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13 MICHAEL J. OTTO individually, and
14 on behalf of other members of
15 the public similarly situated

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 EASTERN DIVISION

19 MICHAEL J. OTTO, individually, and on
20 behalf of other members of the general
21 public similarly situated,

22 Plaintiff,

23 vs.

24 ABBOTT LABORATORIES, INC., a
25 Delaware Corporation, d/b/a Abbott
26 Nutrition,

27 Defendant.
28

Case Number:

CLASS ACTION COMPLAINT FOR:

- (1) Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*);
- (2) Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (3) Violation of False Advertising Law (Cal. Bus. & Prof. Code §§ 17500 *et seq.*);
- (4) Breach of Express Warranty;
- (5) Negligent Misrepresentation;
- (6) Unjust Enrichment;
- (7) Violation of Ohio Consumer Sales Practices Act (Ohio Rev. Code §§ 1345 *et seq.*); and
- (8) Violation of Ohio Deceptive Trade Practices Act (Ohio Rev. Code §§ 4165 *et seq.*)

Jury Trial Demanded

CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

12 AUG 22 PM 1:08

FILED

EDCV12-1411SVW (DTPbx)

1 Plaintiff MICHAEL J. OTTO (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This action is brought on behalf of Plaintiff and a class of consumers who
5 purchased “Ensure® Muscle Health Shake” and “Ensure® Clinical Strength” drinks (the
6 “Products”). Plaintiff’s claims concern the deceptive and misleading practices conducted
7 by Defendant Abbott Laboratories, Inc. d/b/a Abbott Nutrition (“Defendant” or “Abbott”)
8 in connection with marketing of the Products, in violation of California and Ohio state
9 law, and the common law.

10 2. Harkening back to the Eighteenth Century, when traveling doctors and snake
11 oil peddlers ran wild, Abbott capitalizes on the fears of a growing population of baby
12 boomers and other individuals who are concerned about muscle loss. To gain credibility
13 with consumers, Abbott touts the purported health benefits of these supposed miracle
14 elixir Products with pseudo-scientific terms and proclamations like, the “#1 doctor
15 recommended brand.” Abbott takes advantage this this emerging market, and specifically
16 targets mature Americans who are worried about the effects of aging. In particular, the
17 packaging for Abbott’s panacea boldly promises that the Products will “help rebuild
18 muscle and strength naturally lost over time.” According to Abbott, this astonishing
19 scientific achievement comes from Revigor® -- Abbott’s “proprietary ingredient” -- a
20 source of the “Aminio Acid Metabolite HMB.”

21 3. Unfortunately, although the world has become more advanced, so too have
22 the scams used to obtain money from unsuspecting consumers. Abbott’s representations
23 on the packaging for the Products are nothing more than false and misleading claims
24 designed to increase sales by deceiving consumers into believing that purchasing and
25 consuming the Products alone will deliver health and wellness benefits that the Products
26 do not, and cannot, provide.

27 4. Despite Abbott’s representations, without exercise, neither the Products
28 themselves, Revigor®, nor any other ingredients in the Products can “rebuild” lost muscle

1 and strength in normal, healthy adults, regardless of their age. Abbott's statements that
2 the Products will help rebuild muscle and strength are false and misleading.

3 **JURISDICTION AND VENUE**

4 5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2). The
5 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
6 \$5,000,000 and is a class action in which members of the class of plaintiffs are citizens of
7 states different from Defendant. Further, greater than two-thirds of members of the Class
8 reside in states other than the states in which Defendant is a citizen. In addition, under 28
9 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over the state law claims
10 because all of the claims are derived from a common nucleus of operative facts and are
11 such that plaintiffs ordinarily would expect to try them in one judicial proceeding.

12 6. Venue lies within this judicial district under 28 U.S.C. § 1391(b)(1) and
13 (c)(2) because Defendant's contacts are sufficient to subject it to personal jurisdiction in
14 this District, and therefore, Defendant resides in this District for purposes of venue.

15 7. Additionally, venue lies within this judicial district under 28 U.S.C.
16 § 1391(b)(2) because certain acts giving rise to the claims at issue in this Complaint
17 occurred, among other places, in this District.

18 **PARTIES**

19 8. Plaintiff Michael J. Otto is an individual and a citizen of California.

20 9. Defendant Abbott Laboratories, Inc. is a Delaware corporation, with the
21 headquarters for its Abbott Nutrition division in Ohio.

22 10. Defendant Abbott Laboratories, Inc. is authorized to do and, in fact, is doing
23 business in the State of California, because, among other things, its products are offered
24 for sale in retail outlets throughout the state, and it operates a manufacturing plant located
25 in Fairfield, California.

26 11. Whenever, in this Complaint, reference is made to any act, deed, or conduct
27 of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by
28 or through one or more of its officers, directors, agents, employees or representatives who

1 was actively engaged in the management, direction, control or transaction of the ordinary
2 business and affairs of Defendant.

3 FACTUAL BACKGROUND

4 12. Abbott is a global healthcare company in the business of developing a variety
5 of products, ranging from nutritional supplements to pharmaceutical therapies and
6 medical devices.¹

7 13. Abbott's Abbott Nutrition division is responsible for over twenty five
8 different brands of "nutrition products."

9 14. According to Abbott, "[t]he Ensure family of products provides active adults
10 with a source of nutrition that can help them focus on specific nutritional goals."²

11 15. On September 16, 2010, Abbott announced, "[r]esponding to the growing
12 needs of America's aging baby boomer population, the global health care company
13 Abbott today introduced two new nutrition shakes - Ensure® Muscle Health and Ensure
14 Clinical Strength."³ As divisional vice president Rob Miller stated at the time of launch,
15 the Products were primarily intended for "people over 40 who are naturally losing muscle
16 with age."⁴ Capitalizing upon a potentially large market of consumers from the baby
17 boomer generation who may be concerned about loss of muscle and strength as they age,
18 Abbott offered two new products that purported to provide what other nutritional products
19 could not: the rebuilding of muscle and strength, in normal, healthy adults, without
20 exercise.

21
22 ¹ Abbott Laboratories, *About Abbott* (2012), available at
23 http://abbott.com/global/url/content/en_US/10:10/general_content/General_Content_00004.htm (last
24 visited June 29, 2012).

25 ² Abbott Nutrition, *Ensure® Complete, Balanced Nutrition®* (2012), available at
<http://abbottnutrition.com/our-products/abbott-brands.aspx?s=2> (last visited June 29, 2012).

