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 16 Kathleen Holt

17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 **KATHLEEN HOLT, Individually**
 20 **and on Behalf of All Others**
 21 **Similarly Situated,**

22 **Plaintiff,**

23 **v.**

24 **FOODSTATE, INC, d/b/a**
 25 **MEGAFOOD, d/b/a INNATE**
 26 **RESPONSE FORMULAS,**

27 **Defendant.**

Case No.: '15CV0078 L NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES
 AND RESTITUTION FOR
 VIOLATIONS OF CALIFORNIA'S
 BUS. & PROF. CODE §§ 17200 ET
 SEQ.; CALIFORNIA'S BUS. &
 PROF. CODE §§ 17500 ET SEQ.;**
**CALIFORNIA'S HEALTH AND
 SAFETY CODE § 110660;**
**NEGLIGENT AND INTENTIONAL
 MISREPRESENTATION.**

JURY TRIAL DEMANDED

INTRODUCTION

1. KATHLEEN HOLT (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Complaint to challenge the actions of FOODSTATE, INC, d/b/a MEGAFOOD, d/b/a INNATE RESPONSE FORMULAS (“FoodState” or “Defendant”) with regard to Defendant’s false promotion of its One Daily Multivitamin product¹ as, *inter alia*, primarily consisting of and providing vitamins and nutrients from whole foods² as opposed to synthetically created vitamins or processed extracts and failure to disclose the presence and use of magnesium stearate. The nationwide advertising, promotion, marketing, packaging and selling of FoodState’s One Daily Multivitamin content constitutes: (a) a violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 et seq., (b) California’s False Advertising Law (“FAL”), Bus. & Prof. Code §§ 17500 et seq.; (c) California Health and Safety Code § 110660; (d) negligent misrepresentation and (e) intentional misrepresentation. This conduct caused Plaintiff and the putative class members damages, and requires restitution to remedy and/or prevent further damages.
2. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of the named Defendant.

¹ Plaintiff also seeks to represent putative class members who purchased products substantially similar to FoodState’s One Daily Multivitamin products which claim to provide vitamins, minerals or nutrients from whole foods and/or conceal the presence and use of magnesium stearate.

² Such as Carrots, Cabbage, Broccoli, Oranges, Organic Brown Rice, Cranberries and Blueberries, and *Saccharomyces Cerevisiae* (nutritional yeast). *See* <http://www.megafood.com/our-foodstate-nutrients>

NATURE OF ACTION

- 1
- 2 3. The term “whole food” is regularly use by manufacturers, such as
- 3 FoodState, to describe a product that has been processed or refined as little
- 4 as possible, remains in its nature, but dehydrated, state and is free from
- 5 additives or other artificial or processed substances.
- 6 4. The term “whole food” is used to convey the message that the product is a
- 7 healthier and more natural choice than competing products that contain
- 8 overly processed, extracted or synthetic ingredients, have lost their potency,
- 9 and that the product is superior, more natural and even worth a premium
- 10 price because of the benefit.
- 11 5. At all times relevant, FoodState has made, and continues to make,
- 12 affirmative misrepresentations and/or omissions regarding its One Daily
- 13 Multivitamin product. Specifically, the One Daily Multivitamin product,
- 14 which has been packaged, advertised, marketed, promoted and sold by
- 15 FoodState to Plaintiff and other consumers similarly situated, was
- 16 represented by Defendant to contain “whole foods” as a substantial
- 17 ingredient, i.e., “fresh carrots for mixed carotenoids, broccoli for folate,
- 18 whole green cabbage for vitamin K, oranges for vitamin C, organic brown
- 19 rice for vitamin E, antioxidant-rich fruits like cranberries and blueberries
- 20 for protective phenolic compounds, and nutritional yeast for B vitamins and
- 21 minerals.”³
- 22 6. Although One Daily Multivitamin contains some whole food ingredients,
- 23 One Daily Multivitamin contains little vitamins, minerals and/or nutrients
- 24 from whole foods (or much less than consumers reasonably expect based
- 25 upon Defendant’s representations as alleged herein), a fact that Defendant
- 26 knew and purposely failed to disclose (or adequately disclose) to
- 27 consumers. The product, One Daily Multivitamin, consists of mostly

28 ³ See: <http://www.megafood.com/authentic-nourishment>

1 synthetically produced vitamins and minerals, as it is scientifically
 2 impossible, without genetically engineered whole foods, to provide the
 3 amount of vitamins and minerals from the amounts of whole foods that
 4 Defendant purports to use to obtain the levels of vitamins and minerals as
 5 labeled on its packages.

6 7. To this day, Defendant has taken few, if any meaningful steps to clear up
 7 consumers' misconceptions regarding the One Daily Multivitamin product,
 8 including Defendant's intentional and or negligent omission regarding the
 9 presence and use of magnesium stearate.

10 8. As a consequence of Defendant's unfair and deceptive practices, Plaintiff
 11 and other consumers similarly situated have purchased One Daily
 12 Multivitamin under the false impression that, by consuming the product
 13 they would be enjoying the healthful and nutritional benefits associated
 14 with a product which they reasonably believed, based upon Defendant's
 15 representations alleged herein, at least substantially contained vitamins and
 16 minerals from whole foods only and did not contain magnesium stearate.

17 9. Each consumer, including Plaintiff, was exposed to virtually the same
 18 material misrepresentations and/or omissions, which are prominently
 19 displayed on the product's packaging for One Daily Multivitamin, as well
 20 as on Defendant's website, prior to purchasing the product.

21 10. Defendant completely omitted from its labeling and advertising the fact that
 22 One Daily Multivitamin contains magnesium stearate,⁴ which is or may be

23 _____
 24 ⁴ "Magnesium stearate is a ... potentially harmful additive found in many
 25 supplements." [http://articles.mercola.com/sites/articles/archive/2012/06/23/whole-](http://articles.mercola.com/sites/articles/archive/2012/06/23/whole-food-supplement-dangers.aspx)
 26 [food-supplement-dangers.aspx](http://articles.mercola.com/sites/articles/archive/2012/06/23/whole-food-supplement-dangers.aspx), accessed August 22, 2013. Magnesium stearate is
 27 formed by adding a magnesium ion to stearic acid and is a compound that has
 28 lubricating properties, which is why it is often used in the making of supplements,
 as it allows the machinery to run faster and smoother, and prevents the pills or
 capsules from sticking to each other. Research has shown that stearic acid
 suppresses T cells—your natural killer cells—which are a key component of your

1 harmful to consumers by, among other things, negatively impacting the
2 body's immune system.

3 11. As a result of Defendant's representations and/or omissions regarding One
4 Daily Multivitamin, Plaintiff and other consumers similarly situated
5 overpaid for the product because the value of the product was diminished at
6 the time it was sold to consumers. Had Plaintiff and other consumers
7 similarly situated been made aware that One Daily Multivitamin contained
8 little whole food based vitamins and minerals (or much less than consumers
9 reasonably expect based upon Defendant's representations alleged herein),
10 in the presence of magnesium stearate, they would not have purchased One
11 Daily Multivitamin, would have paid less for it, or purchased a different
12 resveratrol supplement.

13 12. As a result of Defendant's false and misleading statements and failures to
14 disclose (or adequately disclose), as well as Defendant's other conduct
15 described herein, Plaintiff and other consumers similarly situated purchased
16 several thousands of units of One Daily Multivitamin and have suffered,
17 and continue to suffer, injury in fact.

18 13. Defendant's conduct violates several California state and federal laws, as
19 alleged more fully herein.

20 14. This action seeks, among other things, restitution of all amounts unlawfully
21 retained by Defendant from Defendant's wrongdoing alleged herein.

22 **JURISDICTION AND VENUE**

23 15. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d),
24 as the matter in controversy, exclusive of interest and costs, exceeds the
25 sum or value of \$5,000,000 and is a class action in which the named
26 Plaintiff is a citizen of a State different from Defendant.

27 16. Defendant sells its products in a great number of retail stores across

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immune system. *Id.*

1 California, as well as a website from which it sells its One Daily
2 Multivitamin products to consumers. Plaintiff believes that Defendant has
3 sold in excess of \$5,000,000 worth of its One Daily Multivitamin products
4 to consumers.

5 17. This Court has personal jurisdiction over Defendant because Defendant
6 does business in the State of California, is incorporated in the State of New
7 Hampshire, has sufficient minimum contacts with this state, and otherwise
8 purposely avails itself of the markets in this state through the promotion,
9 sale, and marketing of its products in this state, to render the exercise of
10 jurisdiction by this Court permissible under traditional notions of fair play
11 and substantial justice.

12 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, in that
13 Defendant resides within the judicial district and many of the acts and
14 transactions giving rise to this action occurred in this district because
15 Defendant:

16 (a) is authorized to conduct business in this district and has
17 intentionally availed itself of the laws and markets within this
18 district;

19 (b) does substantial business within this district;

20 (c) is subject to personal jurisdiction in this district; and

21 (d) the harm to Plaintiff occurred within this district.

22 **PARTIES**

23 19. Plaintiff is, and at all relevant times was, a natural person residing in the
24 State of California, County of San Diego.

25 20. Plaintiff is informed and believes, and thereon alleges, that Defendant's
26 principal place of business is 8 Bowers Road, Derry, New Hampshire,
27 03038, and is incorporated under the laws of the State of New Hampshire,
28 and does business within the State of California and this district.

