Matthew R. Orr, Bar No. 211097
morr@calljensen.com
Joshua G. Simon, Bar No. 264714
gsimon@calljensen.com
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Tel: (949) 717-3000
Fax: (949) 717-3100

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RICK MUSGRAVE, on behalf of himself, and all others similarly situated, and the general public,

Plaintiff,

vs.

QUINCY BIOSCIENCE, LLC, a Wisconsin limited liability company; QUINCY BIOSCIENCE HOLDING CO., INC., a Wisconsin corporation; and DOES 1-15, inclusive,

Defendants.

Case No. 3:15-cv-4505

DEFENDANTS' NOTICE OF REMOVAL

Complaint Filed: March 24, 2015
Trial Date: None Set

TO THE CLERK OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc. ("Defendants") hereby removes this action from the Superior Court of the State of California for the County of Contra Costa to the United States District Court for the Northern District of California, on the following grounds:

STATEMENT OF THE CASE AND TIMELINESS OF REMOVAL

1. On March 24, 2015, Plaintiff Rick Musgrave ("Plaintiff") commenced an action against Defendants in the Superior Court of the State of California for the County of Contra Costa, Case Number C15-00532, by filing a Complaint entitled "*RICK MUSGRAVE, on behalf of himself, all others similarly situated, and the general public, v. QUINCY BIOSCIENCE, LLC, Wisconsin limited liability company; QUINCY BIOSCIENCED HOLDING CO., INC., Wisconsin corporation; and DOES 1-15, inclusive.*" A true and correct copy of this document is attached hereto as Exhibit 1. (*See* Declaration of Joshua G. Simon, "Simon Decl.", ¶ 2.)

2. In his Complaint, Plaintiff seeks, among other things, to certify a putative class that purports to include "[a]ll purchasers of Prevagen original capsules, Prevagen Chewables, Prevagen Extra Strength, Prevagen Professional, and all iterations/variations of the aforementioned products, for personal or household use and not for resale in California from March 23, 2011 to the opt-Out or Objection Date (the 'Class Period')." (Compl. ¶ 44.)

3. The Complaint purports to allege causes of action against Defendants for supposed violations of Consumer Legal Remedies Act § 1750 *et seq*. and California Business and Professions Code §§ 17200 and 17500 *et seq*., based on Defendant's alleged improper labeling of the Prevagen® products.

4. On July 9, 2015, Defendants filed a General Denial and Affirmative Defenses denying the allegations in the Complaint and reserving a number of

affirmative defenses. A true and correct copy of the General Denial is attached hereto as Exhibit 2. (Simon Decl., ¶ 3.)

5. On or about September 11, 2015, Defendants received Plaintiff's Responses to Requests for Admission, Set One. (Simon Decl., ¶ 4.) A true and correct copy of this document is attached as Exhibit A to the Simon Declaration. Plaintiff admits that he is not a citizen of the State of Wisconsin and that he was not domiciled in Wisconsin at the time he filed the Complaint in this matter. (*See* Simon Decl., ¶4, Exhibit A, Responses to Requests for Admission Nos. 1–2.)

6. This removal is timely filed as required by 28 U.S.C. § 1446(b) as it is brought within 30 days of service of Exhibit A to the Simon Declaration from which it may be ascertained that the case is one which is removable.

SUBJECT MATTER JURISDICTION

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1453. This Court specifically has jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"), codified in part at 28 U.S.C. §§ 1332(d)(2) and 1453(b), because it is a civil action styled as a class action in which: (1) the number of members of the proposed plaintiff class is not less than one hundred, in the aggregate; (2) the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs; and (3) any member of the class of plaintiff is a citizen of a State different from any defendant. 28 U.S.C. §§ 1332(d)(2) and (d)(5).

PLAINTIFF'S CASE IS STYLED AS A PUTATIVE CLASS ACTION WITH A PROPOSED CLASS OF NOT LESS THAN 100 MEMBERS

8. The Court has CAFA jurisdiction because this lawsuit is a putative class action, and the proposed class comprises more than 100 individuals.

9. CAFA jurisdiction exists over any "class action" brought under any "State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This case constitutes a "class action" for purposes of removal because Plaintiff styles his

Complaint as a "Class Action," and the Complaint seeks certification of a class pursuant to California Code of Civil Procedure § 382, a state statute that authorizes class actions if the representative plaintiff can prove that the "parties are numerous, and it is impracticable to bring them all before the court . . . ." (Compl., ¶¶ 20–34.) Thus, this action qualifies as a class action under CAFA.

