

1 CLIFFORD H. PEARSON (Bar No. 108523)
cpearson@pswplaw.com
2 DANIEL L. WARSHAW (Bar No. 185365)
dwarshaw@pswplaw.com
3 BOBBY POUYA (Bar No. 245527)
bpouya@pswplaw.com
4 **PEARSON, SIMON, WARSHAW & PENNY, LLP**
15165 Ventura Boulevard, Suite 400
5 Sherman Oaks, California 91403
Telephone: (818) 788-8300
6 Facsimile: (818) 788-8104

7 SCOTT J. FERRELL (Bar No. 202091)
sferrell@trialnewport.com
8 JAMES B. HARDIN (Bar No. 205071)
jhardin@trialnewport.com
9 STEVEN R. TELLES (Bar No. 246514)
steles@trialnewport.com
10 RYAN M. FERRELL (Bar No. 258037)
rferrell@trialnewport.com
11 **NEWPORT TRIAL GROUP**
895 Dove Street, Suite 425
12 Newport Beach, California 92660
Telephone: (949) 706-6464
13 Facsimile: (949) 706-6469

14 Attorneys for Plaintiff and the Class

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

18 EDWARD MARTINEZ, individually,
19 and on behalf of all others similarly
situated,
20 Plaintiff,
21 vs.
22 CVS PHARMACY, INC.,
23 Defendant.
24

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CASE NO. **CV 11-9922** - JFW
(PLAx)
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

ORIGINAL

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES, CA
BY *[Signature]*

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1 Plaintiff EDWARD MARTINEZ (“Plaintiff”), individually and on behalf of
2 all others similarly situated, alleges the following on information and belief:

3 **I. INTRODUCTION**

4 1. CVS PHARMACY, INC. (“Defendant”) advertises, markets, and sells
5 “All Natural Flu Relief” (“Flu Relief”) as a homeopathic medicine that purportedly
6 reduces the duration and severity of symptoms of influenza (commonly known as
7 the flu). Defendant advertises and markets Flu Relief as a generic version of
8 Oscillococcinum, a homeopathic medicine that purportedly relieves symptoms of
9 the flu, by stating on Flu Relief’s packaging: “Compare to the active ingredients in
10 Oscillococcinum.” However, Flu Relief is nothing more than a sugar pill that
11 Defendant falsely advertises as having the ability to relieve the flu. In reality, Flu
12 Relief has no impact on the flu or any symptoms that accompany the flu. The
13 alleged “active” ingredient in Flu Relief is so diluted that it effectively is not even
14 present in Flu Relief, and even if it were present, the alleged “active” ingredient has
15 no impact on the flu or any symptoms that accompany the flu.

16 2. Defendant’s misrepresentations regarding the efficacy of Flu Relief
17 were designed to, and did, lead Plaintiff and others similarly situated (collectively,
18 the “Class”) to believe that Flu Relief would relieve the flu or symptoms that
19 accompany the flu. Plaintiff and members of the Class relied on Defendant’s
20 misrepresentations and would not have paid as much, if at all, for Flu Relief but for
21 Defendant’s misrepresentations.

22 3. Plaintiff brings this lawsuit to enjoin the ongoing deception of
23 thousands of California consumers by Defendant, and to recover the money taken by
24 this unlawful practice.

25 **II. THE PARTIES**

26 **A. Plaintiff**

27 4. Plaintiff Edward Martinez is a resident of Adelanto, California who
28 purchased Flu Relief for approximately \$13.00 in August, 2011 in Hesperia,

1 California. Plaintiff relied on Defendant's representations regarding the ingredients
2 and benefits of Flu Relief, as detailed herein, and but for those representations,
3 Plaintiff would not have purchased or paid as much for Flu Relief.

4 **B. Defendant**

5 5. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation with its
6 principal place of business located at One CVS Drive, Woonsocket, Rhode Island
7 02895. CVS Pharmacy, Inc. advertises, markets, and sells Flu Relief, and conducts
8 business in California.

9 **III. JURISDICTION AND VENUE**

10 6. This Court has jurisdiction over the subject matter presented by this
11 Complaint because it is a class action arising under the Class Action Fairness Act
12 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the
13 original jurisdiction of the Federal Courts over any class action in which any
14 member of the Plaintiff Class is a citizen of a state different from any Defendant,
15 and in which the matter in controversy exceeds in the aggregate the sum of
16 \$5,000,000, exclusive of interest and costs.

17 7. Plaintiff alleges that the total damages of the individual members of the
18 Plaintiff Class in this action are in excess of \$5,000,000 in the aggregate, exclusive
19 of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).

20 8. As set forth above, Plaintiff is a citizen of California and Defendant is a
21 citizen of Rhode Island. Therefore, diversity of citizenship exists under CAFA, as
22 required by 28 U.S.C. § 1332(d)(2)(A).

