

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) 450-7071

PLAINTIFF(S) / PETITIONER(S): Joe Ferris

DEFENDANT(S) / RESPONDENT(S): Dream Products LLC et.al.

FERRIS VS. DREAM PRODUCTS LLC

NOTICE OF CASE ASSIGNMENT

CASE NUMBER:

37-2011-00097625-CU-BC-CTL

Judge: Ronald S. Prager

Department: C-71

COMPLAINT/PETITION FILED: 09/08/2011

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)

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5
6

CENTRAL DIVISION
2011 SEP -8 PM 2:37
SUPERIOR COURT
SAN DIEGO COUNTY, CA

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF SAN DIEGO**
9

10 JOE FERRIS, an individual; on behalf of himself
and all others similarly situated, and ROES 1
11 through 100, inclusive,

12 Plaintiffs,

13 vs.

14 DREAM PRODUCTS, LLC, an entity form
unknown; SARPES BEVERAGES, LLC, a
15 Florida limited liability company; and DOES 1
through 100, inclusive,

16 Defendants.
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CASE NO.: **37-2011-00097625-CU-BC-CTL**

CLASS ACTION

COMPLAINT FOR:

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE §1750, *ET SEQ.*;
2. VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS & PROFESSIONS CODE §17200, *ET SEQ.*;
3. VIOLATION OF THE FALSE ADVERTISING LAW, BUSINESS & PROFESSIONS CODE § 17500, *ET SEQ.*;
4. BREACH OF EXPRESS WARRANTY; and
5. BREACH OF IMPLIED WARRANTY.

26 Plaintiff Joe Ferris ("Mr. Ferris" or "Plaintiff"), by and through his attorneys, brings this
27 action on behalf of himself and all others similarly situated against defendants Dream Products,
28 LLC and Sarpes Beverages, LLC (collectively, "Dream Products" or "Defendant"). Plaintiff

CLASS ACTION COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Via FAX

1 alleges, on information and belief, except for information based on personal knowledge, as
2 follows:

3 **NATURE OF THE ACTION**

4 1. Defendant manufactures, markets, and sells bottled water known as “Dream
5 Water” that Defendant claims is an all-natural revolutionary sleep and relaxation beverage.
6 Defendant claims that Dream Water is a proprietary combination of three natural relaxation
7 ingredients: GABA, Melatonin and 5-htp. Through its advertising and labeling, Defendant
8 promises that its miraculous water works for anyone who needs to relax, fall asleep or stay asleep
9 and that Dream Water will “transport [users] to a sound and restful sleep.” Dream Water,
10 according to Defendant, has no side effects and provides its amazing sleep benefits without
11 making users feel groggy or drowsy the next day like other over-the-counter and prescription sleep
12 aids. Although Defendant uses images and language to represent that these claims about its
13 products have been clinically proven and endorsed by medical organizations and professionals,
14 the reality is that Defendant has no such support for its baseless representations. Defendant
15 simply is and has been misrepresenting the effectiveness of its products to the general public, in
16 order to reap windfall profits. Defendant has conveyed and continues to convey its deceptive
17 claims about Dream Water through a variety of media, including product packaging, the Internet
18 (including misleading testimonials) and point of sale displays.

19 2. Defendant has succeeded in designing its advertising and marketing campaign to
20 cause consumers to buy Dream Water as a result of this deceptive message. Dream Water is now
21 sold in airports throughout the country, over the Internet, and in popular national retail chains
22 including Walgreens and K-Mart. Dream Water is sold in a variety of “flavors” in both 8 ounce
23 bottles and in 2.5 ounce “sleep shots”. A six pack of either the 8 ounce bottles or the 2.5 ounce
24 “sleep shots” retails for approximately \$20.00.

25 3. Plaintiff saw and relied on Defendant’s deceptive Dream Water promises when
26 he purchased the Defendant’s Dream Water products, and lost money as a result. Plaintiff
27 experienced none of Dream Water’s advertised benefits. Plaintiff brings this action on behalf of
28 himself and other similarly situated consumers in the United States to halt the dissemination of

1 this false and misleading advertising message, correct the false and misleading perception it has
2 created in the minds of consumers, and obtain redress for those who have purchased Dream Water
3 products. Plaintiff alleges violations of the California Consumers Legal Remedies Act,
4 California's Unfair Competition Law, California's False Advertising Law, and breach of the
5 express and implied warranties created by Defendant's marketing, including its labeling.