26 ³ Abbott Nutrition, *Abbott Launches New Ensure® Shakes with Focus on Helping Baby Boomers Regain
27 Muscle and Strength* (September 16, 2010), available at [http://www.abbott.com/news-media/press-
releases/Press_Release_0893.htm](http://www.abbott.com/news-media/press-releases/Press_Release_0893.htm) (last visited June 28, 2012).

28 ⁴ *Id.* (quote by Rob Miller, divisional vice president, Global R&D and Scientific Affairs, Abbott).

1 16. Revigor® is the trademarked name Abbott uses for its formulation of beta-
2 hydroxy-beta-methylbutyrate (“HMB”), an amino acid metabolite,⁵ which is derived from
3 the amino acid leucine. Defendant’s marketing department chose this technical,
4 scientific-sounding name -- apparently, an invented derivative of the word “reinvigorate”
5 -- to imply scientific significance and add credibility to its false and misleading
6 representations, telling consumers that by consuming the Products alone, normal, healthy
7 adults can “rebuild” lost muscle and strength. Nowhere on the packaging for the
8 Products, however, does Abbott inform consumers that the Products alone cannot help
9 rebuild muscle or strength for normal, healthy adults, unless the Products are used in
10 combination with an exercise program.

11 17. Defendant further misleads consumers about the scientific efficacy of the
12 Products by representing on the packaging for the Products, among other things, that they
13 provide “Clinical Strength” and “clinical nutrition,” that they are the “#1 Doctor
14 Recommended Brand,” and that the Products are manufactured by “Abbott Laboratories.”
15 These representations contribute to the false and misleading nature of the Products
16 because the representations are designed to reinforce Abbott’s claims and build credibility
17 with respect to Abbott’s deceptive message that the Products will help normal, healthy
18 consumers rebuild muscle and strength, without exercise.

19 18. Because of Abbott’s representations on the Packaging for the Products,
20 ordinary reasonable consumers must accept Abbott’s claims regarding HMB or Revigor®,
21 and they have no choice but to also rely on Abbott’s unambiguous claim that the Products
22 alone “rebuild” muscle and strength. Unaware that Revigor® is nothing more than
23 Abbott’s clever marketing name, reasonable consumers are led to believe that, with the
24 inclusion of this “proprietary ingredient,” consuming the Products alone will rebuild
25 muscle and strength.

26 19. The central message of Abbott’s representations on the packaging for the
27

28 ⁵ *Id.*

1 Products is that Abbott's proprietary ingredient Revigor® provides everyday consumers
2 of the Products with a scientifically proven health benefit -- the rebuilding of lost muscle
3 and strength, without exercise -- that other products do not. Because this message is
4 prominently featured on the packaging for the Products and it is material to consumers,
5 each person who has purchased the Products sees and relies on Abbott's misleading
6 advertising messages when they purchase the Products.

7 20. Despite the above representations, nowhere on the packaging for the
8 Products does Abbott disclose to consumers that the Products may only be effective for
9 individuals with severely compromised health. Nor does Abbott disclose to consumers
10 that that the Products cannot help rebuild muscle and strength in in the general population
11 of consumers to whom the Products are sold -- including in Abbott's target market of
12 normal, healthy, adults -- unless the Products are used in combination with an exercise
13 program. Instead, Abbott chose to selectively omit this material information from the
14 labels for the Products to increase sales by inducing the general population of consumers
15 who will not benefit from the Products to purchase and consume them anyway.

16 21. Abbott's false and misleading labeling of the Products has allowed them to
17 reap profits at the expense of the consumers they have misled. Furthermore, Abbott has
18 been able to charge consumers a premium for the Products over similar products.

19 22. When they purchased and consumed the Products, Plaintiff and members of
20 the Class, as defined below, relied upon Abbott's representations on the packaging for the
21 Products, which communicated to reasonable consumers that Revigor® would help
22 normal, healthy adults "rebuild" muscle and strength, without the need for exercise.
23 Therefore, Plaintiff and the members of the Class were damaged because they did not
24 receive the benefit of the bargain. Plaintiff and members of the Class paid for products
25 that expressly promised to help rebuild muscle and strength, but the Products did not, and
26 could not, provide this benefit.

27
28 23. Abbott's consumer deception is both knowing and willful. Abbott is well

1 aware of the nature of the representations it makes on the packaging for the Products.
2 Each Product prominently represents, directly below the name of the Product, that it
3 contains Revigor® and that it will “help rebuild muscle and strength naturally lost over
4 time.” Abbott was aware that the packaging for the Products failed to disclose to
5 consumers that that the Products cannot help rebuild muscle and strength in in the general
6 population of consumers to whom the Products are sold -- including in Abbott’s target
7 market of normal, healthy, adults -- unless the Products are used in combination with an
8 exercise program.

9 24. As a result, Abbott’s false and misleading representations violate the
10 common law, and state law, as detailed below, including California’s Unfair Competition
11 Law, California’s False Advertising Law, California’s Consumers Legal Remedies Act,
12 Ohio Consumer Sales Practices Act, and the Ohio Deceptive Trade Practices Act.

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2 **Abbott's Representations on the Packaging for Ensure® Muscle Health Shake**

3 25. The packaging for Muscle Health appears as follows:

4 Front:



5 Back:



26. As discussed above, the packaging for Muscle Health expressly promises to

1 “help rebuild muscle and strength lost naturally over time.” Additionally, the packaging
2 for Muscle Health states, “[y]ou can lose 8% of your muscle every 10 years after you turn
3 40.” The product label further represents that “Muscle Health has Revigor®, [a] source
4 HMB®, an amino acid metabolite.” Nowhere on the packaging, however, does Abbott
5 inform reasonable, everyday consumers from the general population that Muscle Health
6 will only “help rebuild muscle and strength lost naturally over time” if it is used in
7 connection with an exercise program.

8 27. As discussed above, Revigor® is the trade name for Abbott’s trademarked
9 source of HMB, an amino acid metabolite. Abbott’s trade name contributes to the false
10 and misleading nature of the product labeling. Abbott’s marketing department chose the
11 name Revigor®, a scientific-sounding name, to deceptively connote medical significance
12 to the company’s claims, building consumer trust and credibility with respect to Abbott’s
13 representations concerning HMB. The consuming public, unaware that Revigor® is
14 nothing more than a cleverly developed marketing name, is led to believe that this
15 technical sounding, “proprietary” ingredient actually will help rebuild muscle and
16 strength.

