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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

TAMMIE AUST, an individual; ALISON
GRENNAN, an individual; JENNIFER
SCHILL, an individual; and LANG YOU
MAU, an individual;

Plaintiffs,

vs.

NORTHWEST NATURAL PRODUCTS, INC.,
a Delaware corporation; and DOES 1-10,
unknown persons and entities;

Defendants.

Case No.:

CLASS ACTION COMPLAINT

Plaintiffs Tammie Aust, Alison Grennan, Jennifer Schill, and Lang You Mau, by and through their attorneys, bring this Class Action Complaint against Northwest Natural Products, Inc. and Does 1-10 and they allege, based upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this class action lawsuit under Rule 23 of the Washington Superior Court Civil Rules on behalf of consumers throughout the State of Washington who have purchased L'il Critters Omega-3 Gummy Fish ("Omega-3 Gummy Fish") designed, manufactured, produced, marketed, advertised, labeled, promoted, distributed, supplied, and/or sold by Northwest Natural Products, Inc. ("NNP").

1 2. This class action lawsuit challenges NNP’s unfair, deceptive, and improper
2 conduct in the marketing, advertising, labeling, promotion, distribution, supply, and/or sale of
3 Omega-3 Gummy Fish. As described below, NNP makes false, inaccurate, unfair, deceptive,
4 misleading, and/or otherwise improper statements, claims, affirmations of fact, and other
5 representations regarding Omega-3 Gummy Fish. In addition, NNP omits and fails to disclose
6 material facts and other information regarding Omega-3 Gummy Fish in their marketing,
7 advertising, labeling, promotion, distribution, supply, and/or sale thereof. As a direct,
8 foreseeable, and proximate result of these and the other wrongful business acts and practices
9 described, referred to, and/or otherwise challenged herein, plaintiffs and members of the Class
10 have suffered the damages and injuries described below.

11 3. There are three primary types of omega-3 fatty acids—docosahexaenoic acid
12 (“DHA”), eicosapentaenoic acid (“EPA”), and alpha-linolenic acid (“ALA”). Each one of these
13 omega-3 fatty acids is different, and each one is associated with different physiological processes
14 in the human body.

15 4. DHA is found in certain types of fish and other marine sources. DHA is widely
16 recognized for its association with healthy brain development and function in both children and
17 adults.

18 5. Omega-3 Gummy Fish are designed, manufactured, produced, marketed,
19 advertised, labeled, promoted, distributed, supplied, and/or sold by NNP as a nutritional
20 supplement.

21 6. Omega-3 Gummy Fish are shaped like fish and other water creatures, and they are
22 sold in a container with a picture of a fish on the front.

23 7. NNP has stated on the label, near the picture of the fish, that “Omega-3’s Promote
24 Healthy Brain Function,” that Omega-3 Gummy Fish are “Smart Gummies For Smart Kids,” that
25 Omega-3 Gummy Fish are a “Brain Booster,” and that Omega-3 Gummy Fish are made “with
26 DHA.”

1 8. NNP has stated, in the portion of the label titled “Supplement Facts,” that each
2 serving of Omega-3 Gummy Fish contains 200 milligrams of NNP’s “Proprietary Omega-3
3 DHA Blend.”

4 9. NNP has stated on the label that each serving of Omega-3 Gummy Fish contains
5 “120 mg of Omega-3 Fatty Acids.”

6 10. At all times relevant herein, NNP omitted and failed to separately disclose the
7 amount of DHA in Omega-3 Gummy Fish.

8 11. Consumers purchased Omega-3 Gummy Fish because they were led to believe,
9 and they did believe, (1) that Omega-3 Gummy Fish contained the amount of omega-3 fatty
10 acids stated on the container, (2) that the omega-3 fatty acids in Omega-3 Gummy Fish were
11 those associated with healthy brain development and function, (3) that the omega-3 fatty acids in
12 Omega-3 Gummy Fish were primarily DHA, and/or (4) that Omega-3 Gummy Fish promoted
13 healthy brain development and function.

14 12. In reality, Omega-3 Gummy Fish do not contain the amount of omega-3 fatty
15 acids stated on the container.

16 13. In reality, Omega-3 Gummy Fish contain very little, if any, of the omega-3 fatty
17 acids associated with healthy brain development and function.

18 14. In reality, Omega-3 Gummy Fish contain very little, if any, DHA.

