims for class wide treatment is
25 appropriate because Plaintiff can prove the elements of her claims on a class wide
26 basis using the same evidence as would be used to prove those elements in
27 individual actions alleging the same claims.

28 81. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The

1 members of the Class are so numerous that individual joinder of all Class members
2 is impracticable. Defendant has sold many thousands of units of the Osteo Bi-Flex
3 Products to Class members.

4 **82. Commonality and Predominance – Federal Rule of Civil**
5 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law
6 and fact, which predominate over any questions affecting individual Class
7 members. Specifically, whether Defendant's representations regarding its
8 Products and their joint health benefits are misleading and deceptive is a question
9 common to the class. Similarly, the Products either are capable of providing joint
10 health benefits or they are not, and Defendant's uniform representation that the
11 Products are joint health supplements capable of providing joint health benefits
12 either is true or false. These questions and others like them are common to the
13 class and predominate over individual issues.

14 **83. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's
15 claims are typical of the other Class members' claims because, among other things,
16 all Class members were comparably injured through the uniform prohibited
17 conduct described above.

18 **84. Adequacy of Representation – Federal Rule of Civil Procedure**
19 **23(a)(4).** Plaintiff is an adequate representative of the Class because Plaintiff's
20 interests do not conflict with the interests of the other Class members Plaintiff
21 seeks to represent; Plaintiff has retained counsel competent and experienced in
22 complex commercial and class action litigation; and Plaintiff intends to prosecute
23 this action vigorously. The interests of the Class members will be fairly and
24 adequately protected by Plaintiff and her counsel.

25 **85. Declaratory and Injunctive Relief – Federal Rule of Civil**
26 **Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally
27 applicable to Plaintiff and the other Class members, thereby making appropriate
28 final injunctive relief and declaratory relief, as described below, with respect to

1 Class as a whole.

2 86. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class
3 action is superior to any other available means for the fair and efficient
4 adjudication of this controversy, and no unusual difficulties are likely to be
5 encountered in the management of this class action. The damages or other
6 financial detriment suffered by Plaintiff and the other Class members are relatively
7 small compared to the burden and expense that would be required to individually
8 litigate their claims against Defendant, so it would be impracticable for Class
9 members to individually seek redress for Defendant’s wrongful conduct. Even if
10 Class members could afford individual litigation, the court system could not.
11 Individualized litigation creates a potential for inconsistent or contradictory
12 judgments, and increases the delay and expense to all parties and the court system.
13 By contrast, the class action device presents far fewer management difficulties,
14 and provides the benefits of single adjudication, economy of scale, and
15 comprehensive supervision by a single court.

16 **CLAIMS ALLEGED**

17 **COUNT I**

18 **Violation of the California Unfair Competition Law (“UCL”) – Cal. Bus. &** 19 **Prof. Code §§ 17200, *et seq.***

20 87. Plaintiff incorporates the preceding paragraphs as if fully set forth
21 herein.

22 88. Plaintiff brings this claim individually and on behalf of the Class.

23 89. Plaintiff and Defendant are “persons” within the meaning of the UCL.
24 Cal. Bus. & Prof. Code § 17201.

25 90. The UCL defines unfair competition to include any “unlawful, unfair
26 or fraudulent business act or practice,” as well as any “unfair, deceptive, untrue or
27 misleading advertising.” Cal. Bus. Prof. Code § 17200.

28 91. In the course of conducting business, Defendant committed unlawful

1 business practices by, among other things, making the representations (which also
2 constitutes advertising within the meaning of §17200) and omissions of material
3 facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709,
4 1711, 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§17200, et
5 seq., 17500, et seq., and the common law.

6 92. Plaintiff reserves the right to allege other violations of law, which
7 constitute other unlawful business acts or practices. Such conduct is ongoing and
8 continues to this date.

9 93. In the course of conducting business, Defendant committed “unfair”
10 business practices by, among other things, making the representations (which also
11 constitute advertising within the meaning of §17200) and omissions of material
12 facts regarding Osteo Bi-Flex Products in its advertising and labeling, including
13 on the Osteo Bi-Flex Products’ packaging, as set forth more fully herein. There is
14 no societal benefit from false advertising – only harm. Plaintiff and the other Class
15 members paid for a valueless product that is not capable of conferring the benefits
16 promised. While Plaintiff and the other Class members were harmed, Defendant
17 was unjustly enriched by its false misrepresentations and omissions. As a result,
18 Defendant’s conduct is “unfair,” as it offended an established public policy.
19 Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous
20 activities that are substantially injurious to consumers.

