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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Thamar S. Cortina, Plaintiff, v. Novartis Consumer Health, Inc., Defendant.	Case No. '14CV0069 MMA KSC

NOTICE OF REMOVAL

TO: United States District Court for the Southern District of California:

Pursuant to 28 U.S.C. § 1441, et seq., defendant Novartis Consumer Health, Inc. ("NCH") hereby removes the state court action, Cortina v. Novartis Consumer Health, Inc., Case No. 37-2013-00078571-CU-BT-CTL, from the California Superior Court for the County of San Diego, California, to the United States District Court for the Southern District of California, and alleges as follows:

1. This is an alleged consumer class action purporting to assert claims for violations of California Business & Professions Code §§ 17200 et seq. and §§ 17500 et seq., as well as California Civil Code §§ 1750 et seq., arising out of the sale of NCH's over-the-counter pharmaceutical product Excedrin® Migraine. Plaintiff claims economic injury only (i.e., there is no claim for personal injury or damage to personal property) on behalf of an alleged class consisting of "[a]ll persons in California who purchased Excedrin Migraine in the State of California." (See Complaint ¶ 16). No time frame is specified. Among other relief, the action seeks "compensatory and punitive damages in amounts to be determined," restitution, "disgorgement and/or all other forms of equitable relief," "injunctive relief" including "enjoin[ing Novartis] from charging a price premium for Excedrin Migraine," and attorney's fees. (*Id.* ¶18, Prayer for Relief ¶¶ d, f, g, h).

2. This action is removable to federal court under the diversity jurisdiction provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(d), 1453, to wit: (1) the alleged class action – filed under a state "rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action" – consists of at least 100 proposed class members (28 U.S.C. §§ 1332(d)(1)(B), 1332(d)(5)(B)); (2) the citizenship of at least one proposed class member is different from that of any defendant (28 U.S.C. § 1332(d)(2)(A)); and (3) the matter in controversy, after aggregating the claims of the proposed class members, exceeds $5 million, exclusive of interest and costs (28 U.S.C. § 1332(d)(6)). As shown below, each of these requirements is satisfied here. Indeed, this is precisely the type of class action brought under state law that Congress, by enacting CAFA, intended to be removable to federal court at defendant's option.

I.

JURISDICTIONAL BASIS FOR REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT

3. CAFA grants the federal courts diversity jurisdiction over putative class actions where: (1) the alleged class consists of at least 100 putative class members; (2) the citizenship of at least one putative class member is different from that of any defendant; and (3) the matter in controversy, after aggregating the claims of the putative class members, exceeds $5 million, exclusive of interest and costs. 28 U.S.C. §§ (d)(1)(B), (d)(5)(B), (d)(2)(A), (d)(6). As shown below, each of these prerequisites is met in this case.

A. Number of Class Members

4. Plaintiff alleges that "Defendant sells hundreds of thousands of bottles of Excedrin Migraine in California." (Complaint ¶ 17). Based on the volume of sales alleged in the complaint, even if certain people in California had bought thousands of bottles of Excedrin® Migraine, there would be thousands of class members. Accordingly, the requirement that there be 100 or more members in the putative class is satisfied. 28 U.S.C. § 1332(d)(5)(B).

B. Diversity of Citizenship

5. CAFA eliminates the requirement of complete diversity. Rather, in actions (as here) covered by the Act, the requisite diversity of jurisdiction is satisfied as long as there is "minimal diversity" – i.e., the citizenship of any proposed class member differs from that of at least one defendant. 28 U.S.C. § 1332(d)(2)(A).

6. Plaintiff alleges that she is a citizen of California. (Complaint ¶ 4). She "seeks to represent a class defined as all persons in California who purchased Excedrin® Migraine, excluding those that made such purchase for purposes of resale." (*Id.* ¶ 16). While some members of the putative class may have been

visiting California, on information and belief, the vast majority of the putative class are citizens of California.

7. The Class Action Fairness Act's requirement of "minimal diversity" is satisfied here because at least one – here, the only – defendant is a citizen of a state other than California. Defendant NCH is, and at the time of filing was, a corporation existing under the laws of the State of Delaware, having its principal place of business in New Jersey, and, thus, for jurisdictional purposes, is a citizen of Delaware and New Jersey. (*See id.* ¶ 5).

8. Under 28 U.S.C. § 1332(d)(2)(A), because there is diversity of citizenship between at least one putative class member and at least one – here, the only – defendant, the requisite diversity of citizenship is satisfied.

C. Amount in Controversy[1]

9. Plaintiff seeks restitution, disgorgement and damages on her own behalf and on behalf of the putative class for injuries allegedly caused by NCH because "they would not have purchased Excedrin® Migraine" under allegedly different circumstances. (Complaint ¶¶ 29, 33, 46, Prayer for Relief ¶¶ d, f, g, h). NCH has been selling Excedrin® Migraine in California since 2005, and the total amount of its sales at retail in California since that time is well in excess of $5 million.[2]

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[1] NCH does not concede that the named plaintiff or any putative class member would be entitled to any of the relief sought in the complaint. However, the plaintiff's "claim, whether well or ill founded in fact, fixes the right of the defendant to remove." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938).