19 15. In reality, Omega-3 Gummy Fish do not promote healthy brain development and
20 function.

21 16. Instead of DHA, Omega-3 Gummy Fish contain primarily, if not exclusively,
22 ALA. This is significant because ALA is not associated with healthy brain development and/or
23 function.

24 17. NNP’s statements, claims, affirmations of fact, representations, disclosures, and
25 omissions in connection with its marketing, advertising, labeling, promotion, distribution,
26 supply, and/or sale of Omega-3 Gummy Fish described above and elsewhere in this class action

1 complaint are unfair, deceptive, misleading, and/or otherwise improper, both individually and as
2 a whole, because (1) they misrepresent the total amount of omega-3 fatty acids in Omega-3
3 Gummy Fish, (2) they incorrectly imply that the omega-3 fatty acids in Omega-3 Gummy Fish
4 are those associated with healthy brain development and function, (3) they incorrectly imply that
5 the omega-3 fatty acids in Omega-3 Gummy Fish are primarily DHA, and/or (4) they incorrectly
6 imply that Omega-3 Gummy Fish promote healthy brain development and function.

7 18. As a result of the conduct described, referred to, and/or otherwise challenged
8 herein, NNP has violated RCW Chapter 19.86, it has breached various express and implied
9 warranties provided in connection with Omega-3 Gummy Fish, and it has been unjustly enriched
10 at the expense of plaintiffs and the Class.

11 19. As a direct, foreseeable, and proximate result of NNP's conduct described,
12 referred to, and/or otherwise challenged herein, plaintiffs and members of the Class have
13 suffered economic damages.

14 20. But for NNP's conduct described, referred to, and/or otherwise challenged herein,
15 plaintiffs and members of the Class would not have suffered economic damages.

16 II. PARTIES

17 A. Plaintiffs

18 21. At all times relevant herein, plaintiff Tammie Aust was a resident of King
19 County, Washington. During the class period, Ms. Aust purchased and paid for Omega-3
20 Gummy Fish.

21 22. At all times relevant herein, plaintiff Alison Grennan was a resident of King
22 County, Washington. During the class period, Ms. Grennan purchased and paid for Omega-3
23 Gummy Fish.

24 23. At all times relevant herein, plaintiff Jennifer Schill was a resident of King
25 County, Washington. During the class period, Ms. Schill purchased and paid for Omega-3
26 Gummy Fish.

1 24. At all times relevant herein, plaintiff Lang You Mau was a resident of King
2 County, Washington. During the class period, Ms. Mau purchased and paid for Omega-3
3 Gummy Fish.

4 **B. Defendants**

5 25. At all times relevant herein, defendant Northwest Natural Products, Inc. was a
6 Delaware corporation licensed and registered to do business in the State of Washington.

7 26. At all times relevant herein, defendant Northwest Natural Products, Inc.
8 transacted business in King County, Washington.

9 27. At all times relevant herein, defendant Northwest Natural Products designed,
10 manufactured, produced, marketed, advertised, labeled, promoted, distributed, supplied, and/or
11 sold Omega-3 Gummy Fish.

12 28. Does 1-10 are officers, employees, and/or agents of defendant Northwest Natural
13 Products, Inc.; entities owned by and/or associated with defendant Northwest Natural Products,
14 Inc.; and officers, employees, and/or agents of such entities. Does 1-10 have responsibility for
15 the conduct described, referred to, and/or otherwise challenged herein. The current identities of
16 Does 1-10 are unknown. Plaintiffs will amend the Class Action Complaint to specifically name
17 Does 1-10 once their identities become known through discovery and/or other methods.

18 **III. JURISDICTION AND VENUE**

19 29. This Court has personal jurisdiction over NNP.

20 30. This Court has subject matter jurisdiction over the causes of action alleged herein,
21 and venue is proper in this Court, because all or part of the alleged wrongful conduct took place
22 in King County, Washington, and because NNP transacted, and continues to transact, business in
23 King County, Washington.

24 31. On January 29, 2010, plaintiffs notified NNP of their belief that NNP had
25 breached express and implied warranties in connection with its marketing, advertising, labeling,
26 promotion, distribution, supply, and/or sale of Omega-3 Gummy Fish.

1 32. Plaintiffs satisfied the notice requirements set forth in RCW 62A.2-607 prior to
2 commencing this lawsuit.

3 33. Plaintiffs have satisfied all of the pre-filing requirements set forth in RCW
4 Chapter 62A.