23 9. Venue is proper in this Court because Plaintiff purchased the product in
24 this Judicial District and because Defendant has received substantial compensation
25 from sales in this Judicial District. Specifically, Defendant knowingly engages in
26 activities directed at consumers in this Judicial District, and Defendant obtains
27 substantial benefits from its scheme perpetrated in this Judicial District. The
28 declaration of venue required by California Civil Code § 1780(d) is attached hereto

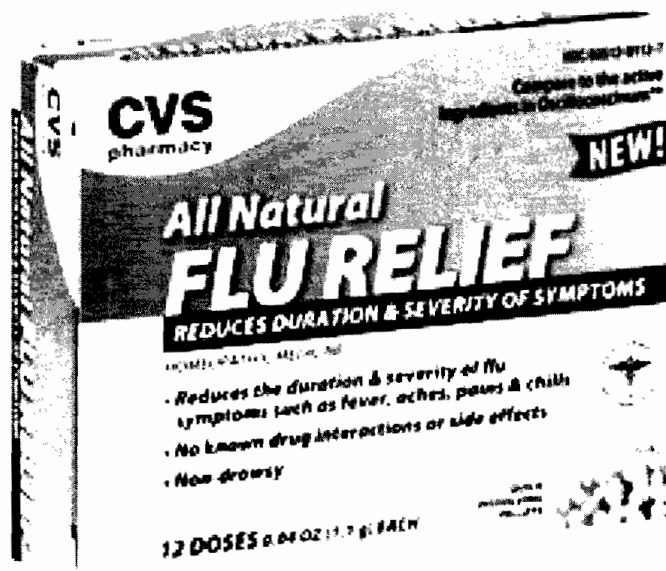
1 as Exhibit A.

2 **IV. FACTUAL ALLEGATIONS**

3 10. The flu kills approximately 500,000 people worldwide each year. In
4 the United States alone, the flu kills approximately 40,000 people annually.

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

8 12. Defendant plays off of the widespread nature of the flu and the public’s
9 justified fear of it by making false claims about the purported efficacy
10 characteristics of Flu Relief in order to drive enormous sales of the worthless
11 product. For instance, the front of Flu Relief’s packaging displays in bold letters the
12 name “**FLU RELIEF**,” directly below the statement “All Natural,” and directly
13 above the statements, “**REDUCES DURATION & SEVERITY OF SYMPTOMS**,”
14 “**HOMEOPATHIC MEDICINE**,” and “Reduces the duration & severity of flu
15 symptoms such as fever, aches, pains & chills.” (Capitalization and emphasis in
16 original). The packaging also claims, “No known drug interactions or side effects”
17 and “Non-Drowsy.” (See picture below).



28 13. From Defendant’s advertising and labeling of Flu Relief, it would

1 appear to be the perfect product to combat the flu. Supposedly, Flu Relief will
2 relieve the painful symptoms of the flu with no possibility of any side effects or
3 drug interactions and without making the patient drowsy.

4 14. Unfortunately, Defendant fails to inform consumers of the truth
5 regarding Flu Relief and its purported “active” ingredient. The truth is that the
6 “active” ingredient in Flu Relief, *Anas Barbariae Hepatis et Cordis Extractum*, is
7 neither effective in combating the flu nor actually active in Flu Relief.

8 15. *Anas Barbariae Hepatis et Cordis Extractum* is not medicine, but
9 merely a fancy name for extract of Muscovy Duck Liver and Heart. It has no
10 known medicinal quality.

11 16. Moreover, Defendant claims that *Anas Barbariae Hepatis et Cordis*
12 *Extractum*, the listed “active” ingredient in Flu Relief, is diluted to 200CK. This
13 extreme level of dilution means that for every part of *Anas Barbariae Hepatis et*
14 *Cordis Extractum* in Flu Relief, there are 10^{399} parts of the inactive ingredient,
15 sugar. This results in a ratio of only 1 part of the “active” ingredient, *Anas*
16 *Barbariae Hepatis et Cordis Extractum*, for every **1 followed by 400 zeroes** parts of
17 sugar. In other words, the purported “active” ingredient in Flu Relief is virtually
18 non-existent. Flu Relief is nothing more than sugar (85% sucrose and 15% lactose).

19 17. Defendant is fully aware that the purported “active” ingredient in Flu
20 Relief is virtually non-existent, as Defendant advertises the extreme dilution of *Anas*
21 *Barbariae Hepatis et Cordis Extractum* prominently on both the packaging of Flu
22 Relief and on its website.¹

23 18. Further, Defendant prominently advertises that Flu Relief is a
24 “homeopathic medicine,” indicating that it conforms to homeopathic norms.

