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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM MURRAY, JR. on behalf of himself and all others similarly situated,

Plaintiff,

vs.

THE ELATIONS COMPANY, LLC, a Delaware Limited Liability Company, and BEVERAGES HOLDINGS, LLC, a Delaware Limited Liability Company,

Defendants.

Case No. **'13CV2357 LAB WVG**

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et seq.*;
2. VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

Plaintiff William Murray, Jr. brings this action on behalf of himself and all others similarly situated against Defendants The Elations Company, LLC ("Elations Company") and Beverages Holdings, LLC ("Beverages Holdings") (collectively "Defendants") and states:

NATURE OF ACTION

1. Defendants distribute, market, and sell "Elations" a line of Glucosamine- and Chondroitin-based supplements that purportedly provide a variety of health benefits focused on improving joint health, mobility, flexibility, and lubrication. These claimed health benefits are the only reason a consumer would purchase Elations. Defendants' advertising claims, however, are false, misleading, and reasonably likely to deceive the public.

2. Defendants explicitly state that the primary active ingredients in their Elations products are "glucosamine" and "chondroitin." Through an extensive, uniform and long-term nationwide advertising campaign, Defendants represent that Elations "improves joint comfort when used everyday" and "helps improve your joint flexibility." Defendants further warranted at some point during the class period that the claimed benefits could be received in as little as 6 days. *See generally* Exhibit A, Product Labels.

3. All available scientific evidence demonstrates that the Elations products have no efficacy at all: that they are ineffective in the improvement of joint health, provide no benefits related to the reduction of pain in human joints, and they do not protect cartilage from breakdown. Defendants do not have any competent, reliable, scientific evidence that substantiates their representations about the health benefits of consuming Elations. In fact, numerous scientifically valid studies have been conducted on the ingredients, including the core or primary ingredients in Elations, glucosamine hydrochloride and chondroitin sulfate, and they have universally demonstrated that those ingredients, either on their own or in combination, have absolutely no scientific value in the treatment of joint pain or discomfort. Simply stated, science has proven over the course of the last decade that the Elations products are ineffective, do not and could not possibly relieve pain, improve joint

comfort or flexibility as advertised.

4. Defendants represent that the active ingredients in the Elations products provide relief for joint pain and discomfort. The product labeling states that consuming the Elations products will result in "healthier joints" and will "improve your joint comfort" and "joint flexibility." *See* product label, attached as Exhibit A. These bold claims are in addition to other misrepresentations which claim that "the ingredients in Elations are known to actually help renew joint cartilage, cushion joints and improve joint flexibility." Taken together, these statements explicitly and implicitly represent that Elations is intended to improve overall joint health and comfort.

5. Defendants convey their uniform, deceptive message to consumers through a variety of media, including the Elations website, online promotional materials, commercials, and, most importantly, at the point of purchase: on the top, back and front of the Elations packaging/labeling where consumers cannot miss it. The front of the Elations product label states in bold print, "Healthier Joints" and "Improves Joint Comfort in 6 days." The top [and back] of the Elations product label states it "Improves Joint Comfort When Used Everyday" and [the top only] "Helps Improve Your Joint Flexibility." The only reason a consumer would purchase Elations is to obtain the advertised joint-health benefits, which the Elations products do not provide.

6. As a result of Defendants' deceptive advertising and false claims regarding the efficacy of the Elations product, Plaintiff and the proposed Class have purchased a product which does not perform as represented, and they have been harmed in the amount they paid for the product, which, in the case of Plaintiff William Murray, Jr. is approximately $8.65 per six pack of 8 fluid ounce bottles.

7. Plaintiff brings this action on behalf of himself and other similarly situated consumers who have purchased the Elations products to halt the dissemination of this false, misleading, and deceptive advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Elations products. Based on violations of California's unfair competition

laws and Defendants' breach of express warranty, Plaintiff seeks injunctive and monetary relief for consumers who purchased the Elations products.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000, and it is a class action in which there are in excess of 100 class members, many of whom are citizens of a state different from Defendants.

9. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do conduct business in California. Defendants have marketed, promoted, distributed, and sold the Elations product in California, and Defendants have sufficient minimum contacts with this State and/or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

10. Venue is proper under 18 U.S.C. § 1965(a) because Defendants transact substantial business in this District and Defendants market, distribute and sell Elations in this District.

PARTIES

11. Plaintiff William Murray, Jr. resides in Orange County, California. For approximately two years leading up to May 2013, Plaintiff purchased Defendants' Elations products from time to time. During those times, and on May 15, 2013, he was exposed to, read and relied upon Defendants' representations regarding the joint-health benefits of the Elations products by reading the Elations product label in a Ralph's store near his home in Laguna Hills, California. Plaintiff's additional purchases of the Elations products were made at various stores in Orange County, California. In reliance on the claims listed on the product label described herein and above, and specifically those claims listed on the product label, that Elations would give him "healthier joints" and "improve joint comfort," Plaintiff purchased the Elations products. He paid approximately $8.65 for the product at Ralph's, and approximately the same amount on

other occasions at various stores. On each occasion, Mr. Murray purchased the product believing it would provide the advertised joint-health benefits and improve his joint soreness and comfort. Mr. Murray consumed the product regularly for several days, but did not experience the intended, advertised benefits. As a result of his purchase, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Defendants' misrepresentations and omissions, he would not have purchased the Elations products. Plaintiff Murray is not claiming physical harm or seeking the recovery of personal injury damages.