5 **IV. SUBSTANTIVE ALLEGATIONS**

6 **A. Omega-3 Fatty Acids**

7 34. Omega-3 fatty acids are considered essential fats, which means that they are
8 essential to human health but cannot be manufactured by the body. For this reason, omega-3
9 fatty acids must be obtained from food.

10 35. Different foods contain different omega-3 fatty acids, and the different omega-3
11 fatty acids are associated with different physiological processes in the human body.

12 **1. DHA**

13 36. DHA is commonly found in fatty fish such as mackerel, lake trout, herring,
14 sardines, albacore tuna, and salmon, as well as other marine sources.

15 37. When ingested, DHA is readily available to and used by the human body for
16 numerous bodily functions.

17 38. Among other things, DHA is widely recognized for its association with healthy
18 brain development and function in both children and adults.

19 **2. EPA**

20 39. Like DHA, EPA is found in certain fatty fish and other marine sources.

21 40. When ingested, EPA is also readily available to and used by the human body for
22 numerous bodily functions.

23 41. Although EPA is sometimes associated with some of the same health benefits as
24 DHA (*e.g.*, both DHA and EPA are associated with certain cardiovascular benefits), EPA does
25 *not* have the same association with healthy brain development and function.
26

1 **3. ALA**

2 42. Unlike DHA, which is derived from marine sources, ALA is typically derived
3 from plant sources such as chia seeds, flax, walnuts, and canola oil.

4 43. Also unlike DHA, ALA is not readily available to the human body. Instead, ALA
5 serves as a precursor for synthesis of DHA and EPA.

6 44. ALA is not associated with healthy brain development and function because,
7 among other things, the human body cannot directly utilize ALA in that manner. Instead, ALA
8 must be converted by the body into DHA. The rate of conversion, however, is slow and
9 extremely inefficient.

10 45. Studies suggest that on average, humans convert less than one percent of ALA
11 into DHA.

12 46. Ultimately, although consumption of ALA might result in some increase in levels
13 of DHA, the increase is not proportional to the amount of ALA. To the contrary, the increase, if
14 any, is both minimal and unpredictable.

15 **B. Consumer Awareness of Omega-3 Fatty Acids**

16 47. Over the past decade, numerous studies and reports have increased the public's
17 awareness of, and interest in, the role of omega-3 fatty acids in promoting and maintaining a
18 healthy brain.

19 48. These studies and reports, along with numerous marketing and advertising
20 campaigns, have also helped make "Omega-3" a household word among health-conscious
21 consumers.

22 49. Consumers today understand that omega-3 fatty acids are beneficial, and they
23 increasingly associate the term "Omega-3" with healthy brain development and function.

24 50. Consumers today are aware that DHA in particular is associated with healthy
25 brain development and function.

26

1 51. This increased consumer awareness of the term “Omega-3,” of the role that
2 omega-3 fatty acids play in promoting and maintaining a healthy brain, and of the role that DHA
3 in particular plays in promoting and maintaining a healthy brain has become extremely profitable
4 for the vitamin and supplement industry.

5 52. To capitalize on this growing market of consumers seeking omega-3 fatty acids to
6 promote healthy brain development and function, vitamin and supplement companies, including
7 NNP, began producing specialty vitamins and supplements that purport to contain DHA.

8 **C. NNP Made Improper Statements, Claims, Affirmations of Fact, Other**
9 **Representations, and Omissions Regarding Omega-3 Gummy Fish**

10 53. Omega-3 Gummy Fish are designed, manufactured, produced, marketed,
11 advertised, labeled, promoted, distributed, supplied, and/or sold by NNP as a nutritional
12 supplement.

13 54. Omega-3 Gummy Fish are shaped like fish and other water creatures.

14 55. Omega-3 Gummy Fish are sold in containers with a picture of a fish on the front.

15 56. NNP has stated on the label, near the picture of the fish, that “Omega-3’s Promote
16 Healthy Brain Function.”

17 57. NNP has stated on the label, near the picture of the fish, that Omega-3 Gummy
18 Fish are “Smart Gummies For Smart Kids.”

19 58. NNP has stated on the label, near the picture of the fish, that Omega-3 Gummy
20 Fish are a “Brain Booster.”

21 59. NNP has stated on the label, near the picture of the fish, that Omega-3 Gummy
22 Fish are made “with DHA.”

