

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7064	
PLAINTIFF(S) / PETITIONER(S): Henry Gonzales	
DEFENDANT(S) / RESPONDENT(S): Boiron Inc et.al.	
GONZALES VS. BOIRON INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2011-00095740-CU-MT-CTL

Judge: William R. Nevitt, Jr.

Department: C-64

COMPLAINT/PETITION FILED: 08/04/2011

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (SDSC Local Rule 2.1.7)

CASE MANAGEMENT CONFERENCE: A Case Management Conference will be set within 150 days of filing the complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION. IF THE CASE IS ORDERED TO ARBITRATION PURSUANT TO CODE CIV. PROC. 1411.11, THE COSTS OF ARBITRATION WILL BE PAID BY THE COURT PURSUANT TO CODE CIV. PROC. 1141.28.

FOR MORE INFORMATION, SEE THE ATTACHED ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730)

2011 AUG -4 A 10: 01

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 NEWPORT TRIAL GROUP
2 A Professional Corporation
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9 Tel: (949) 706-6464
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11 Attorneys for Plaintiff and the Class

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN DIEGO

14 FAXED

15 HENRY GONZALES, individually, and on behalf
16 of all others similarly situated,

Case No.:

37-2011-00095740-CU-MT-CTL

17 Plaintiff,

CLASS ACTION COMPLAINT

18 vs.

JURY TRIAL DEMANDED

19 BOIRON, INC.; BOIRON USA, INC.;
20 LABORATORIES BOIRON; and DOES 1-25,
21 Inclusive,

22 Defendants.

23 I. INTRODUCTION

24 Oscilloccocinum (the "Oscillo") is nothing more than a sugar pill that Defendants falsely
25 advertise has the ability to cure the flu. In reality, Oscillo has no impact on the flu or any symptoms
26 that accompany the flu.

27 Accordingly, Henry Gonzales ("Plaintiff") brings this lawsuit to enjoin the ongoing deception
28 of thousands of California consumers by Defendants, and to recover the money taken by this unlawful
practice.

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2 **II. THE PARTIES**

3 **A. Plaintiff.**

4 1. Plaintiff Henry Gonzales ("Plaintiff") is a resident of California who purchased Oscillo
5 in California.

6 **B. Boiron, Inc. and Boiron USA, Inc. Defendants.**

7 2. Plaintiff is informed and believes, and upon such information and belief alleges, that
8 Defendants Boiron, Inc. and Boiron USA, Inc. ("Defendants") are Pennsylvania corporations that
9 produce, market, and sell Oscillo, and do business in California.

10 **C. Laboratories Boiron Defendant.**

11 3. Plaintiff is informed and believes, and upon such information and belief alleges, that
12 Defendant Laboratories Boiron ("Defendant") is a French company that produces, markets, and sells
13 Oscillo, and does business in California.

14 **D. Doe Defendants.**

15 4. Plaintiff does not know the true names or capacities of the persons or entities sued
16 herein as DOES 1 to 25, inclusive, and therefore sues such defendants by such fictitious names.
17 Plaintiff is informed and believes and thereon alleges that each of the DOE defendants is in some
18 manner legally responsible for the damages suffered by Plaintiff and the members of the class as
19 alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these
20 defendants when they have been ascertained, along with appropriate charging allegations, as may be
21 necessary.

22 **III. JURISDICTION AND VENUE**

23 5. This Court has jurisdiction over all causes of action asserted herein.

24 6. Venue is proper in this Court because Plaintiff purchased the product in this County and
25 because Defendants have received substantial compensation from sales in this County. Specifically,
26 Defendants knowingly engage in activities directed at consumers in this County, and Defendants
27 obtain substantial benefits from their scheme perpetrated in this County. Plaintiff has filed
28 concurrently herewith the declaration of venue required by Civil Code Section 1780(d).