12. Defendant The Elations Company, LLC is incorporated under the laws of the state of Delaware. Elations Company's corporate headquarters is located at 4747 Lake Forest Drive, Cincinnati, Ohio 45242. Elations Company researches, develops, manufactures, distributes, markets, and sells its Elations products to tens of thousands of consumers in California and throughout the United States.

13. Defendant Beverages Holdings LLC is incorporated under the laws of the state of Delaware. Beverages Holdings develops and markets dietary and joint-health supplement drinks and super-fruit beverages. Beverages Holdings is based at 10300 Alliance Road, Suite 500, Blue Ash, Ohio 45242. During the class period, Beverages Holdings, through its subsidiary, Elations Company, marketed and sold the Elations products throughout the United States and in the State of California.

FACTUAL ALLEGATIONS

The Elations Products

14. Defendants manufacture, distribute, market, and sell the Elations line of joint-health supplements on a nationwide basis. Elations Company began manufacturing, marketing, and selling the Elations products in 2004.

15. Defendants presently offer two forms of the Elations product, the pre-made liquid version sold in six-packs of 8 Fluid ounce bottles (purchased by Plaintiff) and a pre-mixed powder version which the customer adds to water, shakes and consumes. The products are identical in their chemical composition and the advertising and marketing

messages for the products are nearly identical. *See* Exhibit A, "pre-made" product labels and "pre-mixed powder" labels.

16. The Elations products are sold throughout the country in major food, drug, and mass retail outlets and online retailers including, but not limited to: Ralph's, Kroger, Cardinal Health, Meijer, and Giant Eagle. The Elations products are also sold through online retailers such as amazon.com and Drugstore.com

17. Since the launch of Elations, Defendants have consistently conveyed the message to consumers throughout California that the Elations products will reduce joint pain and increase "joint comfort" and "joint flexibility." The product labeling represents that Elations "Helps Improve Your Joint Comfort" and "Helps Improve Your Joint Flexibility." *See* product label, attached as Exhibit A. As more fully set forth herein, the scientific evidence regarding the use of glucosamine and chondroitin, taken on their own or in combination, does not provide **any** of the joint-health benefits represented by Defendants.

18. In addition to the two primary ingredients that Defendants both prominently display on it packaging and diligently promote as providing the purported joint-health benefits, the Elations products also contain smaller amounts of other ingredients, including: boron trihydroxide and lesser composition and coloring ingredients. For example, there are only six milligrams of boron in each bottle of Elations—this is less than 1% of the total composition of the product. As with glucosamine and chondroitin, these other minor ingredients are also not effective in providing the joint-health benefits represented by Defendants. In any event, the focus is on the uniform false and deceptive representations and omissions that Defendants make about glucosamine and chondroitin on the package labeling of each Elations product.

19. The primary active ingredients in all Elations products are glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. Chondroitin sulfate is a complex carbohydrate found in the body's connective tissues.

20. According to the Mayo Clinic, the signs and symptoms of osteoarthritis include joint pain, joint tenderness, joint stiffness, and the inability to move your joint through its full range of motion.[1]

21. There is no competent scientific evidence that taking glucosamine hydrochloride and chondroitin sulfate, together or in isolation, let alone through oral administration, results in the body metabolizing it into something that provides the advertised joint-health and cartilage benefits, including relieving the major symptoms of arthritis.

22. Contrary to the stated representations on all the Elations products' labeling and packaging, Defendants do not possess (and have not possessed) competent scientific evidence that any of these ingredients, taken alone or in combination, are effective in providing the advertised joint-health and cartilage benefits, including treating the major symptoms of arthritis or any other joint-related ailments.

23. Despite scientific studies which demonstrate that the claims are false and deceptive, and no scientifically valid confirmation that the Elations products are an effective joint-health supplement—let alone an effective treatment for *all* joints in the human body, for customers of *all* ages, and for *all* stages of joint problems and/or disease—Defendants state on the Elations products' packaging and labeling that Elations will "help improve your joint comfort" and "help improve your joint flexibility." They have also represented that the product is capable of improving joint comfort in 6 days. Representative Elations product packaging and labeling appears as follows:

[1] MayoClinic.com, Osteoarthritis, http://www.mayoclinic.com/health/osteoarthritis/DS00019 (follow "Symptoms" hyperlink) (last visited Sept. 18, 2013).

See also Exhibit A attached (Elations product packaging and labeling exemplars containing the false and deceptive statements).

24. In addition to the representations made on the *front* of the product's packaging, the back of the product packaging represents the Elations product:

- "Improves Joint Comfort When Used Everyday!"

25. The top of the product packaging represents that it:

- "Helps Improve Your Joint Comfort";
- "Helps Improve Your Joint Flexibility"; and repeats the claim on the back of the packaging,
- "Improves Joint Comfort When Used Everyday!"

26. Elations Company's statements on its website repeat and reinforce the false and misleading joint-health statements made on the packaging and labeling:

- Research indicates that taking 1,500 mg of glucosamine and 1,200 mg of chondroitin daily can help improve joint function.
- Rick Zimmerman, general manger of Elations Company states, "The ingredients in Elations are known to actually help renew joint cartilage, cushion joints, and improve joint flexibility."