17 28. Furthermore, Abbott’s misrepresentations that Muscle Health will rebuild
18 muscle and strength are compounded by other representations on the packaging, which are
19 designed to convey to reasonable consumers that Abbott’s claims are widely accepted in
20 the scientific community. For example, to build credibility for its claims with consumers,
21 Abbott labels Muscle Health as being the “#1 Doctor Recommended Brand,” and
22 describes Muscle Health as providing “targeted, specialized nutrition” and “targeted
23 nutrition.”

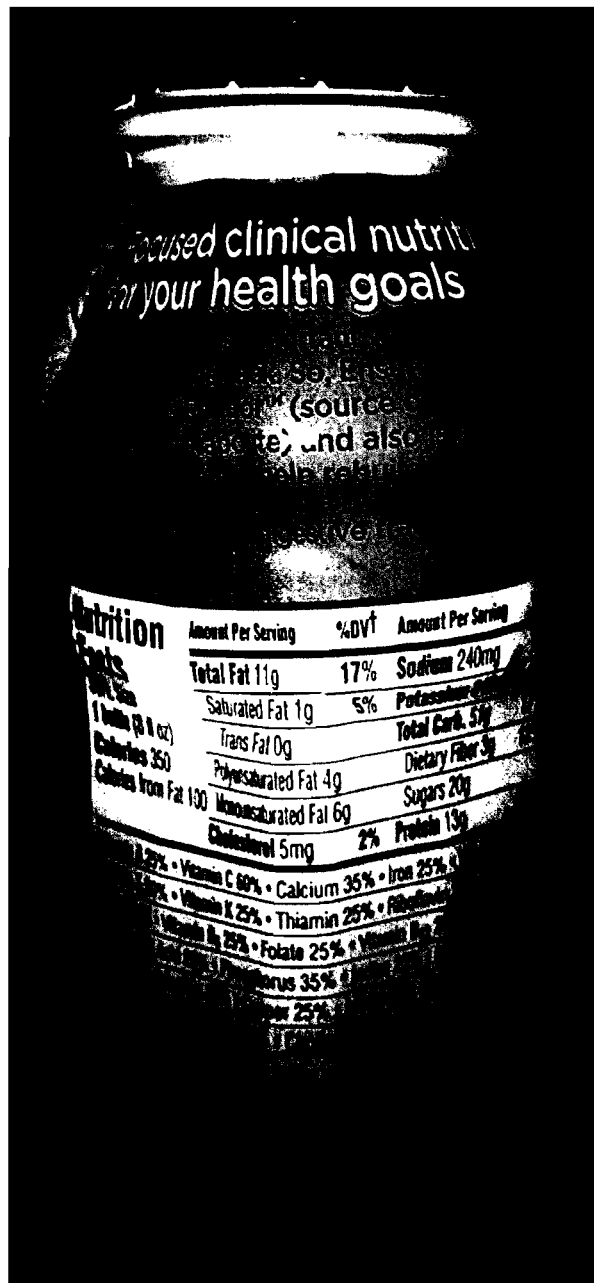
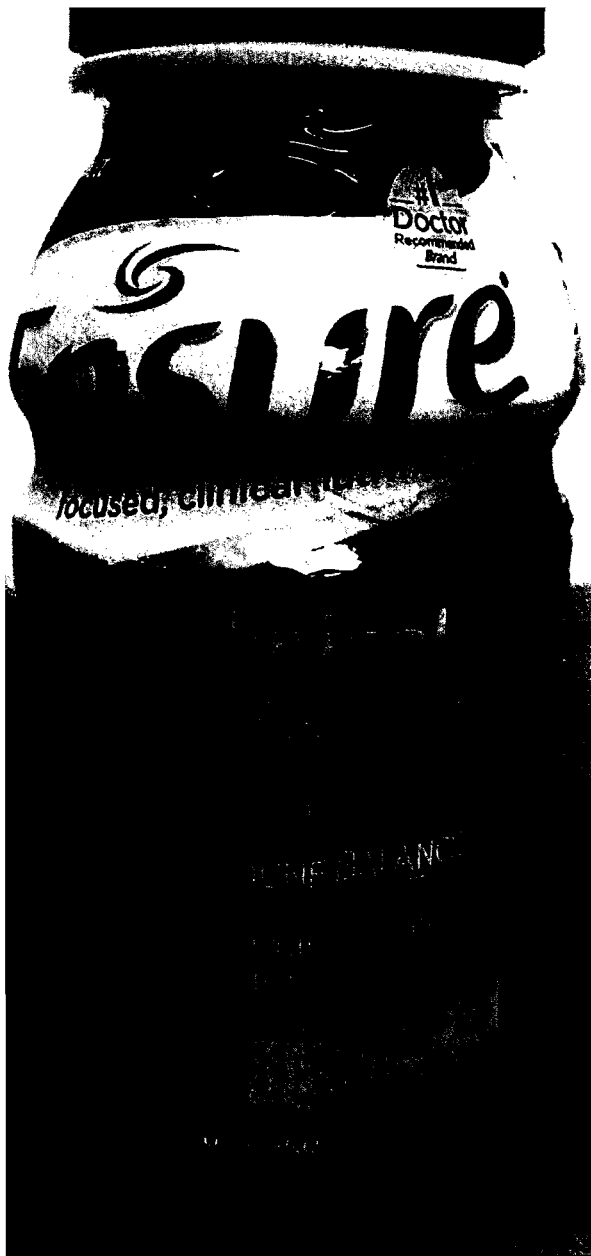
24 29. As a result of the above, Abbott’s messages on the packaging for Muscle
25 Health are false and misleading, and reasonably likely to, and do in fact, deceive the
26 consuming public.
27
28

1 Abbott's Representations on the Packaging for Ensure® Clinical Strength

2 30. The packaging for Clinical Strength appears as follows:

3 Front:

4 Back:



24 31. Like Muscle Health, Clinical Strength is intended to appeal to healthy
25 consumers from the general population who are or may be concerned about muscle loss.
26 The packaging for Clinical Strength informs consumers that it contains Revigor®, a
27 source of the amino acid metabolite HMB, and that it will “help rebuild muscle and
28 strength lost naturally over time.” Nowhere on the packaging for Clinical Strength,

1 however, does Abbott inform reasonable, everyday consumers that Clinical Strength will
2 only “help rebuild muscle and strength lost naturally over time” if it is used in connection
3 with an exercise program.