21 94. Further, as set forth in this Complaint, Plaintiff alleges violations of
22 consumer protection, unfair competition, and truth in advertising laws in
23 California and other states, resulting in harm to consumers. Defendant’s acts and
24 omissions also violate and offend the public policy against engaging in false and
25 misleading advertising, unfair competition, and deceptive conduct towards
26 consumers. This conduct constitutes violations of the unfair prong of Business &
27 Professions Code §17200, et seq.

28 95. There were reasonably available alternatives to further Defendant’s

1 legitimate business interests, other than the conduct described herein. Business &
2 Professions Code §17200, et seq., also prohibits any “fraudulent business act or
3 practice.” In the course of conducting business, Defendant committed “fraudulent
4 business act or practices” by, among other things, making the representations
5 (which also constitute advertising within the meaning of §17200) and omissions
6 of material facts regarding the Osteo Bi-Flex Products in its advertising, including
7 on the Osteo Bi-Flex Products’ packaging and labeling, as set forth more fully
8 herein. Defendant made the misrepresentations and omissions regarding the
9 efficacy of its Osteo Bi-Flex Products, among other ways, by misrepresenting on
10 each and every Osteo Bi-Flex Product’s packaging and labeling that the Products
11 are effective when taken as directed, when, in fact, the representations are false
12 and deceptive, and the Osteo Bi-Flex Products are not capable of conferring the
13 promised health benefits.

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

18 97. Plaintiff and the other members of the Class have in fact been
19 deceived as a result of their reliance on Defendant’s material representations and
20 omissions, which are described above. This reliance has caused harm to Plaintiff
21 and the other members of the Class, each of whom purchased Defendant’s Osteo
22 Bi-Flex Products. Plaintiff and the other Class members have suffered injury in
23 fact and lost money as a result of purchasing the Osteo Bi-Flex Products and
24 Defendant’s unlawful, unfair, and fraudulent practices.

25 98. Defendant knew, or should have known, that its material
26 misrepresentations and omissions would be likely to deceive and harm the
27 consuming public and result in consumers making payments to Defendant for
28 Osteo Bi-Flex Products that are valueless and that are incapable of actually

1 supporting, maintaining, improving or benefiting joint health.

2 99. As a result of its deception, Defendant was unjustly enriched by
3 receiving payments from Plaintiff and the Class in return for providing Plaintiff
4 and the Class, the Osteo Bi-Flex Products that do not perform as advertised.

5 100. Unless restrained and enjoined, Defendant will continue to engage in
6 the unlawful, unfair and fraudulent conduct described herein.

7 101. Accordingly, Plaintiff, individually and on behalf of all others
8 similarly situated, and on behalf of the general public, seeks restitution from
9 Defendant of all money obtained from Plaintiff and the other members of the Class
10 collected as a result of Defendant's unfair competition, and for an injunction
11 prohibiting Defendant from continuing and further engaging in its unlawful, unfair
12 and fraudulent conduct, requiring corrective advertising, and awarding all other
13 relief this Court deems appropriate..

14 **COUNT II**

15 **Violation of the California Consumers Legal Remedies Act ("CLRA") – Cal.** 16 **Civ. Code §§ 1750, *et seq.***

17 102. Plaintiff incorporates the preceding paragraphs as if fully set forth
18 herein.

19 103. Plaintiff brings this claim individually and on behalf of the Class.

20 104. Plaintiff is a "consumer," Defendant is a "person," and the Osteo Bi-
21 Flex Products are "goods" within the meaning of the CLRA. Cal. Civ. Code §
22 1761(a), (c) and (d).

23 105. Defendant's sale and advertisement of its Osteo Bi-Flex Products
24 constitutes "transactions" within the meaning of the CLRA. Cal. Civ. Code §
25 1761(e).

26 106. The CLRA declares as unlawful the following unfair methods of
27 competition and unfair or deceptive acts or practices when undertaken by any
28 person in a transaction intended to result, or which results in the sale of goods to

1 any consumer:

2 (5) Representing that goods ... have ... approval, characteristics, ...
3 uses [and] benefits ... which [they do] not have ...

4 (7) Representing that goods ... are of a particular standard, quality or
5 grade ... if they are of another.

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

7 (16) Representing that [goods] have been supplied in accordance with a
8 previous representation when [they have] not.