27. Elations Company's television commercials repeat and reinforce the same advertising message. For example, one commercial includes the following statement: "Clinically proven to improve joint comfort in as little as 6 days." Another commercial claims that Elations "renews cartilage; cushions joints; improves flexibility."

28. Contrary to the stated representations on all Elations products' labeling and packaging and throughout Defendants' other advertising and marketing for the Elations products, Defendants do not possess (and have not possessed) competent scientific evidence that any of these ingredients, taken alone or in combination, are effective in treating the major symptoms of arthritis or any other joint-related ailments.

29. Defendants knew or should have known that glucosamine and chondroitin, taken alone or in combination with the other ingredients present in Elations, have no actual medicinal value and do not provide any of the warranted benefits as represented by Defendants' Elations products' packaging, labeling, and other advertising. In fact, there is no scientific study demonstrating that glucosamine or chondroitin can provide the claimed joint-health benefits, let alone "renew" cartilage.

30. Independent studies confirm that the representations made on the Elations product label, relied upon by Plaintiff in making his purchases, are false and misleading. Despite knowledge of these studies, Defendants continued to make the described representations, misleading Plaintiff and members of the Class into believing the Elations products had actual efficacy and would provide the benefits described in their advertising.

31. For example, a 1999 study involving 100 subjects by Houpt, et al., entitled *Effect of glucosamine hydrochloride in the treatment of pain of osteoarthritis of the knee*, 26(11) J. Rheumatol. 2423-30 (1999), found that glucosamine hydrochloride performed no better than placebo at reducing pain at the conclusion of the eight week trial.

32. In February 2004, a Supplement to the American Journal of Orthopedics published an article entitled *Restoring Articular Cartilage in the Knee.* The authors concluded that adult cartilage cannot be regenerated because it is not vascularized, meaning that blood does not flow to damaged cartilage, which prevents any mechanism

for regeneration.

33. Likewise, a 2004 study by McAlindon, et al., entitled *Effectiveness of Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based Randomized Double-Blind Controlled Trial,* 117(9) Am. J. Med. 649-9 (Nov. 2004), concluded that "glucosamine was no more effective than placebo in treating symptoms of knee osteoarthritis"—in short, that glucosamine is ineffective. *Id*. at 646 ("we found no difference between the glucosamine and placebo groups in any of the outcome measures, at any of the assessment time points").

34. A 2004 study by Cibere, et al., entitled *Randomized, Double-Blind, Placebo-Controlled Glucosamine Discontinuation Trial In Knee Osteoarthritis*, 51(5) Arthritis Care & Research 738-45 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at least moderate improvement after starting glucosamine. These patients were divided into two groups: one that continued using glucosamine and one that was given a placebo. For six months, the primary outcome observed was the proportion of disease flares in the glucosamine and placebo groups. A secondary outcome was the time to disease flare. The study results reflected that there were no differences in either the primary or secondary outcomes for glucosamine and placebo. The authors concluded that the study provided no evidence of symptomatic benefit from continued use of glucosamine—in other words, any prior perceived benefits were due to the placebo effect and not glucosamine. *Id*. at 743 ("In this study, we found that knee OA disease flare occurred as frequently, as quickly, and as severely in patients who were randomized to continue receiving glucosamine compared with those who received placebo. As a result, the efficacy of glucosamine as a symptom-modifying drug in knee OA is not supported by our study.").

35. A large (1,583 subjects), 24-week, multi-center RCT study sponsored by the National Institute of Health, published in the New England Journal of Medicine (the "2006 GAIT Study"), concluded that "[t]he analysis of the primary outcome measure did not show that either [glucosamine or chondroitin], alone or in combination, was

efficacious…." Clegg, D., et al., *Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee Osteoarthritis*, 354 New England J. of Med. 795, 806 (2006).

36. Subsequent GAIT studies in 2008 and 2010 reported that glucosamine and chondroitin did not rebuild cartilage and were otherwise ineffective—even in patients with moderate to severe knee pain for which the 2006 reported results were inconclusive. *See* Sawitzke, A.D., et al., *The Effect of Glucosamine and/or Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report*, 58(10) J. Arthritis Rheum. 3183-91 (Oct. 2008); Sawitzke, A.D., *Clinical Efficacy And Safety Of Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken To Treat Osteoarthritis Of The Knee: 2 Year Results* From GAIT, 69(8) Ann Rhem. Dis. 1459-64 (Aug. 2010).

37. The GAIT studies are consistent with the reported results of prior and subsequent studies. For example, the National Collaborating Centre for Chronic Conditions ("NCCCC") reported "the evidence to support the efficacy of glucosamine hydrochloride as a symptom modifier is poor" and the "evidence for efficacy of chondroitin was less convincing." NCCCC, Osteoarthritis National Clinical Guideline for Care and Management of Adults, Royal College of Physicians, London 2008. Consistent with its lack-of-efficacy findings, the NCCCC Guideline did not recommend the use of glucosamine or chondroitin for treating osteoarthritis. *Id*. at 33.