10. CAFA jurisdiction exists unless "the number of members of all proposed plaintiff classes in the aggregate is less than 100." 28 U.S.C. § 1332(d)(5)(A). CAFA defines class members as "the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action." 28 U.S.C. § 1332(d)(1)(D). This requirement is met here because Plaintiff seeks to represent a class defined as "[a]ll purchasers of Prevagen original capsules, Prevagen Chewables, Prevagen Extra Strength, Prevagen Professional, and all iterations/variations of the aforementioned products, for personal or household use and not for resale in California from March 23, 2011 to the opt-Out or Objection Date (the 'Class Period')." (Compl. ¶ 44.) Plaintiff further alleges "the total number of Class members is at least in the tens of thousands . . . ." (*See* Compl., ¶ 29.) Thus, on the face of the pleadings there are more than 100 members in Plaintiff's proposed class.

THE AMOUNT IN CONTROVERSY EXCEEDS $5 MILLION

11. Under CAFA, "the claims of individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interests and costs." 28 U.S.C. § 1332(d)(6). In determining the amount in controversy, "a court must assume that the allegations in the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint." *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 WL 26996, *2 (N.D. Cal. Jan. 2, 2014).

12. Where, as here, the Complaint does not specify the amount in controversy, the Defendants must show "by a preponderance of the evidence, that the amount in

controversy exceeds the statutory amount." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010).

13. As discussed above, Plaintiff brings this action on behalf of a purported class of consumers consisting of everyone in the State of California who, from four years preceding the filing of this Complaint, purchased Prevagen® products. (*See* Compl., ¶ 20.) Plaintiff also alleges that he seeks injunctive relief, actual damages, restitution, punitive damages; and attorneys' fees and costs. (Compl. ¶¶ 57, 70, 75, Prayer for Relief.)

14. The Declaration of Mark Y. Underwood (the "Underwood Declaration") concurrently filed herewith, establishes that the amount in controversy exceeds the jurisdictional limit. (*See* Underwood Decl., ¶¶ 6–7); *see also Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (courts may consider "summary-judgment-type evidence relevant to the amount in controversy at the time of removal"). Thus, although Defendants deny Plaintiff's allegations of liability, injury, and damages and will oppose certification of the putative class, taking Plaintiff's allegations to be true, this is a "civil action in which the matter in controversy exceeds the sum or value of $5,000,000." 28 U.S.C. § 1332(d)(2).

MINIMAL DIVERSITY IS MET

15. CAFA jurisdiction is met where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). That requirement is met here. Defendants are now and have been, before and after the commencement of this action, organized and existing under and by virtue of the laws of the State of Wisconsin. (*See* Underwood Decl. ¶ 2.) Currently and before and since the commencement of this action, Defendants have had their corporate headquarters and principal place of business in Wisconsin. (*Id*. ¶¶ 3–4.) The Wisconsin headquarters is and has been the place where the majority of Defendants' corporate books and records are located. (*Id*. at ¶ 3–4; s*ee generally*, *Hertz v. Friend*, 130 S.Ct. 1181, 1192 (Feb. 23, 2010) ("We conclude that 'principal place of business' is best read as referring to the

place where a corporation's officers direct, control, and coordinate the corporation's activities" and, "in practice[,] it should normally be the place where the corporation maintains its headquarters–provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the 'nerve center'").)

16. Defendants, before and after the commencement of this action, have not had their headquarters, executive offices, or executive officers based in California. (*See* Underwood Decl. ¶ 5.) Thus, Defendants are not now, and were not at the time of the filing of the Complaint, citizens of California within the meaning of the Acts of Congress relating to the removal of claims. Defendants are now and have been citizens of Wisconsin for diversity purposes ever since this action commenced. 28 U.S.C. § 1332(c)(1).

17. Plaintiff's admission that he was not domiciled in Wisconsin at the time he brought this action establishes that he was not a citizen of Wisconsin for diversity purposes. (*See* Simon Decl., ¶ 4, Exhibit A,); *see also Grupo Dataflux v. Atlas Global Group, LP*, 541 U.S. 567, 570 ("It has long been the case that the jurisdiction of the court depends upon the state of things at the time of the action brought."); *see also Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.2001) ("The natural person's state citizenship is then determined by her state of domicile, not her state of residence.") Thus, at least some members of the putative class, namely Plaintiff, are a citizen of a State (California) different than Defendants (Wisconsin).

18. The inclusion of "Doe" defendants in Plaintiff's Complaint have no effect on the ability to remove pursuant to 28 U.S.C. Section 1441(a).