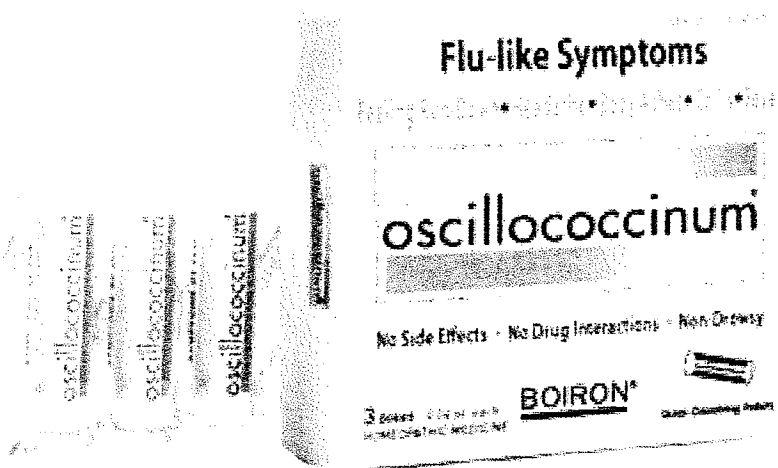
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2 7. Defendants and other out-of-state participants can be brought before this Court pursuant
3 to California's "long-arm" jurisdictional statute.

4 **IV. FACTS**

5 8. Influenza kills approximately 500,000 people each year. In the United States alone,
6 approximately 40,000 people die after contracting the flu each year.

7 9. The most recent pandemic, as declared by the World Health Organization ("WHO"),
8 was an outbreak of the flu. The WHO classified this pandemic as a level 6, the highest level.

9 10. Defendants play off of the widespread nature of the flu and the public's justified fear of
10 it by making false claims about purported efficacy characteristics of Oscillo in order to drive enormous
11 sales of the worthless product. For instance, the front of the Product packaging places in bold letters
12 the name of the Product – "Oscillococcinum", directly below the statements "Flu-like Symptoms",
13 "Feeling Run Down", "Headache", "Body Aches", "Chills", and "Fever". The package also claims,
14 "No Side Effects", "No Drug Interactions", and "Non-Drowsy".
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2 11. Defendants advertise: that Oscillo is “medicine for headache, body aches, chills &
3 fever”; that Oscillo will “slow down the spread of germs”; that “Oscillo[] has a long history of efficacy
4 and safety”; and “[Oscillo] is the first flu medicine recommended by pharmacists”¹.

5 12. Defendants include numerous testimonials touting Oscillo without disclosing either the
6 fact that the endorsers are paid or the actual results that can be expected.²

7 13. From the advertising done by Defendants regarding Oscillo, it would appear to be the
8 perfect product to combat the flu. According to Defendants, Oscillo will take care of the flu within 48
9 hours³ with no possibility of any side effects or drug interactions and without making the patient
10 drowsy.

11 14. Earlier this year, Plaintiff purchased Oscillo. He did so after reading, believing, and
12 relying upon Defendants’ advertising. Plaintiff used Oscillo as directed, but did not obtain the
13 promised results—Oscillo had no impact on Plaintiff’s flu.

14 15. Unfortunately, Defendants fail to inform consumers of the truth regarding Oscillo and
15 its purported active ingredient. The truth is that the listed active ingredient in Oscillo, *Anas Barbariae*
16 *Hepatis et Cordis Extractum*, is neither active in combating the flu nor is it actually an ingredient in
17 Oscillo.

18 16. *Anas Barbariae Hepatis et Cordis Extractum* is a fancy way for Defendants to hide the
19 truth from the general public. The truth being that *Anas Barbariae Hepatis et Cordis Extractum* is
20 actually Muscovy Duck Liver and Heart.

21 17. *Anas Barbariae Hepatis et Cordis Extractum* has no known medicinal quality, further,
22 in the extreme dilution claimed by Defendants, it has no impact on the human body whatsoever
23 because it is not present in Oscillo.

24 18. Defendants claim that the active ingredient in Oscillo, *Anas Barbariae Hepatis et*
25 *Cordis Extractum*, is diluted to 200CK. This dilution indicates that for every part of *Anas Barbariae*
26 *Hepatis et Cordis Extractum* in Oscillo, there is 10³⁹⁹ parts of the inactive ingredient, sugar. Written

27 ¹ www.oscillo.com (last accessed August 2, 2011).

² www.osciullo.com/testimonials/ (last accessed August 2, 2011).

28 ³ Oscillococcinum works rapidly, with 63 percent of patients showing “complete resolution” or “clear improvement” at 48 hours. (<http://www.oscillo.com/about/clinical-studies/>)

1 out in long form, this results in a ratio of
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9 19. At this purported ratio, the probability of getting 1 molecule of the active ingredient of
10 Oscillo in a regular dosage is approximately equal to winning the Powerball every week for an nearly
11 an entire year. Simply stated, there is no trace of the purported active ingredient in Oscillo. Oscillo is
12 nothing more than sugar (85% sucrose and 15% lactose).