[2] Because the complaint is not limited in time, all retail sales in California since NCH commenced selling the product fixes the amount in controversy. *See Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1108 (9th Cir. 2010) ("the fact that the complaint discloses the existence of a valid defense to a claim" does not eliminate federal jurisdiction); *see also Riggins v. Riggins*, 415 F.2d 1259, 1262 (9th Cir. 1969) (the "possibility of [a statute of

(continued...)

10. NCH sells Excedrin® Migraine principally to distributors or wholesalers, who distribute the products to retailers, so NCH routinely relies upon retail sales data for consumer packaged goods sold at thousands of retail locations as reported by the Nielsen Company ("Nielsen"). (*See* Exhibit A, Declaration of Judith Berei ("Berei Decl.")). Based upon Nielsen reports, NCH's Director of Brand Marketing estimates that the retail sales in the four largest metropolitan areas in California of Excedrin® Migraine for the years 2009 through 2013 were approximately $24.7 million, with additional millions of dollars in sales in earlier years. (Berei Decl. ¶¶ 4, 5.) These estimates do not include sales in California outside of the four largest metropolitan areas. According to the 2010 Census, the four metropolitan areas constitute only 60% of California's population, meaning that approximately 40% of California sales are not included in those figures.[3] Based upon this information, the sales of Excedrin® Migraine in California by NCH totaled more than $65 million for the years 2009 through 2013.

11. Where the complaint seeks compensatory damages or restitution based upon false advertising under California law, the full amount of sales may be considered in the amount in controversy. *Watkins v. Vital Pharm., Inc.*, 720 F.3d 1179 (9th Cir. 2013); *see also Lewis v. Verizon Communications, Inc.*, 627 F.3d 395 (9th Cir. 2010) (entire sales constitute amount in controversy even though plaintiff sough refund only for "unauthorized" sales because pleadings did not disclose what portion was "unauthorized"). However, even if the complaint were

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limitations] defense being valid does not affect the jurisdiction of the district court to hear and determine the controversy").

[3] Census data is a reliable basis for estimating the amount in controversy. *See In re Intel Corp. Microprocessor Antitrust Litig.*, 2006 U.S. Dist. LEXIS 36716, *5-6 (D. Del. May 22, 2006) (finding $ 5 million amount in controversy requirement met under Class Action Fairness Act based on application of U.S. Census data to market share and average cost of computers).

construed to limit compensatory damages and restitution to the "price premium," rather than the entire sales price, the amount in controversy would exceed $5 million. The complaint alleges a "price premium" of as much as $3 a box and shows an example where the price charged for Excedrin® Migraine is $16.29 a box. (Complaint ¶ 12). That is a price premium of 18%, putting the amount in controversy at more than $11 million going back to 2005.

12. Plaintiff also seeks to enjoin NCH "from charging a price premium for Excedrin Migraine" (Complaint ¶ 18), which is included in the calculation of the amount in controversy. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation"). Using the 18% price premium alleged in the Complaint and the $9.9 million in annual sales of Excedrin® Migraine in California in 2013, (*see* Berei Decl. ¶¶ 4, 5 and adjustment for areas outside of four metropolitan areas), such injunctive relief would be worth more than $1.7 million per year. If the injunction were to last only 3 years, the value of injunctive relief alone, based upon the allegations of the Complaint and the sales figures, would exceed $5 million.[4]

13. In addition, plaintiff seeks punitive damages in an unspecified amount. It is well established that punitive damages are part of the amount in controversy in a civil action. *Bell v. Preferred Life Assur. Society,* 320 U.S. 238, 240, 64 S.Ct. 5, 88 L.Ed. 15 (1943); *Gibson v. Chrysler Corp.,* 261 F.3d 927 (9th Cir. 2001). California's Consumer Legal Remedies Act, Count III of the Complaint, provides

[4] When a plaintiff seeks injunctive relief, "the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective." *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1077 (11th Cir. 2000). Because the $5 million amount in controversy requirement under CAFA is calculated in the "aggregate" (28 U.S.C. § 1332(d)(6)), the value of injunctive relief to the plaintiff is the value of the aggregate value of the relief to all class members.

for punitive damages. Civil Code § 1780(a)(4). Even if punitive damages were set to equal compensatory damages--*i.e.*, if a multiplier of one were applied--together with other relief sought, the amount in controversy would clearly exceed $5 million.

14. Finally, plaintiff seeks attorneys' fees. In this Circuit, 25% recovery is the "benchmark" level for reasonable attorney's fees in class action cases. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Such fees are properly included in calculations of the amount in controversy. *See Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933); *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 1000 (9th Cir. 2007), *overruled on other grounds, Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013).

15. Adding together all of these forms of relief, it is apparent that the amount in controversy in this action, in the aggregate, exceeds $5 million, exclusive of interest and costs.

II.

PROCEDURAL REQUIREMENTS FOR REMOVAL

16. Plaintiff filed the complaint in this action in the Superior Court for San Diego County, California on December 6, 2013. On December 11, 2013, plaintiff served NCH with a copy of the summons and complaint. Because the action is being removed on January 10, 2014, within 30 days of service, the removal is timely under 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999) (30 day period runs from date of service of summons). Copies of all process, pleadings, and orders served on NCH in the action are attached to this Notice of Removal as Exhibit B.