4 32. In addition, to reinforce Abbott’s claims about rebuilding muscle and
5 strength, and convey an impression of scientific support, Abbott represents that Clinical
6 Strength provides “focused, clinical nutrition,” and “[f]ocused clinical nutrition for your
7 health goals.” Abbott also represents Clinical Strength as being the “#1 Doctor
8 Recommended Brand,” and as being manufactured by “Abbott Laboratories.” Abbott
9 describes Clinical Strength as providing “serious nutrition for your health goals.” These
10 representations, taken as a whole, contribute to the deceptive nature of the packaging for
11 Clinical Strength, suggesting that Abbott’s claims have wide acceptance in the scientific
12 community.

13 33. Reasonable consumers -- unaware that “clinical strength” and “clinical” are
14 nothing more than clever marketing terms -- are further led to believe that Abbott’s claims
15 have a basis in science. Reasonable consumers are likewise unaware that “Revigor®” is
16 nothing more than a made up marketing name, and are deceived into believing that this
17 ingredient, “proprietary” to Abbott, will help rebuild muscle and strength.

18 34. As a result of the above, Abbott’s messages on the packaging for Clinical
19 Strength are false and misleading, and reasonably likely to, and do in fact, deceive the
20 consuming public.

21 **Abbott Is Aware that its Representations on the Packaging**
22 **for the Products Are False and Misleading**

23 35. Neither the Products, HMB, nor Revigor® can, by themselves, rebuild
24 muscle and strength in healthy adults. Abbott is aware that the representations on the
25 packaging for the Products are false and misleading. The packaging for the Products does
26 not inform reasonable, everyday consumers that the Products will only “help rebuild
27 muscle and strength lost naturally over time” in healthy adults if the Products are used in
28

1 connection with an exercise program.

2 36. In a press release issued by the company in 2010, Abbott stated that “in
3 healthy, *exercising* adults . . . three grams of HMB per day is effective in building and
4 maintaining lean body mass.”⁶

5 37. Additionally, on May 2, 2011, the National Advertising Division of the
6 Council of Better Business Bureaus (the “NAD”), a self-regulatory body established by
7 the advertising industry, issued an opinion concerning Muscle Health. Significantly, the
8 NAD’s opinion stated, among other things, the following:

9 [As Abbott has noted,] this product is positioned within
10 Abbott’s overall Ensure line as a product intended for healthy,
11 active adults who nonetheless are at risk for natural muscle loss
12 due to sarcopenia, and that members of this population can and
13 should engage in regular exercise to help enhance their overall
14 health, not just to assist in maintaining muscle strength, but also
15 to help sustain their cardiovascular fitness, mental well-being,
16 NAD concluded that it is appropriate to promote Ensure Muscle
17 Health *with* exercise.⁷

18 38. Notwithstanding Abbott’s knowledge that, consistent with the NAD’s
19 opinion, Abbott’s promises to rebuild muscle and strength are only appropriate when
20 healthy, active adults use Muscle Health “*with* exercise,” nowhere on the packaging for
21 Muscle Health does Abbott inform consumers of this fact. Instead, Abbott continues to
22 profit from its consumer deception, using the packaging to repeat its false and misleading
23 claim that the Products alone will “help rebuild muscle and strength,” making the
24 representation on the packaging three times, including: (i) in large text on the front of the
25 bottle; (ii) in large text at the top of the back panel; and (iii) in the descriptive text on the
26 back panel of the bottle.

27 ⁶ *Id.* (emphasis added.)

28 ⁷ See Abbott Laboratories (Ensure Muscle Health), NAD Case Reports, Report #5323 at 23 (May 2, 2011) (emphasis in original).

PLAINTIFF'S CLAIMS AGAINST ABBOTT

39. Plaintiff is a resident of Murrieta, California, in Riverside County, California.

40. Plaintiff first purchased Muscle Health on or around June of 2011, and thereafter, purchased Muscle Health at least six times, including at Walgreens in Temecula, California, CVS Pharmacy in Murrieta, California, Stater Bros. Markets in Murrieta, California, and Vons in Murrieta, California.

41. In deciding to purchase Muscle Health, Plaintiff saw and relied on the statement on the packaging, representing that it would "help rebuild muscle and strength naturally lost over time." This representation was material to Plaintiff, particularly as a 69-year-old concerned about muscle loss, and Plaintiff believed that Muscle Health alone would help rebuild muscle and strength, without an exercise program.

42. Plaintiff was denied the benefit of the bargain when he decided to purchase Muscle Health over competitor products, because he paid for a product that would help rebuild muscle and strength, but he received a product that did not, and could not, provide the benefits it promised to provide. Accordingly, Plaintiff suffered injury in fact and lost money as a result of Abbott's false and misleading representation that Muscle Health would help rebuild muscle.

43. Had Abbott disclosed to Plaintiff and members of the Class that that the Products cannot help rebuild muscle and strength in the general population of normal, healthy, adults unless the Products are used in combination with an exercise program, they would have seen and been aware of the disclosure. But for Abbott's misrepresentations, Plaintiff and members of the Class would not have purchased and consumed the Products. Instead, had they known the truth, Plaintiff and members of the Class would not have purchased the Products at all, or they would have paid less.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff is informed and believes and on that basis, alleges that Defendant has sold

1 thousands of units of the Products, if not more, in California and throughout the United
2 States. Plaintiff is informed and believes and on that basis, alleges that the representations
3 on the packaging for the Products has been uniform throughout the class period.

4 45. The groups of similarly situated individuals Plaintiff seeks to represent (the
5 “Class”) are defined as follows:

6 All residents of California who purchased Ensure® Muscle
7 Health Shake or Ensure® Clinical Strength during the period of
8 August 14, 2008 continuing through the date of final
9 disposition of this action (the “California Statutory Subclass”).

10 All residents of the United States of America who purchased
11 Ensure® Muscle Health Shake or Ensure® Clinical Strength
12 during the period of August 14, 2008 continuing through the
13 date of final disposition of this action (the “Nationwide
14 Subclass”).

15 46. Plaintiff reserves the right to amend the Class definitions if discovery and
16 further investigation reveal that the Class should be expanded or otherwise modified.

17 47. Plaintiff reserves the right to establish sub-classes as appropriate.

18 48. This action is brought and properly may be maintained as a class action
19 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2)
20 or (b)(3), and satisfies the requirements thereof. As used herein, the term “Class
21 Members” shall mean and refer to the members of the Class.

22 49. Community of Interest: There is a well-defined community of interest
23 among members of the Class, and the disposition of the claims of these members of the
24 Class in a single action will provide substantial benefits to all parties and to the Court.