GENERAL ALLEGATIONS

- 1
- 2 21. FoodState, is a leading producer in the United States of health supplements
- 3 purported to be created from whole foods. Defendant sells One Daily
- 4 Multivitamin in varying quantities, including 30, 60, 90, and 180 count,
- 5 throughout the United States, including in California.
- 6 22. It has been recently believed that nutrients, vitamins, and minerals are
- 7 healthier, more natural and ultimately better for you if they are derived from
- 8 whole foods through gentle minimal processing and heat-free
- 9 manufacturing. FoodState calls the process they developed and use the
- 10 “Slo-Food Process.”⁵ Defendant markets and promotes its products and
- 11 processes through many mediums but particularly through their website and
- 12 YouTube videos. At no time does Defendant mention the use of synthetic or
- 13 processed nutrients.
- 14 23. During the “Class Period” as defined in paragraph 125, Plaintiff was
- 15 exposed to and saw Defendant’s advertising, marketing, promotional and
- 16 packaging claims, purchased FoodState’s One Daily Multivitamin in
- 17 reliance on these claims, and suffered injury in fact and lost money as a
- 18 result of Defendant’s unfair, misleading and unlawful conduct described
- 19 herein.
- 20 24. Plaintiff is a generally health conscious person who often shops at health
- 21 foods stores and supplement shops. Purity, the natural state of health
- 22 supplements and accuracy of a product’s labeling is important to Plaintiff.
- 23 25. Prior to purchasing FoodState’s One Daily Multivitamin, Plaintiff visited
- 24 FoodState’s website, where Defendant advertised its One Daily
- 25 Multivitamin product in addition to FoodState’s overall methods and
- 26 processes.
- 27

28 ⁵ <http://www.megafood.com/slo-food-process>

- 1 26. Health conscious people, like Plaintiff, typically rely on a company's
2 representations, including representations found on a company's website,
3 when purchasing that company's products, especially representations about
4 the source of the nutrients or that the product is solely from whole foods
5 and does not contain magnesium stearate as FoodState markets its One
6 Daily Multivitamin.
- 7 27. On March 13, 2014, Plaintiff purchased a bottle of One Daily Multivitamin
8 (60 tablets) from a retailer in La Mesa, California, because Plaintiff had
9 been exposed to representations by Defendant, including those on
10 Defendant's website, that FoodState's One Daily Multivitamin was
11 formulated from whole foods, and did not contain magnesium stearate.
- 12 28. Plaintiff paid \$36.99 pre-tax for FoodState One Daily Multivitamin.
- 13 29. Plaintiff was seeking a dietary health supplement that was from whole
14 foods as she believed that nutrients from whole foods were more effective,
15 potent, bioavailable and simply more natural and would likely result in
16 substantial health benefits, such as longevity of life and other health
17 benefits. Plaintiff further sought out a product that was not tainted by
18 synthetically produced vitamins and minerals, excessive processing (such as
19 extracts are subject to), and did not contain magnesium stearate.
- 20 30. Plaintiff trusted the "FoodState" and "MegaFoods" brand name because of
21 Defendant's claims and wide-spread marketing of the high quality and
22 whole food nature of its products and Plaintiff's interest in such advertised
23 quality. Plaintiff reasonably relied upon the representations on FoodState
24 packaging and various forms of advertisement, such as by internet, rather
25 than performing in-depth independent research into the truthfulness or
26 accuracy of Defendant's representations.
- 27
28

- 1 31. Plaintiff consumed the One Daily Multivitamin product subsequent to
2 purchasing it.
- 3 32. Sometime after purchasing and consuming One Daily Multivitamin,
4 Plaintiff learned that it was likely that One Daily Multivitamin did not
5 provide the stated amount of vitamins and minerals from the stated amounts
6 of whole foods as listed by Defendant on the One Daily Multivitamin
7 supplemental facts or promoted on Defendant’s website.
- 8 33. Plaintiff was shocked to learn that it is impossible to provide the stated
9 amount of vitamins and minerals from the quantity of whole foods
10 purported to use to derive the value of vitamins and minerals.
- 11 34. Further, Plaintiff was shocked to learn that magnesium stearate was
12 included in the One Daily Multivitamin, but was only listed and referenced
13 by Defendant under a generic term, “vegetable lubricant.”
- 14 35. Defendant’s many representations concerning the One Daily Multivitamin
15 led Plaintiff to believe that the One Daily Multivitamin was created from
16 only whole foods, without synthetically produced ingredients, excessive
17 processing or magnesium stearate.
- 18 36. With the alleged nutritional and health benefits of whole foods becoming
19 more widely known, consumer demand for whole food nutrients has
20 increased significantly over the past few years. Defendant hopes to profit
21 from such research and discovery by selling its products, such as One Daily
22 Multivitamin, and differentiating from other multivitamin products by
23 claiming that it contained vitamins and minerals from whole food sources,
24 lacked excessive processing and not synthetically produced.
- 25 37. The words “Fresh from Farm to Tablet” and “whole food multivitamin”
26 appear on the packaging along with relatively large images of fresh fruits
27 and vegetables. Defendant makes claims of “Fresh from Farm to Tablet”
28 with all of its products.

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38. Defendant seeks to capitalize on consumers’ preference for whole food and health supplements with the association between such foods and supplements and a wholesome and healthy way of life. Defendant is aware that consumers are willing to pay more for whole food supplements and vitamins because of this association, as well as the perceived higher quality, health and safety benefits with products labeled as “whole foods.”
39. In making Plaintiff’s decision to purchase One Daily Multivitamin, Plaintiff relied upon, *inter alia*, the labeling, packaging, advertising and/or other promotional materials prepared and approved by Defendant and its agents and disseminated through its packaging, advertising, marketing, promotion, and/or through local and national advertising media, including Defendant’s internet websites, media and in-store advertisement, containing the misrepresentations and/or omissions alleged herein.
40. On Defendant’s website, and as purchased in stores, FoodState d/b/a MegaFoods advertises and labels the One Daily Multivitamin (60 tablet) as follows:



41. As seen above, the packaging prominently displays the purported whole foods contained within: Carrots, Cabbage, Broccoli, Oranges, Organic Brown Rice, Cranberries and Blueberries. Defendant clearly does not state that its product is, for example, “Made with Whole Foods” and instead goes as far as labeling its product as a “Whole Food *Multivitamin*...” (emphasis added).

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42. The Supplemental Facts label which accompanies the above label and is also provided on Defendant’s website, is even more deceptive and is as follows:

Supplement Facts			
Serving Size 1 Tablet			
Amount per Serving		% DV ▼	
FoodState Nutrients			
Vitamin A	(100 mg†; carrots)	5000 IU	100
As Alpha & Beta Carotene with Mixed Carotenoids (Cryptoxanthin, Lutein, Zeaxanthin, Lycopene)			
Vitamin C.....	(240 mg†; oranges)	60 mg	100
Vitamin D3	(8 mg†; <i>S. cerevisiae</i>)	400 IU	100
Vitamin E* ..	(60 mg†; organic brown rice)	15 IU	50
Vitamin K.....	(7 mg†; cabbage)	65 mcg	81
Thiamine (B-1)....	(20 mg†; <i>S. cerevisiae</i>)	5 mg	333
Riboflavin (B-2) ..	(50 mg†; <i>S. cerevisiae</i>)	5 mg	294
Niacinamide.....	(80 mg†; <i>S. cerevisiae</i>)	20 mg	100
Vitamin B-6.....	(30 mg†; <i>S. cerevisiae</i>)	6 mg	300
Folate.....	(40 mg†; broccoli)	400 mcg	100
Vitamin B-12.....	(3 mg†; <i>S. cerevisiae</i>)	15 mcg	250
Biotin.....	(60 mg†; organic brown rice)	300 mcg	100
Pantothenic Acid ..	(40 mg†; <i>S. cerevisiae</i>)	10 mg	100
Calcium	(40 mg†; <i>S. cerevisiae</i>)	2 mg	<1
Iron	(90 mg†; <i>S. cerevisiae</i>)	4.5 mg	25
Iodine	(5 mg†; <i>S. cerevisiae</i>)	75 mcg	50
Magnesium.....	(40 mg†; <i>S. cerevisiae</i>)	2 mg	<1
Zinc	(120 mg†; <i>S. cerevisiae</i>)	6 mg	40
Selenium	(25 mg†; <i>S. cerevisiae</i>)	25 mcg	36
Copper.....	(10 mg†; <i>S. cerevisiae</i>)	100 mcg	5
Manganese.....	(24 mg†; <i>S. cerevisiae</i>)	1.2 mg	60
Chromium (GTF).....	(23 mg†; <i>S. cerevisiae</i>)	45 mcg	38
Molybdenum	(10 mg†; <i>S. cerevisiae</i>)	20 mcg	27
Potassium	(708 mg†; <i>S. cerevisiae</i>)	4 mg	<1
Boron	(50 mg†; <i>S. cerevisiae</i>)	500 mcg	**
FoodState Farm Fresh Fruit Blend		10 mg	**
Whole Orange (natural source bioflavonoids), Wild Blueberry (natural source anthocyanins), Cranberry (natural source proanthocyanidins)			
Digestive Enzymes		6 mg	**
Amylase, Cellulase, Protease, Lipase			

*Full spectrum of mixed tocotrienols and tocopherols ** % Daily Value (DV) not established †Total Weight FoodState Nutrient to Deliver Daily Value

43. The effect of Defendant’s label (front & supplemental facts) is to communicate that the product is composed primarily or wholly of these whole fruits and vegetables, since there are supposed to be great health benefits associated with whole foods. As a result, purchasers are likely mislead and deceived by the product’s label and other forms of marketing and advertising, and as a result purchasers reasonably expect that One Daily Multivitamin actually consists primarily from whole foods, when in facts, this is not the case.

44. Based on this label, the consumer is informed and does believe that all of the nutrients are naturally occurring in and derived from the whole food listed in the parenthetical to the right of the nutrient.