17. The United States District Court for the Southern District of California embraces the county in which the state court action was filed, and, thus, this Court is a proper venue for this action pursuant to 28 U.S.C. §§ 89(c), 1441(a).

18. NCH is filing written notice of this removal with the Clerk of the State Court in which the action was filed, pursuant to 28 U.S.C. § 1446(d). Copies of the Notice of Filing, together with this Notice of Removal, are being served upon plaintiff's counsel pursuant to 28 U.S.C. § 1446(d).

19. If any question arises as to the propriety of the removal of this action, NCH requests the opportunity to brief any disputed issues and to present oral argument in support of its position that this case is properly removable.

20. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of NCH's right to assert any defense or affirmative matter.

WHEREFORE, Defendant NCH respectfully removes this action from the Superior Court of San Diego County, California, bearing Civil Action No.2013-00078571-CU-BT-CTL, to this Court, pursuant to 28 U.S.C. § 1441, et seq.

Dated: January 10, 2104

Respectfully submitted,

KAYE SCHOLER LLP

By: _____

Aton Arbisser
Attorneys for Defendant
Novartis Consumer Health, Inc.

KAYE | SCHOLER LLP

Exhibit A

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Thamar S. Cortina,

Plaintiff,

v.

Novartis Consumer Health, Inc.,

Defendant.

Case No. '14CV0069 MMAKSC

DECLARATION OF JUDITH BEREI IN SUPPORT OF DEFENDANT'S NOTICE OF REMOVAL

I, Judith Berei, pursuant to 28 U.S.C. § 1746, declare:

1. I am the Director of Brand Marketing for defendant Novartis Consumer Health, Inc.'s ("NCH") pain category portfolio of brands. In my position as Director of Brand Marketing, I am responsible for all aspects of the marketing of all products sold under the Excedrin® trademark, including Excedrin® Migraine.

2. NCH sells Excedrin® Migraine principally to national retail chains and distributors or wholesalers, who distribute the product to retailers. Therefore, NCH relies on data collected by third parties in estimating its retail sales of Excedrin® Migraine.

3. As part of my duties and responsibilities as Director of Brand Marketing, I routinely rely upon sales data that NCH receives from the Nielsen Company ("Nielsen"). Nielsen provides sales data for consumer packaged goods sold at thousands of retail locations in the U.S., and reports to NCH both national and regional sales numbers. It does not provide statewide sales figures.

4. To estimate California retail sales of Excedrin® Migraine I used Nielsen data for 2009 through 2013, the years that we had on hand. I used the Nielsen numbers reported for four metropolitan areas in California. For Los Angeles and San Francisco, I used Nielsen's "extended all outlet coverage" ("xAOC") metric. The sales data for Sacramento and San Diego are derived from Nielsen's "food only" metric. In making my sales estimates, because the "food only" metric captures approximately 25% of the sales volume measured by xAOC, I scaled up the Sacramento and San Diego "food only" numbers by a factor of four. This method resulted in the following estimates of annual retail sales of Excedrin® Migraine in those four California metropolitan areas:

2009	$ 5.3 million
2010	$ 5.8 million
2011	$ 6.3 million
2012	$ 1.5 million[1]
2013	$ 5.8 million

[1] NCH experienced a production problem that limited its sales of Excedrin® Migraine in 2012.

Total 2009-2013 $ 24.7 million.

5. NCH does not have readily available data regarding total retail sales of Excedrin® Migraine prior to 2009. However, sales from 2005--when NCH acquired the Excedrin® line of products--to 2009 were in the range of sales in the 2009-2011 time period.

Executed this 9th day of January, 2014 in Parsippany, New Jersey.

Judith Berei

Judith Berei

KAYE|SCHOLER LLP

Exhibit B

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

THAMAR S. CORTINA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

NOVARTIS CONSUMER HEALTH, INC.

Defendant.

Case No. 37-2013-00078571-CU-BT-CTL

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Thamar S. Cortina ("Plaintiff") brings this action on behalf of herself and all others similarly situated against Defendant Novartis Consumer Health, Inc. ("Novartis"). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to her, which are based on personal knowledge.

INTRODUCTION

1. This is a class action lawsuit on behalf of purchasers of Excedrin Migraine, which Novartis falsely markets as specifically formulated to treat migraine headaches. In fact, Excedrin Migraine is no more effective than Excedrin Extra Strength for treating migraines. While Novartis charges its customers significantly more for Excedrin Migraine than for Excedrin Extra Strength, they are the ***exact same medications***. Novartis preys on migraine sufferers who, desperate for relief from migraine symptoms that are more severe than the symptoms of a headache, are duped into paying more for an identical medication.

2. Plaintiff Cortina purchased Excedrin Migraine because she was deceived into believing that Excedrin Migraine was more effective than Excedrin Extra Strength for treating migraine headaches.

3. Plaintiff Cortina asserts claims on behalf of herself and a class of purchasers of Excedrin Migraine in California for violation of the California Consumer Legal Remedies Act ("CLRA"), violation of the California Unfair Competition Law ("UCL"), and violation of the California False Advertising Law ("FAL").