6 JURISDICTION AND VENUE

7 4. This Court has subject matter jurisdiction over this action pursuant to California
8 Business and Professions Code, Sections 17203, 17204 and 17535 and Civil Code, Section 1780.
9 This Court has personal jurisdiction over Defendant because it conducted and continues to
10 conduct substantial business in the State of California, County of San Diego, and the Defendant's
11 offending products are sold in the State of California, County of San Diego. Upon information
12 and belief, the State of California is Defendant's largest retail market.

13 5. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, Business and Professions Code, Sections 17203, 17204 and 17535, and
15 Civil Code, Section 1780(c) because Defendant conducts substantial business in this County.
16 Venue is also proper because a substantial portion of the misconduct alleged herein occurred in
17 the County of San Diego, and Plaintiff specifically purchased Defendant's offending Dream Water
18 products in the County of San Diego.

19 6. Federal subject matter jurisdiction over this action does not exist. Plaintiff is
20 informed and believes that the parties in this action do not meet the diversity requirements of the
21 Class Action Fairness Act of 2005, which allows Plaintiff to bring this action in California State
22 Court. Plaintiff is informed and believes and thereon alleges that the total amount in controversy
23 is less than \$5,000,000.00. If new facts are obtained with respect to the amount at issue, Plaintiff
24 will seek leave to amend this Complaint.

25 PARTIES

26 7. At all times relevant to this matter, Plaintiff resided and continues to reside in San
27 Diego County, California. During the Class period, Plaintiff was exposed to and saw Defendant's
28 claims, purchased Defendant's Dream Water products in reliance on these claims, and suffered

1 injury in fact and lost money as a result of the misrepresentations, breaches, and unfair
2 competition described herein.

3 8. Upon information and belief, Defendants Sarpes Beverages, LLC and Dream
4 Products, LLC are headquartered in Florida and develop, market, and sell the Dream Water
5 products at issue in this matter.

6 9. The true names and capacities of the defendants named herein under California
7 Code of Civil Procedure, Section 474 as Does 1 through 100 are presently unknown to Plaintiff,
8 who therefore sues them by such fictitious names. Plaintiff will amend this Complaint to allege
9 the true names and capacities of these defendants when they have been determined. Each of the
10 fictitiously named defendants is responsible in some manner for the conduct alleged herein. The
11 Doe defendants are private individuals, associations, partnerships, corporations or institutes who
12 participated in the wrongful conduct alleged herein in ways which are unknown to Plaintiff at this
13 time.

14 ADDITIONAL FACTUAL ALLEGATIONS

15 9. In an article featured on Defendant's website, www.drinkdreamwater.com, the
16 National Academy of Sciences Institute of Medicine estimates that 50 to 70 million Americans
17 chronically suffer from sleep disorders that adversely affect their daily lives and long term health
18 and cost the county billions of dollars a year. The Institute of Medicine goes on to explain that the
19 adverse health consequences of sleep disorders in the United States include increased risk of
20 hypertension, diabetes, obesity, depression, heart attack and stroke.

21 10. Preying on consumers attempting to deal with this serious and dangerous public
22 health problem, Defendant promises that merely by drinking its Dream Water products users are
23 guaranteed to relax, fall asleep, and improve the quality of their sleep. Through the use of
24 misleading and deceptive words, images, and testimonials, Defendant uniformly and consistently
25 represents to consumers throughout its marketing message that the Dream Water products are
26 proven to be a safe and effective cure for sleep disorders that are better than FDA-evaluated and
27 approved over-the-counter alternatives. Defendant promises, in bold colorful letters: "**0-Calorie**
28 **Sleep and Relaxation.**" Users are instructed to "drink to dream."