EXCEPTIONS TO REMOVAL DO NOT APPLY

19. This action does not fall within any exclusions to removal jurisdiction recognized by 28 U.S.C. § 1332(d)(3), (4), and (9) or 28 U.S.C. § 1453(d). Under § 1332(d)(3), a court may decline to exercise jurisdiction over a class action where "greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the

action was originally filed . . . ." Here, because Defendants are Wisconsin organizations with their principle place of business in Wisconsin, this exclusion does not apply.

20. 28 U.S.C. § 1332(d)(4)(A) requires a district court to decline jurisdiction where, among other things, "greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed…and at least one defendant is a defendant…who is a citizen of the State in which the action was originally filed…" Similarly, § 1332(d)(4)(B) requires a district court to decline jurisdiction where "two-thirds or more of the members of all proposed classes in the aggregate, and the primary defendants, are citizens of the state in which the action was originally filed." Here, Defendants are not citizens of California, and therefore neither of these exceptions applies.

21. In addition, this action does not fall within any of the other categorical exceptions under CAFA. *See* 28 U.S.C. § 1332(d)(9)(A), (B), and (C) (making exception for an action (1) "concerning a covered security;" (2) "that relates to the internal affairs or governance of a corporation or other form of business enterprise;" (3) "that relates to the rights, duties (including fiduciary duties), and obligations related to or created by or pursuant to any security . . . .").

ALL PROCEDURAL REQUISITES ARE SATISFIED

22. 28 U.S.C. § 1441(a) allows civil actions brought in state court to be removed to the district court "embracing the place where such action is pending." The Complaint was filed and currently is pending in the California Superior Court for the County of Los Angeles. This District is the proper venue for this action upon removal pursuant to 28 U.S.C. § 1441(a) because it is the District that embraces the county where the state court action was pending.

23. Pursuant to 28 U.S.C. § 1446(a), copies of all relevant process, pleadings, and orders are attached hereto as Exhibits 1 and 2. (Simon Decl., ¶¶ 1–2.)

/ / /

24. Defendants will promptly serve a notice of filing of removal, with a copy of the notice of removal annexed thereto, on Plaintiff's attorneys and will file such notice with the Clerk of the Superior Court of the State of California for the County of Los Angeles.

CONCLUSION

25. For the foregoing reasons, Defendants hereby remove this case from the California Superior Court for the County of Contra Costa to this Federal District Court.

Dated: September 30, 2015

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Joshua G. Simon

By: */s/ Joshua G. Simon*
Joshua G. Simon

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

DEMAND FOR JURY

Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc. hereby demand a jury pursuant to FRCP 38(b) on all issues subject to a jury trial raised in the Complaint of Plaintiff.

Dated: September 30, 2015

CALL & JENSEN

A Professional Corporation
Matthew R. Orr
Joshua G. Simon

By: */s/ Joshua G. Simon*
Joshua G. Simon

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

Exhibit 1

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO): QUINCY BIOSCIENCE, LLC; QUINCY BIOSCIENCE HOLDING CO., INC.; and DOES 1-15, inclusive, Wisconsin limited liability company / Wisconsin corporation

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

RICK MUSGRAVE, on behalf of himself, all others similarly situated, and the general public

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

FILED
2015 MAR 24 P 12:04
STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: _____ DEPUTY CLERK

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Wakefield Taylor Courthouse
725 Court Street, Martinez, CA, 94553

CASE NUMBER:
(Número de Caso): C15-00532

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Ronald A. Marron, 651 Arroyo Drive, San Diego, CA, 92103, (619) 696-9006

DATE: 3/23/15 MAR 2 4 2015
(Fecha)
Clerk, by C. AGUILAR-JACALA, Deputy
(Secretario) _____ *(Adjunto)*

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

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Ronald A. Marron SBN: 175650
LAW OFFICES OF RONALD A. MARRON
651 Arroyo Drive
San Diego, CA 92103
TELEPHONE NO.: 619-696-9006 FAX NO.: 619-564-6665
ATTORNEY FOR (Name): Rick Musgrave

FOR COURT USE ONLY

FILED
2015 MAR 24 A 11:50
STEPHEN H. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa
STREET ADDRESS: 725 Court Street
MAILING ADDRESS: 725 Court Street
CITY AND ZIP CODE: Martinez, 94553
BRANCH NAME: Wakefield Taylor Courthouse

CASE NAME:
Rick Musgrave v. Quincy Bioscience, LLC, et al.