PARTIES

4. Plaintiff Thamar S. Cortina is a citizen of California, residing in Bonita. Ms. Cortina purchased Excedrin Migraine based on representations on the label and in other marketing and advertising materials suggesting that the product was specifically formulated and better for treating migraine headaches. She would not have purchased Excedrin Migraine had she known that the product contained the identical active ingredients as Excedrin's less expensive Excedrin Extra Strength headache medicine.

5. Defendant Novartis Consumer Health, Inc. is a Delaware corporation with its principal place of business at 200 Kimball Drive, Parisppany, New Jersey 07054-0622. Novartis is the distributor and seller of Excedrin Migraine and Excedrin Extra Strength and participated in creating the product formulation, branding, packaging and design, logistics and distribution, marketing, and advertising of both products. Novartis' activities caused the sale of both products in California and across the nation. Novartis utilized deceptive representations to lead consumers to believe that Excedrin Migraine provides better migraine relief than Excedrin Extra Strength.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this class action because the amount in controversy exceeds twenty-five thousand dollars.

7. This Court has personal jurisdiction over the parties because Plaintiff resides in California, and because Defendant, at all times relevant hereto, has systematically and continually conducted, and continues to conduct, business in this State.

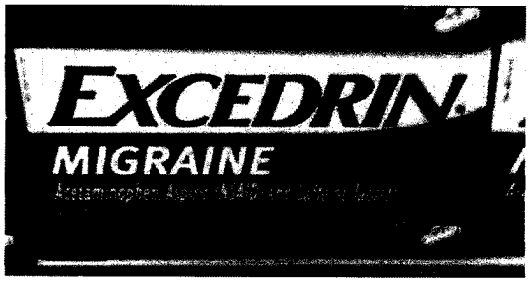
8. Venue is proper in this county because Defendant transacts significant business in San Diego County.

FACTS COMMON TO ALL CAUSES OF ACTION

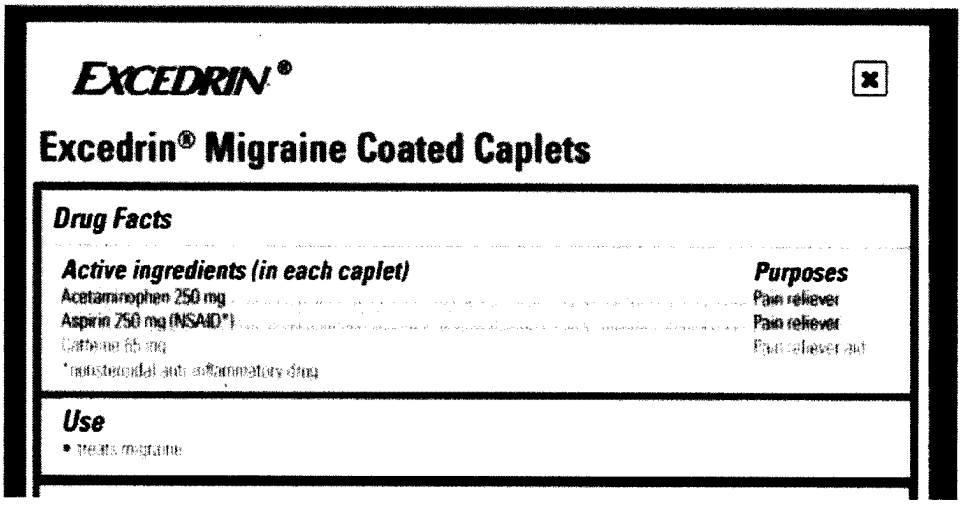
The Misleading Marketing of Excedrin Migraine

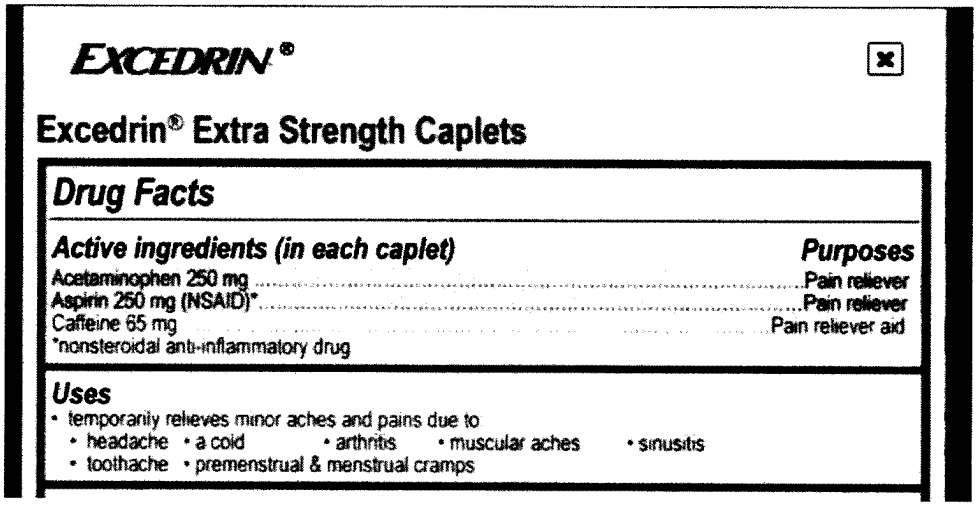
9. Novartis markets Excedrin Migraine as specifically formulated to treat migraine symptoms that it states "tend to be more severe than tension headaches." But Excedrin Migraine is no more effective at treating the more severe symptoms of migraines than Excedrin Extra Strength because it is pharmacologically identical to Excedrin Extra Strength. Thus, not only do migraine sufferers have to endure the pounding headache, nausea, vomiting and light sensitivity caused by migraines, Novartis also fools them into paying more for Excedrin Migraine than for Excedrin Extra Strength, which is the exact same formula. Indeed, no reasonable consumer would pay more for Excedrin Migraine unless he or she was deceived into thinking that Excedrin Migraine was better for treating migraine headaches than Excedrin Extra Strength.