38. In a 2007 report, Vlad, et al. reviewed all studies involving glucosamine hydrochloride and concluded that "[g]lucosamine hydrochloride is not effective." Glucosamine for Pain in Osteoarthritis, 56:7 Arthritis Rheum. 2267-77 (2007); *see also id*. at 2275 ("we believe that there is sufficient information to conclude that glucosamine hydrochloride lacks efficacy for pain in OA").

39. In October 2008, the American College of Rheumatology's Journal, Arthritis & Rheumatism, published a report on a double-blind study conducted at multiple centers in the United States examining joint space width loss with radiograph films in patients who were treated with glucosamine hydrochloride. The authors concluded that after two

years of treatment with this supplement, the treatment did not demonstrate a clinically important difference in joint space width loss. Sawitzke et al., *Glucosamine for Pain in Osteoarthritis: Why do Trial Results Differ?*, Arthritis Rheum., 58:3183-3191 (2008).

40. In December 2008, the American Academy of Orthopaedic Surgeons published clinical practice guidelines for the "Treatment of Osteoarthritis of the Knee (Non-Arthroplasty)," and recommended that "glucosamine and sulfate or hydrochloride should not be prescribed for patients with symptomatic OA of the knee." Richmond et al., *Treatment of osteoarthritis of the knee* (nonarthroplasty), J. Am. Acad. Orthop. Surg. Vol. 17 No. 9 591-600 (2009). This recommendation was based on a 2007 report from the Agency for Healthcare Research and Quality (AHRQ), which states that "the best available evidence found that glucosamine hydrochloride, chondroitin sulfate, or their combination did not have any clinical benefit in patients with primary OA of the knee." Samson, et al., *Treatment of Primary and Secondary Osteoarthritis of the Knee, Agency for Healthcare Research and Quality*, 2007 Sep 1. Report No. 157.

41. Even studies not concerning the type of glucosamine in the Elations Products demonstrate that glucosamine does not provide the joint-health benefits that Defendants represent. For example, a study by Rozendaal, et al., entitled *Effect of Glucosamine Sulfate on Hip Osteoarthritis*, 148 Ann. of Intern. Med. 268-77 (2008), assessing the effectiveness of glucosamine on the symptoms and structural progression of hip osteoarthritis during two years of treatment, concluded that glucosamine was no better than a placebo in reducing symptoms and progression of hip osteoarthritis.

42. In March 2009, Harvard Medical School published a study conclusively proving that the ingestion of glucosamine could not affect the growth of cartilage. The study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt" upon the value of glucosamine. The authors went on to conduct an independent study of subjects ingesting 1500 mg of glucosamine, and proved that ***only trace amounts of glucosamine*** entered the human serum, far below any amount that could possibly affect cartilage (emphasis added). Moreover, even those trace amounts were present only for a

few hours after ingestion. The authors noted that a 1986 study had found no glucosamine in human plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or sulphate. Silbert, Dietary Glucosamine Under Question, Glycobiology 19(6):564-567 (2009).

43. In April 2009, the Journal of Orthopedic Surgery published an article entitled *Review Article: Glucosamine*. The article's authors concluded that, based on their literature review, there was "little or no evidence" to suggest that glucosamine was superior to a placebo even in slowing down cartilage deterioration, much less regenerating it. Kirkham, et al., *Review Article: Glucosamine, Journal of Orthopedic Surgery*, 17(1): 72-6 (2009).

44. In 2009, a panel of scientists from the European Food Safety Authority ("EFSA") (a panel established by the European Union to provide independent scientific advice to improve food safety and consumer protection), reviewed nineteen studies submitted by an applicant, and concluded that "a cause and effect relationship has not been established between the consumption of glucosamine hydrochloride and a reduced rate of cartilage degeneration in individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine hydrochloride and reduced rate of cartilage degeneration and reduced risk of osteoarthritis*, EFSA Journal (2009), 7(10):1358.

45. In a separate opinion from 2009, an EFSA panel examined the evidence for glucosamine (either hydrochloride or sulfate) alone or in combination with chondroitin sulfate and maintenance of joints. The claimed effect was "joint health," and the proposed claims included "helps to maintain healthy joint," "supports mobility," and "helps to keep joints supple and flexible." Based on its review of eleven human intervention studies, three meta-analyses, twenty-one reviews and background papers, two animal studies, one *in vitro* study, one short report, and one case report, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine (either as glucosamine hydrochloride or as glucosamine

sulphate), either alone or in combination with chondroitin sulphate, and the maintenance of normal joints." EFSA Panel on Dietetic Products, Nutrition and Allergies, Scientific Opinion on the substantiation of health claims related to glucosamine alone or in combination with chondroitin sulphate and maintenance of joints and reduction of inflammation, EFSA Journal (2009), 7(9):1264.

46. A 2010 meta-analysis by Wandel, et al., entitled *Effects of Glucosamine, Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta- Analysis*, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and chondroitin, alone or in combination, and whether they relieved the symptoms or progression of arthritis of the knee or hip. The study authors reported that glucosamine and chondroitin, alone or in combination, did not reduce joint pain or have an impact on the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and their combination do not result in a relevant reduction of joint pain nor affect joint space narrowing compared with placebo." *Id*. at 8. The authors further concluded "[w]e believe it unlikely that future trials will show a clinically relevant benefit of any of the evaluated preparations." *Id*.