9 Cal. Civ. Code § 1770(a)(5), (7), (9) and (16).

10 107. Defendant violated the CLRA by representing that its Osteo Bi-Flex
11 Products are beneficial for joint health, when, in reality, the Osteo Bi-Flex Products
12 cannot provide their advertised benefits and the Osteo Bi-Flex Products'
13 ingredients are ineffective at improving, supporting, maintaining or benefiting the
14 health of human joints.

15 108. Defendant knew or should have known its joint health representations
16 were false and misleading, and that by omitting the ineffectiveness of its Osteo Bi-
17 Flex Products it was omitting a material fact that would alter any consumer's
18 decision to purchase the Osteo Bi-Flex Products.

19 109. Defendant's violations of the CLRA proximately caused injury in fact
20 to Plaintiff and the Class.

21 110. Plaintiff and the Class members purchased Defendant's Osteo Bi-
22 Flex Products on the belief that they would receive the advertised joint benefits
23 from the Osteo Bi-Flex Products. Indeed, no consumer would purchase a joint
24 health supplement unless he or she believed it was capable of providing
25 meaningful joint benefits.

26 111. Defendant's Osteo Bi-Flex Products, however, are worthless and
27 cannot provide any of their advertised benefits. Since the Osteo Bi-Flex Products
28 lack any value, Plaintiff and each Class member was injured by the mere fact of

1 their purchase.

2 112. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on
3 behalf of the other members of the Class, seeks a Court order enjoining the above-
4 described wrongful acts and practices of Defendant and for restitution and
5 disgorgement.

6 113. Pursuant to Cal. Civ. Code § 1782(a), Defendant was notified in
7 writing by certified mail of the particular violations of Section 1770 of the CLRA,
8 which notification demanded that Defendant rectify the problems associated with
9 the actions detailed above and give notice to all affected consumers of Defendant's
10 intent to so act. A copy of the letter is attached hereto as Exhibit A.

11 114. If Defendant fails to rectify or agree to rectify the problems associated
12 with the actions detailed above and give notice to all affected consumers within 30
13 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend
14 this complaint to add claims for actual, punitive and statutory damages, as
15 appropriate, including statutory damages awards under §1780(b)(1) for the
16 members of the Class.

17 115. Defendant's conduct is fraudulent, wanton, and malicious.

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

20 **COUNT III**

21 **Violation of the California False Advertising Law ("FAL") – Cal. Bus. &** 22 **Prof. Code §§ 17500, *et seq.***

23 117. Plaintiff incorporates the preceding paragraphs as if fully set forth
24 herein.

25 118. Plaintiff brings this claim individually and on behalf of the Class.

26 119. The FAL, in relevant part, states that "[i]t is unlawful for any ...
27 corporation ... with intent ... to dispose of ... personal property ... to induce the
28 public to enter into any obligation relating thereto, to make or disseminate or cause

1 to be made or disseminated ... from this state before the public in any state, in any
 2 newspaper or other publication, or any advertising device, or by public outcry or
 3 proclamation, or in any other manner or means whatever, including over the
 4 Internet, any statement ... which is *untrue* or *misleading*, and which is known, or
 5 which by the exercise of reasonable care should be known, to be untrue or
 6 misleading[.]” Cal. Bus. & Prof. Code § 17500 (emphasis added).

7 120. The required intent is the intent to dispose of property, not the intent
 8 to mislead the public in the disposition of such property.

9 121. Defendant violated the FAL by making untrue or misleading
 10 representations that its Osteo Bi-Flex Products are beneficial for joint health,
 11 when, in reality, the Osteo Bi-Flex Products cannot provide any of their advertised
 12 benefits and the Osteo Bi-Flex Products’ ingredients are ineffective at improving,
 13 supporting or maintaining the health of human joints.

14 122. As a direct and proximate result of Defendant’s untrue and misleading
 15 advertising, Plaintiff and the Class members have suffered injury in fact and have
 16 lost money.

17 123. Accordingly, Plaintiff requests that the Court order Defendant to
 18 restore the money Defendant has received from Plaintiff and the members of the
 19 Class, and that the Court enjoin Defendant from continuing its unlawful practices,
 20 and engage in corrective advertising.

21 **JURY DEMAND**

22 124. Plaintiff demands a trial by jury of all claims in this Complaint so
 23 triable.