23 60. NNP has stated, in the portion of the label titled “Supplement Facts,” that each
24 serving of Omega-3 Gummy Fish contains 200 milligrams of NNP’s “Proprietary Omega-3
25 DHA Blend.”
26

1 61. NNP has stated on the label that each serving of Omega-3 Gummy Fish contains
2 “120 mg of Omega-3 Fatty Acids.”

3 62. At all times relevant herein, NNP omitted and failed to separately disclose the
4 amount of DHA in Omega-3 Gummy Fish.

5 63. Consumers purchased Omega-3 Gummy Fish because they were led to believe,
6 and they did believe, that Omega-3 Gummy Fish contained the amount of omega-3 fatty acids
7 stated on the container.

8 64. Consumers purchased Omega-3 Gummy Fish because they were led to believe,
9 and they did believe, that the omega-3 fatty acids in Omega-3 Gummy Fish were those
10 associated with healthy brain development and function.

11 65. Consumers purchased Omega-3 Gummy Fish because they were led to believe,
12 and they did believe, that the omega-3 fatty acids in Omega-3 Gummy Fish were primarily
13 DHA.

14 66. Consumers purchased Omega-3 Gummy Fish because they were led to believe,
15 and they did believe, that Omega-3 Gummy Fish promoted healthy brain development and
16 function.

17 67. Omega-3 Gummy Fish do not contain the amount of omega-3 fatty acids stated on
18 the container.

19 68. Omega-3 Gummy Fish contain very little, if any, of the omega-3 fatty acids
20 associated with healthy brain development and function.

21 69. Omega-3 Gummy Fish contain very little, if any, DHA.

22 70. Omega-3 Gummy Fish do not promote healthy brain development and function.

23 71. The omega-3 fatty acids in Omega-3 Gummy Fish are primarily, if not
24 exclusively, ALA.

25 72. ALA is not associated with healthy brain development and function.
26

1 73. NNP's statements, claims, affirmations of fact, other representations, and
2 omissions regarding Omega-3 Gummy Fish, as outlined above and elsewhere herein, are unfair,
3 deceptive, misleading, and/or otherwise improper, both individually and as a whole, because,
4 among other things, they misrepresent the total amount of omega-3 fatty acids in Omega-3
5 Gummy Fish.

6 74. NNP's statements, claims, affirmations of fact, other representations, and
7 omissions regarding Omega-3 Gummy Fish, as outlined above and elsewhere herein, are unfair,
8 deceptive, misleading, and/or otherwise improper, both individually and as a whole, because,
9 among other things, they incorrectly imply that the omega-3 fatty acids in Omega-3 Gummy Fish
10 are those associated with healthy brain development and function.

11 75. NNP's statements, claims, affirmations of fact, other representations, and
12 omissions regarding Omega-3 Gummy Fish, as outlined above and elsewhere herein, are unfair,
13 deceptive, misleading, and/or otherwise improper, both individually and as a whole, because,
14 among other things, they incorrectly imply that the omega-3 fatty acids in Omega-3 Gummy Fish
15 are primarily DHA.

16 76. NNP's statements, claims, affirmations of fact, other representations, and
17 omissions regarding Omega-3 Gummy Fish, as outlined above and elsewhere herein, are unfair,
18 deceptive, misleading, and/or otherwise improper, both individually and as a whole, because,
19 among other things, they incorrectly imply that Omega-3 Gummy Fish promote healthy brain
20 development and function.

21 77. NNP made these false, inaccurate, unfair, deceptive, misleading, and/or otherwise
22 improper statements, claims, affirmations of fact, and other representations regarding Omega-3
23 Gummy Fish, and they omitted and failed to disclose material facts and information in their
24 marketing, advertising, labeling, promotion, distribution, supply, and/or sale thereof, to capitalize
25 on the growing market of health-conscious consumers seeking products with omega-3 fatty acids
26 that promote healthy brain development and function.