13 20. Defendants are fully aware that there is no *Anas Barbariae Hepatis et Cordis*
14 *Extractum* present in Oscillo. In an interview with the U.S. News and World Report, Defendants
15 stated, “[o]f course its safe. There’s nothing in it.”⁴

16 21. Succinctly stated, Oscillo does not, cure, relieve, or in any way treat the flu.

17 22. Defendants sell Oscillo for approximately \$10 per unit based on the preceding false
18 advertising claims. As a result, Defendants have wrongfully taken millions of dollars from California
19 consumers.

20 23. Accordingly, Henry Gonzales brings this lawsuit to enjoin the ongoing deception of
21 thousands of California consumers by Defendants, and to recover the funds taken by this unlawful
22 practice.

23 V. CLASS ACTION ALLEGATIONS

24 24. Plaintiff brings this class action for damages and other monetary relief on behalf of the
25 following class:
26
27

28 ⁴ McGraw, Dan. “Flu Symptoms? Try Duck” U.S. News and World Report 9 February 1997.

1 All persons located within California who purchased Oscillo at any time
2 during the four years preceding the filing of this Complaint (the
3 "Class").
4

5 25. Excluded from the Class are governmental entities, Defendants, any entity in which
6 defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal
7 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from
8 the Class is any judge, justice, or judicial officer presiding over this matter and the members of their
9 immediate families and judicial staff.

10 26. The proposed Class is so numerous that individual joinder of all its members is
11 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
12 the total number of Class members is at least in the tens of thousands and members of the Class are
13 numerous and geographically dispersed across California. While the exact number and identities of
14 the Class members are unknown at this time, such information can be ascertained through appropriate
15 investigation and discovery. The disposition of the claims of the Class members in a single class
16 action will provide substantial benefits to all parties and to the Court.

17 27. There is a well-defined community of interest in the questions of law and fact involved
18 affecting the plaintiff class and these common questions predominate over any questions that may
19 affect individual Class members. Common questions of fact and law include, but are not limited to,
20 the following:

- 21 (a) Whether Defendants' efficacy claims are accurate;
- 22 (b) Whether Defendants' efficacy claims are properly substantiated;
- 23 (c) Whether Defendants have falsely represented that Oscilloccinum has benefits
24 which it does not have; and
- 25 (d) Whether Defendants knew that the efficacy representations were false.

26 28. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
27 members of the Class have been similarly affected by Defendants' common course of conduct since
28 they all relied on Defendants' representations concerning Oscillo and purchased the product based on
those representations.

1 29. Plaintiff will fairly and adequately represent and protect the interests of the Class.
2 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.
3 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and
4 have the financial resources to do so. Plaintiff has retained a law firm who is widely recognized as one
5 of the most successful and effective class action litigators in California, and whose victories have been
6 publicized on CNN, Fox News, MSNBC, and nearly every major California newspaper. The firm has
7 also been certified as lead class counsel in similar class actions.

8 30. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a
9 result of Defendants' unlawful and wrongful conduct. A class action is superior to other available
10 methods for the fair and efficient adjudication of the present controversy. Individual joinder of all
11 members of the class is impracticable. Even if individual class members had the resources to pursue
12 individual litigation, it would be unduly burdensome to the courts in which the individual litigation
13 would proceed. Individual litigation magnifies the delay and expense to all parties in the court system
14 of resolving the controversies engendered by Defendants' common course of conduct. The class
15 action device allows a single court to provide the benefits of unitary adjudication, judicial economy,
16 and the fair and efficient handling of all class members' claims in a single forum. The conduct of this
17 action as a class action conserves the resources of the parties and of the judicial system and protects
18 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
19 mechanism that allows an opportunity for legal redress and justice.

20 31. Adjudication of individual class members' claims with respect to Defendants would, as
21 a practical matter, be dispositive of the interests of other members not parties to the adjudication, and
22 could substantially impair or impede the ability of other class members to protect their interests.

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2 **VI. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

5 **(By Plaintiff and On Behalf of the Class as against All Defendants)**

6 32. Plaintiff incorporates by this reference the allegations contained in the paragraphs
7 above as if fully set forth herein.

8 33. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
9 lost money or property as a result of Defendants' actions as set forth herein. Specifically, prior to the
10 filing of this action, Plaintiff purchased Oscillo. In so doing, he relied upon Defendants' marketing
11 claims. He used Oscillo as directed, but the product has not worked as advertised, nor did it provide
12 any of the promised benefits.