- 1 45. According to this label, 60mg of Vitamin C was derived from the inclusion
 2 of 240mg of oranges. Specifically, the orange powder manufactured
 3 through FoodState’s Slo-Food Process contained 25% Vitamin C.
- 4 46. This claim is simply too good to be true. Oranges are not the highest
 5 Vitamin C containing product on the market and therefore it would not be
 6 financially reasonable to use oranges to provide the bulk of the Vitamin C.
 7 In fact, Camu Camu (*Myrciaria dubia*) and the Kakadu plum (*Terminalia*
 8 *ferdinandiana*) are far higher sources of Vitamin C with the Kadadu plum
 9 containing 1,000 to 5,300 mg of Vitamin C per 100,000 mg of fruit (0.1%
 10 to 5.3%) compared with 50 mg of Vitamin per 100,000 mg of orange fruit.⁶
- 11 47. Further, as oranges are a naturally occurring product, they naturally have
 12 variances in nutrient and vitamin content from season to season or batch to
 13 batch (even individual fruit to individual fruit). To state that 240mg of
 14 oranges always yields 60mg of Vitamin C, as Defendant has done for years
 15 and years, is simply unrealistic, false and deceptive.
- 16 48. In reality, Defendant is using a orange power where synthetic Vitamin C, or
 17 ascorbic acid, has been added to standardize it to contain 60mg of Vitamin
 18 C per 240mg of orange powder. The same is true for Defendant’s claims
 19 regarding the vitamins, minerals and nutrients that purportedly are naturally
 20 occurring and provided by the carrots, *Saccharomyces cerevisiae*, organic
 21 brown rice and broccoli in its One Daily Multivitamin.
- 22 49. Lastly, nowhere on the label does Defendant list magnesium stearate, as
 23 other manufacturers commonly and clearly do in a non-deceptive manner in
 24 the “Other ingredients” section of their labels. Instead, Defendant, knowing
 25 the consumer dislike for magnesium stearate, deceptively disguises the use

26 ⁶ See:

27 http://www.nt.gov.au/health/healthdev/health_promotion/bushbook/volume2/chap
 28 [3/strategies.html#localfoods](http://en.wikipedia.org/wiki/Terminalia_ferdinandiana#cite_note-1) and
http://en.wikipedia.org/wiki/Terminalia_ferdinandiana#cite_note-1

1 of magnesium stearate as “Vegetable Lubricant”, a description that no
2 common consumer would suspect is magnesium stearate irrespective of the
3 compound’s industry known machine lubricating properties and potential
4 vegetable source.. Defendant’s use of magnesium stearate is necessary in
5 tablet manufacturing and allows Defendant to operate its machines faster
6 and cheaper while producing cheaper tablets (as opposed to vegetable
7 capsules or other methods). To avoid the use of magnesium stearate,
8 Defendant could have produced capsules of its product or selected other
9 plant based lubricants.

10 50. Reasonable consumers do not expect to be ingesting magnesium stearate,
11 when consuming the One Daily Multivitamin product, since Defendant
12 completely failed to include on the product’s label and in Defendant’s
13 advertising that One Daily Multivitamin contains magnesium stearate,
14 which is or may be harmful and certainly undesirable to consumers.

15 51. Plaintiff and consumers similarly situated are simply not informed by
16 Defendant exactly how much whole food or synthetic sources are used to
17 provide the listed amount of vitamins and minerals from each capsule, even
18 though they are paying a premium for the product due to Defendant’s
19 advertising, marketing, and other misrepresentations.

20 52. In addition to the deceptive label, Defendant deceptively describes its One
21 Daily Multivitamin and its manufacturing principals and methods on its
22 interactive website which is accessible to the general public. As explained
23 below, Defendant’s website conveys the marketing and/or advertising
24 message in a calculated way to lead the consumers to believe that the
25 product primarily contains nutrients from whole foods, when in fact it also
26 contains synthetically derived nutrients.

1 53. MegaFood, one of FoodState’s brands, markets itself “as pioneers in the
2 natural products industry, being the first company to make vitamins from
3 scratch, with farm fresh whole foods.”⁷

4 54. MegaFood continues its claims explaining the following on its website:

5 **Fresh from Farm To Tablet**⁸

6 MegaFood has made whole food supplements for 40
7 years and we take great pride in knowing we deliver the
8 promise of farm fresh foods to you in every product we make.
9 Doing this is not easy, yet we believe farm fresh whole foods
10 are the best way to deliver authentic nourishment and not just
11 vitamins and minerals alone.

12 To make dietary supplements that provide the most
13 authentic nourishment possible, we first begin with sourcing
14 fruits, vegetables and whole grains from our Farm Fresh Farm
15 Partners throughout the United States and Canada. We work
16 with family-owned farmers known for their commitment to
17 grow with care and ethical farming practices. Each season we
18 receive freshly harvested foods right at our back door, where
19 they are then rigorously examined for quality, prior to
20 beginning their journey through our privately-owned facility
21 and one-of-kind Slo-Food ProcessTM.

22 To retain the freshness of the foods we source from the
23 farm to each tablet we produce, our Slo-Food Process was
24 designed to be slow and gentle. This means we do not expose
25 the foods to damaging temperatures that diminish the foods
26 nutritional value, nor destroy any of the colorful aromatic
27 compounds that give a freshly harvested food its color, taste
28 and nutritional punch! By preserving freshness of the foods we
source, we believe it makes all the difference in our products
and your health.

29 **Our FoodState Nutrients**⁹

30 At MegaFood, we care about doing things the right way –

31 ⁷ <http://www.megafood.com/about-us4>

32 ⁸ <http://www.megafood.com/fresh-from-farm-to-tablet>

33 ⁹ <http://www.megafood.com/our-foodstate-nutrients>

1 we never take shortcuts, and we never compromise on quality
 2 or things that matter. This is why we make our own FoodState
 3 Nutrients from scratch in our state-of-the-art facility in New
 4 Hampshire. FoodState Nutrients are made with fresh and local
 5 foods. Crafted with our Slo-Food Process™, they deliver the
 6 most authentic nourishment available, which we believe the
 7 body recognizes as whole food.

8 It took a combination of research, ingenuity, and passion
 9 to create our FoodState Nutrients. The initial challenge was
 10 how to best capture the vital nutrition of a farm fresh food and
 11 deliver it to our customers in a bottle. With this goal in mind,
 12 we partnered with a team of scientists at the University of New
 13 Hampshire. Together, we conducted extensive research to
 14 develop scientifically validated methods to craft our FoodState
 15 Nutrients. Today we produce over 30 unique FoodState
 16 Nutrients from Vitamin A to Zinc. Each one of our FoodState
 17 Nutrients has a unique recipe to deliver an optimal level of a
 18 specific vitamin or mineral, which has been tested for potency
 19 assurance and purity.

20 The foods we source to deliver our nutrients are below:

- 21 • Carrots to deliver mixed-carotenoids, or vegetarian
- 22 sourced Vitamin A
- 23 • Cabbage to deliver Vitamin K1
- 24 • Broccoli to deliver Folate
- 25 • Oranges to deliver Vitamin C
- 26 • Organic Brown Rice to deliver full spectrum Vitamin
- 27 E and Biotin
- 28 • Saccharomyces cerevisiae to deliver B Vitamins,
- Vitamin D and Minerals
- Cranberries and Blueberries to deliver protective
antioxidants

29 **Fresh & Local**¹⁰

30 MegaFood has been making whole food supplements
 31 with farm fresh food for 40 years. We're committed to
 32 sourcing fresh and local foods from family owned farmers
 33 throughout the United States and Canada to deliver the
 34 wholesome nutrition your body needs. We take pride in

35 ¹⁰ <http://www.megafood.com/fresh-a-local>

1 knowing the freshly harvested fruits, vegetables and organic
2 brown rice that arrive right at our back door are what make the
3 difference in our products and in your health.

4 **Our One-of-a-Kind Slo-Food Process^{TM11}**

5 The best way to consume essential vitamins and minerals
6 is by eating a variety of fresh, colorful foods – fruits, vegetables
7 and whole grains. At MegaFood we go out of our way to start
8 with fresh, ripe-harvested whole foods that will provide our
9 customers with a broad array of essential vitamins, minerals
10 and micro-nutrients, just as Nature intended.

11 We are mindful of the fact that standard manufacturing
12 processes can destroy many of the delicate phytonutrients that
13 play a key role in supporting health. Because MegaFood is
14 committed to delivering authentic nourishment and not just
15 vitamins alone, we have no other choice than to do things
16 differently. To help us understand how to best protect these
17 health supportive nutrients, we partnered with researchers at the
18 University of New Hampshire. Together we developed the
19 unique Slo-Food ProcessTM which is used to make our
20 MegaFood products.

21 Just as the name implies, the Slo-Food Process is a
22 slower, gentler way of making whole food supplements. The
23 process was designed to optimize the potency of a vitamin or
24 mineral within the phytonutrient rich whole foods selected to
25 create our FoodState NutrientsTM. Each and every step, from
26 farm to tablet, was designed with the ultimate goal in mind – to
27 create supplements that make a noticeable difference on your
28 journey toward optimal health.

The foods we use, sourced from farms as close to home
as possible, are delivered fresh frozen to the doorstep of our
own manufacturing facility in Londonderry, New Hampshire. It
is here, in our MegaFood kitchen, that the Slo-Food Process
takes place. We use cold-milling to help break down
indigestible plant fibers and enhance digestibility, natural
enzymatic pre-digestion to improve bioavailability and gentle

¹¹ <http://www.megafood.com/slo-food-process>

1 drying to maximize nutrient retention. Heat-free tableting and
 2 glass bottles ensure that the foods are as nutrient rich when they
 3 reach our customer as they were when they were delivered to us
 in their fresh, raw form.

4 Made with love in New Hampshire since 1973, we have
 5 been serving our customers for almost 40 years. We look
 6 forward to providing you the best in whole food supplements
 for many more years to come.

7 **Authentic Nourishment - More Than Just Vitamins Alone**¹²

8 Simply put, MegaFood is dedicated to crafting the
 9 highest quality whole food supplements possible, which to us,
 10 means starting with a variety of nourishing foods. For
 11 MegaFood, this includes fresh carrots for mixed carotenoids,
 12 broccoli for folate, whole green cabbage for vitamin K, oranges
 13 for vitamin C, organic brown rice for vitamin E, antioxidant-
 14 rich fruits like cranberries and blueberries for protective
 phenolic compounds, and nutritional yeast for B vitamins and
 minerals.

15 There are many other vitamins to choose from, but no
 16 other whole food supplement makes their own nutrients, or
 17 sources as many fresh foods as we do. The colorful spectrum of
 18 foods we select provide a comprehensive blend of
 phytonutrients and trace minerals not found in isolated vitamin
 supplements.

- 19 55. Plaintiff's claim that Defendant's website is misleading and deceptive is
 20 based on specific marketing and/or advertising content, which Defendant
 21 displays on its website, distinct from the misleading aspects of the product
 22 label. Specifically, the misleading and deceptive website content was not
 23 required by the FDA labeling requirements. Instead, Defendant voluntarily
 24 selected each of the features on the website in order to maximize its impact
 25 on consumers seeking to obtain information concerning One Daily
 26 Multivitamin. However, Defendant's website does not adequately inform
 27 consumers that the bulk of the vitamins and minerals in the One Daily
 28

¹² <http://www.megafood.com/authentic-nourishment>

1 Multivitamin are some synthetic or processed nutrients, not from whole
2 foods. Plaintiff claims that Defendant's website violates the laws alleged
3 herein, not that the website violates FDA regulations.