10. As depicted below, Novartis features the word "MIGRAINE" in large bold letters in the name on Excedrin Migraine packaging to lead consumers to believe that it is more effective for treating migraines.



11. As shown below, Excedrin Migraine and Excedrin Extra Strength are both comprised of Acetaminophen 250 mg, Aspirin 250 mg, and Caffeine 65 mg." Thus, Excedrin Migraine is not more effective at relieving migraines than Excedrin Extra Strength. To convince consumers to pay a price premium for Excedrin Migraine, Novartis lists "treats migraine" as the only "Use" for Excedrin Migraine. For Excedrin Extra Strength, Novartis includes "headache" among the "Uses" but does not include "treats migraine." Thus, Novartis misrepresents to consumers that Excedrin Migraine is capable of treating migraines but that Excedrin Extra Strength is not.





12. Excedrin Migraine and Excedrin Extra Strength also appear directly next to each other on store shelves, which misleads consumers to reasonably believe that Excedrin Extra Strength and Excedrin Migraine are two separate medications designed to treat distinct symptoms. Novartis also uses red packaging for Excedrin Migraine and green packaging for Excedrin Extra Strength to connote that the products are different and have different uses. The fact that Novartis charges $2 to $3 more for Excedrin Migraine also suggests to consumers that Excedrin Migraine is a stronger medicine that is more effective at relieving severe migraine pain.

13. Even though there is no distinction between the formulation of Excedrin Migraine and Excedrin Extra Strength, to sell Excedrin Migraine at a higher price, Novartis emphasizes the increased severity of migraine symptoms. On its website, Novartis asks "Migraine or Headache?" Novartis goes on to state "A migraine is more than just a bad headache" to suggest to migraine

sufferers that they need a stronger and more effective medicine, such as Excedrin Migraine, for treatment of migraines. But Excedrin Migraine is no more than just Excedrin Extra Strength, which is marketed as treatment for headaches but not migraines.

14. Under the "Migraine Center" tab on its website, Novartis describes the differences between "Migraines vs. tension headaches." Novartis explains that "According to the U.S. Department of Health and Human Services, migraines tend to be more severe than tension headaches." As shown below, Novartis includes a chart with check marks identifying the additional symptoms of migraines. Novartis neglects to mention that while there are differences between migraines and headaches there are no differences between Excedrin Extra Strength and Excedrin Migraine.

Migraine vs. bad tension-type headache[1]

Intensity of pain		
Mild to moderate	✓	✓
Moderate to severe		✓
Quality of pain		
Pounding or throbbing		✓
Distracting, dull tightness	✓	
Steady ache	✓	✓
Location of pain		
One side of head		✓
Both sides of head	✓	✓
Other associated symptoms		
Nausea		✓
Sensitivity to light and/or sound		✓
Aura before onset of headache[2]		✓

15. Also on its website, below the title "Types of Headaches," Novartis states that "While there are many different types of headaches, tension headaches and migraine headaches are most common. ***Since these two types of headaches may be treated differently, determining which type you have is a critical step in pain relief.***" (emphasis added). Further down on the webpage, Novartis explains "Tension headaches are sometimes called muscle contraction headaches. The pain is usually a dull ache on both sides of the head and has been described as feeling like a tight band across the front of the head. It is also associated with stiffness or the neck/shoulder and frequent pain." Novartis then distinguishes the "Migraine Headache" by stating that "Migraine headaches produce moderate to severe pounding or throbbing pain, common on one side of the head. Migraine pain is often accompanied by nausea, vomiting, dizziness, and sensitivity to light and/or sounds." Thus, Novartis encourages consumers to determine which type of headache they have so that they can take the "critical step" of paying more for Excedrin Migraine even though it is no different than Excedrin Extra strength.

CLASS REPRESENTATION ALLEGATIONS

16. Plaintiff seeks to represent a class defined as all persons in California who purchased Excedrin Migraine, excluding those that made such purchase for purpose of resale (the "Class").

17. Numerosity: Defendant sells hundreds of thousands of bottles of Excedrin Migraine in California. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third party retailers and vendors.

18. Existence and Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendant's labeling, marketing and promotion of Excedrin Migraine is false, and misleading. Such questions include, but are not limited to, the following:

(a) Whether Defendant's marketing of Excedrin Migraine violates the CLRA;

(b) Whether Defendant's marketing of Excedrin Migraine violates the UCL;

(c) Whether Defendant's marketing of Excedrin Migraine violates the FAL;

(d) Whether Plaintiff and the proposed class members are entitled to restitution of the price premium Defendant has collected;

(e) Whether Plaintiff and the proposed class members are entitled to disgorgement of the price premium Defendant has collected;

(f) Whether Defendant should be enjoined from charging a price premium for Excedrin Migraine.