1 11. In reality, Defendant has no support whatsoever for these claims. It has conducted
2 no studies examining the safety or effectiveness of its "proprietary" combination of the effective
3 ingredients in the Dream Water products let alone the products themselves. Defendant is simply
4 selling snake-oil as a purported cure for one of the most important health problems faced by
5 millions of Americans.

6 12. Defendant claims that Dream Water is "all-natural" and that it is "safe as a warm
7 glass of milk." But Dream Water includes and promotes the use of melatonin. Medical
8 professionals note that melatonin has "inconsistent" effects as a sleep aid, that "[t]here are many
9 unanswered questions about melatonin" and that melatonin may lead to daytime drowsiness,
10 headaches, dizziness, stomach discomfort, short-lasting depression symptoms, mild tremor, mild
11 anxiety, irritability, and confusion. Melatonin may interact negatively with a variety of common
12 drugs, including blood-thinning medications (anticoagulants), immunosuppressants, diabetes
13 medications, and birth control pills. People who are pregnant, breast-feeding, and younger than
14 age 20 must be especially careful when taking melatonin. Risks of taking melatonin are thought
15 to increase over time. Upon information and belief, melatonin was recently banned for over-the-
16 counter use in Canada, and has been banned for over the counter use in many European countries
17 for some time. Defendant does not disclose any of melatonin's potential negative effects or
18 implications.¹

19 13. Plaintiff was exposed to, saw, and relied on Defendant's bold claims and promises
20 about its Dream Water products and purchased Defendant's products in reliance on Defendant's
21 claims during 2011. Plaintiff drank the Dream Water products and received none of the product's
22 purported benefits whatsoever.

23 CLASS ACTION ALLEGATIONS

24 ¹ Dream Water's use of melatonin also calls into question its claim that Dream Water is "all-
25 natural." Naturally-occurring melatonin is a hormone appearing in humans and animals. The
26 vast majority of commercial products that have melatonin in them, though, use synthetic or
27 manufactured melatonin. Discovery will reveal whether or not Dream Water uses this
28 manufactured melatonin (as is likely the case) and, therefore, whether or not Dream Water is
truly "all-natural." And in the off chance that Dream Water uses natural melatonin from
animals, then this presents another set of issues because the medical community often warns
and counsels against the taking of animal melatonin because of its disease-carrying potential –
a potential which is not disclosed by Dream Water.

1 14. Plaintiff brings this lawsuit on behalf of himself and the proposed Class
2 members under California Code of Civil Procedure, Section 382, and California Civil Code,
3 Sections 1752, 1780, and 1781. The proposed Class consists of:

4 All persons, nationwide, who purchased Dream Water until the date notice is
5 disseminated. Excluded from the Class are Defendant's officers, directors and
6 employees and those who purchased Dream Water for the purpose of resale.

7 15. Plaintiff also brings this lawsuit on behalf of himself and the following
8 proposed class or sub-class:

9 All persons who purchased Dream Water in the State of California until the date notice is
10 disseminated. Excluded from the Class are Defendant's officers, directors and employees
11 and those who purchased Dream Water for the purpose of resale.

12 16. Subject to additional information obtained through further investigation and
13 discovery, the foregoing definition of the Class² may be expanded or narrowed by amendment or
14 amended complaint. Specifically excluded from the proposed Class are defendants, their officers,
15 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
16 principals, servants, partners, joint venturers, or entities controlled by the defendants, and their
17 heirs, successors, assigns, or other persons or entities related to or affiliated with defendants
18 and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any
19 member of the Judge's immediate family.

20 17. **Numerosity.** The members of the Class are so numerous that their individual
21 joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the
22 proposed Class contains many thousands of members. The precise number of Class members is
23 unknown to Plaintiff. The true number of Class members is known by the Defendant, however,
24 and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by
25 published notice.

26 18. **Existence and Predominance of Common Questions of Law and Fact.** There
27 exists a well-defined community of interest in the questions of law and fact presented by this

28 ² The "Class" shall refer collectively to both the nationwide and California classes described in the
above paragraphs.