4 56. The scope of Defendant's advertising of One Daily Multivitamin is wide-
5 spread. One Daily Multivitamin is marketed in California and throughout
6 the nation. Defendant has advertised its One Daily Multivitamin product
7 during the Class Period.

8 57. In addition, Plaintiff is informed and believes, and thereupon alleges, that
9 Defendant has also engaged in other forms of advertising and/or marketing
10 of One Daily Multivitamin, including social media, print advertisements,
11 point-of-purchase displays, radio advertising, and national in-store
12 programs. Through the uniform deceptive and misleading advertising and
13 marketing campaigns, Defendant leads consumers to believe that the
14 primary, or sole, ingredients in the product providing vitamins and minerals
15 are whole foods.

16 58. As a result of this campaign, the average consumer, unaware that the
17 product actually contains little or no whole foods (or much less than
18 consumers reasonably expect) and uses magnesium stearate to bind the
19 product into tablet form, has purchased the product believing the main and
20 active sources of vitamins and minerals are whole foods. While there likely
21 are whole foods included in One Daily Multivitamin, a significant amount
22 of the vitamins and minerals are derived from added processed or synthetic
23 nutrients.

24 59. Moreover, consumers' confusion is reasonable, given that whole foods
25 typically thought of as an excellent source of nutrients, vitamins, and
26 minerals, and a product advertised and/or promoted as made from whole
27 foods should primarily contain whole foods as the ingredient that provides
28 the vitamins and minerals, not synthetic sources.

- 1 60. Plaintiff's claim that Defendant's product label and associated advertising is
2 misleading and deceptive does not seek to bring a private action against the
3 product's formal name and labeling in areas for which the Food and Drug
4 Administration ("FDA") has promulgated regulations implementing the
5 Federal Food and Drug and Cosmetic Act ("FFDCA"). Plaintiff's claim is,
6 instead, predicated on the fact that the labeling and associated advertising is
7 misleading and deceptive even if in compliance with the minimum
8 requirements set forth by the FDA. Indeed, compliance with the minimum
9 requirements is necessary, but it is not sufficient to determine whether a
10 product's label is false and misleading, and simply does not provide a shield
11 from liability. *See e.g., Wyeth v. Levine*, 129 S. Ct 1187, 12012 (2009).
- 12 61. Plaintiff's state law claims are aimed at the features of the labeling of One
13 Daily Multivitamin and associated advertising that are voluntary, and not
14 required by the FDA regulations, which Defendant selected in order to
15 maximize the label's deceptive impact upon Plaintiff and other consumer's
16 similarly situated. Defendant made the decision to so label its product
17 because of its marketing strategy. Indeed, Defendant's strategy misleads
18 consumers to buy One Daily Multivitamin as a result of this deceptive
19 message; and Defendant has been successful thus far, earning millions of
20 dollars annually from sales of One Daily Multivitamin throughout the
21 nation within the last few years.
- 22 62. Defendant's misrepresentation specifically lies within its efforts to appear
23 as though it was complying with FDA regulations. The formatting, and
24 structure of the labels and nutritional information appears to the consumer
25 to be accurate and in compliance. However, the fact remains that the
26 amount of vitamins and minerals stated to be included within the product
27 were not entirely obtained from the whole food sources listed, and therefore
28 the labeling is misleading. Specifically, Defendant uses a dagger (†) to

1 denote the phrase “Total Weight of Food State Nutrient to Deliver Daily
2 Value” leading the consumer to believe that, for example, 240 mg of
3 Defendant’s oranges provide 60 mg of naturally occurring (within the
4 orange) Vitamin C.

5 63. As a result of Defendant’s representations and/or omissions, Plaintiff
6 overpaid for One Daily Multivitamin purchased by Plaintiff because the
7 value of the product was diminished at the time of the sale. Had Plaintiff
8 been aware that One Daily Multivitamin included little vitamins and
9 minerals from whole foods (or much less than consumers reasonably
10 expect), and contained magnesium stearate, Plaintiff would not have
11 purchased it, would have paid less for it, or would have purchased a
12 different multivitamin. For all the reasons stated herein, Plaintiff suffered
13 injury in fact and has lost monies as a result of Defendant’s actions.

14 64. Defendant produces and/or sells One Daily Multivitamin in bottles of 30,
15 60, 90, and 180 capsules.

16 65. Defendant’s packaging, labeling and marketing of these multivitamin
17 products is likewise false or misleading for the same or substantially similar
18 reasons that Defendant’s representations and/or omissions regarding One
19 Daily Multivitamin (60 capsules) is false or misleading and in violation of
20 California law as alleged herein.

21 66. Defendant’s One Daily Multivitamin product is not the only product
22 produced and/or sold by Defendant purporting to contain whole food
23 nutrients and/or magnesium stearate, as Defendant produces and/or sells
24 other dietary supplements purporting to contain whole food nutrients and
25 not contain magnesium stearate under its two brands, MegaFoods and
26 Innate Response Formulas, including:
27
28

1 **MegaFoods**¹³:

- 2 a. Adrenal Strength®
- 3 b. Alpha Teen™
- 4 c. Baby and Me™
- 5 d. Baby and Me™ - CA Blend
- 6 e. Baby and Me™ Herb Free
- 7 f. Baby and Me™ Herb Free – CA Blend
- 8 g. Balanced B Complex
- 9 h. Balanced Minerals
- 10 i. Blood Builder®
- 11 j. Bone
- 12 k. Boosters
- 13 l. Calcium
- 14 m. Calcium, Magnesium & Potassium
- 15 n. Complex C
- 16 o. E & Selenium
- 17 p. Extinguish™
- 18 q. GTF Chromium 100 mcg
- 19 r. Kid's One Daily
- 20 s. Kid's B Complex
- 21 t. Kid's Vitamin D3
- 22 u. Magnesium
- 23 v. Medi-Safe™
- 24 w. Men Over 40™
- 25 x. Men Over 40™ - CA Blend
- 26 y. Men Over 40™ One Daily
- 27 z. Men Over 55™

28 _____
¹³ <http://www.megafood.com/>

Kazerouni Law Group, APC

- 1 aa. Men's
- 2 bb. Men's – CA Blend
- 3 cc. Men's One Daily
- 4 dd. One Daily
- 5 ee. One Daily Iron Free
- 6 ff. Prostate Strength™
- 7 gg. Quercetin Strength™
- 8 hh. Skin, Nails & Hair™
- 9 ii. Skin, Nails & Hair™ - CA Blend
- 10 jj. Selenium
- 11 kk. Thyroid Strength®
- 12 ll. Ultra C-400
- 13 mm. Un-Stress®
- 14 nn. Vegan B12™
- 15 oo. Vegan Daily™
- 16 pp. Vegan Protect™
- 17 qq. Vision Strength®
- 18 rr. Vitamin D3 1000 IU
- 19 ss. Vitamin D3 2000 IU
- 20 tt. Women Over 40™
- 21 uu. Women Over 40™ - CA Blend
- 22 vv. Women Over 40™ One Daily
- 23 ww. Women Over 55™
- 24 xx. Women's One Daily
- 25 yy. Women's One Daily – CA Blend
- 26 zz. Women's
- 27 aaa. Zinc
- 28

1 **Innate Response Formula**¹⁴:

- 2 a. Antioxidants - 90 tablets
- 3 b. B Complex - 180 tablets
- 4 c. B Complex - 90 tablets
- 5 d. Baby & Me™ Trimester I & II - 120 tablets
- 6 e. Baby & Me™ Trimester III & Post - 120 tablets
- 7 f. Food Multi III BioMax - 180 tablets
- 8 g. Food Multi III BioMax - 90 tablets
- 9 h. GTF Chromium - 90 tablets
- 10 i. Homocysteine Response™ - 90 tablets
- 11 j. Iron Response - 90 tablets
- 12 k. JCTH® - 180 tablets
- 13 l. JCTH® - 90 tablets
- 14 m. Men Over 40 One Daily Iron Free - 60 tablets
- 15 n. Men Over 40™ Iron Free - 120 tablets
- 16 o. Mens One Daily Iron Free - 60 tablets
- 17 p. One Daily - 90 tablets
- 18 q. One Daily Iron Free - 90 tablets
- 19 r. Proteolytic Enzyme Clinical Strength - 120 capsules
- 20 s. Selenium - 90 tablets
- 21 t. Tension Defense™ - 114 G
- 22 u. Thyroid Response® Complete Care - 90 tablets
- 23 v. Vitamin C-400 - 180 tablets
- 24 w. Vitamin D-3 2,000 IU - 180 tablets
- 25 x. Vitamin D-3 2,000 IU - 60 tablets
- 26 y. Vitamin D-3 2,000 IU - 90 tablets
- 27 z. Women Over 40™ - 120 tablets

28 _____
¹⁴ <http://www.innateresponse.com/pindex.asp>

- 1 aa. Women Over 40™ - 60 tablets
- 2 bb. Women Over 40™ One Daily - 60 tablets
- 3 cc. Womens Multi - 60 tablets
- 4 dd. Womens One Daily - 60 tablets

5 67. Plaintiff's allegations regarding One Daily Multivitamin are applicable to
6 these other products claiming to contain whole food nutrients and
7 disguising the use of magnesium stearate, as Defendant made the same or
8 substantially similar representations and omissions concerning these other
9 products as Defendant did concerning its One Daily Multivitamin.

10 68. Further, though these products do not falsely hide the presence of
11 magnesium stearate, Defendant produces and/or sells other dietary
12 supplements purporting to contain whole food nutrients, under its two
13 brands, MegaFoods and Innate Response Formulas, including:

14 **MegaFoods**¹⁵:

- 15 a. Acute Defense
- 16 b. Daily Energy
- 17 c. Daily C Protect
- 18 d. Daily Tumeric Nutrient Booster
- 19 e. Turmeric Strength for Whole Body

20 **Innate Response Formula**¹⁶:

- 21 a. Acute Defense

22 69. Plaintiff's allegations regarding One Daily Multivitamin are applicable to
23 these other products claiming to contain whole food nutrients, as Defendant
24 made the same or substantially similar representations and omissions
25 concerning these other products as Defendant did concerning its One Daily
26 Multivitamin.