47. On July 7, 2010, Wilkens, et al., reported that there was no difference between a placebo and glucosamine for the treatment of low back pain and lumbar osteoarthritis and that neither glucosamine nor a placebo was effective in reducing pain related disability. The researchers also concluded that "[b]ased on our results, it seems unwise to recommend glucosamine to all patients" with low back pain and lumbar osteoarthritis. Wilkens, et al., *Effect of Glucosamine on Pain-Related Disability in Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis*, 304(1) JAMA 45-52 (July 7, 2010).

48. In 2011, Miller and Clegg, after surveying the clinical study history of glucosamine and chondroitin, concluded that "[t]he cost-effectiveness of these dietary supplements alone or in combination in the treatment of OA has not been demonstrated in North America." Miller, K. and Clegg, D., *Glucosamine and Chondroitin Sulfate*,

Rheum. Dis. Clin. N. Am. 37 103-118 (2011).

49. In June 2011, the Journal of Pharmacy & Pharmaceutical Sciences published an article entitled *The Glucosamine Controversy; A Pharmacokinetic Issue*. The authors concluded that regardless of the formulation used, no or marginal beneficial effects were observed as a result of low glucosamine bioavailability. Aghazadeh-Habashi and Jamali, *The Glucosamine Controversy; A Pharmacokinetic Issue*, Journal of Pharmacy & Pharmaceutical Sciences, 14(2): 264-273 (2011).

50. In 2012, a report by Rovati, et al., entitled *Crystalline glucosamine sulfate in the management of knee osteoarthritis: efficacy, safety, and pharmacokinetic properties*, Ther Adv Muskoloskel Dis 4(3) 167-180, noted that glucosamine hydrochloride "ha[s] never been shown to be effective."

51. In 2012, EFSA examined the evidence to determine if glucosamine sulphate or glucosamine hydrochloride, could substantiate a claimed effect that either "contributes to the maintenance of normal joint cartilage." Based on its review of sixty-one references provided by Merck Consumer Healthcare, the EFSA panel concluded that "a cause and effect relationship has not been established between the consumption of glucosamine and maintenance of normal joint cartilage in individuals without osteoarthritis." EFSA Panel on Dietetic Products, Nutrition and Allergies, *Scientific Opinion on the substantiation of a health claim related to glucosamine and maintenance of normal joint cartilage*, EFSA Journal 2012, 10(5): 2691.

52. To date, there are only two studies, both of which are more than a decade old, purporting to claim that the ingestion of glucosamine can affect the growth or deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer: Pavelka, et al., *Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis*, Arch. Intern. Med., 162: 2113-2123 (2002); and Reginster, et al., *Long-term Effects of Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled Clinical Trial*, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of Orthopedic Surgery article, the methodologies in those studies had "inherently poor

reproducibility," and even minor changes in posture by the subjects during scans could cause false apparent changes in cartilage. The authors of the Journal of Orthopedic Surgery article explained the manufacturer-sponsored studies' findings by noting that "industry-sponsored trials report positive effects more often than do non-sponsored trials and more find pro-industry results." No reliable scientific medical study has shown that glucosamine and chondroitin, alone or in combination, have a structure-modifying effect that will regenerate cartilage that has broken down or worn away. Furthermore, even if these studies were reliable scientific data, they did not analyze glucosamine ***hydrochloride*** and cannot be extrapolated to Elations.

53. Plaintiff and Class members have been, and will continue to be, deceived or misled by Defendants' deceptive representations touting the effectiveness of the Elations products. Plaintiff purchased and used the Elations products during the Class Period and in doing so, read, considered and based his decisions to buy Elations on the above-cited label representations. Because the Elations products' sole purpose is to provide joint relief for the major symptoms of arthritis, Defendants' representations and omissions were a material factor in influencing Plaintiff's decision to purchase Elations. There is no other reason for Plaintiff to have purchased Elations, and Plaintiff would not have purchased Elations had he known that Elations was ineffective and that Defendants did not possess competent scientific evidence to support the claims they made about Elations.

54. As a result, Plaintiff and the Class members have been damaged in their purchases of the Elations products and have been deceived into purchasing products that they believed, based on Defendants' representations, were proven to be effective in treating the major symptoms of arthritis and other joint-related ailments, when, in fact, they are not.

55. Defendants, by contrast, reaped enormous profits from their false marketing and sale of the Elations products.

CLASS DEFINITION AND ALLEGATIONS

56. Plaintiff brings this action on behalf of himself and all others similarly

situated pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

All persons who purchased the Elations Products in California.

Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, and directors, those who purchased the Elations products for the purpose of resale, and those who assert claims for personal injury.

57. ***Numerosity***. Members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff.

58. ***Existence and Predominance of Common Questions of Law and Fact***. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

i. Whether Defendants had competent scientific evidence to support each of the claims they made about the Elations products;

ii. Whether the claims discussed herein that Defendants made about the Elations products were or are misleading, or reasonably likely to deceive;

iii. Whether Defendants' alleged conduct violates public policy;

iv. Whether the alleged conduct constitutes violations of the laws asserted herein;

v. Whether Defendants engaged in false and misleading advertising;

vi. Whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;

vii. Whether Plaintiff and Class members are entitled to restitution, disgorgement of Defendants' profits, declaratory and/or injunctive relief; and

viii. Whether Plaintiff and Class members are entitled to an award of compensatory damages.