19. Typicality: Plaintiff is asserting claims that are typical of the proposed class members' claims, having paid a price premium to Defendant for Excedrin Migraine. Plaintiff and the proposed class members have similarly suffered harm arising from Defendant's violations of law as alleged herein.

20. Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

21. Superiority: The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment

of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Violation Of California's Unfair Competition Law,

California Business & Professions Code §§ 17200, *et seq.*

22. Plaintiff hereby incorporates by reference the allegations contained in all paragraphs of this complaint.

23. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

24. Defendant is subject to California's Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq*. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising …."

25. Defendant's misrepresentations and other conduct, described herein, violated the "unfair" prong of the UCL 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. Defendant's practice of charging migraine sufferers a price premium for a product that is not superior for relieving migraines is of no benefit to consumers.

26. Defendant violated the "fraudulent" prong of the UCL by making misrepresentations about the strength and efficacy of Excedrin Migraine, as described herein.

27. Plaintiff and the Class are not sophisticated experts about the effect of the active ingredients in Excedrin headache products, and they acted reasonably when they purchased Excedrin Migraine based on their belief that it would provide more effective relief for migraine symptoms.

28. Defendant's misrepresentations and other conduct, described herein, violated the "unlawful" prong of the UCL by violating the CLRA and the FAL.

29. Plaintiff and the Class suffered injuries caused by Defendant because: (a) they would not have purchased Excedrin Migraine if they had known that it was identical to Excedrin Extra Strength; (b) they paid a price premium for Excedrin Migraine due to Defendant's marketing of Excedrin Migraine as superior for treating migraines; and (3) Excedrin Migraine did not have the characteristics as promised because it is not a more effective treatment of migraines.

COUNT II

Violation Of California's False Advertising Law,

California Business & Professions Code §§ 17500, *et seq.*

30. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

31. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

32. California's False Advertising Law, Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

33. Defendant committed acts of misleading advertising, as defined by § 17500, by misrepresenting that Excedrin Migraine is specifically formulated and a superior treatment for migraine headaches. These misrepresentations likely deceived and are still deceiving the general public, and lead reasonable consumers to believe that Excedrin Migraine is worth the price premium for its use in treating migraine headaches.

34. Defendant knew or should have known, through the exercise of reasonable care that their representations about Excedrin Migraine were untrue and misleading.

35. Defendant's actions in violation of § 17500 were false and misleading such that the general public is and was likely to be deceived.

36. Plaintiff and the Class suffered injuries caused by Defendant because: (a) they would not have purchased Excedrin Migraine if they had known that it was identical to Excedrin Extra Strength; (b) they paid a price premium for Excedrin Migraine due to Defendant's marketing of Excedrin Migraine as superior for treating migraines; and (3) Excedrin Migraine did not have the characteristics as promised because it is not a more effective treatment of migraines.

COUNT III

Violation Of California's Consumers Legal Remedies Act,

California Civil Code §§ 1750, *et seq.*

37. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

38. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

39. Plaintiff and the Class members are consumers who purchased Excedrin Migraine for personal, family or household purposes. Plaintiff and the Class members are "consumers" as that term is defined by the CLRA in Civ. Code § 1761(d). Plaintiffs and the Class members are not sophisticated experts with independent knowledge of the effect of the ingredients in Excedrin products.

40. Excedrin Migraine that Plaintiff and other Class Members purchased from Defendant were "goods" within the meaning of Civ. Code § 1761(a).

41. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

42. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have."

43. Defendant violated Civ. Code § 1770(a)(5) by misrepresenting that Excedrin Migraine is specifically formulated for treating migraines and more effective for treating migraines than Excedrin Extra Strength.

44. Civ. Code § 1770(a)(7), prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are another."

45. Defendant represented that Excedrin Migraine was of a particular standard, style and/or model because Defendant represented that Excedrin Migraine was specifically formulated for treating migraines. Defendant violated Civ. Code § 1770(a)(7) because Excedrin Migraine is not of a particular style, standard and/or model for treating migraines. Instead, Defendant's Excedrin Migraine product is the same standard, style and model as its Excedrin Extra Strength product.

46. Plaintiff and the Class suffered injuries caused by Defendant because: (a) they would not have purchased Excedrin Migraine if they had known that it was identical to Excedrin Extra Strength; (b) they paid a price premium for Excedrin Migraine due to Defendant's marketing of Excedrin Migraine as superior for treating migraines; and (3) Excedrin Migraine did not have the characteristics as promised because it is not a more effective treatment of migraines.

47. On or about October 24, 2013, prior to filing this action, a CLRA notice letter was served on Defendant which complies in all respects with California Civil Code § 1782(a). Plaintiff Cortina sent Novartis Consumer Health, Inc. a letter via certified mail, return receipt requested, advising Novartis that it is in violation of the CLRA and demanding that it cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff Cortina's letter is attached hereto as Exhibit A.