25 50. Numerosity: While the exact number of members of the Class is unknown to
26 Plaintiff at this time and can only be determined by appropriate discovery, membership in
27 the Class is ascertainable based upon the records maintained by Defendant. At this time,
28 Plaintiff is informed and believes that the Class includes thousands of members.
Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a

1 single action is impracticable under Federal Rule of Civil Procedure Rule 23(a)(1), and
2 the resolution of their claims through the procedure of a class action will be of benefit to
3 the parties and the Court.

4 51. Ascertainability: Names and addresses of members of the Class are available
5 from Defendant's records. Notice can be provided to the members of the Class through
6 direct mailing, publication, or otherwise using techniques and a form of notice similar to
7 those customarily used in consumer class actions arising under California state law and
8 federal law.

9 52. Typicality: Plaintiff's claims are typical of the claims of the other members
10 of the Class which he seeks to represent under Federal Rule of Civil Procedure 23(a)(3)
11 because Plaintiff and each member of the Class have been subjected to the same deceptive
12 and improper practices and have been damaged in the same manner thereby.

13 53. Adequacy: Plaintiff will fairly and adequately represent and protect the
14 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).
15 Plaintiff is an adequate representative of the Class, because he has no interests which are
16 adverse to the interests of the members of the Class. Plaintiff is committed to the
17 vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are
18 competent and experienced in handling class action litigation on behalf of consumers.

19 54. Superiority: A class action is superior to all other available methods of the
20 fair and efficient adjudication of the claims asserted in this action under Federal Rule of
21 Civil Procedure 23(b)(3) because:

- 22 (a) The expense and burden of individual litigation make it economically
23 unfeasible for members of the Class to seek to redress their "negative
24 value" claims other than through the procedure of a class action.
- 25 (b) If separate actions were brought by individual members of the Class,
26 the resulting duplicity of lawsuits would cause members to seek to
27 redress their "negative value" claims other than through the procedure
28 of a class action; and

1 (c) Absent a class action, Defendant likely would retain the benefits of its
2 wrongdoing, and there would be a failure of justice.

3 55. Common questions of law and fact exist as to the members of the Class, as
4 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions
5 which affect individual members of the Class within the meaning of Federal Rule of Civil
6 Procedure 23(b)(3).

7 56. The common questions of fact include, but are not limited to, the following:

- 8 (a) Whether Defendant's practice of misleading consumers who purchase
9 Muscle Health and Clinical Strength products violates one or more
10 provisions of the CLRA;
- 11 (b) Whether Defendant engaged in unlawful, unfair, misleading, or
12 deceptive business acts or practices;
- 13 (c) Whether Defendant engaged in consumer fraud, deceptive trade
14 practices, or other unlawful acts;
- 15 (d) Whether Plaintiff and members of the Class justifiably relied on the
16 representations Defendant made in connection with its Muscle Health
17 and Clinical Strength products;
- 18 (e) Whether Defendant's conduct was willful or reckless;
- 19 (f) Whether Plaintiff and members of the Class are entitled to an award of
20 reasonable attorneys' fees, pre-judgment interest, and costs of this suit;
21 and
- 22 (g) Whether Defendant engaged in unlawful and unfair business practices
23 in violation of California Business & Professions Code sections 17200
24 *et seq.* and 17500 *et seq.*

25 57. In the alternative, this action is certifiable under the provisions of Federal
26 Rule(s) of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 27 (a) The prosecution of separate actions by individual members of the
28 Class would create a risk of inconsistent or varying adjudications with

1 respect to individual members of the Class which would establish
2 incompatible standards of conduct for Defendant.

3 (b) The prosecution of separate actions by individual members of the
4 Class would create a risk of adjudications as to them which would, as a
5 practical matter, be dispositive of the interests of the other members of
6 the Class not parties to the adjudications, or substantially impair or
7 impede their ability to protect their interests; and

8 (c) Defendant has acted or refused to act on grounds generally applicable
9 to the Class, thereby making appropriate final injunctive relief or
10 corresponding declaratory relief with respect to the Class as a whole
11 and necessitating that any such relief be extended to members of the
12 Class on a mandatory, class-wide basis.

13 58. Plaintiff is not aware of any difficulty which will be encountered in the
14 management of this litigation which should preclude its maintenance as a class action.

15 **FIRST CAUSE OF ACTION**
16 ***Brought on Behalf of the California Statutory Subclass***
17 **Violation of the California Consumers Legal Remedies Act**
18 **(Cal. Civil Code §§ 1750 *et seq.*)**

19 59. Plaintiff incorporates by reference in this cause of action each and every
20 allegation of the preceding paragraphs, with the same force and effect as though fully set
21 forth herein.

22 60. Plaintiff brings this cause of action on behalf of himself and the other
23 members of the California Statutory Subclass.

24 61. This cause of action is brought under the California Consumers Legal
25 Remedies Act, California Civil Code sections 1750 *et seq.* ("CLRA"). Plaintiff and
26 members of the California Statutory Subclass are consumers as defined by California
27 Civil Code section 1761(d). The Products are goods within the meaning of California
28 Civil Code section 1761(a).

62. Defendant violated and continues to violate the CLRA by engaging in the

1 following practices proscribed by California Civil Code section 1770(a) in transactions
2 with Plaintiff and members of the California Statutory Subclass, which were intended to
3 result in, and did result in, the sale of the Products:

4
5 (5) Representing that [the Products have]...
characteristics...[and] uses...which they do not have....

6 (7) Representing that [the Products] are of a particular
7 standard...if they are of another.

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

10 63. Defendant violated the CRLA by representing and advertising that the
11 Products, as discussed above, would help consumers to rebuild muscle and strength.
12 However, Defendant knew, or should have known, that this representation was false and
13 misleading.

14 64. In order to conceal the fact that its claims of “rebuild[ing] muscle and
15 strength” are untrue, and to deceptively imply that these false claims actually have
16 scientific support, Defendant labels the Products with phrases such as “clinical strength,”
17 “focused, clinical nutrition,” “targeted, specialized nutrition,” and other representations
18 discussed above.

19 65. On July 9, 2012, via certified mail, return receipt requested, under Section
20 1782 of the CLRA, Plaintiff notified Abbott in writing of the particular violations of
21 Section 1770, and demanded that Abbott rectify the problems associated with the behavior
22 detailed above, which acts and practices are in violation of Section 1770.

23 66. Abbott failed to rectify the violations identified by Plaintiff. Therefore,
24 under Section 1780(a) of the CLRA, Plaintiff and members of the Class seek actual and
25 punitive damages.

26 67. Plaintiff also has filed a Declaration of Venue in accordance with Civil Code
27 section 1780(d).