25

26 ¹[http://www.cvs.com/CVSApp/catalog/shop_product_detail.jsp?filterBy=&skuld=7](http://www.cvs.com/CVSApp/catalog/shop_product_detail.jsp?filterBy=&skuld=702307&productId=702307&navAction=push&navCount=2&no_new_crumb=true#Prodtabdetail)
27 [02307&productId=702307&navAction=push&navCount=2&no_new_crumb=true#](http://www.cvs.com/CVSApp/catalog/shop_product_detail.jsp?filterBy=&skuld=702307&productId=702307&navAction=push&navCount=2&no_new_crumb=true#Prodtabdetail)
28 [Prodtabdetail](http://www.cvs.com/CVSApp/catalog/shop_product_detail.jsp?filterBy=&skuld=702307&productId=702307&navAction=push&navCount=2&no_new_crumb=true#Prodtabdetail) (last accessed October 27, 2011).

1 However, despite Defendant’s advertising of Flu Relief as a “homeopathic
2 medicine,” Flu Relief does not comply with homeopathic medicine’s central
3 principle of “like cures like.” (See below).

4 19. According to the Homeopathic Pharmacopoeia of the United States
5 (“HPUS”):

6 Homeopathy is the art and the science of healing the sick
7 by using substances capable of causing the same
8 symptoms, syndromes and conditions when administered
9 to healthy people.

10 Any substance may be considered a homeopathic medicine
11 if it has known "homeopathic provings" and/or known
12 effects which mimic the symptoms, syndromes or
13 conditions which it is administered to treat, and is
14 manufactured according to the specifications of the
15 Homeopathic Pharmacopoeia of the United States
16 (HPUS). Official homeopathic drugs are those that have
17 been monographed and accepted for inclusion in the
18 HPUS.

19 Central to all homeopathy is the determination of the
20 effect of substances on healthy volunteers and the use of
21 the developed “drug picture” by the consumer and/or
22 trained health care practitioners according to the
23 homeopathic principle of similia similibus curentur – Let
24 likes be cured by Likes.²

25 20. The alleged “active” ingredient in Flu Relief stems from a French
26 physician, Dr. Joseph Roy. Dr. Roy lived and practiced during the flu epidemic of
27 1918 that is estimated to have killed approximately 20 to 40 million people
28 worldwide. Dr. Roy allegedly discovered a bacterium in flu patients, a bacterium he
named Oscillococcus because of its shape and oscillating movement. Dr. Roy
believed that this bacterium caused several maladies, including the flu, cancer,
herpes, tuberculosis, and measles. He believed he had found the same bacterium in
the liver of the Long Island duckling.

29 21. Aside from Dr. Roy, no one has ever been able to rediscover

30 _____
31 ²<http://www.hpus.com/whatishomeopathy.php>

1 Oscillococcus. However, that has not stopped companies such as Defendant from
2 exploiting and profiting off of the supposed findings of Dr. Roy.

3 22. Since Oscillococcus has never been rediscovered, it has never been, nor
4 could it be, subject to “provings,” the foundation of homeopathy. Thus, Flu Relief,
5 which is branded Oscillococcus, does not comply with homeopathic norms.

6 23. Defendant will undoubtedly allege that it has complied with
7 homeopathic norms and as such is shielded from liability. The legal aspect of this
8 argument will undoubtedly be the subject of future motions; however, the factual
9 aspect of the argument is imperative to understanding the gravity of Defendant’s
10 false advertising.

11 24. Simply stated, Flu Relief is not a valid homeopathic medicine and does
12 not relieve or in any way treat the flu or any symptoms that accompany the flu.

13 25. In mid-2011, Plaintiff purchased Flu Relief. He did so after reading,
14 believing, and relying upon Defendant’s advertising, including the representations
15 set forth above regarding the efficacy of Flu Relief in fighting symptoms of the flu.
16 Plaintiff used Flu Relief as directed, but did not obtain the promised results—Flu
17 Relief had no impact on Plaintiff’s flu or any symptoms that accompany the flu.

18 26. Defendant’s misrepresentations regarding the ingredients, efficacy, and
19 benefits of Flu Relief were designed to, and did, induce reliance from reasonable
20 consumers, including Plaintiff and members of the Class.

21 27. As a direct and proximate result of Defendant’s false and misleading
22 representations, reasonable consumers—including Plaintiff and members of the
23 Class—were led to believe that Flu Relief would relieve the flu or symptoms that
24 accompany the flu. Based on these beliefs, Plaintiff and members of the Class
25 purchased Flu Relief.

26 28. Plaintiff and members of the Class have suffered injury in fact and have
27 lost money as a result of Defendant’s misconduct. Plaintiff and members of the
28 Class relied on Defendant’s misrepresentations and would not have paid as much, if

1 at all, for Flu Relief but for Defendant's misrepresentations on the labeling,
2 packaging, and other advertising for Flu Relief. Flu Relief has no stated or implied
3 purpose other than to combat symptoms of the flu. As such, its lack of efficacy
4 renders the product completely and utterly worthless.

