



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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COMPLAINT

WONG, CRYSTLE INDIVIDUALLY AND ON BEHALF OF OTHERS VS. ALACER  
CORPORATION

001C04306884

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24 **SUPERIOR COURT OF CALIFORNIA**  
25 **COUNTY OF SAN FRANCISCO**

26 **CRYSTLE WONG, NICHOLAS J. GIANINO,**  
27 **ARNOLD LEE, and LORI RISMAN,**  
28 individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

**ALACER CORPORATION,**

Defendant.

**FILED**  
Superior Court of California  
County of San Francisco

DEC 12 2013

CLERK OF THE COURT  
BY: CLASHA BURSTEN  
Deputy Clerk

Case No. CGC-12-519221

**CLASS ACTION**

**AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Crystle Wong Nicholas J. Gianino, Arnold Lee, and Lori Risman, individually and on  
2 behalf of others similarly situated, alleges for their Class Action Complaint against California based  
3 defendant Alacer Corporation (collectively, “Defendant” or “Alacer”), upon personal knowledge as to  
4 themselves and their own acts and upon information and belief – based upon, *inter alia*, the  
5 investigation made by their attorneys – as to all other matters, as follows:

### 6 INTRODUCTION

7 1. Defendant Alacer, a California based company, manufactures Emergen-C,<sup>1</sup> a purported  
8 immune-boosting and supporting supplement, and distributes it to retailers in California for sale to  
9 California consumers.

10 2. This is a proposed class action brought by Plaintiffs, on behalf of a class of those  
11 similarly situated, against Alacer seeking redress for Alacer’s unjust, unfair, and deceptive practices in  
12 misrepresenting the health benefits of Emergen-C in violation of California law.

13 3. Alacer deceptively markets Emergen-C as a supplement that “supports” or “boosts” the  
14 user’s immune system – thereby representing, directly and/or indirectly, expressly and/or by  
15 implication, that Emergen-C: (a) has a positive and beneficial effect on one’s immune system, in that it  
16 can “boost”; power up” or “support” one’s immune system; and, therefore can (b) protect against and  
17 helps fight germs, thereby reducing the risk of or prevents colds and flu. In addition, Alacer falsely  
18 represents that Emergen-C increases the user’s metabolic function and “ignites [the user’s] energy  
19 level.”

20 4. Alacer’s representations of the health benefits of Emergen-C are false and wholly  
21 unsupported.

22 5. Emergen-C does not boost the immune system; offers no protection against germs;  
23 provides no health protection, immune defense, or support; and has no effect on whether a user gets or  
24 remains sick. In addition, Emergen-C does nothing to improve metabolic function or increase energy.

---

25  
26  
27 <sup>1</sup> Emergen-C Products (referred to herein collectively as “Emergen-C” or the “Product”) include  
28 the following products: Emergen-C Original Formula, Emergen-C Specialty Formula Products (Heart  
Health, Joint Health, Immune Defense, Lite with MSM, Vitamin D, and Calcium, and ElectroMix),  
Emergen-C Multi-Vitamin, Kidz Multi-Vitamin, Emergen-C Kidz, Emergen-C Immune Plus, and  
Super Gram tablets.

1 6. The purpose of this action is to put an end to Alacer’s deceptive marketing of  
2 Emergen-C and to provide nationwide consumers with monetary relief for Defendant’s unjust  
3 enrichment and violations of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code  
4 §§ 17200-17209, California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500-17536,  
5 and California’s Consumers Legal Remedies Act (“CLRA”), Civ. Code §§ 1750-1784.

6 **JURISDICTION AND VENUE**

7 7. This Court has personal jurisdiction over the parties in this case. Plaintiff, Crystle  
8 Wong, is a citizen of California within this County. Defendant purposefully avails itself of the  
9 California consumer market and sells the Product in at least hundreds of locations within this County  
10 and thousands of retail locations throughout California, where the Product is purchased by thousands of  
11 consumers every day. Alacer Corporation is a corporate entity whose headquarters are in California.

12 8. This Complaint is filed, and these proceedings are instituted, pursuant to California  
13 Business and Professions Code §§ 17203 and 17535, to recover damages and to obtain other relief that  
14 Plaintiffs and members of the proposed Plaintiffs Class (the “Class”) have sustained as a result of  
15 violations by Defendant of California Business and Professions Code §§ 17200 *et seq.* and 17500 *et*  
16 *seq.* and of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*

17 9. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395.  
18 Substantial acts in furtherance of the alleged improper conduct occurred within this jurisdiction.  
19 Plaintiff Wong resides within this jurisdiction and bought Defendant’s Product within this jurisdiction.