28 68. Under Section 1782(d) of the CLRA, Plaintiff seeks an order enjoining the

1 act and practices described above, restitution of property, and any other relief that the
2 court deems proper.

3 69. Defendant's conduct is malicious, fraudulent, and wanton, and Defendant
4 intentionally misleads and withholds material information from consumers in order to
5 increase the sale of the Products.

6 70. Defendant's misrepresentations and omissions were material to Plaintiff and
7 members of the California Statutory Subclass. Plaintiff and members of the California
8 Statutory Subclass would not have purchased and consumed the Products had it not been
9 for Defendant's misrepresentations and concealment of material facts. Plaintiff and
10 members of the California Statutory Subclass were damaged as a result of Defendant's
11 material misrepresentations and omissions.

12 **SECOND CAUSE OF ACTION**
13 ***Brought on Behalf of the California Statutory Subclass***
14 **Violation of the California Unfair Business Practices Act**
15 **(California Business & Professions Code §§ 17200 *et seq.*)**

16 71. Plaintiff incorporates by reference in this cause of action each and every
17 allegation of the preceding paragraphs, with the same force and effect as though fully set
18 forth herein.

19 72. Plaintiff brings this cause of action on behalf of himself and the other
20 members of the California Statutory Subclass.

21 73. California Business and Professions Code section 17200 prohibits "any
22 unlawful, unfair or fraudulent business act or practice." For the reasons described above,
23 Defendant has engaged in unlawful, unfair, and/or fraudulent business acts or practices in
24 violation of California Business and Professions Code section 17200.

25 74. Defendant's misrepresentations and omissions of material facts, as set forth
26 herein, constitute an unlawful practice because they violate California Civil Code sections
27 1572, 1573, 1709, 1710, 1711, and 1770, California Health & Safety Code section 109875
28 *et seq.*, and the common law.

75. Defendant's misrepresentations and omissions of material facts, as set forth

1 herein, also constitute “unfair” business acts and practices within the meaning of
2 California Business and Professions Code sections 17200 *et seq.*, in that Defendant’s
3 conduct was injurious to consumers, offended public policy, and was unethical and
4 unscrupulous. Plaintiff also asserts a violation of public policy by withholding material
5 facts from consumers. Defendant’s violation of California’s consumer protection and
6 unfair competition laws in California resulted in harm to consumers.

7 76. There were reasonable alternatives available to Defendant to further
8 Defendant’s legitimate business interests, other than the conduct described herein.

9 77. California Business and Professions Code section 17200 also prohibits any
10 “fraudulent business act or practice.”

11 78. Defendant’s misrepresentations and concealment of material facts, as set
12 forth above, were false, misleading, and/or likely to deceive the public within the meaning
13 of California Business and Professions Code section 17200.

14 79. Defendant’s misrepresentations and concealment were made with knowledge
15 of their effect, and were done to induce Plaintiff and members of the California Statutory
16 Subclass to purchase the Products. Plaintiff and members of the California Statutory
17 Subclass saw and justifiably relied on Defendant’s misrepresentations on the packaging
18 when purchasing the Products.

19 80. Defendant’s conduct caused and continues to cause injury to Plaintiff and
20 members of the California Statutory Subclass. Defendant’s misrepresentations and
21 omissions were material to Plaintiff and members of the California Statutory Subclass.
22 Plaintiff and members of the California Statutory Subclass would not have purchased and
23 consumed the Products had it not been for Defendant’s misrepresentations and
24 concealment of material facts. Plaintiff and members of the California Statutory Subclass
25 have suffered injury in fact and have lost money as a result of Defendant’s fraudulent
26 conduct.

27 81. Defendant’s misrepresentations and omissions alleged herein are objectively
28 material to the reasonable consumer, and they were material to Plaintiff. Reliance upon

1 the misrepresentations and omissions discussed herein may therefore be presumed as a
2 matter of law. The materiality of such representations and omissions also establishes
3 causation between Defendant's conduct and Plaintiff's and the members of the California
4 Statutory Subclass' injuries.

5 82. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
6 entitling Plaintiff and members of the California Statutory Subclass to judgment and
7 equitable relief against Defendants, as set forth in the Prayer for Relief.

8 83. Additionally, under Business and Professions Code section 17203, Plaintiff
9 and members of the California Statutory Subclass seek an order requiring Defendant to
10 immediately cease such acts of unlawful, unfair, and fraudulent business practices, and
11 requiring Defendant to correct its actions.

12 **THIRD CAUSE OF ACTION**
13 ***Brought on Behalf of the California Statutory Subclass***
14 **Violation of the California False Advertising Law**
(California Business & Professions Code §§ 17500 *et seq.*)

15 84. Plaintiff incorporates by reference in this cause of action each and every
16 allegation of the preceding paragraphs, with the same force and effect as though fully set
17 forth herein.

18 85. Plaintiff brings this cause of action on behalf of himself and the members of
19 the California Statutory Subclass.

20 86. California Business and Professions Code section 17500 prohibits "unfair,
21 deceptive, untrue or misleading advertising."

22 87. Defendant violated California Business and Professions Code section 17500
23 by, *inter alia*, (a) misleadingly advertising that the Products would help rebuild muscle
24 and strength; and (b) concealing material information about the true nature of the
25 Products, in that the Products cannot rebuild muscle and strength.

26 88. Defendant's deceptive practices were specifically designed to induce Plaintiff
27 and members of the California Statutory Subclass to purchase the Products over those of
28 its competitors. Defendant's deceptive practices were carried out on the labels for the

1 Products in order to induce Plaintiff and members of the California Statutory Subclass to
2 purchase the Products.

3 89. Plaintiff and members of the California Statutory Subclass would not have
4 purchased and consumed the Products had it not been for Defendant's misrepresentations
5 and concealment of material facts. Plaintiff and members of the California Statutory
6 Subclass were denied the benefit of the bargain when they decided to purchase the
7 Products over competitor products, which are less expensive or do not unlawfully claim to
8 rebuild muscle. Had Plaintiff and members of the California Statutory Subclass been
9 aware of Defendant's false and misleading advertising tactics, they would have paid less
10 than what they paid for the Products, or they would not have purchased the Products at all.

11 90. The content of the labels, as alleged herein, were of a nature likely to deceive
12 reasonable consumers.

13 91. Defendant knew, or in the exercise of reasonable care, should have known,
14 that the representations were untrue or misleading and likely to deceive reasonable
15 consumers.

16 92. Defendant's misrepresentations and omissions alleged herein are objectively
17 material to the reasonable consumer, and reliance upon such misrepresentations and
18 omissions may therefore be presumed as a matter of law. The materiality of such
19 representations and omissions also establishes causation between Defendant's conduct
20 and Plaintiff's and the California Statutory Subclass members' injuries.