59. ***Typicality***. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendants, and the relief sought is common. Plaintiff and Class members suffered uniform damages caused by their purchases of the Elations products which were manufactured, marketed, and sold by Defendants.

60. ***Adequacy of Representation***. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer-protection and class-action litigation.

61. ***Superiority***. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class-action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

62. In the alternative, the Class also may be certified because Defendants have acted or refused to act on grounds generally applicable to the Class thereby making final declaratory and/or injunctive relief with respect to the members of the Class as a whole appropriate.

COUNT I

Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

63. Plaintiffs seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from engaging in the acts described, and requiring Defendants to provide full restitution to Plaintiffs and Class members.

64. Unless a Class is certified, Defendants will retain monies that were taken from Plaintiffs and Class members as a result of their conduct. Unless a Class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

65. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

66. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* (the "Act"). Plaintiffs are consumers as defined by California Civil Code §1761(d). Defendant's Elations products are goods within the meaning of the Act.

67. Defendants violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiffs and the Class which were intended to result in, and did result in, the sale of the Elations products:

> (5) Representing that [the Products] have . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . . .
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> * * *
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> (7) Representing that [the Products] are of a particular standard, quality or grade . . . if [they are] of another.
>
> * * *
>
> (9) Advertising goods . . . with intent not to sell them as advertised.
>
> * * *

(16) Representing that [the Products have] been supplied in accordance with a previous representation when [they have] not.

68. Defendants violated and continue to violate the Act by representing and failing to disclose material facts on the Elations product labels and packages as described above when they knew, or should have known, that the representations were unsubstantiated, false and misleading and that the omissions were of material facts.

69. Pursuant to §1782(d) of the Act, Plaintiffs and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

70. Pursuant to §1782 of the Act, Plaintiffs notified Defendants in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendants' intent to so act. Copies of the letters are attached hereto as Exhibit B.

71. If Defendants fail to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add claims for actual, punitive and statutory damages, as appropriate.

72. Defendants' conduct is malicious, fraudulent and wanton, and provides misleading information.

73. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the affidavit showing that this action has been commenced in the proper forum.

COUNT II

Violation of Business & Professions Code §17200, *et seq.*

74. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

75. As alleged herein, Plaintiffs have suffered injury in fact and lost money or

property as a result of Defendants' conduct because they purchased the Products.

76. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, making the representations (which also constitute advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

77. Plaintiffs and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

78. Defendants' acts, omissions, misrepresentations, practices and non-disclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of Business and Professions Code §17200 *et seq.*, in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

79. As stated in this complaint, Plaintiffs allege violations of consumer protection, unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiffs assert violations of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of Business & Professions Code §17200 *et seq*.

80. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

81. Defendants' claims, nondisclosures and misleading statements, as more fully set forth above, are also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code §17200 *et seq*.

82. Defendants' labeling and packaging as described herein, also constitutes unfair, deceptive, untrue and misleading advertising.

83. Defendants' conduct caused and continues to cause substantial injury to Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair conduct.

84. Plaintiffs, on behalf of themselves, and all other similarly situated California residents, seeks restitution of all money obtained from Plaintiffs and the members of the Class collected as a result of unfair competition, an injunction prohibiting Defendants from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code §17203.

COUNT III

Breach of Express Warranty

85. Plaintiffs re-allege and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

86. Plaintiffs, and each member of the Class, formed a contract with Defendants at the time Plaintiffs and the other members of the Class purchased the Elations products. The terms of that contract include the promises and affirmations of fact made by Defendants on the Elations product labels and packages, as described above. These representations constitute express warranties, became part of the basis of the bargain, and are part of a standardized contract between Plaintiffs and the members of the Class on the one hand, and Defendants on the other.

87. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiffs and the Class.

88. Defendants breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing the Elations products that could provide the benefits described above which was the only reason Plaintiffs and Class members purchased the Elations products.

89. As a result of Defendants' breach of warranty, Plaintiffs and Class members have been damaged in the amount of the purchase price of the Elations products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment:

A. Certifying the class as requested herein;

B. Awarding Plaintiffs and the proposed Class members damages;

C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the proposed Class members;

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

E. Ordering Defendants to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs; and

G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: October 1, 2013

CARPENTER LAW GROUP

By: */s/ Todd D. Carpenter*

Todd D. Carpenter (CA 234464)
402 West Broadway, 29th Floor
San Diego, California 92101
Telephone: 619.347.3517
Facsimile: 619.756.6991
todd@carpenterlawyers.com

PATTERSON LAW GROUP
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402 West Broadway, 29th Floor
San Diego, California 92101
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Facsimile: 619.756.6991
jim@pattersonlawgroup.com

Attorneys for Plaintiffs

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

'13CV2357 LAB WVG

The 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, except as provided~~ by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

WILLIAM MURRAY, JR. on behalf of himself and all others similarly situated,

DEFENDANTS

THE ELATIONS COMPANY, LLC, a Delaware Limited Liability Company, and BEVERAGES HOLDINGS, LLC, a Delaware Limited Liability Company,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