13 34. Prior to filing this action, Plaintiff's counsel mailed to Defendants, by certified mail,
14 return receipt requested, the written notice required by Civil Code Section 1782(a). A copy of that
15 letter is attached hereto as Exhibit 1.

16 35. Plaintiff filed the declaration of venue required by Civil Code Section 1780(d).

17 36. Defendants' wrongful business practices constituted, and constitute, a continuing
18 course of conduct in violation of the California Consumers Legal Remedies Act since Defendants are
19 still representing that their product has characteristics, uses, benefits, and abilities which are false and
20 misleading, and have injured Plaintiff and the Class.

21 37. Plaintiff and the Class seek:

22 (a) an order of this court enjoining Defendants from continuing to engage in
23 unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those
24 set forth in the complaint, pursuant to California Civil Code Section 1780(a)(2);

25 (b) actual damages pursuant to Civil Code Section 1780(a)(1);

26 (c) punitive damages pursuant to California Civil Code Section 1780(a)(4) due to
27 the fraudulent, malicious, and willful nature of Defendants' conduct;

28 (d) statutory damages of no less than \$1,000 per class member pursuant to
California Civil Code Section 1780(a)(1);

1 (e) restitution pursuant to Civil Code Section 1780(a)(3); and
2 (f) any other equitable or legal relief that the Court deems proper pursuant to
3 California Civil Code Section 1780(a)(5).
4

5
6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**

8 **CODE SECTIONS 17200 ET SEQ. AND 17500 ET. SEQ.**

9 **(By Plaintiff and On Behalf of the Class as against All Defendants)**

10 38. Plaintiff incorporates by this reference the allegations contained in the paragraphs
11 above as if fully set forth herein.

12 39. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
13 lost money or property as a result of Defendants' actions as set forth herein. Specifically, prior to the
14 filing of this action, Plaintiff purchased Oscillo. In so doing, he relied upon Defendants' marketing
15 claims. He used Oscillo as directed, but the product has not worked as advertised, nor did it provide
16 any of the promised benefits.

17 40. Defendants' actions as alleged in this Complaint constitute an unfair or deceptive
18 business practice within the meaning of California Business and Professions Code section 17200 in
19 that Defendants' actions are unfair, unlawful, and fraudulent, and because Defendants have made
20 unfair, deceptive, untrue or misleading statements in advertising media, including the Internet, within
21 the meaning of California Business and Professions Code sections 17500, et seq.

22 41. Defendants' business practices, as alleged herein, are unfair because they offend
23 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or substantially
24 injurious to consumers in that consumers are misled by the claims made with respect to Oscillo as set
25 forth herein.

26 42. Defendants' business practices as alleged herein are unlawful because the conduct
27 constitutes false marketing and advertising and other causes of action alleged herein.

28 43. Defendants' business practices as alleged herein are fraudulent because they are likely
to deceive customers into believing that Oscillo has properties that it in fact does not have.

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2 44. Defendant's business practices as alleged herein are unfair, deceptive, untrue, and
3 misleading advertising pursuant to California Business and Professions Code section 17500, et seq.
4 because Defendants have advertised Oscillo, including over the internet, in a manner that is untrue and
5 misleading, and that is known to be untrue or misleading.

6 45. Defendants' wrongful business practices constituted, and constitute, a continuing
7 course of conduct of unfair competition since Defendants are marketing and selling their products in a
8 manner likely to deceive the public.

9 46. Defendants' wrongful business practices have caused injury to Plaintiff and the Class.

10 47. Pursuant to section 17203 of the California Business and Professions Code, Plaintiff
11 and the Class seek an order of this court enjoining Defendants from continuing to engage in unlawful,
12 unfair, or deceptive business practices and any other act prohibited by law, including those set forth in
13 the complaint. Plaintiff and the Class also seek an order requiring Defendants to make full restitution
14 of all moneys it wrongfully obtained from Plaintiff and the Class.

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16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff and members of the Class request that the Court enter an order or
18 judgment against Defendants as follows:

- 19 1. Certification of the proposed classes and notice thereto to be paid by Defendants;
20 2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;
21 3. For restitution and disgorgement on certain causes of action;
22 4. For an injunction ordering Defendants to cease and desist from engaging in the unfair,
23 unlawful, and/or fraudulent practices alleged in the Complaint;
24 5. For compensatory, actual, general, statutory, exemplary, punitive, and any other
25 damages legally available according to proof on certain causes of action;
26 6. For both pre and post-judgment interest at the maximum allowable rate on any amounts
27 awarded;
28 7. Costs of the proceedings herein;
8. Reasonable attorneys' fees as allowed by statute; and

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9. Any and all such other and further relief that this Court may deem just and proper.