27
28 ¹⁵ <http://www.megafood.com/all-products>

¹⁶ <http://www.innateresponse.com/pindex.asp>

1 70. Additionally, Defendant produces, markets, and sells the following
 2 nutritional supplements without disclosing the presence of magnesium
 3 stearate, under its two brands, MegaFoods and Innate Response Formulas,
 4 including:

5 **MegaFoods**¹⁷:

- 6 a. Dream Release™
- 7 b. Tension Release™
- 8 c. Wild Blueberry

9 **Innate Response Formula**¹⁸:

- 10 b. Adrenal Response® - 60 tablets
- 11 c. Adrenal Response® - 90 tablets
- 12 d. Adrenal Response® Complete Care - 90 tablets
- 13 e. Allergy Response™- 60 capsules
- 14 f. C Complete Powder 81 G
- 15 g. CoEnzyme B Complex - 60 capsules
- 16 h. Complete Multi Powder 195 G
- 17 i. CoQ10 - 100 mg 30 capsules
- 18 j. CoQ10 - 100 mg 60 capsules
- 19 k. DysBio-GI - 90 capsules
- 20 l. Gluco-Defense™ - 60 capsules
- 21 m. Immune Response™ - 60 capsules
- 22 n. Inflama-Complete™ - 90 Capsules
- 23 o. One Daily Cap - 60 capsules
- 24 p. Vessel Defense™ - 60 capsules
- 25 q. Vitamin D 5,000 IU - 60 capsules

26 Plaintiff's allegations regarding One Daily Multivitamin are applicable to
 27

28 ¹⁷ <http://www.megafood.com/all-products>

¹⁸ <http://www.innateresponse.com/pindex.asp>

1 these other products containing magnesium stearate, as Defendant made the
 2 same or substantially similar representations and omissions concerning
 3 these other multivitamin products as Defendant did concerning its One
 4 Daily Multivitamin containing magnesium stearate.

5 **I. FIRST CAUSE OF ACTION FOR VIOLATION OF**
 6 **CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**
 7 **(California's False Advertising Law)**

- 8 71. Plaintiff repeats, re-alleges and incorporates herein by reference the above
 9 allegations as if set forth fully herein.
- 10 72. Plaintiff brings this cause of action on behalf of herself and on behalf of the
 11 putative class.
- 12 73. The misrepresentations, acts and non-disclosures by Defendant of the
 13 material facts detailed above constitute false and misleading advertising and
 14 therefore violates Business & Professions Code §§ 17500 et seq.
- 15 74. At all times relevant, Defendant's advertising and promotion regarding One
 16 Daily Multivitamin was untrue, misleading and likely to deceive the public
 17 and/or has deceived the Plaintiff and California consumers similarly
 18 situated by representing that the product contained vitamins and minerals
 19 source from only whole foods, not synthetic or processed nutrients and that
 20 the product did not contain magnesium stearate when in fact defendant
 21 knew and failed to disclose that the product contained synthetic or
 22 processed vitamins. Furthermore, Defendant failed to disclosure the
 23 presence of magnesium stearate on its labeling and as part of its advertising
 24 and marketing.
- 25 75. State law claims based on a food products misleading and deceptive labels
 26 are expressly permitted when they impose legal obligations identical to
 27 those of the FFDCA and its implementing FDA regulations, including FDA
 28 regulations concerning naming and labeling. *See e.g., In re Farm Raised*

1 *Salmon Cases*, 22 Cal. 4th 1077, 1094-95 (2008). Plaintiff's § 17500 claim
2 that the label of the One Daily Multivitamin product is false or misleading
3 imposes legal obligations identical to 21 U.S.C. § 343(a) of the FFDCFA,
4 which states that, "a food shall be deemed to be misbranded...[i]f (1) its
5 labeling is false or misleading in any particular[.]" Further, section 343(a)
6 of the FFDCFA is not subject to express preemption provision set forth in 21
7 U.S.C. § 343-1 of the FFDCFA.

8 76. Defendant engaged in the false and/or misleading advertising and marketing
9 alleged herein with the intent to directly or indirectly induce the purchase of
10 One Daily Multivitamin.

11 77. In making and disseminating the statements and and/or omissions alleged
12 herein, Defendant knew or should have known that the statements and
13 and/or omissions were untrue or misleading, and acted in violation of
14 California Business & Professions Code §§ 17500 et seq.

15 78. Plaintiff and members of the putative class have suffered injury in fact and
16 have lost money or property as a result of Defendant's false advertising, as
17 more fully set forth herein. Plaintiff and members of the class have been
18 injured because they overpaid for One Daily Multivitamin, since the value
19 of the supplement was diminished at the time of sale. Plaintiff and members
20 of the putative class have been injured because had they been made aware
21 that the One Daily Multivitamin product contains vitamins and minerals
22 from synthetic or processed sources and little vitamins and minerals from
23 whole foods, (or much less than consumers reasonably expect based upon
24 Defendant's representations alleged herein), and contained magnesium
25 stearate, they would have not purchased the supplement, would have paid
26 less for it, or would have purchased a different One Daily Multivitamin
27 supplement.

1 79. At a date presently unknown to Plaintiff, but at least four years prior to the
 2 filing of this action, and as set forth above, Defendant has committed acts of
 3 untrue and misleading advertising and promotion of One Daily
 4 Multivitamin, as defined by Business & Professions Code §§ 17500 et seq.,
 5 by engaging in the false advertising and promotion of One Daily
 6 Multivitamin as “made with fresh and local foods,” and from “whole foods”
 7 along with prominently depicting fruits and vegetables across the front of
 8 the packaging, as described above.

9 80. The fraudulent, unlawful and unfair business practices and false and
 10 misleading advertising of Defendant, as described above, presents a
 11 continuing threat to consumers in that they will continue to mislead
 12 consumers to purchase One Daily Multivitamin on false premises.

13 81. As a direct and proximate result of the aforementioned acts and
 14 representations of Defendant, Defendant received and continues to hold
 15 monies rightfully belonging to Plaintiff and other similarly situated
 16 consumers who were led to purchase, purchase more of, or pay more for,
 17 the One Daily Multivitamin product, due to the unlawful acts of Defendant,
 18 during the Class Period.

19 **II. SECOND CAUSE OF ACTION FOR VIOLATION OF**
 20 **CAL. HEALTH & SAFETY CODE §§ 110660**
 21 **(California’s Sherman Law)**

22 82. Plaintiff repeats, re-alleges and incorporates herein by reference the above
 23 allegations as set forth fully herein.

24 83. Plaintiff brings this cause of action on behalf of herself and on behalf of the
 25 putative class.

26 84. State law claims based on a food product’s misleading and deceptive label
 27 are expressly permitted when they impose legal obligations identical to the
 28 Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing

1 FDA regulations, including FDA regulations concerning naming and
2 labeling. *See e.g., In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077,
3 1094-95 (2008). The Sherman law expressly incorporates into California
4 law all of the food labeling regulations adopted pursuant to the FFDCA.
5 Plaintiff’s § 17200 claim that the label of the One Daily Multivitamin
6 product violates California Health & Safety Code § 110660 imposes legal
7 obligations identical to 21 U.S.C. § 343(a) of the FFDCA. Since § 110660
8 imposes the identical legal obligation that “any food is misbranded if its
9 labeling is false or misleading in any particular,” part of Plaintiff’s section
10 17200 claim (*infra*), which is based in part on § 110660, is expressly
11 permitted and not preempted by the FFDCA. Further, § 343(a) of the
12 FFDCA is not subject to express preemption provision set forth in 21
13 U.S.C. § 343-1 of the FFDCA.

14 85. Section 110660 states, “any food is misbranded if its labeling is false or
15 misleading in any particular.” Section 110660 is part of California's
16 Sherman Food, Drug and Cosmetic law, California Health & Safety Code §
17 109875, et seq. (the “Sherman law”). Defendant has violated § 110660
18 because the product label misleads and deceives consumers into believing
19 that the One Daily Multivitamin product contains vitamins and minerals
20 from whole foods, when it does not contain minerals and vitamins from
21 whole foods (or much less than consumers reasonably expect based upon
22 Defendant’s representations alleged herein), and instead provides the
23 vitamins and minerals from synthetic or processed sources.

24 86. Further, the product label misleads and deceives consumers into believing
25 that One Daily Multivitamin does not contain magnesium stearate when it
26 in fact does contain magnesium stearate.
27
28

**III. THIRD CAUSE OF ACTION FOR VIOLATION OF
CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.
(California’s Unfair Competition Law)**

87. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if fully stated herein.

88. “Unfair competition” is defined in Business and Professions Code Section § 17200 as encompassing any one of the five types of business “wrongs,” three of which are at issue here: (1) an “unlawful” business act or practice; (2) an “unfair” business act or practice; and (3) a “fraudulent” business act or practice. The definitions in § 17200 are disjunctive, meaning that each of these five “wrongs” (Plaintiff alleges three of them here) operates independently from the others.

89. Plaintiff and Defendant are both “person[s]” as defined by California Business & Professions Code § 17201. Section 17204 authorizes a private right of action on both an individual and representative basis.

a. “Unlawful” Prong

90. Because Defendant has violated California’s False Advertising Law, Business & Professions Code §§ 17500 et seq., as well as California’s Health and Safety Code § 110660, Defendant has violated California’s Unfair Competition Law, Business & Professions Code §§ 17200 et seq., which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

91. There were reasonably available alternatives to further Defendant’s legitimate business interest, other than the conduct described herein.

92. Plaintiff and the putative class reserve the right to allege other violations of law, which constitute other unlawful business practices or acts, as such conduct is ongoing and continues to this date.

b. “Unfair” Prong

1
2 93. Defendant’s actions and representations constitute an “unfair” business act
3 or practice under § 17200, in that Defendant’s conduct is substantially
4 injurious to consumers, offends public policy, and is immoral, unethical,
5 oppressive, and unscrupulous as the gravity of the conduct outweighs any
6 alleged benefits attributable to such conduct. Without limitation, it is an
7 unfair business act or practice for Defendant to knowingly and negligently
8 represent to the consuming public, including Plaintiff, that One Daily
9 Multivitamin provides vitamins and minerals primarily from whole foods,
10 when in fact, the majority of the vitamins and minerals are from synthetic or
11 processed sources. Defendant's business practices, and each of them, are
12 "unfair" because they offend established public policy and/or are in moral,
13 unethical, oppressive, unscrupulous and/or substantially injurious to
14 consumers in that consumers are led to believe that One Daily Multivitamin
15 has qualities and benefits, including quantities of “whole food” nutrients
16 that it does not have. The product label misleads and deceives consumers
17 into believing that One Daily Multivitamin does not contain magnesium
18 stearate when it in fact does contain magnesium stearate.