21 93. Unless restrained by this Court, Defendant will continue to engage in
22 misleading advertising, as alleged above, in violation of California Business and
23 Professions Code section 17500.

24 94. As a result of the foregoing, Plaintiff and members of the California
25 Statutory Class have been injured in fact and lost money or property, and they are entitled
26 to restitution and injunctive relief.
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FOURTH CAUSE OF ACTION
Brought on Behalf of the Nationwide Subclass
Breach of Express Warranty

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4 95. Plaintiff incorporates by reference in this cause of action each and every
5 allegation of the preceding paragraphs, with the same force and effect as though fully set
6 forth herein.

7 96. Plaintiff brings this cause of action on behalf of himself and the members of
8 the Nationwide Subclass.

9 97. Plaintiff, and each member of the Nationwide Subclass, formed a contract
10 with Defendant at the time that Plaintiff and Nationwide Subclass members purchased the
11 Products. The terms of that contract include the promises and affirmations of fact that the
12 Products would help rebuild muscle and strength, made by Defendant on the packaging
13 for the Products, as described above. The packaging for the Products constitutes an
14 express warranty, became part of the basis of the bargain, and is a part of a standardized
15 contract between Plaintiff and Nationwide Subclass members on the one hand, and
16 Defendant on the other.

17 98. All conditions precedent to Defendant's liability under this contract have
18 been performed by Plaintiff and the Nationwide Subclass.

19 99. Despite express warranties that the Products alone would help rebuild muscle
20 and strength, the Products do not provide such a benefit.

21 100. Defendant breached the terms of this contract, including the express
22 warranties, with Plaintiff and the Nationwide Subclass by not providing Products which
23 rebuild muscle, as described above.

24 101. As a result of Defendant's breach of express warranty, Plaintiff and members
25 of the Nationwide Subclass were harmed in the amount of the purchase price they paid for
26 the Products.

FIFTH CAUSE OF ACTION
Brought on Behalf of the Nationwide Subclass
Negligent Misrepresentation

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3 102. Plaintiff incorporates by reference in this cause of action each and every
4 allegation of the preceding paragraphs, with the same force and effect as though fully set
5 forth herein.

6 103. Defendant, directly or through its agents and employees, made false
7 representations, concealments, and nondisclosures to Plaintiff and members of the
8 Nationwide Subclass.

9 104. In making the representations of fact to Plaintiff and members of the
10 Nationwide Subclass described herein, Defendant has failed to fulfill its duties to disclose
11 the material facts set forth above. The direct and proximate cause of said failure to
12 disclose was the negligence and carelessness of Defendant.

13 105. In making the representations and omissions, and in doing the acts alleged
14 above, Defendant acted without any reasonable grounds for believing the representations
15 were true, and intended by said representations to induce the reliance of Plaintiff and
16 members of the Nationwide Subclass.

17 106. Plaintiff and members of the Nationwide Subclass relied upon these false
18 representations, concealments and nondisclosures by Defendant when purchasing the
19 products at issue herein, which reliance was justified.

20 107. As a result of Defendant's wrongful conduct, Plaintiff and members of the
21 Nationwide Subclass have suffered and continue to suffer economic losses and other
22 general and specific damages, including but not limited to the amounts paid for Muscle
23 Health or Clinical Strength, and any interest that would have been accrued on those
24 monies, all in an amount to be determined according to proof at time of trial.

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SIXTH CAUSE OF ACTION
Brought on Behalf of the Nationwide Subclass
Unjust Enrichment

108. Plaintiff incorporates by reference in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

109. By its wrongful acts and omissions (in particular, on the packaging for the Products, as discussed above, with false and materially misleading labeling claims that the Products alone would help rebuild muscle and strength), Defendant was unjustly enriched at the expense of Plaintiff and members of the Nationwide Subclass, who did not receive the goods to which they were entitled -- namely products that would help rebuild muscle and strength -- for the payments made to Defendant, and thus Plaintiff and members of the Nationwide Subclass were unjustly deprived.

110. It would be inequitable and unconscionable for Defendant to retain the profit, benefit and other compensation it obtained from its deceptive, misleading, and unlawful conduct alleged herein.

111. Plaintiff and members of the Nationwide Subclass seek restitution from Defendant, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by Defendant from its wrongful conduct.

SEVENTH CAUSE OF ACTION
Brought on Behalf of the Nationwide Subclass
Violation of Ohio Consumer Sales Practices Act
(Ohio Revised Code §§ 1345 *et seq.*)

112. Plaintiff incorporates by reference in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

113. Plaintiff brings this cause of action on behalf of himself and the other members of the Nationwide Subclass.

114. This cause of action is brought pursuant to the Ohio Consumer Sales

1 Practices Act, Ohio Revised Code section 1345 *et seq.* (the “CSPA”).

2 115. Plaintiff is a “consumer” as defined by Ohio Revised Code section
3 1345.01(D).

4 116. Abbott is a “supplier” as defined by Ohio Revised Code section 1345.01(C).
5 Abbott’s conduct described herein involves “consumer transactions” as defined in Ohio
6 Revised Code section 1345.01(A).

7 117. Abbott violated and continues to violate the CSPA by engaging in the
8 following practices proscribed by Ohio Revised Code section 1345.02 in consumer
9 transactions with Plaintiff and members of the Nationwide Subclass, which were intended
10 to result in, and did result in, the sale of the Products:

11 (A) by “commit[ting] an unfair or deceptive act or practice in
12 connection with a consumer transaction”;

13 (B)(1) by representing that the Products have “sponsorship,
14 approval, performance characteristics, accessories, uses, or
15 benefits that [they] do not have”;

16 (B)(2) by representing that the Products are “of a particular
17 standard, quality, grade, style, prescription, or model, if [they]
18 are not”; and

19 (B)(5) by representing that the Products “ha[ve] been supplied
20 in accordance with a previous representation, if [they] have not”

21 118. Abbott violated and continues to violate the CSPA by engaging in the
22 following practices proscribed by Ohio Revised Code § 1345.03 in consumer transactions
23 with Plaintiff and the Nationwide Subclass, which were intended to result in, and did
24 result in, the sale of the Products:

25 (A) because Abbott has engaged in and is engaging in
26 “unconscionable act[s] or practice[s] in connection with a
27 consumer transaction”;

28 (B)(3) because Abbott “knew at the time the consumer
transaction was entered into of the inability of the consumer to
receive a substantial benefit from the subject of the consumer
transaction”; and

1 (B)(6) because Abbott “knowingly made a misleading
2 statement of opinion on which the consumer was likely to rely
3 to the consumer’s detriment”

4 119. Abbott violated the CSPA by representing the nature of Products, as
5 described above, when it knew, or should have known, that the representations on the
6 packaging for the Products were false and misleading.