20 10. No portion of this Complaint is brought pursuant to federal law, and there is no  
21 diversity of citizenship among the Class and Defendant.

22 11. The claims of each member of the Class separately do not exceed seventy-five thousand  
23 dollars (\$75,000) exclusive of interest and costs.

24 **PARTIES**

25 **Individual and Representative Plaintiffs**

26 12. Plaintiff Crystle Wong is an individual consumer who, at all times material hereto,  
27 was a citizen of California. Plaintiff purchased Emergen-C from a Walgreen’s store located in San  
28 Francisco, California.

1 13. Plaintiff Nicholas J. Gianino is an individual consumer who, at all times material hereto,  
2 was a citizen of Illinois. Plaintiff Gianino purchased Emergen-C from a Walgreen's store located in  
3 Illinois.

4 14. Plaintiff Arnold Lee is an individual consumer who, at all times material hereto, was a  
5 citizen of Massachusetts. Plaintiff Lee purchased several boxes of Emergen-C from a Trader Joe's  
6 store located at 1317 Beacon Street, in Brookline, Massachusetts.

7 15. Plaintiff Lori Risman is an individual consumer who, at all times material hereto, was a  
8 citizen of New Hampshire. Plaintiff Risman purchased Emergen-C from a Hannaford Supermarket  
9 located at 6 Hampton Drive, in Londonderry, New Hampshire.

10 16. Each Plaintiff relied on Defendant's false, misleading and deceptive written  
11 misrepresentations that taking Emergen-C would "boost" his or her immune system. Had Plaintiffs  
12 known the truth that the statements they relied on were false, misleading, deceptive, and unfair, they  
13 would have not purchased Emergen-C.

#### 14 Defendants

15 17. Defendant Alacer Corporation is a California corporation with its principal place of  
16 business in Foothill Ranch, California. According to its website, Alacer produces and sells more than  
17 400 million packets of Emergen-C annually.

#### 18 COMMON FACTUAL ALLEGATIONS

19 18. Cold and flu remedies are big business in California. The research company Mintel  
20 estimated that the cough/cold market accounted for more than \$4.6 billion in 2008 sales through food,  
21 drug, and mass outlets, excluding Wal-Mart, representing an increase of 10.7% from the previous year.  
22 See Craig Levitt, *Nothing to sneeze at: the cough and cold category posted double-digit growth last*  
23 *year and the upward trend is expected to continue this season*, Grocery Headquarters Magazine, Sept.  
24 1, 2009, available at <http://www.thefreelibrary.com/Nothing+to+sneeze>  
25 [+at:+the+cough+and+cold+category+posted+double-digit+...-a0209032548](http://www.thefreelibrary.com/Nothing+to+sneeze)) (last visited Mar. 13,  
26 2012).

27 19. Seeking to cash in on consumers' desire to avoid colds and flu, Alacer markets  
28 Emergen-C as a "health drink" that contains 1,000mg of Vitamin C, nearly seventeen times the

1 recommended daily allowance of Vitamin C by the Food and Drug Administration, as well as a  
2 concoction of an additional seventeen miscellaneous vitamins and minerals. Emergen-C has been  
3 available in at least 19 varieties of drink mix, nutritional supplements, tablets and four ready-to-drink  
4 beverages. The Product is sold in a variety of outlets, including Walgreens, Wal-Mart, and Safeway,  
5 and other health food, grocery, and drug stores.

6 20. Emergen-C's packaging represents that Emergen-C will benefit consumers' health in a  
7 variety of ways. The packaging for Emergen-C products has represented that Emergen-C "boosts  
8 immunity," "supports immunity" "increases metabolic function," and "ignites" the user's energy level.

9 21. Specifically, the packaging for the various flavors of Emergen-C "Original Formula"  
10 has contained the following misrepresentations:

11 (a) The packaging for Emergen-C "Acai Berry" has described the product as a "*Health*  
12 *and Energy Booster*," and has further stated:

- 13 i. "The powerful blend of vitamins, antioxidants and minerals boost your  
14 immunity, increase your metabolic function and ignite your energy level -  
15 without caffeine;"
- 16 ii. "Health Boost – 1,000 mg of vitamin C, zinc, quercetin and antioxidants  
17 *power up your immune system to promote overall health;*" and
- 18 iii. "Energy Boost – 7 B vitamins . . . *offer a natural energy boost – no caffeine,*  
19 *no crash.*"