19 94. At a date presently unknown to Plaintiff, but at least four years prior to the
20 filing of this action, and as set forth above, Defendant has committed acts of
21 unfair competition as defined by Business & Professions Code §§ 17200 et
22 seq., by engaging in the false advertising and promotion of Resveratrol as,
23 *inter alia*, from “whole foods” as described above. Defendant also failed to
24 disclose the presence of magnesium stearate.

25 95. Plaintiff and other members of the class could not reasonably have avoided
26 the injury suffered by each of them. Plaintiff reserves the right to allege
27 further conduct that constitutes other unfair business acts or practices. Such
28 conduct is ongoing and continues to this date.

1 96. Defendant could have and should have furthered its legitimate business
 2 interests by expressly indicating on its packaging and website the exact
 3 amount of vitamins and minerals obtained from whole foods and from
 4 synthetic or processed sources. Further, it is not unreasonably difficult for
 5 Defendant to disclose the presence of magnesium stearate.¹⁹

6 **c. “Fraudulent” Prong**

7 97. Defendant’s claims and misleading statements were false, misleading
 8 and/or likely to deceive the consuming public within the meaning of §
 9 17200. Without limitation, it is a fraudulent act or business act or practice
 10 for Defendant to knowingly or negligently represent to Plaintiffs, whether
 11 by conduct, orally or in writing by:

12 (a) intentionally and misleadingly designing the product’s front label
 13 by displaying the product’s name “One Daily Multivitamin” from
 14 “MegaFood” along with prominently depicting whole fruits and
 15 vegetables which occupy a significant part of the front label, with
 16 the claim “from whole foods” and “Fresh From Farm to Tablet,”
 17 while One Daily Multivitamin predominately contains vitamins
 18 and minerals from synthetic sources (or contains much less
 19 vitamins and minerals from whole foods than consumers
 20 reasonably expect based upon Defendant’s representations
 21 alleged herein concerning One Daily Multivitamin);

22 (b) intentionally and misleadingly designing the product’s
 23 Supplement Facts panel to state whole foods as the source for the
 24 vitamins and minerals contained within One Daily Multivitamin
 25 without indicating how much of the vitamins and minerals actual

26 _____
 27 ¹⁹ Other producers/sellers of dietary supplements clearly and unambiguously
 28 disclose the presence and use of magnesium stearate, such as Solgar’s Earth
 Source Multi-Nutrient. *See*: <http://www.solgar.com/SolgarProducts/Earth-Source-Multi-Nutrient-Tablets.htm>.

1 are provided from synthetic or processed sources;

2 (c) intentionally creating Defendant's website to mislead and deceive
3 consumers into believing that One Daily Multivitamin does not
4 contain magnesium stearate when it in fact does contain
5 magnesium stearate; and

6 (d) intentionally creating Defendant's website to mislead and deceive
7 consumers into believing that One Daily Multivitamin primarily
8 contains vitamins and minerals from whole foods without
9 adequately identifying that the primary source of the vitamins
10 and minerals is from synthetic or processed sources, while
11 frequently and predominantly associating One Daily
12 Multivitamin with whole fruits and vegetables, and without any
13 depiction of synthetic sources.

14 98. Plaintiff reserves the right to allege further conduct that constitutes other
15 fraudulent business acts or practices. Such conduct is ongoing and
16 continues to this date.

17 99. The fraudulent, unlawful and unfair business practices and false and
18 misleading advertising of Defendant, as described above, presents a
19 continuing threat to consumers in that they will continue to be misled into
20 purchasing One Daily Multivitamin on false premises.

21 100. As a direct and proximate result of the aforementioned acts and
22 representations of Defendant, Defendant received and continues to hold
23 monies rightfully belonging to Plaintiff and other similarly situated
24 consumers who were led to purchase, purchase more of, or pay more for,
25 the One Daily Multivitamin product, due to the unlawful acts of Defendant.

26 101. Thus, Defendant caused Plaintiff and other members of the Class to
27 purchase One Daily Multivitamin on false premises during the Class Period.

28 102. Defendant has engaged in unlawful, unfair and fraudulent business acts or

1 practices, entitling Plaintiff to judgment and equitable relief against
2 Defendant, as set forth in the Prayer for Relief. Pursuant to Business &
3 Professions Code § 17203, as result of each and every violation of the UCL,
4 which are continuing, Plaintiff is entitled to restitution from against
5 Defendant, as set forth in the Prayer for Relief.

6 103. Plaintiff and members of the putative class have suffered injury in fact and
7 have lost money or property as a result of Defendant's unfair competition,
8 as more fully set forth herein. Plaintiff and members of the putative class
9 have been injured because they overpaid for One Daily Multivitamin, since
10 the value of the supplement was diminished at the time of sale. Plaintiff and
11 members of the class of been injured because had they been made aware
12 that the One Daily Multivitamin product contains vitamins and minerals
13 from synthetic or processed sources and little vitamins and minerals from
14 whole foods, (or much less than consumers reasonably expect based upon
15 Defendant's representations alleged herein), and contained magnesium
16 stearate, they would have not purchased the supplement, would have paid
17 less for it, or would purchased a different multivitamin supplement.

18 104. Defendant, through its acts of unfair competition, has unfairly acquired
19 money from Plaintiff and members of the putative class. It is impossible for
20 the Plaintiff to determine the exact amount of money that Defendant has
21 obtained without a detailed review of the Defendant's books and records.
22 Plaintiff requests that this Court restore this money and enjoin Defendant
23 from continuing to violate California Business & Professions Code § 17200
24 et seq., as discussed above.

25 105. Plaintiff further seeks an order requiring Defendant to make full restitution
26 of all moneys wrongfully obtained and disgorge all ill-gotten revenues
27 and/or profits, together with interest thereupon.

28 106. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,

1 California Civil Code section 1021.5.

2 **IV. FOURTH CAUSE OF ACTION**
3 **FOR NEGLIGENT MISREPRESENTATION**

4 107. Plaintiff repeats, re-alleges and incorporates herein by reference the above
5 allegations as if fully stated herein.

6 108. At a date presently unknown to Plaintiff, but at least four years prior to the
7 filing of this action, and as set forth above, Defendant represented to the
8 public, including Plaintiff, by packaging and other means, that One Daily
9 Multivitamin provided vitamins and minerals from whole foods processed
10 in Defendant's Slo-Food Process and not synthetic or processed nutrients
11 along with prominently depicting whole fruits and vegetables that occupy a
12 significant portion of the picture part of the front label, with the claim
13 "Fresh from Farm to Tablet" and "Whole Food Multivitamin & Mineral
14 Dietary Supplement."

15 109. Defendant's representations were untrue in that One Daily Multivitamin
16 does not provide vitamins and minerals only from whole foods, and
17 certainly not in the amounts listed on the label and fails to identify any other
18 sources of vitamins and minerals that are in each individual tablet.

19 110. Defendant also intentionally failed to disclose that the One Daily
20 Multivitamin product contained magnesium stearate.

21 111. Defendant made the representations herein alleged with the intention of
22 inducing the public, including Plaintiff, to purchase One Daily
23 Multivitamin.

24 112. Plaintiff and other similarly situated persons in California saw, believed,
25 and relied upon Defendant's advertising representations and, in reliance on
26 them, purchased the products, as described above.

27 113. At all times relevant, Defendant made the misrepresentations herein
28

1 alleged, Defendant had no reasonable grounds for believing the
2 representations to be true.

3 114. As a proximate result of Defendant's negligent misrepresentations, Plaintiff
4 and other consumers similarly situated were induced to purchase, purchase
5 more of, or pay more for, the One Daily Multivitamin product, due to the
6 unlawful acts of Defendant, in an amount to be determined at trial, during
7 the Class Period.

8 **V. FIFTH CAUSE OF ACTION**
9 **FOR INTENTIONAL MISREPRESENTATION**

10 115. Plaintiff repeats, re-alleges and incorporates herein by reference the above
11 allegations.

12 116. At a date presently unknown to Plaintiff, but at least four years prior to the
13 filing of this action, and as set forth above, Defendant intentionally
14 represented to the public, including Plaintiff, by packaging and other
15 means, that One Daily Multivitamin provided vitamins and minerals from
16 whole foods, not synthetic or processed sources, processed in Defendant's
17 Slo-Food Process along with prominently depicting whole fruits and
18 vegetables that occupy a significant portion of the picture part of the front
19 label, with the claim "Fresh from Farm to Tablet" and "Whole Food
20 Multivitamin & Mineral Dietary Supplement."

21 117. Defendant's representations were untrue in that One Daily Multivitamin
22 does not provide vitamins and minerals only from whole foods, and
23 certainly not in the amounts listed on the label and fails to identify any other
24 sources of vitamins and minerals that are in each individual capsule.

25 118. Defendant also intentionally failed to disclose that the One Daily
26 Multivitamin product contained magnesium stearate.

27 119. Defendant made the representations herein alleged with the intention of
28 inducing the public, including Plaintiff, to purchase One Daily

1 Multivitamin.

2 120. Plaintiff and other similarly situated persons in California saw, believed,
3 and relied upon Defendant's advertising representations and, in reliance on
4 them, purchased the products, as described above.

5 121. At all times relevant, Defendant made the misrepresentations herein
6 alleged, Defendant knew the representations to be false.

7 122. As a proximate result of Defendant's intentional misrepresentations,
8 Plaintiff and other consumers similarly situated were induced to spend an
9 amount of money to be determined at trial on Defendant's product One
10 Daily Multivitamin.

11 123. Plaintiff is informed, and believes, and thereupon alleges, that Defendant
12 knew that One Daily Multivitamin was not as healthy as promoted, as it
13 does in fact not contain vitamins and minerals all from whole foods.
14 Defendant intended that consumers and the unknowing public should rely
15 on such representations and other representations as alleged herein. Plaintiff
16 and other consumers similarly situated, in purchasing and using the
17 products as herein alleged, did rely on Defendant's representations, all to
18 their damage and/or detriment, as herein alleged. By engaging in said acts,
19 Defendant is guilty of malice, oppression, and fraud, and each Plaintiff is
20 therefore entitled to recover exemplary or punitive damages.