48. Wherefore, Plaintiff seeks damages, restitution, and injunctive relief for this violation of the CLRA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

a. For an order certifying the Class under Code of Civil Procedure § 382 and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class members;

b. For an order declaring that the Defendant's conduct violates the statutes referenced herein;

c. For an order finding in favor of Plaintiff, and the Class, on all counts asserted herein;

d. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

e. For prejudgment interest on all amounts awarded;

f. For an order of restitution, disgorgement and/or all other forms of equitable monetary relief;

g. For injunctive relief as pleaded or as the Court may deem proper;

h. For an order awarding Plaintiff and the Class her reasonable attorneys' fees and expenses and costs of suit; and

i. For such other relief as the Court may deem proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues so triable.

Dated: December 6, 2013

Respectfully submitted,

BURSOR & FISHER, P.A.

By: L. Timothy Fisher

L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)
Sarah N. Westcot (State Bar No. 264916)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
swestcot@bursor.com
apersinger@bursor.com

Attorneys for Plaintiff

CLRA Venue Declaration Pursuant to Civil Code Section 1780(d)

I, Thamar S. Cortina, declare as follows:

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

2. The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendant conducts a substantial amount of business in this county.

3. While living in Bonita, California, I purchased Excedrin Migraine for my personal use based on representations on the label and in other marketing and advertising materials suggesting that the product was specifically formulated and better for treating migraine headaches. I would not have purchased Excedrin Migraine had I known that that the product contained the identical ingredients as Excedrin's less expensive Extra Strength headache medicine.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on Nov. 29, 2013 at Bonita, California.

Thamar Sav
THAMAR S. CORTINA

EXHIBIT A

BURSOR FISHER
P.A.

1990 N. CALIFORNIA BLVD.
SUITE 940
WALNUT CREEK, CA 94596
www.bursor.com

L. TIMOTHY FISHER
Tel: 925.300.4455
Fax: 925.407.2700
ltfisher@bursor.com

October 24, 2013

Via Certified Mail - Return Receipt Requested

Novartis Consumer Health, Inc.
200 Kimball Drive
Parsippany, NJ 07054-0622

Re: Demand Letter Pursuant to California Civil Code § 1782, Violation of Magnuson-Moss Act, 15 U.S.C. §§ 2301, et seq., and other applicable laws.

To Whom It May Concern:

This letter serves as a notice and demand for corrective action on behalf of my client, Thamar Cortina, and all other persons similarly situated, arising from breaches of warranty under the Magnuson-Moss Warranty Act and violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5), (7), and (9).

You have participated in the manufacture, marketing, and sale of Excedrin Migraine. Your conduct with respect to the promotion and marketing of Excedrin Migraine is false and misleading. Such conduct includes suggesting to consumers that Excedrin Migraine is specifically formulated to treat migraine headaches, suggesting that the product is more effective for treating migraine headaches than Excedrin's regular headache product (Excedrin Extra Strength), and charging more for Excedrin Migraine than Excedrin Extra Strength. This conduct is false and misleading because Excedrin Migraine is not more effective at relieving migraines than Excedrin Extra Strength. The two products are pharmacologically identical, containing the same active ingredients in each pill, and in the same amounts: 250 mg of acetaminophen, 250 mg of aspirin, and 65 mg of caffeine.

Ms. Cortina, a resident of California, purchased Excedrin Migraine based on representations on the label and in other marketing and advertising materials suggesting that the product is formulated to treat the symptoms of migraine headaches. She would not have purchased Excedrin Migraine had she known that the product contained the identical active ingredients as Excedrin's less expensive Excedrin Extra Strength headache medicine.

Ms. Cortina is acting on behalf of a class defined as all persons in the United States who purchased Excedrin Migraine (hereafter, the "Class"). She is also acting on behalf of a subclass of Class members who purchased Excedrin Migraine in the state of California (the "California Subclass").

To cure the defects described above, we demand that you (1) cease and desist from continuing to mislabel and falsely advertise Excedrin Migraine; (2) issue an immediate recall on any Excedrin Migraine products bearing false labels; and (3) make full restitution to all purchasers of Excedrin Migraine of all purchase money obtained from sales thereof.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the ingredients, formula, and manufacturing process for Excedrin Migraine and Excedrin Extra Strength;

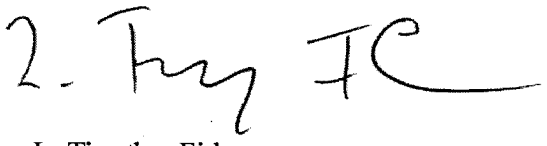
2. All communications with the U.S. Food and Drug Administration concerning the product development, manufacturing, marketing and sales of Excedrin Migraine and Excedrin Extra Strength;

3. All documents concerning the advertisement, marketing, or sale of Excedrin Migraine; and

4. All communications with customers concerning complaints or comments concerning Excedrin Migraine.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,



L. Timothy Fisher

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
L. Timothy Fisher (State Bar No. 191626)
Bursor & Fisher, P.A.
1990 N. California Blvd., Suite 940
Walnut Creek, CA 94596
TELEPHONE NO (925) 300-4455 FAX NO. (925) 407-2700
ATTORNEY FOR (Name) Thamar S. Cortina

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/06/2013 at 10:02:44 AM
Clerk of the Superior Court
By Lee McAlister,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS 220 West Broadway
MAILING ADDRESS
CITY AND ZIP CODE San Diego, CA 92101
BRANCH NAME

CASE NAME:
CORTINA, . v. NOVARTIS CONSUMER HEALTH, INC.