5 29. As a result of the false and misleading representations detailed above,
6 Defendant was able to charge approximately \$13.00 per unit for the worthless
7 product Flu Relief, which is nothing more than a sugar pill. Defendant has reaped
8 substantial profit from its misrepresentations and has been unjustly enriched by
9 wrongfully taking millions of dollars from California consumers.

10 30. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing
11 deception by Defendant of thousands of California consumers, and to recover the
12 funds taken by this unlawful practice.

13 **V. RULE 9(b) ALLEGATIONS**

14 31. Federal Rule of Civil Procedure ("Rule") 9(b) provides that "[i]n
15 alleging fraud or mistake, a party must state with particularity the circumstances
16 constituting fraud or mistake." Fed. R. Civ. P. 9(b). Accordingly, Plaintiff alleges
17 the following:

18 32. WHO: Defendant CVS Pharmacy, Inc. made material
19 misrepresentations and failed to disclose, or adequately disclose, material facts as
20 detailed herein. Except as identified herein, Plaintiff is unaware, and therefore
21 unable to identify, the true names and identities of those individuals at CVS
22 Pharmacy, Inc. who are responsible for such material misrepresentations and/or
23 omissions.

24 33. WHAT: Defendant made material misrepresentations regarding the
25 efficacy characteristics and "active" ingredient in Flu Relief. Specifically,
26 Defendant misrepresented that: (1) Flu Relief is a valid homeopathic medicine;
27 (2) Flu Relief reduces the duration and severity of symptoms of the flu; (3) *Anas*
28 *Barbariae Hepatis et Cordis Extractum* is active in Flu Relief; and (4) Flu Relief is

1 based on the premise that Oscillocooccus exists in the product. Each of these
2 representations was false and misleading because: (1) Flu Relief does not comply
3 with homeopathic norms; (2) Flu Relief has no effect on the flu or symptoms that
4 accompany the flu; (3) the “active” ingredient in Flu Relief, *Anas Barbariae Hepatis*
5 *et Cordis Extractum*, is so diluted as to be virtually non-existent; and
6 (4) Oscillocooccus has never been rediscovered since Dr. Roy allegedly discovered it
7 over 90 years ago.

8 34. WHEN: Defendant made the material misrepresentations, omissions,
9 and non-disclosures detailed herein continuously during the Class Period.

10 35. WHERE: Defendant’s material misrepresentations, omissions, and
11 non-disclosures detailed herein were made, *inter alia*, on the packaging of Flu Relief
12 and on Defendant’s website.

13 36. HOW: Defendant made numerous, written material misrepresentations
14 on the packaging of Flu Relief and on Defendant’s website that were designed to,
15 and in fact did, mislead Plaintiff and Class members into purchasing Flu Relief.

16 37. WHY: Defendant engaged in the material misrepresentations,
17 omissions, and non-disclosures detailed herein for the express purpose of inducing
18 Plaintiff and other reasonable consumers to purchase and use Flu Relief based on
19 the belief that Flu Relief would relieve the flu or symptoms that accompany the flu.
20 Defendant profited by selling its worthless product to thousands of unsuspecting
21 California consumers.

22 **VI. CLASS ACTION ALLEGATIONS**

23 38. Plaintiff brings this class action for damages and other relief on behalf
24 of the following class:

25 All persons residing in the State of California who
26 purchased CVS Pharmacy brand “All Natural Flu Relief”
27 at any time during the four years preceding the filing of
28 this Complaint (the “Class”).

28 39. Excluded from the Class are governmental entities, Defendant, any

1 entity in which Defendant has a controlling interest, and Defendant's officers,
2 directors, affiliates, legal representatives, employees, co-conspirators, successors,
3 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or
4 judicial officer presiding over this matter and the members of their immediate
5 families and judicial staff.

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

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

- 19 a. Whether Defendant's efficacy claims are accurate;
- 20 b. Whether Defendant's efficacy claims are properly substantiated;
- 21 c. Whether Defendant has falsely represented that Flu Relief has
22 benefits which it does not have;
- 23 d. Whether Defendant knew that its efficacy claims were false;
- 24 e. Whether Defendant's conduct constitutes breach of express
25 warranty;
- 26 f. Whether Defendant's conduct constitutes breach of the implied
27 warranty of fitness for a particular purpose;
- 28 g. Whether Defendant's conduct constitutes negligent

1 misrepresentation;

2 h. Whether Defendant's conduct constitutes a violation of the
3 Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);

4 i. Whether Defendant's conduct constitutes a violation of
5 California's false advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);

6 j. Whether Defendant's conduct constitutes an unfair, unlawful,
7 and/or fraudulent business practice in violation of California's unfair competition
8 law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);

9 k. Whether Plaintiff and Class members are entitled to
10 compensatory damages, and if so, the nature of such damages;

11 l. Whether Plaintiff and Class members are entitled to
12 restitutionary relief; and

13 m. Whether Plaintiff and Class members are entitled to injunctive
14 relief.