21 **CLASS ACTION ALLEGATIONS**

22 124. Plaintiff and the members of the Class have all suffered injury in fact as a
23 result of the Defendant's unlawful and misleading conduct.

24 125. The "Class Period" means four years prior to filing of this action.

25 126. Plaintiff bring this lawsuit on behalf of herself and the other California
26 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal
27 Rules of Civil Procedure. Subject to additional information obtained
28 through further investigation and/or discovery, the proposed "Class"

1 consists of three classes: Class One, Class Two, and Class Three:

2 **Class One**

3 “All persons in California who purchased One Daily
 4 Multivitamin (30, 60 , 90, or 180 capsules); Adrenal Strength®,
 5 Alpha Teen™, Baby and Me™, Baby and Me™ - CA Blend,
 6 Baby and Me™ Herb Free, Baby and Me™ Herb Free – CA
 7 Blend, Balanced B Complex, Balanced Minerals, Blood
 8 Builder®, Bone, Boosters, Calcium, Calcium, Magnesium &
 9 Potassium, Complex C, E & Selenium, Extinguish™, GTF
 10 Chromium 100 mcg, Kid's One Daily, Kid’s B Complex, Kid’s
 11 Vitamin D3, Magnesium, Medi-Safe™, Men Over 40™, Men
 12 Over 40™ - CA Blend, Men Over 40™ One Daily, Men Over
 13 55™, Men's, Men's – CA Blend, Men's One Daily, One Daily,
 14 One Daily Iron Free , Prostate Strength™, Quercetin
 15 Strength™ , Skin, Nails & Hair™, Skin, Nails & Hair™ - CA
 16 Blend, Seleniun, Thyroid Strength®, Ultra C-400, Un-Stress®
 17 , Vegan B12™, Vegan Daily™, Vegan Protect™ , Vision
 18 Strength®, Vitamin D3 1000 IU, Vitamin D3 2000 IU, Women
 19 Over 40™, Women Over 40™ - CA Blend, Women Over 40™
 20 One Daily, Women Over 55™, Women's One Daily, Women's
 21 One Daily – CA Blend, Women’s, Zinc, Antioxidants - 90
 22 tablets, B Complex - 180 tablets, B Complex - 90 tablets, Baby
 23 & Me™ Trimester I & II - 120 tablets, Baby & Me™ Trimester
 24 III & Post - 120 tablets, Food Multi III BioMax - 180 tablets,
 25 Food Multi III BioMax - 90 tablets, GTF Chromium - 90
 26 tablets, Homocysteine Response™ - 90 tablets, Iron Response -
 27 90 tablets, JCTH® - 180 tablets, JCTH® - 90 tablets, Men Over
 28 40 One Daily Iron Free - 60 tablets, Men Over 40™ Iron Free -

1 120 tablets, Mens One Daily Iron Free - 60 tablets, One Daily -
 2 90 tablets, One Daily Iron Free - 90 tablets, Proteolytic Enzyme
 3 Clinical Strength - 120 capsules, Selenium - 90 tablets, Tension
 4 Defense™ - 114 G, Thyroid Response® Complete Care - 90
 5 tablets, Vitamin C-400 - 180 tablets, Vitamin D-3 2,000 IU -
 6 180 tablets, Vitamin D-3 2,000 IU - 60 tablets, Vitamin D-3
 7 2,000 IU - 90 tablets, Women Over 40™ - 120 tablets, Women
 8 Over 40™ - 60 tablets, Women Over 40™ One Daily - 60
 9 tablets, Womens Multi - 60 tablets, Womens One Daily - 60
 10 tablets, formulated and distributed by Defendant, within four
 11 years prior to the filing of this action.”

12 Excluded from Class One are Defendant and any of its officers, directors,
 13 and employees, or anyone who purchased One Daily Multivitamin (or
 14 Defendant’s other products purporting to contain vitamins and minerals
 15 from only whole foods) for the purposes of resale. Plaintiff reserves the
 16 right to modify or amend the Class definition before the Court determines
 17 whether certification is appropriate.

18 Class Two

19 “All persons in California who purchased One Daily
 20 Multivitamin (30, 60 , 90, or 180 capsules); Acute Defense,
 21 Daily Energy, Daily C Protect, Daily Turmeric Nutrient
 22 Booster, Turmeric Strength for Whole Body, and/or Acute
 23 Defense (Innate Response Formulas) capsules formulated and
 24 distributed by Defendant, within four years prior to the filing of
 25 this action.”

26 Excluded from Class Two are Defendant and any of its officers, directors,
 27 and employees, or anyone who purchased One Daily Multivitamin (or
 28 Defendant’s other products where the presence of magnesium stearate was

1 not disclosed) for the purposes of resale. Plaintiff reserves the right to
 2 modify or amend the Class definition before the Court determines whether
 3 certification is appropriate.

4 **Class Three**

5 “All persons in California who purchased One Daily
 6 Multivitamin (30, 60 , 90, or 180 capsules); Dream Release™,
 7 Tension Release™, Wild Blueberry, Adrenal Response® - 60
 8 tablets, Adrenal Response® - 90 tablets, Adrenal Response®
 9 Complete Care - 90 tablets, Allergy Response™- 60 capsules,
 10 C Complete Powder 81 G, CoEnzyme B Complex - 60
 11 capsules, Complete Multi Powder 195 G, CoQ10 - 100 mg 30
 12 capsules, CoQ10 - 100 mg 60 capsules, DysBio-GI - 90
 13 capsules, Gluco-Defense™ - 60 capsules, Immune Response™
 14 - 60 capsules, Inflama-Complete™ - 90 Capsules, One Daily
 15 Cap - 60 capsules, Vessel Defense™ - 60 capsules, Vitamin D
 16 5,000 IU - 60 capsules formulated and distributed by
 17 Defendant, within four years prior to the filing of this action.”

18 Excluded from Class Three are Defendant and any of its officers, directors,
 19 and employees, or anyone who purchased One Daily Multivitamin (or
 20 Defendant’s other products where the presence of magnesium stearate was
 21 not disclosed) for the purposes of resale. Plaintiff reserves the right to
 22 modify or amend the Class definition before the Court determines whether
 23 certification is appropriate.

24 127. ***Ascertainability.*** The members of the Class are readily ascertainable by
 25 resort to Defendant’s records and/or Defendant’s agent’s records, including
 26 in-store and online sales, as well as through public notice.

27 128. ***Numerosity.*** The members of the Class are so numerous that their
 28 individual joinder is impracticable. Plaintiff is informed and believes, and

1 on that basis alleges, that the proposed class contains several thousands of
2 members.

3 **129. *Existence and Predominance of Common Questions of Law and Fact.***

4 Common questions of law and fact exist as to all members of the Class
5 predominate over any questions affecting only individual Class members.
6 All members of the Class have been subject to the same conduct and their
7 claims are based on the standardized marketing, advertisements and
8 promotions. The common legal and factual questions include, but are not
9 limited to, the following:

- 10 (a) Whether One Daily Multivitamin, contain synthetic nutrients
11 as the predominant source of vitamins and minerals;
- 12 (b) Whether One Daily Multivitamin contains magnesium stearate;
- 13 (c) Whether FoodState's claims alleged herein are untrue, or are
14 misleading, or reasonably likely to deceive;
- 15 (d) Whether FoodState's misrepresentations and/or omissions
16 regarding its other products containing vitamins and minerals
17 from whole foods, i.e., Class One: Adrenal Strength®, Alpha
18 Teen™, Baby and Me™, Baby and Me™ - CA Blend, Baby
19 and Me™ Herb Free, Baby and Me™ Herb Free – CA
20 Blend, Balanced B Complex, Balanced Minerals, Blood
21 Builder®, Bone, Boosters, Calcium, Calcium, Magnesium &
22 Potassium, Complex C, E & Selenium, Extinguish™, GTF
23 Chromium 100 mcg, Kid's One Daily, Kid's B Complex, Kid's
24 Vitamin D3, Magnesium, Medi-Safe™, Men Over 40™, Men
25 Over 40™ - CA Blend, Men Over 40™ One Daily, Men Over
26 55™, Men's, Men's – CA Blend, Men's One Daily, One Daily,
27 One Daily Iron Free , Prostate Strength™, Quercetin
28 Strength™ , Skin, Nails & Hair™, Skin, Nails & Hair™ - CA

1 Blend, Seleniim, Thyroid Strength®, Ultra C-400, Un-Stress®
 2 , Vegan B12™, Vegan Daily™, Vegan Protect™ , Vision
 3 Strength®, Vitamin D3 1000 IU, Vitamin D3 2000 IU,
 4 Women Over 40™, Women Over 40™ - CA Blend, Women
 5 Over 40™ One Daily, Women Over 55™, Women's One
 6 Daily, Women's One Daily – CA Blend, Women’s, Zinc,
 7 Antioxidants - 90 tablets, B Complex - 180 tablets, B Complex
 8 - 90 tablets, Baby & Me™ Trimester I & II - 120 tablets, Baby
 9 & Me™ Trimester III & Post - 120 tablets, Food Multi III
 10 BioMax - 180 tablets, Food Multi III BioMax - 90 tablets, GTF
 11 Chromium - 90 tablets, Homocysteine Response™ - 90 tablets,
 12 Iron Response - 90 tablets, JCTH® - 180 tablets, JCTH® - 90
 13 tablets, Men Over 40 One Daily Iron Free - 60 tablets, Men
 14 Over 40™ Iron Free - 120 tablets, Mens One Daily Iron Free -
 15 60 tablets, One Daily - 90 tablets, One Daily Iron Free - 90
 16 tablets, Proteolytic Enzyme Clinical Strength - 120 capsules,
 17 Selenium - 90 tablets, Tension Defense™ - 114 G, Thyroid
 18 Response® Complete Care - 90 tablets, Vitamin C-400 - 180
 19 tablets, Vitamin D-3 2,000 IU - 180 tablets, Vitamin D-3 2,000
 20 IU - 60 tablets, Vitamin D-3 2,000 IU - 90 tablets, Women
 21 Over 40™ - 120 tablets, Women Over 40™ - 60 tablets,
 22 Women Over 40™ One Daily - 60 tablets, Womens Multi - 60
 23 tablets, Womens One Daily - 60 tablets, Class Two: One Daily
 24 Multivitamin (30, 60 , 90, or 180 capsules); Dream Release™,
 25 Tension Release™, Wild Blueberry, Adrenal Response® - 60
 26 tablets, Adrenal Response® - 90 tablets, Adrenal Response®
 27 Complete Care - 90 tablets, Allergy Response™- 60 capsules,
 28 C Complete Powder 81 G, CoEnzyme B Complex - 60