CARPENTER LAW GROUP, 402 W. Broadway, 29th Floor
San Diego, Ca 92101

PATTERSON LAW GROUP, 402 W. Broadway, 29th Floor
San Diego, Ca 92101

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities – Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus – Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. 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 Multidistrict Litigation | ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity):**
28USC § 1332 (d)(2), 28USC § 1330 - Breach of Contract

Brief description of cause:
Violation of the the Unfair Competition Law, Violation of the Consumers Legal Remedies Act , Breach of Express Warranty

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

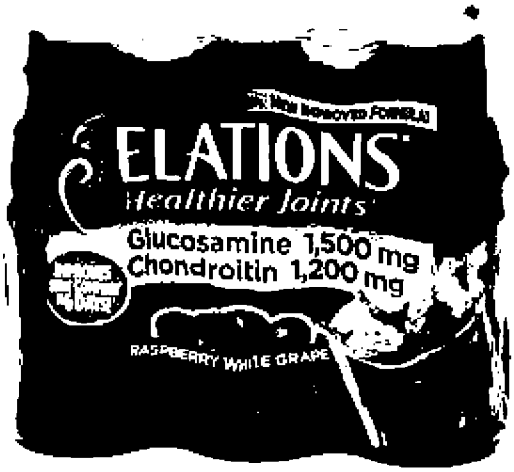
DATE
October 1, 2013

SIGNATURE OF ATTORNEY OF RECORD
/s/ Todd D. Carpenter

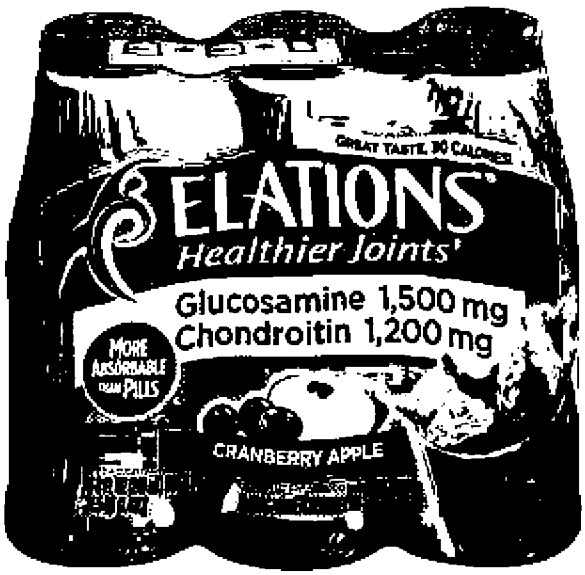
FOR OFFICE USE ONLY

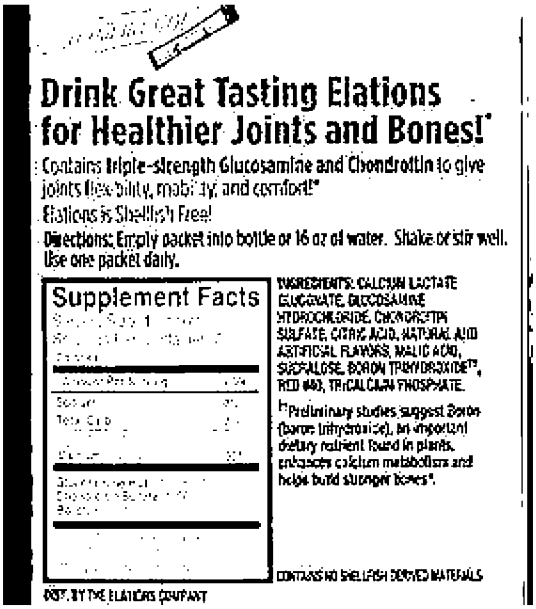
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Exhibit A


ELATIONS
Healthier Joints
Glucosamine 1,500 mg
Chondroitin 1,200 mg
RASPBERRY WHITE GRAPE


GREAT TASTE, 30 CALORIES!
ELATIONS®
Healthier Joints*
Glucosamine 1,500 mg,
Chondroitin 1,200 mg
MORE ABSORBABLE THAN PILLS
RASPBERRY WHITE GRAPE


GREAT TASTE, 30 CALORIES
ELATIONS
Healthier Joints
Glucosamine 1,500 mg
Chondroitin 1,200 mg
MORE ABSORBABLE THAN PILLS
CRANBERRY APPLE



Drink Great Tasting Elations for Healthier Joints and Bones!*

Contains triple-strength Glucosamine and Chondroitin to give joints flexibility, mobility, and comfort!*

Elations is Shellfish Free!

Directions: Empty packet into bottle or 16 oz of water. Shake or stir well. Use one packet daily.

Supplement Facts

INGREDIENTS: CALCIUM LACTATE GLUCONATE, GLUCOSAMINE HYDROCHLORIDE, CHONDROITIN SULFATE, CITRIC ACID, NATURAL AND ARTIFICIAL FLAVORS, MALIC ACID, SUCRALOSE, BORON TRIHYDROXIDE†, RED #40, TRICALCIUM PHOSPHATE.

†Preliminary studies suggest Boron (boron trihydroxide), an important dietary nutrient found in plants, enhances calcium metabolism and helps build stronger bones*.