20 (b) The packaging for Emergen-C "Blue" has described the product as a "*Health and*  
21 *Energy Booster*," and has further stated:

- 22 i. "A powerful blend of 24 vitamins, antioxidants and minerals that increases  
23 your metabolic function and gives you a boost of non-caffeinated;"
- 24 ii. "Health Boost – 1,000 mg of vitamin C, zinc, quercetin and antioxidants  
25 *power up your immune system to promote overall health;*" and
- 26 iii. "Energy Boost – 7 B vitamins . . . *offer a natural energy boost – no caffeine,*  
27 *no crash.*"

28 ///

1 (c) The packaging of Emergen-C “Lemon-Lime” has described the product as a “*Health*  
2 *and Energy Booster*,” and has further stated:

3 i. “The powerful blend of vitamins, antioxidants and minerals boost your  
4 immunity, increase your metabolic function and ignite your energy level -  
5 without caffeine;”

6 ii. “1,000 mg of vitamin C, zinc, quercetin and antioxidants power up your  
7 immune system to promote overall health;” and

8 iii. “7 B vitamins . . . *offer a natural energy boost – no caffeine, no crash.*”

9 (d) The packaging of Emergen-C “Lite” has described the product as a “*Health and*  
10 *Energy Booster*,” and has further stated:

11 i. “Emergen-C is a potent blend of antioxidants, vitamins, minerals and other  
12 micronutrients that support healthy metabolic function, boost your immunity  
13 & give you a burst of non-caffeinated energy;”

14 ii. “Health Boost – “1,000 mg of vitamin C, zinc, and antioxidants *power up*  
15 *your immune system to promote overall health*,” and

16 iii. “B vitamins . . . *offer a natural energy boost – no caffeine, no crash.*”

17 (e) The packaging of Emergen-C “Pink” has described the product as a “*Health and*  
18 *Energy Booster*,” and has further stated:

19 i. “[T]his delicious Emergen-C Pink Lemonade is loaded with 24 vitamins,  
20 antioxidants and minerals that boost your immunity, increase your metabolic  
21 function and ignite your energy level – without caffeine;”

22 ii. “Health Boost – “1,000 mg of vitamin C, zinc, quercetin and antioxidants  
23 *power up your immune system to promote overall health*,” and

24 iii. “Energy Boost – B vitamins . . . *offer a natural energy boost – no caffeine,*  
25 *no crash.*”

26 (f) The packaging of Emergen-C “Raspberry” has described the product as a “*Health*  
27 *and Energy Booster*,” and has further stated:

28 ///

- 1 i. "The powerful blend of vitamins, antioxidants and minerals boost your  
2 immunity, increase your metabolic function and ignite your energy level -  
3 without caffeine;"
- 4 ii. "1,000 mg of vitamin C, zinc, quercetin and antioxidants *power up your*  
5 *immune system to promote overall health;*" and
- 6 iii. "7 B vitamins . . . *offer a natural energy boost – no caffeine, no crash.*"

7 (g) The packaging of Emergen-C Super Orange has described the product as a "Health  
8 and Energy Booster," and has further stated:

- 9 i. "The powerful blend of vitamins, antioxidants and minerals boost your  
10 immunity, increase your metabolic function and ignite your energy level -  
11 without caffeine;"
- 12 ii. "Health Boost – "1,000 mg of vitamin C, zinc, quercetin and antioxidants  
13 *power up your immune system to promote overall health;*" and
- 14 iii. "Energy Boost – B vitamins . . . *offer a natural energy boost – no caffeine,*  
15 *no crash.*"

16 (h) The packaging of Emergen-C "Tangerine" has described the product as a "Health  
17 and Energy Booster," and further states:

- 18 i. "The powerful blend of vitamins, antioxidants and minerals boost your  
19 immunity, increase your metabolic function and ignite your energy level -  
20 without caffeine;"
- 21 ii. "Health Boost – "1,000 mg of vitamin C, zinc, quercetin and antioxidants  
22 *power up your immune system to promote overall health;*" and
- 23 iii. "Energy Boost – B vitamins . . . *offer a natural energy boost – no caffeine,*  
24 *no crash.*"

25 (i) The packaging of Emergen-C "Tropical" has described the product as a "Health and  
26 Energy Booster," and has further stated:

27 ///

28 ///



- 1                   i. “The powerful blend of vitamins, antioxidants and minerals boost your  
2                   immunity, increase your metabolic function and ignite your energy level -  
3                   without caffeine;”  
4                   ii. “Health Boost – “1,000 mg of vitamin C, zinc, quercetin and antioxidants  
5                   *power up your immune system to promote overall health;*” and  
6                   iii. “Energy Boost – B vitamins . . . *offer a natural energy boost – no caffeine,*  
7                   *no crash.*”

8           22.     In addition, on Defendant’s website [www.emergenc.com](http://www.emergenc.com), Alacer advertised each of its  
9     Emergen-C “Original Formula” products identified in ¶ 20 above as “A powerful blend of vitamin C, B  
10    vitamins, antioxidants and electrolytes [that] boosts your immunity, increases your metabolic function,  
11    and ignites your energy level to help you really feel the good.”