1 capsules, Complete Multi Powder 195 G, CoQ10 - 100 mg 30
 2 capsules, CoQ10 - 100 mg 60 capsules, DysBio-GI - 90
 3 capsules, Gluco-Defense™ - 60 capsules, Immune Response™
 4 - 60 capsules, Inflama-Complete™ - 90 Capsules, One Daily
 5 Cap - 60 capsules, Vessel Defense™ - 60 capsules, Vitamin D
 6 5,000 IU - 60 capsules are substantially similar to the
 7 misrepresentations and/or omissions regarding the One Daily
 8 Multivitamin product such that Plaintiff has standing to sue
 9 FoodState for such products despite no allegation from
 10 Plaintiff that Plaintiff purchased those products;

11 (e) Whether Defendant's conduct is an unlawful act or practice
 12 within the meaning of California Business & Professions Code
 13 § 17200;

14 (f) Whether Defendant's conduct is a deceptive act or practice
 15 within the meaning of California Business & Professions Code
 16 § 17200;

17 (g) Whether Defendant's conduct is an unfair act or practice
 18 within the meaning of California Business & Professions Code
 19 § 17200;

20 (h) Whether Defendant's advertising is untrue or misleading with
 21 the meaning of California Business & Professions Code §
 22 17500;

23 (i) Whether Defendant's advertising is untrue or misleading in
 24 violation of California Health And Safety Code § 110660;

25 (j) Whether Defendant, through its conduct, received money that,
 26 in equity and good conscience, belongs to Plaintiff and
 27 members of the Class; and,

28 (k) Whether Plaintiff and proposed members of the Class are

entitled to restitution and/or disgorgement of FoodState's.

130. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent. Plaintiff, like members of the proposed Class, purchased One Daily Multivitamin after exposure to virtually the same material misrepresentations and/or omissions appearing on the product packaging, and on Defendant's website, and received a product that contained little vitamins and minerals from whole foods (or much less than consumers reasonably expect from Defendant's representations), and which product contained magnesium stearate without disclosure of its presence by Defendant. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Class. Food State's misrepresentations and/or omissions regarding its other products containing whole foods and magnesium stearate, i.e., Class One: Adrenal Strength®, Alpha Teen™, Baby and Me™, Baby and Me™ - CA Blend, Baby and Me™ Herb Free, Baby and Me™ Herb Free – CA Blend, Balanced B Complex, Balanced Minerals, Blood Builder®, Bone, Boosters, Calcium, Calcium, Magnesium & Potassium, Complex C, E & Selenium, Extinguish™, GTF Chromium 100 mcg, Kid's One Daily, Kid's B Complex, Kid's Vitamin D3, Magnesium, Medi-Safe™, Men Over 40™, Men Over 40™ - CA Blend, Men Over 40™ One Daily, Men Over 55™, Men's, Men's – CA Blend, Men's One Daily, One Daily, One Daily Iron Free , Prostate Strength™, Quercetin Strength™ , Skin, Nails & Hair™, Skin, Nails & Hair™ - CA Blend, Seleniun, Thyroid Strength®, Ultra C-400, Un-Stress® , Vegan B12™, Vegan Daily™, Vegan Protect™ , Vision Strength®, Vitamin D3 1000 IU, Vitamin D3 2000 IU, Women Over 40™, Women Over 40™ - CA Blend, Women Over 40™ One Daily, Women Over 55™, Women's One Daily, Women's One Daily – CA Blend,

1 Women's, Zinc, Antioxidants - 90 tablets, B Complex - 180 tablets, B
2 Complex - 90 tablets, Baby & Me™ Trimester I & II - 120 tablets, Baby &
3 Me™ Trimester III & Post - 120 tablets, Food Multi III BioMax - 180
4 tablets, Food Multi III BioMax - 90 tablets, GTF Chromium - 90 tablets,
5 Homocysteine Response™ - 90 tablets, Iron Response - 90 tablets, JCTH®
6 - 180 tablets, JCTH® - 90 tablets, Men Over 40 One Daily Iron Free - 60
7 tablets, Men Over 40™ Iron Free - 120 tablets, Mens One Daily Iron Free -
8 60 tablets, One Daily - 90 tablets, One Daily Iron Free - 90 tablets,
9 Proteolytic Enzyme Clinical Strength - 120 capsules, Selenium - 90 tablets,
10 Tension Defense™ - 114 G, Thyroid Response® Complete Care - 90
11 tablets, Vitamin C-400 - 180 tablets, Vitamin D-3 2,000 IU - 180 tablets,
12 Vitamin D-3 2,000 IU - 60 tablets, Vitamin D-3 2,000 IU - 90 tablets,
13 Women Over 40™ - 120 tablets, Women Over 40™ - 60 tablets, Women
14 Over 40™ One Daily - 60 tablets, Womens Multi - 60 tablets, Womens One
15 Daily - 60 tablets, Class Two: Acute Defense, Daily Energy, Daily C
16 Protect, Daily Turmeric Nutrient Booster, Turmeric Strength for Whole
17 Body, Acute Defense (Innate Response Formulas), Class Three: One Daily
18 Multivitamin (30, 60 , 90, or 180 capsules); Dream Release™, Tension
19 Release™, Wild Blueberry, Adrenal Response® - 60 tablets, Adrenal
20 Response® - 90 tablets, Adrenal Response® Complete Care - 90 tablets,
21 Allergy Response™- 60 capsules, C Complete Powder 81 G, CoEnzyme B
22 Complex - 60 capsules, Complete Multi Powder 195 G, CoQ10 - 100 mg 30
23 capsules, CoQ10 - 100 mg 60 capsules, DysBio-GI - 90 capsules, Gluco-
24 Defense™ - 60 capsules, Immune Response™ - 60 capsules, Inflama-
25 Complete™ - 90 Capsules, One Daily Cap - 60 capsules, Vessel Defense™
26 - 60 capsules, Vitamin D 5,000 IU - 60 capsules are substantially similar to
27 the misrepresentations and/or omissions regarding the One Daily
28 Multivitamin product. Defendant has no defenses unique to the Plaintiff.

1 131. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the
2 interests of the members of the Class. Plaintiff has retained counsel
3 experience in consumer protection law, including class actions. Plaintiff has
4 no adverse or antagonistic interest to those in the Class, and will fairly and
5 adequately protect the interests of the Class. Plaintiff's attorneys are aware
6 of no interests adverse or antagonistic to those of the Plaintiff and proposed
7 Class.

8 132. ***Superiority.*** A class-action is superior to all other available means for the
9 fair and efficient adjudication of this controversy. Individualized litigation
10 would create the danger inconsistent or contradictory judgments arising
11 from the same set of facts. Individualized litigation would also increase the
12 delay and expense to all parties and court system and the issues raised by
13 this action. The damages or other financial detriment suffered by individual
14 Class members may be relatively small compared to the burden and
15 expense that would be entailed by individual litigation of the claims against
16 the Defendant. The injury suffered by each individual member of the
17 proposed class is relatively small in comparison to the burden and expense
18 of individual prosecution of the complex and extensive litigation
19 necessitated by Defendant's conduct. It would be virtually impossible for
20 members of the proposed Class to individually redress effectively the
21 wrongs to them. Even if the members of the proposed Class could afford
22 such litigation, the court system could not. Individualized litigation
23 increases the delay and expense to all parties, and to the court system,
24 presented by the complex legal and factual issues of the case. By contrast,
25 the class action device presents far fewer management difficulties, and
26 provides the benefits of single adjudication, economy of scale, and
27 comprehensive supervision by a single court. Therefore, a class action is
28 maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

1 133. Unless a Class is certified, Defendant will retain monies received as a result
2 of Defendant's unlawful and deceptive conduct alleged herein. Unless a
3 class-wide restitution is permitted as compensation and as a deterrent,
4 Defendant will also likely continue to advertise, market, promote and
5 package One Daily Multivitamin in an unlawful and misleading manner,
6 and members of the Class will continue to be misled and denied their rights
7 under California law.

8
9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and
11 Plaintiff and Class members be awarded damages from Defendant as follows:

- 12 a. Certifying the Class as requested herein;
- 13 b. An order requiring imposition of a constructive trust to pay restitution to
14 Plaintiff and all members of the Class and to restore to the plaintiff and
15 members of the class all funds acquired by means of any act or practice
16 declared by this Court to be an unlawful, fraudulent or unfair business
17 act or practice, in violation of laws, statutes or regulations, or
18 constituting unfair competition;
- 19 c. Distribution of any monies recovered on behalf of members of the Class
20 via fluid recovery or *cy pres* recovery were necessary and as applicable,
21 to prevent Defendant from retaining the benefits of their wrongful
22 conduct;
- 23 d. Statutory prejudgment and post judgment interest;
- 24 e. Special, general, and compensatory damages to Plaintiff and Class
25 members;
- 26 f. Costs of this suit;
- 27 g. Reasonable attorneys' fees pursuant to, *inter alia*, California Code of
28 Civil Procedure § 1021.5; and

Kazerouni Law Group, APC

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h. Awarding any and all other relief that this Court deems necessary or appropriate.

Dated: January 13, 2015

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

Trial By Jury

134. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 13, 2015

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

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

Kathleen Holt, Individually and on Behalf of all Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. Kazerouni Law Group 245 Fischer Avenue, Suite D1; Costa Mesa, CA 92626 (800) 400-6808

DEFENDANTS

Foodstate, Inc., d/b/a Megafood, d/b/a Innate Response Formulas

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)

'15CV0078 L NLS

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 U.S.C. § 1332(d)
Brief description of cause: Diversity; Violations of Cal. Bus. and Prof. Code § 17200 et seq; Cal. Bus. and Prof. Code § 17500 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.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 01/14/2015 SIGNATURE OF ATTORNEY OF RECORD s/Abbas Kazerounian

FOR OFFICE USE ONLY

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.