1 controversy. Common questions of law and fact exist as to all members of the Class and
2 predominate over any questions affecting only individual Class members. These common legal
3 and factual questions include, but are not limited to, the following:

4 (a) whether Defendant had adequate substantiation for its claims prior to
5 making them;

6 (b) whether the claims discussed above are true, or are misleading, or
7 reasonably likely to deceive;

8 (c) whether Defendant's alleged conduct violates public policy;

9 (d) whether the alleged conduct constitutes violations of the laws asserted
10 herein;

11 (e) whether Defendant engaged in false or misleading advertising;

12 (f) whether Defendant made express and/or implied warranties to Plaintiff and
13 to the Class members;

14 (g) whether Defendant breached express and/or implied warranties made to
15 Plaintiff and to the Class;

16 (h) whether Plaintiff and Class members have sustained monetary loss and the
17 proper measure of that loss;

18 (i) whether Plaintiff and Class members are entitled to an award of restitution;

19 (j) whether Plaintiff and Class members are entitled to declaratory and
20 injunctive relief.

21 19. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class
22 in that the Defendant was unjustly enriched as a result of Plaintiff's and the Class' respective
23 purchases of the Dream Water products.

24 20. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
25 interests of the members of the Class. Plaintiff has retained counsel highly experienced in
26 complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously.
27 Plaintiff has no adverse or antagonistic interests to those of the Class.

28

1 21. *Superiority* (to the extent required). A class action is superior to all other available
2 means for the fair and efficient adjudication of this controversy. The damages or other financial
3 detriment suffered by individual Class members is relatively small compared to the burden and
4 expense that would be entailed by individual litigation of their claims against the Defendant. It
5 would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress
6 for the wrongs done to them. Furthermore, even if Class members could afford such
7 individualized litigation, the court system could not. Individualized litigation would create the
8 danger of inconsistent or contradictory judgments arising from the same set of facts.
9 Individualized litigation would also increase the delay and expense to all parties and the court
10 system from the issues raised by this action. By contrast, the class action device provides the
11 benefits of adjudication of these issues in a single proceeding, economies of scale, and
12 comprehensive supervision by a single court, and presents no unusual management difficulties
13 under the circumstances here.

14 22. In the alternative, the Class may also be certified because:

15 (k) the prosecution of separate actions by individual Class members would
16 create a risk of inconsistent or varying adjudication with respect to individual Class members that
17 would establish incompatible standards of conduct for the Defendant;

18 (l) the prosecution of separate actions by individual Class members would
19 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive
20 of the interests of other Class members not parties to the adjudications, or substantially impair or
21 impede their ability to protect their interests; and/or

22 (m) Defendant has acted or refused to act on grounds generally applicable to the
23 Class thereby making appropriate final declaratory and/or injunctive relief with respect to the
24 members of the Class as a whole.

25 23. Unless stated otherwise, the claims asserted herein are applicable to all persons
26 who purchased Dream Water products.

27 24. Adequate notice can be given to Class members directly using information
28 maintained in Defendant's records or through notice by publication.

1 (o) Representing that [the Dream Water products are] of a particular standard,
2 quality or grade . . . if [they are] of another.

3 (p) Advertising [the Dream Water products] . . . with intent not to sell them as
4 advertised.

5 (q) Representing that [the Dream Water products have] been supplied in
6 accordance with a previous representation when [they have] not.

7 32. Defendant violated the Act by making the representations and claims for the
8 Dream Water products as described above when it knew, or should have known, that the
9 representations and advertisements were unsubstantiated, false, and misleading.

10 33. Defendant's unfair methods of competition and unfair or deceptive acts or
11 practices were material to Plaintiff's and other Class members' decision to purchase Defendant's
12 Dream Water products. Plaintiff and the Class reasonably relied on the misrepresentations and
13 misleading statements made by Defendant, including on every package of its products, and
14 sustained injury in fact as a result of Defendant's misconduct, including but not limited to, the loss
15 of money used to purchase the products, the diminution in value of the products, transaction costs,
16 and loss of use of funds. As a result of Defendant's conduct, Plaintiff and Class members have
17 sustained damage.

18 34. Pursuant to Section 1782 of the Act, Plaintiff notified Defendant in writing by
19 certified mail of the particular violations of Section 1770 of the Act and demanded that Defendant
20 rectify the problems associated with the actions detailed above and give notice to all affected
21 consumers of its intent to so act. A copy of the letter is attached hereto as Exhibit A.