12           23.     Alacer also produced and sold two versions of its Product – Emergen-C “Immune  
13    Defense Formula” and Emergen-C “Immune + System Booster” – that further emphasized the  
14    Product’s purported immunity boosting properties by including the term “immune” has in the name of  
15    the Product version. In addition, the packaging and advertising for Alacer’s Emergen-C “Immune  
16    Defense Formula” described the Product as “[t]he feel good way to strengthen your immunity every  
17    day,” stating: “Boost immunity, increase metabolic function, and ignite your energy level – without  
18    caffeine. If feeling good while boosting your immunity defenses is your thing, you’ve found the right  
19    box.” Further, the packaging for Emergen-C “Immune Defense Formula” made the additional  
20    misrepresentations that using this version of Emergen-C will (i) “[a]ctivate the white blood cells that  
21    are most important in antibody production and in coordinating immune functions; (ii) “fight[] free  
22    radicals and help[] maintain healthy white blood cell activity;” and (iii) “stimulate” and “enhance” the  
23    immune system.

24           24.     On Defendant’s website [www.emergenc.com](http://www.emergenc.com), Defendant advertised its “Immune  
25    Defense” version of the Product the following way:

26                   When your immune system needs a boost try this extra power packed  
27                   Emergen-C drink mix. It starts with 1,000 mg of Vitamin C and key B  
28                   Vitamins, then adds a full day supply of Zinc, Vitamins A and D,  
                  Selenium, Hibiscus extract and Elderberry concentrate. All in a soothing  
                  blend of natural fruit and honey flavors you mix with water. We’ve even

1 heard that some like it hot. Since when was pumping up your immune  
2 health such a pleasure?

3 Alacer further represented:

4 With this enhanced formulation, along with the Emergen-C Immune  
5 Defense name, we wanted to create an Emergen-C product specifically  
6 designed for placement within the fast growing immune support segment  
7 of the cold and flu section of the grocery store

8 <http://www.emergenc.com/press/emergen-c-to-the-d-fense/>

9 25. Media advertisements contained the same false claims as found on Emergen-C's  
10 packaging. For example, the following is a transcript of an advertisement for Emergen-C played on the  
11 radio:

12 Does Emergen-C, the fizzy, energizing, immune boosting, Vitamin C  
13 drink mix really make you feel good? Adam, from Seattle, writes "Dear  
14 Emergen-C, I hate you. Why? Because now I see that you were a  
15 nefarious conspiracy to stop me from using up all my sick days. Can't  
16 walk around all full of bouncy bounce one day and then not show up the  
17 next. . . . Clearly you are in cahoots with my manager." Okay Adam.  
18 Glad it's working for you. Emergen-C, Feel the good.

19 26. A similar advertisement for Emergen-C, transcribed below, played on television:

20 What's in Emergen-C to boost your health and energy? 1000 mg. of  
21 immune strengthening Vitamin C plus naturally energizing B Vitamins.  
22 Emergen-C, feel the good.

23 27. In fact, however, there is no evidence to suggest that using Emergen-C has any impact  
24 on a person's immune system, let alone "boosts" the immune system. Nor is there any evidence that  
25 Emergen-C increases metabolic functions and a user's energy level. Alacer has no scientific or other  
26 legitimate basis for making any of these claims. All such representations by Alacer are thus unfair,  
27 unjust, false, misleading, and deceptive.

28 28. Unfortunately for Plaintiffs and other consumers of Emergen-C, Alacer has not been  
truthful regarding what its Emergen-C Product "can and cannot do." Alacer has profited enormously  
from its false advertising of Emergen-C. According to Emergen-C's website, the price of a box

///

1 containing 30 single-serving packets of Emergen-C original formula is \$12.99 or \$0.43 per packet, a  
2 premium price compared to the cost of a multivitamin.