24 ///

25 ///

26 ///

27

28

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the proposed Class, respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendant as follows:

A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

B. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of Defendant's unlawful, unfair and fraudulent business practices;

C. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;

D. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;

E. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

F. Ordering such other and further relief as may be just and proper.

Dated: June 19, 2017

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

By: /s/ Todd D. Carpenter

TODD D. CARPENTER (234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 756-6994
Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
701 B Street, Suite 1700
San Diego, CA 92101

Telephone: (619) 338-1100
Facsimile: (619) 338-1101
tblood@bholaw.com
toreardon@bholaw.com

Attorneys for Plaintiff and Class Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Sandra Seeger, individually and on behalf of all others similarly situated

DEFENDANTS

Rexall Sundown, Inc.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Florida

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd Carpenter (619-756-6994)

Carlson Lynch Sweet Kilpela & Carpenter LLP

402 W. Broadway, 29th Fl., San Diego, CA 92101

'17CV1243 JAH JMA**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)☐ 1 U.S. Government Plaintiff☒ 3 Federal Question

(U.S. Government Not a Party)

(mxn)

☐ 2 U.S. Government Defendant☒ 4 Diversity

(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☒ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from Another District (specify)	☐ 6 Multidistrict Litigation - Transfer	☐ 8 Multidistrict Litigation - Direct File
---	---	--	---	--	--	---

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. section 1332(d)

Brief description of cause:

Violation of UCL, Violation of CLRA, Violation of FAL,

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/09/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A



402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 347-3517
Facsimile: (619) 756-6990
tcarpenter@carlsonlynch.com

June 19, 2017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7017 0530 0000 3306 5002)

Chief Executive Officer / President
Rexall Sundown, Inc.
2100 Smithtown Avenue
Ronkonkoma, New York 11779

Re: *Sandra Seegert v. Rexall Sundown, Inc.*

Dear Sir/Madam:

Our law firm,¹ along with the law firm of Blood Hurst & O'Reardon, LLP, represent Sandra Seegert and all other similarly situated California Residents in an action against Rexall Sundown, Inc. ("Rexall Sundown") arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Osteo Bi-Flex One Per Day, Osteo Bi-Flex Triple Strength, Osteo Bi-Flex Triple Strength MSM, and Osteo Bi-Flex Triple Strength with Vitamin D (collectively, the "Osteo Bi-Flex Products") are beneficial to the joints of the consumers who use them and provide meaningful joint health benefits. All of the Osteo Bi-Flex Products advertise on the label that the products are for "Joint Health." Moreover, the front label of the Osteo Bi-Flex One Per Day, Triple Strength, and Triple Strength with Vitamin D warrants that the product is a "Joint Shield" and that it "shows improved joint comfort within 7 days!" Similarly, the front of the label of the Osteo Bi-Flex Triple Strength MSM product advertises that it "supports cartilage health" and "helps strengthen your joints."

As you are aware, Rexall Sundown warranted on its product labeling that the claimed benefits can be received through the recommended consumption of any of the Osteo Bi-Flex Products. Sandra Seegert and others similarly situated purchased the Osteo-Bi Flex Triple Strength product, or any of the other above-mentioned Osteo Bi-Flex Products, unaware that the representations found on the product's labels are false. Several clinical studies have found no causative link between the ingredients in the Osteo Bi-Flex products and improved joint health or comfort. The full claims, including the facts and circumstances surrounding these claims, are

¹ Our firm has successfully prosecuted several Glucosamine supplement cases resulting in multi-million dollar settlements, including: *Clavert v. Walgreen Co.*, No. 13 cv1161 (W.D. Pa), *Nunez v. Supervalu, Inc.* No. 13cv626 (S.D. Cal.), and *Hazlin v. Botanical Laboratories, L.L.C. et al*, Case No. 3:13-cv-00618 (S.D. Cal.). We are presently counsel of record for the certified class in *Sonner v. Premier Nutrition Corp*, Case No. 13-cv-01271-RS (N.D. Cal).

detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Of the numerous clinical trials examining the palliative and structural benefits of glucosamine and chondroitin, the Glucosamine/Chondroitin Arthritis Intervention Trials (“GAIT”) studies are the most influential. In 2006, 2008, and 2010 the NIH conducted three multicenter clinical trials to evaluate the efficacy of glucosamine and chondroitin. The first of these studies examined whether five treatments reduced pain and stiffness in patients suffering from OA. Trial participants received one of five treatments for twenty-four weeks: (1) glucosamine hydrochloride, (2) chondroitin, (3) glucosamine and chondroitin, (4) celecoxib,⁶ and (5) placebo. In 2006, the authors of the GAIT I study concluded, “Glucosamine and chondroitin sulfate alone or in combination did not reduce pain effectively in the overall group of patients with [OA] of the knee.” In other words, glucosamine and chondroitin, alone or in combination, performed no better than placebo.