CONTAINS NO SHELLFISH DERIVED MATERIALS

DIST. BY THE ELATIONS COMPANY

Exhibit B

PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

October 1, 2013

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President
The Elations Company LLC
c/o The Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Re: Murray et al. v. The Elations Company, LLC., et al.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents William Murray Jr. and all other similarly situated California Residents in an action against The Elations Company, L.L.C. ("Elations Company"), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Elations Glucosamine ("Elations") line of joint dietary supplements:

- "Improves Joint Comfort When Used Everyday!;"
- "Helps Improve Your Joint Comfort;"
- "Helps Improve Your Joint Flexibility;"
- "For Healthy Joint Support & Flexibility"; and
- Will help improve your joint comfort in 6 days.

These bold claims are in addition to other misrepresentations on your website, repeated in marketing materials and advertising.

Mr. Murray and others similarly situated purchased the Elations products unaware that representations found on the Elations products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Elations products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Elations Company's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Elations Company with the intent to result in the sale of the Elations products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia,* the following subdivisions:

> (5) Representing that [Elations has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.
>
> * * *
>
> (7) Representing that [Elations is] of a particular standard, quality or grade, . . . if [it is] of another.
>
> * * *
>
> (9) Advertising goods . . . with the intent not to sell them as advertised.
>
> * * *
>
> (16) Representing that [Elations has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Elations Company's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Elations Company immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Elations Company should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of

unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Elations Company address this problem immediately.

Elations Company must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Elations Company will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Elations purchasers who so request; and

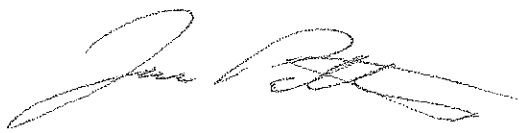
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

CARPENTER LAW GROUP



James R. Patterson

Enclosure

PATTERSON LAW GROUP

JAMES R. PATTERSON
619.756.6993 direct
jim@pattersonlawgroup.com

October 1, 2013

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Chief Executive Officer / President
Beverages Holdings, LLC
c/o The Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Re: Murray et al. v. The Elations Company, LLC., et al.

Dear Sir/Madame:

Our law firm and Carpenter Law Group represents William Murray Jr. and all other similarly situated California Residents in an action against Beverages Holdings, L.L.C. ("Beverages"), arising out of, *inter alia*, misrepresentations, either express or implied to consumers that its Elations Glucosamine ("Elations") line of joint dietary supplements:

- "Improves Joint Comfort When Used Everyday!;"
- "Helps Improve Your Joint Comfort;"
- "Helps Improve Your Joint Flexibility;"
- "For Healthy Joint Support & Flexibility"; and
- Will help improve your joint comfort in 6 days.

These bold claims are in addition to other misrepresentations on your website, repeated in marketing materials and advertising.

Mr. Murray and others similarly situated purchased the Elations products unaware that representations found on the Elations products' labels and packages are false. Several clinical studies have found no causative link between the ingredients in the Elations products and joint renewal, mobility and comfort. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Beverages' representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Beverages with the intent to result in the sale of the Elations products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia,* the following subdivisions:

> (5) Representing that [Elations has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.
>
> * * *
>
> (7) Representing that [Elations is] of a particular standard, quality or grade, . . . if [it is] of another.
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> (9) Advertising goods . . . with the intent not to sell them as advertised.
>
> * * *
>
> (16) Representing that [Elations has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Beverages' representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our clients and all other similarly situated California Residents that Beverages immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Beverages should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiffs will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of

unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Beverages address this problem immediately.

Beverages must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Beverages will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Elations purchasers who so request; and

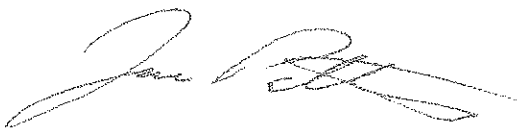
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Sincerely,

PATTERSON LAW GROUP

CARPENTER LAW GROUP



James R. Patterson

Enclosure

Exhibit C

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San Diego, California 92101
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todd@carpenterlawyers.com

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San Diego, California 92101
Telephone: 619.756.6990
Facsimile: 619.756.6991
jim@pattersonlawgroup.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM MURRAY, JR. on behalf of himself and all others similarly situated,

Plaintiff,

vs.

THE ELATIONS COMPANY, LLC, a Delaware Limited Liability Company, and BEVERAGES HOLDINGS, LLC, a Delaware Limited Liability Company,

Defendants.

Case No. '13CV2357 LAB WVG

CLASS ACTION

DECLARATION OF TODD D. CARPENTER RE: JURISDICTION

I, Todd D. Carpenter, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am the principle and owner of the Carpenter Law Group, and the counsel of record for plaintiffs in the above-entitled action

2. Defendant The Elations Company, LLC has done and is doing business in the Southern District of California. Such business includes the marketing, distributing and sale of its Elations brand joint supplement drinks.

3. Defendant Beverages Holdings, LLC, has done and is doing business in the Southern District of California. Such business includes the marketing, distributing and sale of its Elations brand joint supplement drinks.

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

Executed this 1st Day of October, 2013 in San Diego, California.

/s/ Todd D. Carpenter
Todd D. Carpenter