15 42. Plaintiff's claims are typical of the claims of the members of the Class.
16 Plaintiff and all members of the Class have been similarly affected by Defendant's
17 common course of conduct since they all relied on Defendant's representations
18 concerning Flu Relief and purchased the product based on those representations.

19 43. Plaintiff will fairly and adequately represent and protect the interests of
20 the Class. Plaintiff has retained counsel with substantial experience in handling
21 complex class action litigation. Plaintiff and his counsel are committed to
22 vigorously prosecuting this action on behalf of the Class and have the financial
23 resources to do so. Plaintiff and the members of the Class suffered, and will
24 continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct.
25 A class action is superior to other available methods for the fair and efficient
26 adjudication of the present controversy. Individual joinder of all members of the
27 class is impracticable. Even if individual Class members had the resources to
28 pursue individual litigation, it would be unduly burdensome to the courts in which

1 the individual litigation would proceed. Individual litigation magnifies the delay
2 and expense to all parties in the court system of resolving the controversies
3 engendered by Defendant's common course of conduct. The class action device
4 allows a single court to provide the benefits of unitary adjudication, judicial
5 economy, and the fair and efficient handling of all Class members' claims in a
6 single forum. The conduct of this action as a class action conserves the resources of
7 the parties and of the judicial system and protects the rights of the Class members.
8 Furthermore, for many, if not most, a class action is the only feasible mechanism
9 that allows an opportunity for legal redress and justice.

10 44. Adjudication of individual Class members' claims with respect to
11 Defendant would, as a practical matter, be dispositive of the interests of the other
12 Class members not parties to the adjudication, and could substantially impair or
13 impede the ability of such non-party Class members to protect their interests.

14 45. Individual actions by Class members would establish incompatible
15 standards of conduct for Defendant.

16 46. Defendant has acted or refused to act in respects generally applicable to
17 the Class, thereby making appropriate final and injunctive relief with regard to Class
18 members as a whole, as requested herein.

19 **VII. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY**

22 **(By Plaintiff and on Behalf of the Class Against Defendant)**

23 47. Plaintiff incorporates by this reference the allegations contained in the
24 paragraphs above as if fully set forth herein.

25 48. Defendant is a merchant as defined by the applicable Uniform
26 Commercial Code ("U.C.C.") provisions and sold goods to Plaintiff and Class
27 members.

28 49. Defendant is in direct privity with Plaintiff and Class members because

1 it sold Flu Relief to Plaintiff and Class members.

2 50. Defendant expressly warranted via its advertising, statements, and
3 website information, and disseminated information to the general public, including
4 to Plaintiff and Class members, that *inter alia*: (1) Flu Relief is a valid homeopathic
5 medicine; (2) Flu Relief reduces the duration and severity of symptoms of the flu;
6 and (3) *Anas Barbariae Hepatis et Cordis Extractum* is active in Flu Relief.

7 51. The statements made by Defendant were affirmations of fact that
8 became part of the basis of the bargain and created an express warranty that Flu
9 Relief would conform to the stated promises. Plaintiff and Class members placed
10 importance on Defendant's representations.

11 52. Defendant breached each of the aforementioned warranties and
12 representations because: (1) Flu Relief does not comply with homeopathic norms;
13 (2) Flu Relief has no effect on the flu or symptoms that accompany the flu; and
14 (3) the "active" ingredient in Flu Relief, *Anas Barbariae Hepatis et Cordis*
15 *Extractum*, is so diluted as to be virtually non-existent.

16 53. As a result of Defendant's breach of express warranty, Plaintiff and
17 Class members were injured in the amount of all or a portion of their purchase price
18 of Flu Relief.

19 54. On November 23, 2011 Plaintiff's counsel mailed to Defendant by
20 certified mail, with return receipt requested, written notice that Defendant's conduct
21 constitutes a breach of both express and implied warranties so as to provide
22 reasonable, pre-litigation notice of their violations. A copy of that written notice is
23 attached hereto as Exhibit C.

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SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR
PURPOSE

(By Plaintiff and on Behalf of the Class Against Defendant)

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

56. Defendant is a merchant as defined by the applicable U.C.C. provisions and sold goods to Plaintiff and Class members.

57. Defendant is in direct privity with Plaintiff and Class members because it sold Flu Relief to Plaintiff and Class members.

58. Defendant knew that Plaintiff and Class members intended to purchase Flu Relief to relieve symptoms of the flu and were relying on Defendant's skill and expertise in making their decision to purchase Flu Relief.