Two years later, in 2008, NIH published a follow-up study, GAIT II, which explored the effects of the same five treatments on progressive loss of joint space width in patients with OA of the knee over a period of twenty-four months. Researchers found “no significant differences in mean [joint space width] loss over 2 years between the treatment groups and the placebo group” GAIT II at 5.

Finally, in 2010, NIH released the third study designed to evaluate the efficacy and safety of the same five treatments over a twenty-four-month period. In addition, this study examined the research question the GAIT I study left open: whether people with moderate to severe joint pain benefit from taking glucosamine and chondroitin. The authors of GAIT III concluded “no treatment achieved a clinically important difference in WOMAC Pain or Function as compared with placebo.” GAIT III at 3. These results caused the researchers to conclude that glucosamine was “ineffective for treatment of pain.” *Id.* at 6.

In addition to the GAIT studies, numerous double-blind randomized placebo-controlled clinical trials add to the body of scientific literature finding that glucosamine and chondroitin do not provide palliative or functional benefits. A 2015 six-month, double-blind study concluded that glucosamine and chondroitin have “no impact on the relief of OA symptoms.” (Hochberg, 2015). In 2014, the Long-term Evaluation of Glucosamine Sulfate study (“the LEGS study”) did “not detect significant symptomatic benefit” of glucosamine and chondroitin. Similarly, a short-term study of “glucosamine hydrochloride in beverage form”—the first of its kind—found no evidence “that glucosamine is more effective than placebo in improving joint health” when assessing cartilage damage.

Rexall Sundown’s representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Rexall Sundown with the intent to result in the sale of the Osteo Bi-Flex Products to the consuming public.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the Osteo Bi-Flex Products have] . . . characteristics, . . . uses [or] benefits. . . which [they do] not have.

* * *

- (7) Representing that [the Osteo Bi-Flex Products are] of a particular standard, quality or grade . . . if [they are] of another.

* * *

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

* * *

- (16) Representing that [the Osteo Bi-Flex Products have] been supplied in accordance with a previous representation when [they have] not.

California Civil Code §1770(a)(5)-(16).

Rexall Sundown's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While our Class Action Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California Residents that Rexall Sundown immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Rexall Sundown should offer to refund the purchase price to all consumer purchasers of the Osteo Bi-Flex Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Rexall Sundown address this problem immediately.

Rexall Sundown must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Rexall Sundown will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such Product, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Osteo Bi-Flex Product purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that the Osteo Bi-Flex Products are effective at promoting joint health and comfort. Including, refrain from making representations that the Osteo-Bi Flex One per Day, Triple Strength, and Triple Strength with Vitamin D products “[show] improved joint comfort within 7 days,” and refrain from warranting on the Osteo Bi-Flex Triple Strength MSM product that it “supports cartilage health” and “helps strengthen your joints.”

If you would like to discuss resolution of Plaintiff’s claims prior to the filing of the lawsuit, please contact us within fourteen (14) days of receipt of this letter.

We await your response.

Very truly yours,

/s/ Todd D. Carpenter

Todd D. Carpenter
For the Firm

Enclosures

EXHIBIT B

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

TODD D. CARPENTER (234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: (619) 756-6994
Facsimile: (619) 756-6991
tcarpenter@carlsonlynch.com

BLOOD HURST & O'REARDON, LLP

TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
701 B Street, Suite 1700
San Diego, CA 92101
Telephone: (619) 338-1100
Facsimile: (619) 338-1101
tblood@bholaw.com
toreardon@bholaw.com

Attorneys for Plaintiff and Class Counsel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SANDRA SEEGER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

REXALL SUNDOWN, INC.,

Defendant.

Case No.: '17CV1243 JAH JMA

**DECLARATION IN SUPPORT OF
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner at Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff in the above-entitled action.

2. Defendant Rexall Sundown, Inc. has done and is doing business in the County of San Diego. Such business includes the marketing, distributing, and sale of its Osteo Bi-Flex Products.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Todd D. Carpenter
Todd D. Carpenter

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges 'Osteo Bi-Flex' Glucosamine Has No Health Benefits](#)