22 35. Pursuant to Section 1782(d) of the Act, Plaintiff and the Class seek a Court order
23 enjoining the above-described wrongful acts and practices and for restitution and disgorgement.

24 36. If Defendant fails to rectify or agree to rectify the problems associated with the
25 actions detailed above and give notice to all affected consumers within 30 days of the date of
26 written notice pursuant to Section 1782 of the Act, Plaintiff will amend this Complaint to add
27 claims for actual, punitive and statutory damages, as appropriate.

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1 37. Defendant's conduct is malicious, fraudulent and wanton, and provides misleading
2 information that can lead to the delayed treatment of serious and life-threatening conditions.

3 38. Plaintiff has incurred attorneys' fees and costs in connection with the filing of this
4 Complaint and anticipates incurring additional attorneys' fees and costs in connection with the
5 prosecution of this action. An award of attorneys' fees is therefore appropriate pursuant to,
6 among other grounds, Civil Code, Section 1780(d).

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

9 **SECOND CAUSE OF ACTION**

10 **Unlawful Business Acts and Practices in Violation of California Business & Professions**

11 **Code Section 17200, *et seq.*, On Behalf of Plaintiff and the Class**

12 40. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
13 as if fully set forth herein.

14 41. Business & Professions Code Section 17200 prohibits any "unlawful, unfair or
15 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." For
16 the reasons discussed above, Defendant has violated each of these provisions of Business &
17 Professions Code, Section 17200.

18 42. Defendant has violated Section 17200's prohibition against engaging in unlawful
19 acts and practices by, among other things, making the representations and omissions of material
20 facts, as set forth more fully herein, and violating, among other statutes, Civil Code, Sections
21 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code, Sections 17200 *et seq.* and
22 17500 *et seq.*, Health & Safety Code Section 110765, and by violating the common law.

23 43. Plaintiff and the Class reserve the right to allege other violations of law which
24 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
25 this date.

26 44. Defendant's acts, omissions, misrepresentations, practices and non-disclosures as
27 alleged herein also constitute "unfair" business acts and practices within the meaning of Business
28 & Professions Code Section 17200 *et seq.* in that its conduct is substantially injurious to

1 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
2 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

3 45. As stated in this Complaint, Plaintiff alleges violations of consumer protection,
4 unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff asserts
5 violations of the public policy of engaging in false and misleading advertising, unfair competition
6 and deceptive conduct towards consumers.

7 46. There were reasonably available alternatives to further Defendant's legitimate
8 business interests, other than the conduct described herein.

9 47. Defendant's claims, nondisclosures and misleading statements, as more fully set
10 forth above, were also false, misleading and/or likely to deceive the consuming public
11 within the meaning of Business & Professions Code, Section 17200, and actually *did*
12 deceive Plaintiff.

13 48. Defendant's labeling, website and other advertisements, as described herein, also
14 constitute unfair, deceptive, untrue and misleading advertising.

15 49. Defendant's conduct caused and continues to cause substantial injury to Plaintiff
16 and the other Class members. Plaintiff has suffered injury in fact and has lost money as a result of
17 Defendant's unfair conduct. Plaintiff was exposed to, saw, and relied on Defendant's bold claims
18 about its products and the products effectiveness and purchased Dream Water in reliance on
19 Defendant's claims.

20 50. Defendant has thus engaged in unlawful, unfair and fraudulent business acts and
21 practices and false advertising, entitling Plaintiff to judgment and equitable relief against
22 Defendant, as set forth in the Prayer for Relief.

23 51. Additionally, pursuant to Business & Professions Code, Section 17203,
24 Plaintiff seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair
25 and fraudulent business practices and requiring Defendant to engage in a corrective advertising
26 campaign.

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1 above. These representations constitute express warranties, became part of the basis of the
2 bargain, and is part of a standardized contract between Plaintiff and the members of the Class on
3 the one hand, and Defendant on the other.

4 60. All conditions precedent to Defendant's liability under this contract has been
5 performed by Plaintiff and the Class.