59. Defendant represented via its advertising, statements, and website information, and disseminated information to the general public, including to Plaintiff and Class members, that *inter alia*, Flu Relief was fit for its advertised purpose of relieving the flu or symptoms that accompany the flu.

60. Defendant breached the implied warranty of fitness for a particular purpose because Flu Relief is not fit for its advertised purpose—namely, relieving the flu or symptoms that accompany the flu.

61. As a result of Defendant's breach of implied warranty, Plaintiff and Class members were injured in the amount of all or a portion of their purchase price of Flu Relief.

62. On November 23, 2011 Plaintiff's counsel mailed to Defendant by certified mail, with return receipt requested, written notice that Defendant's conduct constitutes a breach of both express and implied warranties so as to provide reasonable, pre-litigation notice of their violations. A copy of that written notice is attached hereto as Exhibit C.

1 Code § 1770(a)(4); (2) representing that goods or services have sponsorship,
2 approval, characteristics, ingredients, uses, benefits, or quantities which they do not
3 have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or
4 services with intent not to sell them as advertised in violation of Civil Code §
5 1770(a)(9). As a direct and proximate result of Defendant's conduct, as set forth
6 herein, Defendant has received ill-gotten gains and/or profits, including but not
7 limited to, money. Therefore, Defendant has been unjustly enriched.

8 76. There is no other adequate remedy at law, and Plaintiff and Class
9 members will suffer irreparable harm unless Defendant's conduct is enjoined.

10 77. Pursuant to Civil Code §§ 1780(a)(2)-(5) and 1780(d) Plaintiff and
11 Class members seek an order for: (1) an injunction against Defendant's illegal
12 conduct as alleged herein; (2) actual damages; (3) restitution; (4) ancillary relief;
13 and (5) attorneys' fees and costs to the full extent allowed by law.

14 78. The declaration of venue required by Civil Code § 1780(d) is attached
15 hereto as Exhibit A.

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

21 80. On August 29, 2011 Plaintiff's counsel mailed to Defendant by
22 certified mail, with return receipt requested, written notice that Defendant's conduct
23 is in violation of the Consumers Legal Remedies Act, as required by Civil Code §
24 1782(a). A copy of that written notice is attached hereto as Exhibit B. A second
25 written notice was sent on November 23, 2011 again providing notice of
26 Defendant's violations of the CLRA as well as notice of violations of express and
27 implied warranties. A copy of the second written notice is attached hereto as
28 Exhibit C.

1 FIFTH CAUSE OF ACTION

2 VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW

3 (CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)

4 (By Plaintiff and on Behalf of the Class Against Defendant)

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

7 82. Plaintiff has standing to pursue this cause of action because Plaintiff
8 has suffered injury in fact and has lost money as a result of Defendant's actions as
9 set forth herein. Specifically, Plaintiff purchased Flu Relief in reliance on
10 Defendant's marketing claims. He used Flu Relief as directed, but it did not work as
11 advertised and did not provide any of the promised benefits.

12 83. Defendant has engaged in false advertising as it has disseminated false
13 and/or misleading representations about Flu Relief.

14 84. Defendant knew or should have known by exercising reasonable care
15 that its representations were false and/or misleading. During the Class Period,
16 Defendant engaged in false advertising in violation of Cal. Bus. & Prof. Code
17 §§ 17500, *et seq.*, by misrepresenting in its advertising and marketing of Flu Relief
18 to Plaintiff, Class members, and the consuming public that, *inter alia*: (1) Flu Relief
19 is a valid homeopathic medicine; (2) Flu Relief reduces the duration and severity of
20 symptoms of the flu; (3) *Anas Barbariae Hepatis et Cordis Extractum* is active in
21 Flu Relief; and (4) Flu Relief is based on the premise that *Oscillocooccus* exists in the
22 product.

23 85. Each of the aforementioned representations alleged in this Complaint
24 was false and misleading because: (1) Flu Relief does not comply with homeopathic
25 norms; (2) Flu Relief has no effect on the flu or symptoms that accompany the flu;
26 (3) the "active" ingredient in Flu Relief, *Anas Barbariae Hepatis et Cordis*
27 *Extractum*, is so diluted as to be virtually non-existent; and (4) *Oscillocooccus* has
28 never been rediscovered since Dr. Roy allegedly discovered it over 90 years ago.

1 86. By disseminating and publishing these statements in connection with
2 the sale of Flu Relief, Defendant has engaged in and continues to engage in false
3 advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

4 87. As a direct and proximate result of Defendant's conduct, as set forth
5 herein, Defendant has received ill-gotten gains and/or profits, including but not
6 limited to, money. Therefore, Defendant has been unjustly enriched. Pursuant to
7 Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution and restitutionary
8 disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500,
9 *et seq.*

10 88. Plaintiff seeks injunctive relief, restitution, and restitutionary
11 disgorgement of Defendant's ill-gotten gains as specifically provided in Cal. Bus. &
12 Prof. Code § 17535.