- 1 (d) Whether Omega-3 Gummy Fish promote healthy brain development and
function.
- 2 (e) Whether Omega-3 Gummy Fish contain primarily, if not exclusively,
3 ALA.
- 4 (f) Whether NNP omits and fails to separately disclose the amount of DHA in
Omega-3 Gummy Fish.
- 5 (g) Whether NNP's omission and/or failure to separately disclose the amount
6 of DHA in Omega-3 Gummy Fish is uniformly unfair, deceptive,
7 misleading, and/or otherwise improper, individually and/or in conjunction
with NNP's other conduct challenged herein.
- 8 (h) Whether the shape of Omega-3 Gummy Fish is uniformly unfair,
9 deceptive, misleading, and/or otherwise improper, individually and/or in
conjunction with NNP's other conduct challenged herein.
- 10 (i) Whether the picture of a fish on the label of Omega-3 Gummy Fish is
11 uniformly unfair, deceptive, misleading, and/or otherwise improper,
individually and/or in conjunction with NNP's other conduct challenged
herein.
- 12 (j) Whether NNP's statement that "Omega-3's Promote Healthy Brain
13 Function" is uniformly unfair, deceptive, misleading, and/or otherwise
improper, individually and/or in conjunction with NNP's other conduct
14 challenged herein.
- 15 (k) Whether NNP's statement that Omega-3 Gummy Fish are "Smart
16 Gummies For Smart Kids" is uniformly unfair, deceptive, misleading,
and/or otherwise improper, individually and/or in conjunction with NNP's
other conduct challenged herein.
- 17 (l) Whether NNP's statement that Omega-3 Gummy Fish are a "Brain
18 Booster" is uniformly unfair, deceptive, misleading, and/or otherwise
improper, individually and/or in conjunction with NNP's other conduct
19 challenged herein.
- 20 (m) Whether NNP's statement that Omega-3 Gummy Fish are made "with
21 DHA" is uniformly unfair, deceptive, misleading, and/or otherwise
improper, individually and/or in conjunction with NNP's other conduct
challenged herein.
- 22 (n) Whether NNP's statement that each serving of Omega-3 Gummy Fish
23 contains 200 milligrams of NNP's "Proprietary Omega-3 DHA Blend" is
uniformly unfair, deceptive, misleading, and/or otherwise improper,
24 individually and/or in conjunction with NNP's other conduct challenged
herein.
- 25 (o) Whether NNP's conduct described, referred to, and/or otherwise
26 challenged herein amounts to unfair and/or deceptive acts and/or

practices in the conduct of business or commerce within the meaning of RCW Chapter 19.86.

(p) Whether NNP's conduct described, referred to, and/or otherwise challenged herein violates express warranty statutes.

(q) Whether NNP's conduct described, referred to, and/or otherwise challenged herein violates implied warranty statutes.

(r) Whether NNP's conduct described, referred to, and/or otherwise challenged herein amounts to a conversion of property belonging to plaintiffs and the Class.

(s) Whether NNP was unjustly enriched at the expense of plaintiffs and the Class.

(t) Whether plaintiffs and the Class have sustained damages, and the proper measure of those damages.

(u) Whether, and in what amount, plaintiffs and members of the Class are entitled to recover treble damages, court costs, and attorneys' fees.

84. Plaintiffs' claims and defenses are typical of the claims and defenses belonging to absent members of the Class because NNP engaged in a common course of conduct with respect to each and every member of the Class. NNP systematically and uniformly made false, inaccurate, unfair, deceptive, misleading, and/or otherwise improper statements, claims, affirmations of fact, and other representations regarding Omega-3 Gummy Fish. In addition, NNP systematically and uniformly omitted and failed to disclose material facts and other information regarding Omega-3 Gummy Fish in its marketing, advertising, labeling, promotion, distribution, supply, and/or sale thereof.

85. Similar or identical deceptive business practices and statutory and common law violations are involved herein, such that individual questions, if any, pale by comparison to the numerous questions of law and fact common to all members of the Class.

86. Plaintiffs will fairly and adequately assert and protect the interests of absent members of the Class. Plaintiffs are familiar with the claims at issue herein, and they have no interests adverse to absent members of the Class. Plaintiffs have retained counsel competent and

1 experienced in complex class action litigation, and they intend to pursue this litigation
2 vigorously.

3 87. Class certification is proper under Washington Superior Court Civil Rule
4 23(b)(1)(A) because the prosecution of separate actions by individual members of the Class
5 would create a risk of inconsistent or varying adjudications with respect to individual members
6 of the Class and establish incompatible standards of conduct for NNP.

7 88. Class certification is proper under Washington Superior Court Civil Rule
8 23(b)(1)(B) because the prosecution of separate actions by individual members of the Class
9 would create a risk of adjudications with respect to individual members of the Class which
10 would, as a practical matter, be dispositive of the interests of other members not parties to these
11 adjudications and/or substantially impair their ability to protect these interests.