3 **CLASS ALLEGATIONS**

4 29. Plaintiffs bring this action pursuant to section 382 of the California Code of Civil  
5 Procedure and section 1781 of the California Civil Code on behalf of themselves and all others  
6 similarly situated nationwide (the "Class"), defined as follows:

7 All consumers who purchased Defendant's Emergen-C Product in California  
8 during the period March 16, 2008, to the date of class certification. Excluded  
9 from the Class are any of Defendant's officers, directors, or employees; officers,  
10 directors, or employees of any entity in which Defendant currently has or has had  
a controlling interest; and Defendant's legal representatives, heirs, successors, and  
assigns.

11 30. At this time, Plaintiffs do not know the exact number of Class members; however, given  
12 the nature of the claims and the number of retail stores nationwide selling Defendant's Product,  
13 Plaintiffs believe that Class members are so numerous that joinder of all members of the Class is  
14 impracticable.

15 31. There is a well-defined community of interest in the questions of law and fact involved  
16 in this case. Questions of law and fact common to the members of the Class which predominate over  
17 questions which may affect individual Class members include:

- 18 (a) Whether Alacer misrepresented and/or failed to disclose material facts concerning  
19 Emergen-C;  
20 (b) Whether Alacer's conduct was unfair and/or deceptive;  
21 (c) Whether Alacer has been unjustly enriched as a result of the unlawful, fraudulent,  
22 and unfair conduct alleged in this Complaint such that it would be inequitable for  
23 Defendant to retain the benefits conferred upon Defendant by Plaintiffs and the  
24 Class;  
25 (d) Whether, in violation of Civil Code § 1770(a)(7), Defendant advertised its  
26 Emergen-C Product with the intent not to sell it as advertised;

27 ///

28 ///

- 1 (e) Whether, in violation of Civil Code §1770(a)(5), Defendant represented on  
2 packaging for Emergen-C that the Product had characteristics, ingredients, uses, or  
3 benefits that it does not have.
- 4 (f) Whether Defendant is subject to liability for violating California’s Consumers Legal  
5 Remedies Act, Civ. Code §§ 1750-1784;
- 6 (g) Whether Defendant has violated California’s Unfair Competition Law, Bus. & Prof.  
7 Code §§ 17200-17209;
- 8 (h) Whether Defendant has violated California’s False Advertising Law, Bus. & Prof.  
9 Code §§ 17500-17536;
- 10 (i) Whether the Class is entitled to an award of restitution pursuant to California Bus. &  
11 Prof. Code § 17203; and
- 12 (j) Whether Plaintiffs and the Class have sustained damages with respect to the  
13 common law claims asserted, and if so, the proper measure of their damages.

14 32. Plaintiffs’ claims are typical of those of the Class because Plaintiffs, like all members of  
15 the Class, purchased, in a typical consumer setting, Defendant’s Product bearing the representations  
16 about “boost[ing]”, “support[ing]” “power[ing] up” and otherwise having positive effect on the user’s  
17 immune system, “increase[ing] metabolic function,” and “igni[ting]” the user’s energy level, and  
18 Plaintiffs sustained damages from Defendant’s wrongful conduct.

19 33. Plaintiffs will fairly and adequately protect the interests of the Class and has retained  
20 counsel that is experienced in litigating complex class actions. Plaintiffs have no interests which  
21 conflict with those of the Class.

22 34. A class action is superior to other available methods for the fair and efficient  
23 adjudication of this controversy.

24 35. The prerequisites to maintaining a class action for injunctive or equitable relief are met  
25 as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making  
26 appropriate final injunctive or equitable relief with respect to the Class as a whole.

27 36. The prosecution of separate actions by members of the Class would create a risk of  
28 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example,

1 one court might enjoin Defendant from performing the challenged acts, whereas another might not.  
2 Additionally, individual actions could be dispositive of the interests of the Class even where certain  
3 Class members are not parties to such actions.

4 37. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek,  
5 *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic  
6 policies and practices make declaratory relief with respect to the Class as a whole appropriate.

7 **CAUSES OF ACTION**

8 **COUNT I**

9 **Unfair and Deceptive Acts and Practices  
10 In Violation of California's Consumers Legal Remedies Act**

11 38. Plaintiffs incorporate by reference and realleges herein all paragraphs alleged above.

12 39. This cause of action is brought pursuant to the California Consumer Legal Remedies  
13 Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA").

14 40. Plaintiffs and members of the Class are "consumers," as the term is defined by Civil  
15 Code § 1761(d), because they bought Emergen-C for personal, family, or household purposes.

16 41. Plaintiffs, members of the Class, and Defendant have engaged in "transactions," as that  
17 term is defined by Civil Code §1761(e).

18 42. The conduct alleged in this Complaint constitutes unfair methods of competition and  
19 unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken  
20 by Defendant in transactions intended to result in, and which did result in, the sale of goods to  
21 consumers.

22 43. As alleged more fully above, Defendant has violated the CLRA by falsely representing  
23 to Plaintiffs and the Class that Emergen-C products (a) "boost" a user's immune system; (b) provide  
24 "immune system support"; (c) provide "immune defense" and prevent a user from becoming sick;  
25 (d) "[a]ctivate the white blood cells that are most important in antibody production and in coordinating  
26 immune functions; (e) "fight[] free radicals and help[] maintain healthy white blood cell activity;"  
27 (f) "stimulate" and "enhance" the immune system; (g) increase metabolic function; and (g) "boost" a  
28 user's energy level.

///

1           44. As a result of engaging in such conduct, Defendant has violated Civil Code  
2 § 1770(a)(5), (a)(7), and (a)(9).

3           45. Pursuant to Civil Code § 1780(a)(2) and (a)(5), Plaintiffs seek an order of this Court  
4 that includes, but is not limited to, an order requiring Defendant to:

- 5           (a) remove and/or refrain from making representations on the Emergen-C box  
6                 representing Emergen-C “boosts” or powers up a person’s immune system;
- 7           (b) remove and/or refrain from making representations on the Emergen-C box  
8                 representing Emergen-C “supports the immune system”;
- 9           (c) remove the language “Immune Defense” from the Emergen-C product box;
- 10          (d) remove language on the Emergen-C box representing that Emergen-C can
  - 11                 i. “[a]ctivate the white blood cells that are most important in antibody  
12                         production and in coordinating immune functions;”
  - 13                 ii. “fight[] free radicals and help[] maintain healthy white blood cell activity;”  
14                         and
  - 15                 iii. “stimulate[]” and “enhance[]” the user’s immune system;
- 16          (e) remove and/or refrain from using representations on the Emergen-C box  
17                 representing Emergen-C increases metabolic function;
- 18          (f) remove and/or refrain from using representations on the Emergen-C box  
19                 representing Emergen-C “ignites” a user’s energy level; and
- 20          (g) comply with all applicable requirements of California’s Sherman Law, including,  
21                 but not limited to, prohibition of:
  - 22                         i. misbranding any food or drug, Health and Safety Code §§ 10398 & 111445;
  - 23                         ii. manufacturing, selling, delivering, holding, or offering for sale and food or  
24                                 drug that is misbranded, *id.* at §§ 10398 & 111440; and
  - 25                         iii. receiving in commerce any food or drug that is misbranded or delivering or  
26                                 proffering it for delivery, *id.* at §§ 110770 & 111450.

27           46. Plaintiffs and Class members may be irreparably harmed and/or denied an effective and  
28 complete remedy if such an order is not granted.

1 47. The unfair and deceptive acts and practices of Alacer, as described above, present a  
2 serious threat to Plaintiffs and members of the Class.

3 48. CLRA §1782 NOTICE. On February 3, 2012, a CLRA demand letter was sent to  
4 Defendant via certified mail that provided notice of Defendant's violation of the CLRA and demanded  
5 that within thirty (30) days from that date, Defendant correct, repair, replace or other rectify the  
6 unlawful, unfair, false and/or deceptive practices complained of herein. The letters also stated that if  
7 Defendant refused to do so, a complaint seeking damages in accordance with the CLRA would be filed.  
8 Defendant has failed to comply with the letter. Accordingly, pursuant to California Civil Code  
9 §1780(a)(3), Plaintiffs, on behalf of herself and all other members of the Class, seek compensatory  
10 damages, punitive damages and restitution of any ill-gotten gains due to Defendant's acts and practices.

11 **COUNT II**

12 **Violations of California's False Advertising Law**

13 49. Plaintiffs incorporate by reference and realleges herein all paragraphs alleged above.

14 50. As alleged more fully above, Defendant has falsely advertised Emergen-C by falsely  
15 claiming that the Product can and does boost users' immune systems, can and does support users'  
16 immune system, and can and does provides immune system defense. In addition, Defendant falsely  
17 represents that Emergen-C increases metabolic function and "ignites" the user's energy level.

18 51. Plaintiffs and the members of the proposed Class have suffered injury in fact and have  
19 lost money or property as a result of Defendant's violations of California's False Advertising Law  
20 ("FAL").

21 52. Pursuant to the Business and Professions Code §§ 17203 and 17535, Plaintiffs and the  
22 Class seek and order of this Court that includes, but is not limited to, an order requiring Defendant to:

- 23 (a) remove and/or refrain from making representations on the Emergen-C box  
24 representing Emergen-C "boosts" or powers up a person's immune system;
- 25 (b) remove and/or refrain from using representations on the Emergen-C box  
26 representing Emergen-C "supports the immune system;"
- 27 (c) remove the language "Immune Defense" from the Emergen-C product box;
- 28 (d) remove language on the Emergen-C box representing Emergen-C can

- 1 i. “[a]ctivate the white blood cells that are most important in antibody  
2 production and in coordinating immune functions;  
3 ii. “fight[] free radicals and help[] maintain healthy white blood cell activity;”  
4 and  
5 iii. and “stimulate[]” and “enhance[]” the immune system;
- 6 (e) remove and/or refrain from using representations on the Emergen-C box  
7 representing Emergen-C increases metabolic function;
- 8 (f) remove and/or refrain from using representations on the Emergen-C box  
9 representing Emergen-C “ignites” a user’s energy level;
- 10 (g) comply with all applicable requirements of the Sherman Law, including, but not  
11 limited to, prohibition of:
- 12 i. misbranding any food or drug, Health and Safety Code §§ 10398 & 111445;  
13 ii. manufacturing, selling, delivering, holding, or offering for sale and food or  
14 drug that is misbranded, *id.* at §§ 10398 & 111440; and  
15 iii. receiving in commerce any food or drug that is misbranded or delivering or  
16 proffering it for delivery, *id.* at §§ 110770 & 111450;
- 17 (h) provide restitution to Plaintiffs and Class members;
- 18 (i) disgorge all revenues obtained as a result of violations of the FAL; and  
19 (j) pay Plaintiffs’ and the Class’s attorney fees and costs.

20 **COUNT III**

21 **Violation of California’s Unfair Competition Law**

22 53. Plaintiffs incorporate by reference and realleges herein all paragraphs alleged above.

23 54. By committing the acts and practices alleged herein, Defendant has violated  
24 California’s Unfair Competition Law (“UCL”), as to the Class as a whole, by engaging in unlawful,  
25 fraudulent, and unfair conduct.

26 55. Defendant has violated the UCL’s proscription against engaging in *unlawful* conduct as  
27 a result of:

28 ///



1 (a) its violations of the CLRA, Civ. Code § 1770(a)(5), (a)(7) and (a)(9), as alleged  
2 above, and

3 (b) its violations of the FAL, Bus. & Prof. Code §§ 17500-17536, as alleged above.

4 56. In addition, Defendant has violated the UCL's proscription against engaging in *unlawful*  
5 conduct as a result of its violations of the Sherman Law, Health & Saf. Code § 109875 *et seq.*, which  
6 forbids (1) misbranding of any food or drug, *id.* at §§ 10398 & 111445, and (2) manufacturing, selling,  
7 delivering, holding, or offering for sale any food or drug that is misbranded, or delivering or proffering  
8 it for delivery, *id.* at §§ 110770 & 111450.

9 57. The Sherman Law provides that a product is misbranded "if its labeling is false or  
10 misleading in any particular." *Id.* at § 110660. In determining whether the labeling or advertisement  
11 of a food, drug, device, or cosmetic is misleading, all representations made or suggested by statement,  
12 word, design, device, sound, or any combination of these shall be taken into account. The extent that  
13 the labeling or advertising fails to reveal facts concerning the food, drug, device, or cosmetic or  
14 consequences of customary use of the food, drug, device, or cosmetic shall also be considered. *Id.* at  
15 § 110290.

16 58. Defendant's acts and practices described above also violate the UCL's proscription  
17 against engaging in fraudulent conduct.

18 59. As more fully described above, Defendant's misleading marketing, advertising,  
19 packaging, and labeling of Emergen-C is likely to deceive reasonable consumers. Indeed, Plaintiffs  
20 and the other members of the Class were unquestionably deceived regarding the health benefits of  
21 Emergen-C, as Defendant's marketing, advertising, packaging, and labeling of Emergen-C  
22 misrepresent and/or omit the true facts concerning the benefits of Emergen-C. Said acts are fraudulent  
23 business practices.

24 60. Defendant's acts and practices described above also violate the UCL's proscription  
25 against engaging in *unfair* conduct.

26 61. Plaintiffs and Class members suffered a substantial injury by virtue of buying a Product  
27 they would not have purchased absent Defendant's unlawful, fraudulent, and unfair marketing,

28 ///

1 advertising, packaging, and labeling or by virtue of paying an excessive premium price for the  
2 unlawfully, fraudulently, and unfairly marketed, advertised, packaged, and labeled Product.

3 62. There is no benefit to consumers or competition from deceptively marketing and  
4 labeling products like Emergen-C, which purports to be a “dietary supplement.” Indeed, the harm to  
5 consumers and competition is substantial.

6 63. Plaintiffs and other Class members had no way of reasonably knowing that the  
7 Emergen-C they purchased was not as marketed, advertised, packaged, or labeled. Thus, they could  
8 not have reasonably avoided the injury each of them suffered.

9 64. The gravity of the consequences of Defendant’s conduct as described above outweighs  
10 any justification, motive, or reason therefore, particularly considering the available legal alternatives  
11 which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous, offends  
12 established public policy or is substantially injurious to Plaintiffs and the other members of the Class.

13 65. Defendant’s violations of the UCL continue to this day.

14 66. Pursuant to Business & Professional Code § 17203, Plaintiffs and the Class seek an  
15 order of this Court that includes, but is not limited to, an order requiring Defendant to:

- 16 (a) remove and/or refrain from using representations on the Emergen-C box  
17 representing Emergen-C “boosts” or powers up a person’s immune system;  
18 (b) remove and/or refrain from using representations on the Emergen-C box  
19 representing Emergen-C “supports the immune system;”  
20 (c) remove the language “Immune Defense” from the Emergen-C product box;  
21 (d) remove language on the Emergen-C box representing that Emergen-C can  
22 i. “[a]ctivate the white blood cells that are most important in antibody  
23 production and in coordinating immune functions;  
24 ii. “fight[] free radicals and help[] maintain healthy white blood cell activity;”  
25 and  
26 iii. “stimulate[]” and “enhance[]” the immune system;  
27 (e) remove and/or refrain from using representations on the Emergen-C box  
28 representing Emergen-C increases metabolic function;

- 1 (f) remove and/or refrain from using representations on the Emergen-C box  
2 representing Emergen-C “ignites” a user’s energy level;
- 3 (g) comply with all applicable requirements of the Sherman Law, including, but not  
4 limited to, prohibition of:
- 5 i. misbranding any food or drug, Health and Safety Code §§ 10398 & 111445;
  - 6 ii. manufacturing, selling, delivering, holding, or offering for sale and food or  
7 drug that is misbranded, *id.* at §§ 10398 & 111440; or
  - 8 iii. receiving in commerce any food or drug that is misbranded or delivering or  
9 proffering it for delivery, *id.* at §§ 110770 & 111450;
- 10 (h) provide restitution to Plaintiffs and Class members;
- 11 (i) disgorge all revenues obtained as a result of violations of the UCL; and
- 12 (j) pay Plaintiffs’ and the Class’s attorney fees and costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and the Class as follows:

- 15 A. An order certifying the proposed Class; appointing Plaintiffs as representatives of the Class; and  
16 appointing their undersigned counsel as class counsel;
- 17 B. A declaration that Defendant is financially responsible for notifying Class members of the  
18 pendency of this suit;
- 19 C. An award of restitution pursuant to California Business and Professions Code §§ 17203, 17535;
- 20 D. An award of disgorgement pursuant to California Business and Professions Code §§ 17203, 17535;
- 21 E. An order enjoining Defendant’s unlawful and deceptive acts and practices, pursuant to California  
22 Business and Professions Code §§ 17203, 17535, to remove and/or refrain from using  
23 representations on Defendant’s Product that the Product “boosts immunity,” “supports” the user’s  
24 immune system, provides “Immune Defense,” “increases metabolic function,” and “ignites” the  
25 user’s energy level.
- 26 F. Monetary damages and injunctive relief allowed pursuant to Cal. Civ. Code § 1780;
- 27 G. Statutory damages in the maximum amount provided by law;
- 28 H. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

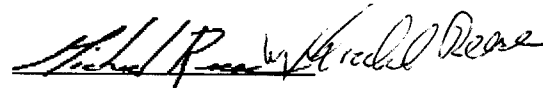
- 1 I. An order awarding Plaintiffs and the other Class members the reasonable costs and expenses of  
2 suit, including their attorneys' fees; and  
3 J. Any further relief that the Court may deem appropriate.  
4

5 **JURY TRIAL DEMANDED**

6 Plaintiffs demand a trial by jury for all claims so triable.

7 DATED: September 27, 2013

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