13 89. Plaintiff and Class members seek to enjoin Defendant from engaging in
14 these wrongful practices, as alleged herein, in the future. There is no other adequate
15 remedy at law and if an injunction is not ordered, Plaintiff and the Class will suffer
16 irreparable harm and/or injury.

17 **SIXTH CAUSE OF ACTION**

18 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

19 **(CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

20 **(By Plaintiff and on Behalf of the Class Against Defendant)**

21 90. Plaintiff incorporates by this reference the allegations contained in the
22 paragraphs above as if fully set forth herein.

23 91. Plaintiff has standing to pursue this cause of action because Plaintiff
24 has suffered injury in fact and has lost money as a result of Defendant's actions as
25 set forth herein. Specifically, Plaintiff purchased Flu Relief in reliance on
26 Defendant's marketing claims. He used Flu Relief as directed, but it did not work as
27 advertised and did not provide any of the promised benefits.

28 92. Defendant's actions as alleged in this Complaint constitute an unfair or

1 deceptive business practice within the meaning of California Business and
2 Professions Code §§ 17200, *et seq.*, in that Defendant's actions are unfair, unlawful,
3 and fraudulent, and because Defendant has made unfair, deceptive, untrue, or
4 misleading statements in advertising media, including the Internet, within the
5 meaning of California Business and Professions Code §§ 17200, *et seq.*

6 93. Defendant knew or should have known by exercising reasonable care
7 that its representations were false and/or misleading. During the Class Period,
8 Defendant engaged in unfair, unlawful, and fraudulent business practices in
9 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by misrepresenting in its
10 advertising and marketing of Flu Relief to Plaintiff, Class members, and the
11 consuming public that, *inter alia*: (1) Flu Relief is a valid homeopathic medicine; (2)
12 Flu Relief reduces the duration and severity of symptoms of the flu; (3) *Anas*
13 *Barbariae Hepatis et Cordis Extractum* is active in Flu Relief; and (4) Flu Relief is
14 based on the premise that Oscillocooccus exists in the product.

15 94. Each of the aforementioned representations alleged in this Complaint
16 was false and misleading because: (1) Flu Relief does not comply with homeopathic
17 norms; (2) Flu Relief has no effect on the flu or symptoms that accompany the flu;
18 (3) the "active" ingredient in Flu Relief, *Anas Barbariae Hepatis et Cordis*
19 *Extractum*, is so diluted as to be virtually non-existent; and (4) Oscillocooccus has
20 never been rediscovered since Dr. Roy allegedly discovered it over 90 years ago.

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

25 96. Defendant's business practices, as alleged herein, are unlawful because
26 they violate the Consumers Legal Remedies Act and False Advertising Law.

27 97. Defendant's business practices, as alleged herein, are fraudulent
28 because they are likely to, and did, deceive customers—including Plaintiff and

1 members of the Class—into believing that Flu Relief has properties it in fact does
2 not have.

3 98. Defendant's wrongful business practices constituted, and constitute, a
4 continuing course of conduct of unfair competition since Defendant is marketing
5 and selling its products in a manner likely to deceive the public.

6 99. As a direct and proximate result of Defendant's wrongful business
7 practices in violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff
8 and members of the Class have suffered economic injury by losing money as a result
9 of purchasing Flu Relief. Plaintiff and members of the Class would not have
10 purchased or would have paid less for Flu Relief had they known that it was not as
11 represented.

12 100. Pursuant to section 17203 of the Business and Professions Code,
13 Plaintiff and the Class seek an order of this Court enjoining Defendant from
14 continuing to engage in unlawful, unfair, or deceptive business practices and any
15 other act prohibited by law, including those set forth in the Complaint. Plaintiff and
16 the Class also seek an order requiring Defendant to make full restitution of all
17 moneys it wrongfully obtained from Plaintiff and the Class.

18 **VIII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff and members of the Class request that the Court
20 enter an order or judgment against Defendant, and each of them, as follows:

21 1. For an order certifying the Class, appointing Plaintiff and his counsel to
22 represent the Class, and notice to the Class to be paid by Defendant;

23 2. For damages suffered by Plaintiff and Class members;

24 3. For restitution to Plaintiff and Class members of all monies wrongfully
25 obtained by Defendant;

26 4. For an injunction ordering Defendant to cease and desist from engaging
27 in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;

28 5. For both pre-judgment and post-judgment interest at the maximum

- 1 allowable rate on any amounts awarded;
- 2 6. For Plaintiff's costs of the proceedings herein;
- 3 7. For reasonable attorneys' fees as allowed by statute; and
- 4 8. For any and all such other and further relief that this Court may deem
- 5 just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a trial by jury of all claims and causes of action so

8 triable in this lawsuit.