CIVIL CASE COVER SHEET
☑ **Unlimited** (Amount demanded exceeds $25,000)
☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE 37-2013-00078571-CU-BT-CTL
JUDGE Judge William S. Dato
DEPT

Items 1–6 below must be completed (see instructions on page 2).

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

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☑ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☑ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☑ punitive
4. Number of causes of action *(specify)*: 3: Civ. Code 1750; Bus. & Prof. Code 17200; Bus. & Prof. Code 17500
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 12/06/2013
L. Timothy Fisher
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

NOVARTIS CONSUMER HEALTH, INC.

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

THAMAR S. CORTINA, individually and on behalf of all others similarly situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/06/2013 at 10:02:44 AM

Clerk of the Superior Court
By Lee McAlister,Deputy Clerk

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

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

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

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

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

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

CASE NUMBER:
(Núm...)
37-2013-00078571-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
L.Timothy Fisher,Bursor & Fisher, P.A,1990 N California Blvd.,940,Walnut Creek,CA 94596,(925)300-4455

DATE: 12/06/2013
(Fecha)

Clerk, by
(Secretario) L McAlister L. McAlister , Deputy
(Adjunto)

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): Thamar S Cortina	
DEFENDANT(S) / RESPONDENT(S): NOVARTIS CONSUMER HEALTH INC	
THAMAR S CORTINA VS NOVARTIS CONSUMER HEALTH INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2013-00078571-CU-BT-CTL

CASE ASSIGNMENT

Judge: William S. Dato Department: C-67

COMPLAINT/PETITION FILED: 12/06/2013

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/29/2014	10:30 am	C-67	William S. Dato

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

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

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

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

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

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

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars ($150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 010313 at www.sdcourt.ca.gov for guidelines and procedures.

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

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Lawrence T Fisher, 191626 Bursor & Fisher, P.A. 1990 North California Blvd. Suite 940 Walnut Creek, CA 94596 TELEPHONE NO.: (925) 300-4455 ATTORNEY FOR (Name): Plaintiff	**ELECTRONICALLY FILED** Superior Court of California, County of San Diego **12/17/2013** at 10:34:00 AM Clerk of the Superior Court By E- Filing,Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Diego County 330 W. Broadway San Diego, CA 92101-3409	
PLAINTIFF/PETITIONER: Thamar S. Cortina DEFENDANT/RESPONDENT: Novartis Consumer Health Inc.	CASE NUMBER: 37-2013-00078571-CU-BT-CTL
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 137

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Complaint, Summons, Notice of Case Assignment, Notice to Litigants, General/Other- E-Filing, General/Other- E-Filing Req, Stipulation-ADR

3. a. Party served: Novartis Consumer Health, Inc.

   b. Person Served: CSC - Becky DeGeorge - Person authorized to accept service of process

4. Address where the party was served: 2710 N Gateway Oaks Dr Ste 150
   Sacramento, CA 95833

5. I served the party
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/11/2013 (2) at (time): 1:48 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:

   c. on behalf of:

   Novartis Consumer Health, Inc.

   under: CCP 416.10 (corporation)
7. **Person who served papers**
   a. Name: Michelle Dodd
   b. Address: One Legal - 194-Marin
   504 Redwood Blvd #223
   Novato, CA 94947

   c. Telephone number: 415-491-0606
   d. The fee for service was: $ 36.95
   e I am:
   (3) registered California process server.
   (i) Employee or independent contractor.
   (ii) Registration No.: 2011-42
   (iii) County: SACRAMENTO

BY FAX

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

Date: 12/11/2013

Michelle Dodd

Michelle Dodd
(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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 NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Thamar S. Cortina, individually and on behalf of all others similarly situated

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

(see attachment)

DEFENDANTS

Novartis Consumer Health, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

(see attachment)

'14CV0069 MMAKSC

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 (Excludes 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
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical 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
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 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
- ☐ 375 False Claims Act
- ☐ 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
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 1441, 28 U.S.C. 1332(d)

Brief description of cause:
Cal. Civ. Code 1750; Cal. Bus. & Prof. Code 17200; Cal. Bus. & Prof. Code 17500

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ $5mm+, and injunct.

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

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE 01/10/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

CIVIL COVER SHEET ATTACHMENT I(A)

Plaintiff's Counsel	Defendant's Counsel
BURSON & FISHER, P.A. 1990 N. California Boulevard Suite 940 Walnut Creek, CA 94596 Tel.: 925-300-4455 Attorneys of record: L. Timothy Fisher (State Bar No. 191626) Sarah N. Westcot (State Bar No. 264916) Annick M. Persinger (State Bar No. 272996)	KAYE SCHOLER LLP 1999 Avenue of the Stars Suite 1600 Los Angeles, CA 90067 Tel.: 310-788-1000 Attorneys of record: Aton Arbisser (State Bar No. 150496) Daniel R. Paluch (State Bar No. 287231)