6 61. Defendant breached the terms of this contract, including the express warranties,
7 with Plaintiff and the Class by not providing the Dream Water products which could provide the
8 benefits described above.

9 62. As a result of Defendant's breach, Plaintiff and the Class have been damaged in an
10 amount to be proven at trial.

11 **FIFTH CAUSE OF ACTION**

12 **Breach of Implied Warranty On Behalf of Plaintiff and the Class**

13 63. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 paragraphs above as if fully set forth herein.

15 64. Plaintiff, and each member of the Class, formed a contract with Defendant at the
16 time Plaintiff and the other members of the Class purchased Dream Water products. The terms of
17 that contract include implied warranties to Plaintiff and the Class that the goods: (1) pass without
18 objection in the trade under the contract description; (2) are fit for the ordinary purposes for which
19 such goods are used; (3) are adequately contained, packaged, and labeled; and (4) conform to the
20 promises or affirmations of fact made on the container or label. Also, Defendant, at the time of
21 contracting, had reason to know that Plaintiff and each member of the Class had in mind a
22 particular purpose for which the Dream Water products were required and that Plaintiff and each
23 member of the Class was relying on Defendant's skill or judgment to select or furnish suitable
24 goods to suit that purpose.

25 65. These and other implied warranties became part of the basis of the bargain, and are
26 part of a standardized contract between Plaintiff and the members of the Class on the one hand,
27 and Defendant on the other.

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1 66. All conditions precedent to Defendant's liability under this contract have been
2 performed by Plaintiff and the Class.

3 67. Defendant breached the terms of this contract, including the implied warranties,
4 with Plaintiff and the Class by not providing the Dream Water products which could provide the
5 benefits described above. Specifically, the Dream Water products would *not* pass without
6 objection in the trade under the contract description; are *not* fit for the ordinary purposes for
7 which such goods are used (safe and effective sleep aids); are *not* adequately labeled, and do *not*
8 conform to the promises or affirmations of fact made by Defendant. The Dream Water products
9 were and are *not* fit for the particular purpose for which the products were required by Plaintiff
10 and the Class.

11 68. As a result of Defendant's breach, Plaintiff and the Class have been damaged in an
12 amount to be proven at trial.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for a judgment:

- 15 A. Certifying the Class as requested herein;
16 B. Awarding Plaintiff and the proposed Class members damages, where appropriate;
17 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff and the
18 proposed Class members;
19 D. Awarding declaratory and injunctive relief as permitted by law or equity,
20 including: enjoining Defendant from continuing the unlawful, unfair, and deceptive practices as
21 set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct
22 and pay them restitution and disgorgement of all monies acquired by Defendant by means of any
23 act or practice declared by this Court to be wrongful;
24 E. Awarding Plaintiff and the Class punitive damages, where applicable;
25 F. Ordering Defendant to engage in a corrective advertising campaign;
26 G. Awarding attorneys' fees, interest, and costs; and
27 H. Providing such further relief as may be just and proper.
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JURY DEMAND

Plaintiff hereby demands a trial by jury.

COLEMAN FROST LLP

Dated: September 8, 2011

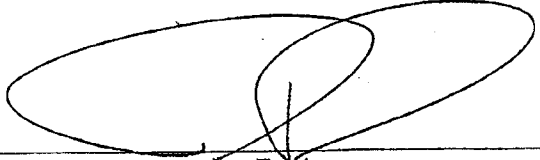
By: 
Derrick F. Coleman
Attorneys for Plaintiffs

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3 **DECLARATION OF JOE FERRIS**

4 I, Joe Ferris, declare as follows:

- 5 1. I am the plaintiff in the above-entitled action and make this declaration to the best of
6 my knowledge, information and belief of the facts stated herein.
7 2. I am over twenty-one years of age and am a resident of San Diego, California.
8 3. I purchased the Dream Water products at issue in this action in San Diego County and
9 every part of my Dream Water transactions were conducted in San Diego County.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct and that this declaration was signed on the 24 day of August,
12 2011 at San Diego, California.

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16 _____
17 Joe Ferris
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