9

10 DATED: November 30, 2011

Respectfully submitted,

11 **PEARSON, SIMON, WARSHAW &**
12 **PENNY, LLP**
13 CLIFFORD H. PEARSON
DANIEL L. WARSHAW
BOBBY POUYA

14 **NEWPORT TRIAL GROUP**
15 A Professional Corporation
SCOTT J. FERRELL
16 JAMES B. HARDIN
STEVEN R. TELLES
17 RYAN M. FERRELL

18 Bv: 

19 SCOTT J. FERRELL
20 Attorneys for Plaintiff and the Class

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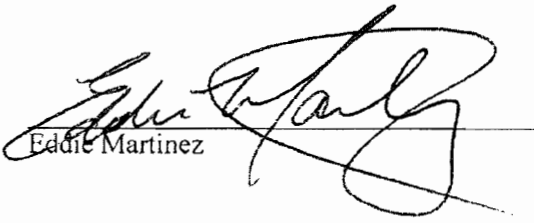
28

1 I, Eddie Martinez, declare as follows:

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

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county in
8 which Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12
13 
14 Eddie Martinez

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NEWPORT TRIAL GROUP

A Professional Corporation

895 Dove Street, Suite 425
Newport Beach, CA 92660
Phone (949) 706-6464
Fax (949) 706-6469
www.trialnewport.com

November 23, 2011

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895
Attention: President and CEO

Re: *Violations of California Consumer Protection Laws and Breach of Warranties*

Dear Sir or Madam:

I am following up on my letter pursuant to the California Consumers Legal Remedies Act ("CLRA") dated August 29, 2011. As previously stated, we believe that your conduct in connection with the marketing, sale and advertisement of CVS All Natural FLU RELIEF[®] violates the CLRA as to a class of California consumers who purchased this product.

You market and sell "CVS All Natural FLU RELIEF" as a remedy for flu and flu-like symptoms, and claim that it "reduces the duration & severity of flu-like symptoms such as fever, aches, pains, and chills."

In reality, CVS All Natural FLU RELIEF contains the same active ingredient as Boiron Oscillococcinum, and is simply 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.

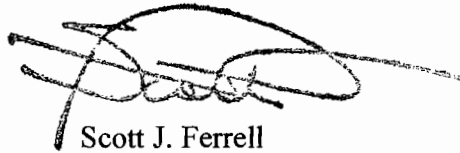
As such, we believe that you are advertising "CVS All Natural FLU RELIEF" as having characteristics, uses and benefits that it does not have in violation of the CLRA. We further believe that the aforementioned representations regarding the purported benefits, qualities and characteristics of "CVS All Natural FLU RELIEF" constitutes: (1) breach of express warranty; (2) breach of the implied warranty of fitness for a particular purpose; (3) negligent misrepresentation; (4) a violation of California's False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*); and (5) a violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*).

CVS Pharmacy, Inc.
November 23, 2011
Page 2

We respectfully request that you agree to irrevocably stop all false and misleading advertising and labeling of this product and provide all consumers who have purchased the product with a full refund. Given that our primary goal is to enjoin the false labeling and 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:sp

NEWPORT TRIAL GROUP

A Professional Corporation

895 Dove Street, Suite 425
Newport Beach, CA 92660
Phone (949) 706-6464
Fax (949) 706-6469
www.trialnewport.com

November 23, 2011

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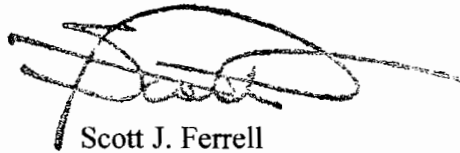
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Very truly yours,

NEWPORT TRIAL GROUP



Scott J. Ferrell

SJF:sp

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

| | |
|---|---|
| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) EDWARD MARTINEZ, individually, and on behalf of all others similarly situated, | DEFENDANTS CVS PHARMACY, INC. |
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) NEWPORT TRIAL GROUP 895 Dove Street, Suite 425 Newport Beach, CA 92660 Telephone No.: 949-706-6464 | Attorneys (If Known) |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|----------------------------|---|----------------------------|---------------------------------------|------------|------------|-----------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,001.00 plus

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. § 1332; diversity of citizenship; aggregate damages exceeds \$5M; Class Action Consumer Protection Lawsuit

VII. NATURE OF SUIT (Place an X in one box only.)

| | | | | | |
|--|--|--|---|--|---|
| OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
|--|--|--|---|--|---|

CV11-9922

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| San Bernardino | |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| | Rhode Island |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| San Bernardino | |

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): Scott J. Lee Date November 30, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g)) |