7 120. Under Ohio Revised Code section 1345.09(A), Plaintiff and the Nationwide
8 Subclass are entitled to rescind the consumer transactions.

9 121. Under Ohio Revised Code section 1345.09(D), Plaintiff and the Nationwide
10 Subclass seek an order enjoining the above-described wrongful acts and practices of
11 Defendant and for restitution and disgorgement.

12 122. Under Ohio Revised Code section 1345.09(E), the clerk of court shall serve a
13 copy of this Complaint upon the attorney general.

14 123. Plaintiff and the Nationwide Subclass reserve the right to allege further
15 violations of the CSPA as Abbott’s conduct is ongoing.

16 **EIGHTH CAUSE OF ACTION**
17 ***Brought on Behalf of the Nationwide Subclass***
18 **Violation of Ohio Deceptive Trade Practices Act**
19 **(Ohio Rev. Code §§ 4165 *et seq.*)**

20 124. Plaintiff incorporates by reference in this cause of action each and every
21 allegation of the preceding paragraphs, with the same force and effect as though fully set
22 forth herein.

23 125. Plaintiff brings this cause of action on behalf of himself and the other
24 members of the Nationwide Subclass.

25 126. Abbott is a “person” as defined in Ohio Revised Code section 4165.01(D).

26 127. For the reasons discussed above, Abbott has engaged in unfair, deceptive,
27 untrue and misleading advertising in violation of the Ohio Deceptive Trade Practices Act
28 section 4165.02 because Abbott, in the course of its business:

(A)(1) “Passes off goods or services as those of another;”

1 (A)(4) “Uses deceptive representations . . . in connection with
2 goods or services;”

3 (A)(7) “Represents that goods . . . have sponsorship, approval,
4 characteristics, ingredients, uses, benefits . . . that they do not
5 have;”

6 (A)(9) “Represents that goods or services are of a particular
7 standard, quality, or grade . . . [when] they are of another;”

8 (A)(11) “Advertises goods or services with intent not to sell
9 them as advertised[.]”

10 128. Plaintiff and the Nationwide Subclass reserve the right to allege other
11 violations of the law under the Ohio Deceptive Trade Practices Act because Abbott’s
12 conduct is ongoing.

13 129. Abbott’s conduct caused and continues to cause substantial injury to Plaintiff
14 and the Nationwide Subclass. Plaintiff has suffered injury in fact and has lost money as a
15 result of Abbott’s deceptive conduct.

16 130. Plaintiff and the Nationwide Subclass seek equitable relief and to enjoin
17 Abbott on the terms that the Court considers reasonable.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of himself and all others similarly situated, requests the Court
20 to enter judgment against Defendant, as follows:

- 21 1. Certifying the Class, including the California Statutory Subclass and the
22 Nationwide Subclass, as requested herein, certifying Plaintiff as the representative of the
23 Class, and appointing Plaintiff’s counsel as counsel for the Class;
- 24 2. Ordering that Defendant is financially responsible for notifying all members
25 of the Class of the alleged misrepresentations and omissions discussed herein;
- 26 3. Awarding Plaintiff and the members of the Class compensatory damages in
27 an amount according to proof at trial;
- 28 4. Awarding restitution and disgorgement of Defendant’s revenues and/or

1 profits to Plaintiff and members of the Class;

2 5. Awarding declaratory and injunctive relief as permitted by law or equity,
3 including: enjoining Defendant from continuing the unlawful practices as set forth herein,
4 and directing Defendant to identify, with Court supervision, victims of its conduct and pay
5 them restitution and disgorgement of all monies acquired by Defendant by means of any
6 act or practice declared by this Court to be wrongful;

7 6. Awarding to Plaintiff and the Class punitive damages;

8 7. Ordering Defendant to engage in corrective advertising;

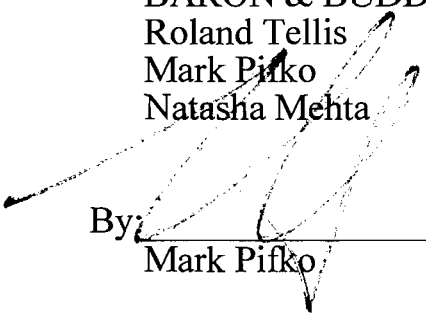
9 8. Awarding interest on the monies wrongfully obtained from the date of
10 collection through the date of entry to judgment in this action;

11 9. Awarding attorneys' fees, expenses, and recoverable costs reasonably
12 incurred in connection with the commencement and prosecution of this action; and

13 10. For such other and further relief as the Court deems just and proper.

14
15 Dated: August 22, 2012

16 BARON & BUDD, P.C.
17 Roland Tellis
18 Mark Pifko
19 Natasha Mehta

20 By: 
21 _____
22 Mark Pifko

23 Attorneys for Plaintiff
24 MICHAEL J. OTTO, individually, and
25 on behalf of other members of the
26 public similarly situated
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DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury on all issues so triable.

Respectfully submitted,

Dated: August 22, 2012

BARON & BUDD, P.C.
Roland Tellis
Mark Pifko
Natasha Mehta

By: _____

Mark Pifko

Attorneys for Plaintiff
MICHAEL J. OTTO, individually, and
on behalf of other members of the
public similarly situated

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

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> MICHAEL J. OTTO, individually, and on behalf of other members of the general public similarly situated	DEFENDANTS ABBOTT LABORATORIES, INC., a Delaware Corporation, d/b/a ABBOTT NUTRITION
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(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Roland Tellis (SBN 186269); Mark Pifko (SBN 228412) Natasha Mehta (SBN 272241) - BARON & BUDD, P.C. 15910 Ventura Blvd., #1600, Encino, CA 91436; 818.839.2333	Attorneys (If Known)
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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-collapse: collapse;"> <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 align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td 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																				
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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:** \$ Exceed \$5,000,000.00

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.)
 Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(a) & 1332(b).

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 <input type="checkbox"/> 530 General Habeas Corpus <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) (405(g)) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW <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
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FOR OFFICE USE ONLY: Case Number: **LDCV12-1411**

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
Riverside	

(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
Riverside	

(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
Riverside	

* 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 PROPER): _____ Date August 22, 2012

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))