12 89. Class certification is proper under Washington Superior Court Civil Rule 23(b)(3)
13 because common issues of law and fact predominate over any questions affecting only individual
14 members of the Class, and a class action is superior to other available methods for the fair and
15 efficient adjudication of this controversy.

16 90. The Class action device is superior to other available methods of litigation
17 because, among other things, the claims at issue herein are too small to pursue on an individual
18 basis, and even if members of the Class could afford such litigation, the judicial system could
19 not. Individual litigation of these claims would only increase the burden and expense of the
20 litigation and delay final resolution of these issues. The class action device presents far fewer
21 management difficulties and provides the benefits of a single uniform adjudication, economies of
22 scale, and comprehensive supervision by a single court. Given the similar nature of the claims of
23 each member of the Class, a statewide Class can be managed easily by the Court and the parties.

24 91. The need for Class-wide notice is not a barrier to certification. Notice can be
25 effectively disseminated to the Class by techniques customarily used in consumer class actions,
26

1 including published notice, internet notice, and direct mailings based on readily available
2 computer databases maintained by NNP in the ordinary course of its business.

3 **VI. COUNT I**

4 **UNLAWFUL, UNFAIR, DECEPTIVE, AND IMPROPER BUSINESS PRACTICES**

5 92. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully
6 set forth herein.

7 93. NNP's conduct described, referred to, and/or otherwise challenged herein took
8 place in the conduct of trade and/or commerce.

9 94. NNP's conduct described, referred to, and/or otherwise challenged herein
10 constitutes unlawful, unfair, deceptive, and/or improper business acts within the meaning of the
11 Washington Consumer Protection Act, RCW Chapter 19.86.

12 95. NNP's conduct described, referred to, and/or otherwise challenged herein has the
13 capacity to deceive a substantial portion of the public and to affect the public interest.

14 96. As a direct, foreseeable, and proximate result of NNP's conduct described,
15 referred to, and/or otherwise challenged herein, plaintiffs and members of the Class have
16 suffered economic damages in an amount to be proven at trial.

17 **VII. COUNT II**

18 **BREACH OF WARRANTIES**

19 97. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully
20 set forth herein.

21 98. Omega-3 Gummy Fish are "goods" within the meaning of Article 2 of the
22 Uniform Commercial Code.

23 99. NNP's conduct described, referred to, and/or otherwise challenged herein
24 constitutes a breach of an express or implied warranty of affirmation.

25 100. NNP's conduct described, referred to, and/or otherwise challenged herein
26 constitutes a breach of an implied warranty of merchantability.

1 111. Equity and good conscience militate against NNP's continued retention of these
2 ill-gotten gains.

3 112. Plaintiffs seek full restitution of the enrichment, benefits, and ill-gotten gains
4 NNP acquired as a result of the conduct described, referred to, and/or otherwise challenged
5 herein.

6 **X. PRAYER FOR RELIEF**

7 WHEREFORE, plaintiffs pray for judgment as follows:

8 (a) For an order determining that this lawsuit may proceed as a class action
9 under Washington Superior Court Civil Rules 23(b)(1) and (3) with respect to plaintiffs' claims
10 for damages;

11 (b) For an order appointing plaintiffs as lead plaintiffs and representatives of
12 the Class, and designating plaintiffs' attorneys as lead counsel for the Class;

13 (c) For an order declaring that NNP's conduct was unlawful, and that NNP is
14 liable for the conduct described, referred to, and/or otherwise challenged herein;

15 (d) For judgment against NNP for actual damages, including but not limited to
16 all general, special, incidental, and consequential damages;

17 (e) For judgment against NNP for statutory damages, including but not
18 limited to treble damages;

19 (f) For judgment against NNP for punitive damages;

20 (g) For an award of attorneys' fees;

21 (h) For an award of all costs and expenses incurred herein;

22 (i) For an award of pre-judgment and post-judgment interest;

23 (j) For an award of any other penalties allowed by law; and

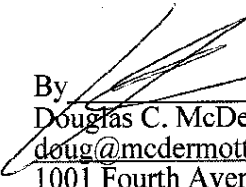
24 (k) For such other and further relief as this Court may deem just and proper.
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Dated this 9th day of February, 2010

Respectfully submitted,

MCDERMOTT NEWMAN, PLLC

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