Dated: August 4, 2011

NEWPORT TRIAL GROUP
A Professional Corporation
Ryan M. Ferrell

By: Ryan M. Ferrell
(Ryan M. Ferrell)

Attorney for Plaintiff and the Class

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I, Henry Gonzales, declare as follows:

1. I am a Plaintiff in this action, and am a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that San Diego County is a county in which Defendants are doing business.

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


Henry Gonzalez

NEWPORT
TRIAL GROUP

A Professional Corporation

895 Dove Street, Suite 425
Newport Beach, CA 92660
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Fax (949) 706-6469
www.trialnewport.com

June 13, 2011

SENT VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Boiron, Inc.
Boiron USA Inc.
6 Campus Blvd., Building A
Newton Square, PA 19073
Attention: President and CEO

Laboratories Boiron
20 rue de la Libération
69110 Sainte Foy Les Lyon
France
Attention: President and CEO

Re: Ongoing Violations of California Consumer Legal Remedies Act

Dear Sir or Madam:

I am writing on behalf of an individual Californian, as well as a class of similarly situated persons, to advise you that we believe you are violating the California Consumer Legal Remedies Act.

You market and sell a product known as "Oscillococcinum." You market it as a remedy for flu and flu-like symptoms, including "feeling run down, headache, bodyaches, chills, and fever."

In reality, Oscillococcinum is a microdosage of duck liver and heart. Diluted to a dosage of 200C (1 x 10⁴⁰⁰), the product contains no active ingredients and is of no medicinal value whatsoever.

We believe that your marketing, advertising, and distribution of Oscillococcinum violate the California Consumer Legal Remedies Act by falsely representing that the product has characteristics, uses and benefits which it does not have.

EXHIBIT 1

June 13, 2011

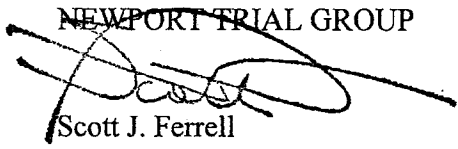
Page 2

We respectfully request that you agree to irrevocably stop all false and misleading advertising and labeling of Oscillococcinum and provide all consumers who have purchased the product with a full refund.

Given that our primary goal is to enjoin the false advertising claims, we will agree to take no further action in this matter if you will agree to conform your conduct to the requirements and prohibitions of the California Consumer Legal Remedies Act.

Very truly yours,

~~NEWPORT TRIAL GROUP~~


Scott J. Ferrell

SJF/lb

**SUMMONS
(CITACION JUDICIAL)**

2011 AUG -4 A 10: 01

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BOIRON, INC.; BOIRON USA, INC.; LABORATORIES BOIRON;
and DOES 1-25, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

HENRY GONZALES, individually, and on behalf of all others similarly
situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **San Diego County Superior Court**
200 W. Broadway
San Diego, CA 92101

CASE NUMBER:
(Número de caso) **37-2011-00095740-CU-MT-CTL**

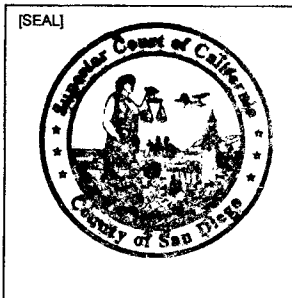
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Newport Trial Group, 895 Dove Street, Suite 425, Newport Beach, CA 92660 (949) 706-6464

FAXED

DATE: **AUG 04 2011**
(Fecha)

Clerk, by *M. Bane* Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). **M. BANE**



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

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SUPERIOR COURT
SAN DIEGO COUNTY, CA

FAXED

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott J. Ferrell, SBN 202091 NEWPORT TRIAL GROUP 895 Dove Street, Suite 425 Newport Beach, CA 92660 TELEPHONE NO.: (949) 706-6464 FAX NO.: (949) 706-6469 ATTORNEY FOR (Name): Plaintiff and the Class		CASE NUMBER: 37-2011-00095740-CU-MT-CTL JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 200 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
CASE NAME: GONZALES v. BOIRON, et al.		

CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input checked="" type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision


3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Two

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 4, 2011
 Scott J. Ferrell
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
- Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition