

FILED

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

04/01/14 12:50

ANDREW HOFFMAN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

BLUEBONNET NUTRITION CORP.,
and ALBION LABORATORIES, INC.

Defendants.

Case No.

CLASS ACTION COMPLAINT

[Jury Trial Demanded]

8:14 cv 773 T 23 AEP

Plaintiff Andrew Hoffman, by and through his counsel, respectfully files this Class Action Complaint on behalf of himself and a class of similarly-situated individuals who purchased Magnesium Bisglycinate Chelate Buffered (the "Product") from Bluebonnet Nutrition Corp., and Albion Laboratories, Inc.

NATURE OF THE CASE

1. As consumers have become increasingly health conscious, dietary supplements have become a multibillion dollar industry. In order to navigate the vast array of vitamin and mineral products available on the market today, consumers rely on honest and accurate labels. Unfortunately, some companies attempt to maximize their profits by mislabeling their supplements in order to trick consumers into paying a price premium for an inferior product. Defendants are two such companies.

2. The Product is a Magnesium supplement that contains two kinds of Magnesium: Glycinate and Oxide. It is well-known that Glycinate is superior to Oxide because it is a "chelated" Magnesium, which is more easily absorbed into the body and causes fewer negative

TRA-22687
\$400

side effects. Accordingly, the wholesale and retail prices for Glycinate are higher than for Oxide.

3. In an effort to cut costs while maintaining demand, Defendants blend Glycinate with Oxide but do not list Oxide as an ingredient anywhere on the Product label. They do, however, list Glycinate as an ingredient on the “Supplement Facts” panel. This enables Defendants to charge a price premium for the Product by charging the same price for the Product as would be charged for Glycinate.

4. Under the false impression that Defendants’ Product is Glycinate, tens of thousands of consumers have paid a price premium for an inferior form of Magnesium, thereby padding Defendants’ pockets with undeserved profits. This suit seeks redress on behalf of consumers who paid a price premium for the Product under the reasonable but mistaken belief that it was Magnesium Glycinate.

PARTIES

5. Plaintiff Andrew Hoffman resides in Clearwater Florida. In or around December 2013, Mr. Hoffman purchased a bottle of Defendants’ Product. Were it not for Defendants’ unfair and deceptive practices, Plaintiff and the Class would not have purchased Defendants’ Product or paid a price premium to purchase it. If Defendants’ Product did in fact provide Magnesium Glycinate as promised rather than also containing Magnesium Oxide, Plaintiff would likely continue to purchase the Product and pay the price premium to purchase it.

6. Defendant Bluebonnet Nutrition Corp. (“Bluebonnet”) is a Texas corporation headquartered at 12915 Dairy Ashford, Sugar Land, TX 77478. Bluebonnet markets and sells nutrition supplements, including the Product, worldwide.

7. Defendant Albion Laboratories, Inc. (“Albion”) is a Utah corporation headquartered at 101 N. Main Street, Clearfield, Utah 84015. Albion manufactures and supplies mineral amino acid chelate nutrition to industries worldwide. Pursuant to an agreement with Bluebonnet, Albion was able to control the nature and content of the Product’s label.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Jurisdiction is proper because (1) the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs; (2) the named Plaintiff and the Defendants are citizens of different states; and (3) the proposed class has more than 100 members. 28 U.S.C. § 1332(d)(2), (5)(B).

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred within this judicial district, and because Defendants have marketed and sold the products at issue in this action within this judicial district and have done business within this judicial district.

GENERAL ALLEGATIONS

10. Consumers are increasingly health conscious and often rely on vitamin and mineral supplements to promote health and prevent disease. A multibillion dollar industry, nutrition supplements have become a mainstay of the American diet. However, because most supplements are over-the-counter, and particularly in the era of self-diagnosis on the Internet, consumers depend on the accuracy and honesty of labels so they can make informed decisions about which products to purchase for their health needs.

11. Magnesium has become one of the best selling minerals on the market, as studies show that a staggering 68% of Americans do not consume the recommended daily intake of

magnesium. Magnesium is critical to a wide variety of essential bodily functions, including protein synthesis, muscle and nerve function, bone development, blood glucose control, and blood pressure regulation. Magnesium deficiencies have also been linked to insomnia. Magnesium supplements are therefore growing in popularity as consumers learn about the consequences of a deficiency in this essential mineral.

12. Because Magnesium must be combined with another substance in order to properly absorb into the body, there are numerous types of Magnesium supplements. The types of Magnesium supplements are defined by the substances with which the Magnesium is combined, and include: Glycinate, Malate, Citrate, Threonate, Taurate, Chloride or Lactate, Carbonate, Sulfate or Hydroxide, and Oxide. The greater the absorption, the greater the “bioavailability.”

13. Glycinate is one of the most bioavailable forms of magnesium “and is typically ideal for those who are trying to correct a deficiency.”¹ Oxide, by contrast, is one of the least bioavailable forms of Magnesium and has an unpleasant laxative effect.² One study found that Oxide only has a 4% absorption rate.³ Another found that Glycinate has a more immediate and higher overall absorption rate in, and is better tolerated by, patients who have difficulty absorbing and retaining magnesium due to a procedure called “ileal resection.”⁴ The University of Kansas Medical Center clearly states: “Magnesium oxide is poorly absorbed, and hence likely

¹ <http://articles.mercola.com/sites/articles/archive/2012/12/17/magnesium-benefits.aspx>; *see also* http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf_b_425499.html (recommending mg citrate, glycinate, taurate, or aspartate).

² <http://www.emed.com.au/3438> (explaining that Mg oxide is used as a laxative).

³ Firoz M, Graber M. (2001) Bioavailability of US commercial magnesium preparations. *Magnesium Research*. 14(4):257-62.

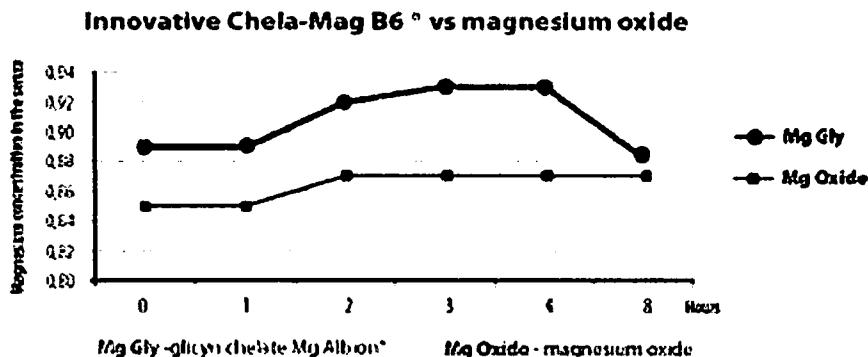
⁴ Schuette S.A. et al. (1994) Bioavailability of magnesium diglycinate vs magnesium oxide in patients with ileal resection. *J Parenter Enteral Nutr*. 18(5):430-5.

to cause diarrhea. We do not recommend magnesium oxide.”⁵ Livestrong.com also recommends

Glycinate over Oxide:

If you are suffering from a magnesium deficiency, magnesium glycinate or other forms of chelated magnesium may be your best bet because they are so well absorbed, says Carolyn Dean, author of "The Magnesium Miracle." Your body may tolerate magnesium glycinate better than magnesium oxide, which is commonly used for this purpose, notes Donald Goldberg, lead author for "The Best Supplement for Your Health.”⁶

Dr. Andrew Weil, a well-known naturopath, recommends Glycinate over Oxide,⁷ and even Albion’s own studies, which are readily available on the Internet, promote the superiority of Glycinate as compared to Oxide:



14. Unsurprisingly, consumers believe Glycinate is superior to Oxide. This is demonstrated by numerous blog posts espousing Glycinate over Oxide. For example, in an online forum with a blog post entitled “Bulletproof Magnesium Thread,” a member wrote: “Magnesium Glycinate – The most bioavailable form of Magnesium Least likely to cause

⁵ <http://www.kumc.edu/school-of-medicine/integrative-medicine/the-benefits-of-magnesium.html>.

⁶ <http://www.livestrong.com/article/271338-what-are-the-benefits-of-magnesium-glycinate/>

⁷ <http://www.drweil.com/drw/u/ART02805/magnesium.html> (Dr. Weil recommends “magnesium citrate, chelate, or glycinate, and avoid magnesium oxide, which can be irritating to the digestive tract”).

loose stools” and “Magnesium Oxide – VERY POORLY ABSORBED – out of 400 mg only AT MOST 80 mg of magnesium absorbed by the body. The worst form of magnesium.”⁸ In another blog post on MedHelp.org, a member wrote that Magnesium Glycinate is one of the best forms of magnesium and that “Chelated magnesium [which includes Glycinate] is far better absorbed than magnesium oxide”⁹

15. In part due to this increased consumer awareness and demand for Glycinate, Glycinate is significantly more expensive than Oxide. As noted by the Huffington Post, Magnesium Oxide is one of “the cheapest and most common forms [of Magnesium] found in supplements.”¹⁰ For example, Solaray, a supplement retailer, offers Magnesium Glycinate for \$12.98 per bottle, which contains 120 capsules and 400 milligrams (“mg”) per serving (where each serving is four capsules). This computes to \$0.11/capsule or \$0.001/mg. By contrast, Nature Made, another supplement retailer, offers Magnesium Oxide for \$2.97 per bottle, which contains 100 capsules and 250 mg per serving (where each serving is one capsule). This calculates to \$0.03/capsule or \$0.0001/mg. Therefore, as between these two retailers, Magnesium Glycinate costs **ten times** more per mg than Oxide.

16. In addition to increased consumer demand, Glycinate is also more expensive because it is more costly to manufacture. Glycinate is a “chelated” form of Magnesium, which means it is combined with another substance to increase absorption. To chelate its Magnesium Glycinate, Albion uses a six-stage chelation process described in a promotional video on

⁸ <http://forum.bulletproofexec.com/index.php?/topic/2078-bulletproof-magnesium-thread/>

⁹ <http://www.medhelp.org/posts/Heart-Rhythm/Magnesium-supplements----to-avoid---how-to-take-it-and--safety/show/1002415>

¹⁰ http://www.huffingtonpost.com/dr-mark-hyman/magnesium-the-most-powerf_b_425499.html (“Avoid magnesium carbonate, sulfate, gluconate, and oxide. They are poorly absorbed (and the cheapest and most common forms found in supplements).”).

Albion’s homepage.¹¹ The machinery and expertise required to manufacture Glycinate is very expensive. Oxide is not chelated, and is therefore far less costly to manufacture.

17. To reduce these costs while maintaining consumer demand, Albion blended Oxide with Glycinate. Albion’s Product Data Sheet lists Magnesium Glycinate and Magnesium Oxide as ingredients. Yet the labeling on Bluebonnet’s final product, a label that is at least in part controlled by Albion, lists Glycinate but entirely omits Oxide:



S u p p l e m e n t F a c t s		
Serving Size 1 Capsule		
	Amount Per Serving	% Daily Value
Magnesium (buffered magnesium glycinate chelate)	200 mg †	50

Daily Value based on a 2,000 calorie diet
† Elemental

Other Ingredients: 100% Kosher vegetable capsules, vegetable cellulose, vegetable magnesium stearate
Free of milk, egg, fish, crustacean shellfish, tree nuts, peanuts, wheat and soybeans
Also free of corn, yeast, gluten, barley, sodium and sugar
Bluebonnet KOF-K Certification #K-03307000

Such deceptive labeling leads a reasonable consumer to believe that the Product is Glycinate, when in fact it is blended with an inferior form of Magnesium.

18. Like other members of the Class, Plaintiff purchased Bluebonnet’s Chelated Magnesium believing it to have the qualities he sought (magnesium glycinate product), based on the unlawful and deceptive misrepresentations of Defendants.

19. Instead of receiving a Product that has the advantages of a Magnesium Glycinate, Plaintiff and members of the Class received a product containing both Magnesium Glycinate and an inferior Magnesium Oxide.

¹¹ <http://www.albionminerals.com/>

20. Defendants' Product was worth less than what Plaintiff and members of the Class paid for it and Plaintiff and members of the Class lost monies as a result of Defendants' deception in that they did not receive what they paid for.

21. Defendants therefore earn a substantial additional profit by knowingly and intentionally misleading consumers into believing that the Product is Glycinate.

22. Moreover, Defendants' deceptive labeling practice defies the FDA's explicit instructions. 21 C.F.R. § 101.36 covers nutrition labeling of dietary supplements, and provides that "the label of a dietary supplement that is offered for sale shall bear nutrition labeling in accordance with this regulation unless an exemption is provided for the product in paragraph (h) of this section." 21 C.F.R. § 101.36(a). Defendants are not exempt under 21 C.F.R. § 101.36(h)(3).

23. Defendants must abide by the labeling requirements set forth in 21 C.F.R. § 101.36. Specifically, Section 101.36(b)(2) applies to dietary ingredients and their subcomponents that have a "Reference Daily Intake" or "Daily Reference Value" under Section 101.9(c). Magnesium's daily reference value is readily available online:

AGE	MALE	FEMALE
1-3	80 mg	80 mg
4-8	130 mg	130 mg
9-13	240 mg	240 mg
14-18	410 mg	360 mg (400 mg during pregnancy)
19-30	400 mg	310 mg (350 mg during pregnancy)
31+	420 mg	320 mg

Section 101.9(c)(8)(iv) also includes magnesium as one of the minerals that is "essential" to human nutrition, and magnesium is explicitly referenced in Section 101.36(b)(2)(B). Section

101.36(b)(2) therefore applies to Defendants, and requires such Magnesium to be declared “when [it is] added to the product for purposes of supplementation, or when a claim is made about [it].” Because the Defendants’ Magnesium is added to the Product for purposes of supplementation and claims about nutrient content and health are made about it, the Magnesium in the Product must be declared.

24. Although Defendants do list Magnesium, they only list Magnesium Glycinate, not Magnesium Oxide. This violates Section 101.36(d), which requires “source ingredients” to be disclosed either in the nutrition label or “outside and immediately below the nutrition label.” Further, “[w]hen source ingredients are listed within the nutrition label, and two or more are used to provide a single dietary ingredient, all of the sources shall be listed within the parentheses in descending order by weight.” 21 C.F.R. § 101.36(d)(2).

25. Glycinate and Oxide are source ingredients. Therefore, not only must Defendants disclose the Oxide contained in the Product, they must also list the respective weights of the Glycinate and Oxide.

26. Even if Defendants’ Product were deemed a “proprietary blend,” pursuant to Section 101.36(c)(2), each ingredient must nevertheless be listed in descending order of predominance by weight, in accordance with Section 101.36(b)(3). Thus, Defendants may not circumvent the FDA’s disclosure requirements by simply calling the Product “proprietary.” In fact, Albion must be aware of this disclosure requirement, as it discloses all of the ingredients of a proprietary blend contained in prostate health supplement called Natural Prostate Health, for which Albion supplies some of the underlying ingredients¹²:

¹² <http://shop.enivausa.com/487786/en-us/product.aspx?id=26005>

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 30		
	Amount Per Serving	% DV*
Zinc	15 mg	100%
Selenium	25 mcg	36%
Proprietary Blend	2,000 mg	†
Saw Palmetto Fruit Extract		
Beta-Sitosterol with Phytosterols		
Pygeum Africanum Bark Extract		
Cranberry Extract		
Stinging Nettle Root Extract		
Grape Seed Extract		
Evening Primrose Seed Oil (for GLA, ALA, PLA)		
Pumpkin Seed Oil		
* Percent Daily Value (DV) is based on a 2000 calorie diet.		
† Daily Value not established.		

Defendants therefore knowingly and intentionally hide the fact that the Product contains Oxide so they can turn an additional profit at the consumer's expense.

27. This is precisely what happened to Plaintiff. In or around December 2013, Mr. Hoffman decided to try Magnesium supplements as a potential natural remedy for his sleeping trouble. Plaintiff purchased one bottle of the Product. After taking the Product for two or three weeks and experiencing no beneficial effects, Plaintiff consulted several consumer reviews on Amazon.com to get more information about the Product. Plaintiff discovered more than one review regarding the Product that stated, contrary to the implication on the label, that it is not Glycinate and instead contains 50% Magnesium Oxide.

28. After reading this information, Plaintiff saw another post which explained that Magnesium Oxide is an inferior form of Magnesium because it has lower absorption rates and functions as a laxative. Plaintiff thereafter immediately stopped taking the Product.

29. Plaintiff conducted additional research on the Product and discovered that Swanson was the only company that discloses the fact that its similar product contains

Magnesium Oxide, and only in the “other ingredients” section below the more prominent “Supplement Facts” label, which lists Magnesium Glycinate. See Swanson Ultra Albion Chelated Magnesium Glycinate Supplement Facts below:

Supplement Facts

Serving Size 1 Capsule

	Amount Per Serving	% Daily Value
Magnesium (from TRAACS®magnesium glycinate chelate buffered)	133 mg	33%

Other ingredients: Gelatin, magnesium oxide, citric acid, maltodextrin, may contain one or more of the following: microcrystalline cellulose (plant fiber), magnesium stearate, silica.

30. Through his inquiries, Plaintiff discovered that Albion dictates the labeling to its suppliers by way of a licensing agreement. A representative from one of Albion’s retailers told Plaintiff that they were following Albion’s guidelines by not listing Magnesium Oxide as an ingredient, stating “Albion did review, direct, and approve the current content of our label.” Moreover, the representative stated that Albion’s review was pursuant to “contractual agreements.” It is therefore apparent that Albion exercises control over the Product’s labeling, and either explicitly or implicitly instructs its retailers not to disclose Magnesium Oxide.

31. In fact, another magnesium retailer has acknowledged that Magnesium Oxide should have been listed as an ingredient in its products, and apologized for the mislabeling.

32. Nuvari, a seller of Magnesium ULTRA - High Absorbency Buffered Magnesium Glycinate Chelated From Albion Labs has stated on its product page on Amazon that “We have conducted further research into this matter and have spoken further with our supplier and Albion.

It appears that our supplier failed to list the following other ingredients in the supplement facts provided for our label: magnesium oxide, citric acid, maltodextrin, silica. These ingredients are part of the formula manufactured by Albion. They are not added in afterwards by our supplier. Nevertheless, it is required that they appear in the ingredients. We are very disappointed to learn that our labeling is incorrect. We will be closing our Amazon listing this week in order to have our product relabeled and the ingredients listed properly.”¹³

33. This was repeated in an email to Plaintiff’s counsel dated January 20, 2014, attached hereto as Exhibit 1, stating:

We have been looking into this matter thoroughly and have finally discovered what we believe to be the problem. Our supplier, a contract manufacturing company, provided us with the supplement facts to put on our label. It seems that they have considered the Buffered Magnesium Bisglycinate Chelate an ingredient unto itself with no need to mention what is in it. As they are a certified GMP company we did not feel the need to second guess this. After our initial talks with Albion, we mistakenly believed this was a licensing agreement issue and that a product such as this didn’t need to reveal it’s exact ingredient list. After discussing further with Albion and finally receiving a spec sheet for the material, it became clear the following ingredients should in fact be included on the label under FDA guidelines: magnesium oxide, citric acid, maltodextrin, and silica. These ingredients should have appeared on our label under the other ingredients list.

Needless to say, we are very disappointed to learn that our labeling is incorrect. And we are now working with our supplier to remedy the situation. It has never been our intent to mislead or hide anything. We only wish to provide a quality product to consumers.

It is our decision to close our Amazon listing for this product until it is relabeled and the ingredients properly listed.

Best Regards,

Nuvari Life

¹³ http://www.amazon.com/specifically-ingredient-telling-provides-ingredients/forum/Fx3LFGZHGWM1F/Tx1EUOVE2ISN3Z/1/ref=cm_cd_dp_aar_al_a?_encoding=UTF8&asin=B00EAPQIRU

34. Moreover, Nuvari further stated in an email to Plaintiff's counsel that "[w]e've contacted and spoken with Albion more than once about their Buffered Magnesium Bisglycinate Chelate and how it should be labeled. They clearly told us that the labeling is fine the way it is; that it doesn't need to mention Magnesium Oxide; and that it's been sold that way for 20 years."

35. Notwithstanding Albion's directive, Bluebonnet is required to abide by the FDA regulations set forth above. Bluebonnet could and should have resisted Albion's instructions by either listing Oxide as an ingredient on the Supplement Facts panel, or refusing to purchase the Product.

36. Bluebonnet therefore cannot claim innocence; by only listing "Magnesium Glycinate" as an ingredient on the Supplement Facts panel and failing to disclose Oxide as an ingredient, Defendants were able to charge an unwarranted price premium for an adulterated product.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on his own behalf and, pursuant to Federal Rule of Civil Procedure 23, on behalf of a class of all persons who, during the period of April 1, 2008 through present, purchased the Product (the "Class"). Excluded from the Class are Defendants and any parent, subsidiary, or affiliate of Defendants.

38. This action is brought as a class action for the following reasons:

- A. The Class consists of tens of thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- B. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:

- i. Whether Defendants violated F.S.A. § 501.204 *et seq.*;
- ii. The wholesale and retail prices of the Product, Magnesium Glycinate, and Magnesium Oxide;
- iii. The cost of manufacturing the Product, Magnesium Glycinate, and Magnesium Oxide;
- iv. Whether a reasonable consumer would believe that the Product contains Magnesium Glycinate without Magnesium Oxide;
- v. Whether Albion required Bluebonnet to include Magnesium Glycinate, and to exclude Magnesium Oxide, from the Product's labeling;
- vi. Whether Defendants knew the Product was mislabeled;
- vii. Whether Defendants knowingly deceived consumers;
- viii. Whether Defendants intentionally deceived consumers;
- ix. Whether Defendants' labeling and pricing scheme constitutes an unfair method of competition;
- x. Whether Defendants' labeling and pricing scheme is an unconscionable act or practice;
- xi. Whether Defendants' labeling and pricing scheme is an unfair or deceptive act or practice;
- xii. Whether Defendants have been unjustly enriched by their labeling and pricing scheme;
- xiii. Whether Defendants should be enjoined from continuing their labeling and pricing scheme;

- C. The claims asserted by Plaintiff are typical of the claims of the members of the Class;
- D. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class and complex litigation, including class action litigation involving state statutes protecting consumers from deceptive and unfair trade practices;
- E. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants;
- F. Defendants have acted on grounds that apply generally to the Class, i.e., mislabeling and charging an unjustifiable price premium for the Product, so that final injunctive relief prohibiting Defendants from continuing their unfair and deceptive practice is appropriate with respect to the Class as a whole; and
- G. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:
 - i. Absent a class action, Class members as a practical matter will be unable to obtain redress; Defendants' violations will continue without remedy; additional consumers will be harmed; and Defendants will continue to reap and retain its ill-gotten gains;
 - ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

iii. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class;

iv. A class action will permit an orderly and expeditious administration of Class claims and foster economies of time, effort, and expense;

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action; and

vi. Defendants have acted on grounds generally applicable to Class members, making Class-wide monetary and injunctive relief appropriate.

FIRST CAUSE OF ACTION
**(Violation of the Florida Deceptive and Unfair Trade Practices Act,
F.S.A. § 501.204 *et. seq.*)**

39. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 – 36 above as if fully set forth herein.

40. The elements to state a claim under the Florida Deceptive and Unfair Trade Practices Act are (1) a deceptive act or unfair practice, (2) causation, and (3) actual damages.

41. Defendants' labeling and pricing scheme constitutes a deceptive act because it is a representation, omission, or practice that that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment. Defendants represent that the Product contains Magnesium Glycinate but omit the fact that it also contains Magnesium Oxide. This mislabeling practice is likely to mislead a consumer acting reasonably under the circumstances into believing that the Product is Magnesium Glycinate. As a result of this reasonable but erroneous belief, tens of thousands of consumers have paid and continue to pay an unjustified price premium for Defendants' Product.

42. Defendants' labeling and pricing scheme constitutes an unfair practice because it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. By representing that the Product contains Magnesium Glycinate without Magnesium Oxide, Defendants charge an immoral, unethical, oppressive, and unscrupulous price premium that is substantially injurious to consumers.

43. As a direct and proximate result of Defendants' deceptive acts and unfair practices, Plaintiff and the Class paid a price premium for an inferior product. It was reasonably foreseeable that the Product label would lead a reasonable consumer to believe that the Product contains Glycinate, and that such a consumer would unknowingly pay a price premium for the Product even though it is less expensive to manufacture, has a greater laxative effect, and has lower bioavailability than Magnesium Glycinate.

44. Consumers suffered actual damages because they paid the fair market price for Magnesium Glycinate when the Product they purchased contained both Magnesium Glycinate and Magnesium Oxide, the latter of which is a less expensive and inferior form of Magnesium.

45. The above-described deceptive acts and unfair practices by Defendants present an ongoing threat to the Class. Plaintiff is informed and believes and thereon alleges that Defendants have systematically perpetrated deceptive acts and unfair practices upon members of the public and have knowingly and intentionally misled Plaintiff and members of the Class.

SECOND CAUSE OF ACTION

(Unjust Enrichment)

46. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 – 36 above as if fully set forth herein.

47. By deceiving consumers into paying more for a less expensive and inferior product, Defendants have unjustly enriched themselves at the expense of Plaintiff and the Class.

Defendants are therefore required in equity and good conscience to compensate Plaintiff and members of the Class for the damages they have suffered as a result of Defendants' inequitable conduct.

48. By reason of the foregoing, Defendants are liable to Plaintiff and the Class for the damages that they have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial, plus attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants as follows:

1. Certifying this action as a class action as soon as practicable, with the Class as defined above;
2. On Plaintiff's First Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial, and ordering appropriate injunctive relief, including a prohibition against Defendants' deceptive acts and unfair practices of mislabeling and overcharging for the Product;
3. On Plaintiff's Second Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial;
4. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and
5. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury.

Dated: April 1, 2014

Respectfully submitted,

**MORGAN & MORGAN
COMPLEX LITIGATION GROUP**

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Attorneys for Plaintiffs and the Class

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

ANDREW HOFFMAN, on behalf of himself and all others similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
J. Andrew Meyer, Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, Tampa, Florida 33602 (813) 223-5505

DEFENDANTS

BLUEBONNET NUTRITION CORP. and ALBION LABORATORIES, INC.,

County of Residence of First Listed Defendant **Fort Bend**
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question *(U.S. Government Not a Party)*
- 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)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care - Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Title - Involvement <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 851 HEA (1395f) <input type="checkbox"/> 852 Black Lung (923) <input type="checkbox"/> 853 DIWC/DIWW (405(g)) <input type="checkbox"/> 854 SSD Title XVI <input type="checkbox"/> 855 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing - Accommodations <input type="checkbox"/> 445 Amer. w Disabilities - Employment <input type="checkbox"/> 446 Amer. w Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 U.S.C. §1332(d)

Brief description of cause:
Florida Deceptive and Unfair Trade Practices Act and Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.V.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE: DOCKET NUMBER:

DATE: 04/01/2014 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING FEE JUDGE MAG JUDGE