CASE NUMBER: C15-00538

JUDGE:
DEPT:

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

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

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

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

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

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

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

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

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

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

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

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

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

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

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

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

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

Date: 3/23/2015
Ronald A. Marron
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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

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

CIVIL CASE COVER SHEET

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

FILED BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

LAW OFFICES OF RONALD A. MARRON, APLC
RONALD A. MARRON (175650)
ron@consumersadvocates.com
SKYE RESENDES (278511)
skye@consumersadvocates.com
ALEXIS M. WOOD (270200)
alexis@consumersadvocates.com
651 Arroyo Drive
San Diego, CA 92103
Phone: (619) 696-9006
Fax: (619) 564-6665
Counsel for Plaintiffs and the Putative Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

C 15-00582

RICK MUSGRAVE, on behalf of himself, all others similarly situated, and the general public,

Plaintiff,

v.

QUINCY BIOSCIENCE, LLC, a Wisconsin limited liability company; QUINCY BIOSCIENCE HOLDING CO., INC., a Wisconsin corporation; and DOES 1-15, inclusive,

Defendants.

Case No:

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF CALIFORNIA CONSUMER PROTECTION STATUTES

DEMAND FOR JURY TRIAL

Plaintiff RICK MUSGRAVE on behalf of himself, all others similarly situated, and the general public ("Plaintiff") alleges against Defendants QUINCY BIOSCIENCE, LLC, a Wisconsin limited liability company; QUINCY BIOSCIENCE HOLDING CO., INC., a Wisconsin corporation; and DOES 1-15, inclusive ("Defendants") the following upon his own personal knowledge, or where there is no personal knowledge, upon information and belief and the investigation of his counsel:

JURISDICTION AND VENUE

1. Personal jurisdiction is derived from the fact that Defendants conduct business within the State of California and within this judicial district. *See also* Cal. Civ. Proc. Code § 410.10; Civ. Code § 1780(d).

2. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of this Court, and the claims asserted in this Complaint are within the subject-matter jurisdiction of this Court.

3. Venue is proper in this Court because Defendants (i) are authorized to conduct business in this forum and have intentionally availed themselves of the laws and markets within forum through the promotion, marketing, distribution and sale of its products in this venue; (ii) do substantial business in this district; (iii) advertise to consumers residing in this district; and, (iv) the events and injuries complained of in this Complaint occurred in the County of Contra Costa. *See also* Cal. Civ. Proc. Code § 410.10; Civ. Code § 1780(d).

4. Defendants and other out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute, Code of Civil Procedure § 410.10, as a result of Defendants' substantial, continuous and systematic contacts with the State, and because Defendants have purposely availed themselves of the benefits and privileges of conducting business activities within the State.

THE PARTIES

5. At all times relevant to this matter, Plaintiff was a resident of Pacheco, California, in Contra Costa County, California.

6. On information and belief, at all times relevant to this matter, Defendants were Wisconsin entities that maintained their principal place of business and corporate headquarters at 301 S. Westfield Road, Suite 200, Madison, Wisconsin.

7. Defendants are the manufacturer and seller of dietary supplements.

8. Defendants' packaging and labeling of the dietary supplements at issue in this complaint are uniform throughout California and the United States.

9. Members of the putative class reside in California.

10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned the Defendants and Defendants' employees were the agents, servants and employees of the Defendants, acting within the purpose and scope of that agency and employment.

11. Each of the DOE defendants is in some manner responsible for the incidents and conduct alleged in this Complaint. Plaintiffs are unaware of the true names or capacities of the persons, or entities, sued herein as DOEs 1 through 15, and therefore sue such Defendants by such fictitious names. Plaintiffs are informed and believed that each of the DOE Defendants is in some manner legally responsible for the damages suffered by Plaintiffs and the members of the class as alleged herein. Plaintiffs will amend this Complaint to set forth the true names and capacities of these defendants when they have been ascertained, along with appropriate charging allegations, as may be necessary.

12. In addition to selling its Products on the shelf in major retail stores, Defendants also distribute its Products to online third party retailers for sale directly to consumers through online transactions, such as amazon.com, drugstore.com, and target.com. Defendants conduct substantial business in California, including, but not limited to, extensive on-the-shelf presence of the Products in hundreds of retail stores in California, including major chain stores such as Walgreens, Target, CVS, Rite-Aid, and Walmart, among others; and through online marketing through their website, www.prevagen.com, intended to reach consumers in California, including offering online coupons to California consumers, and direct orders to any consumer in California via the Internet.

BACKGROUND FACTS

13. Defendants manufacture, market and sell a purported memory pill branded as Prevagen, which represents on its exterior packaging to be "Clinically Tested" to "Improve[] Memory," and to support "Healthy Brain Function," "Sharper Mind," "Clearer Thinking" through a "Once Daily" capsule. Copies of the labels are attached hereto as Exhibit A.

14. Prevagen comes in four known formulas: the original Prevagen capsule, Prevagen Chewables, Professional, and Extra Strength (the "Products" or, collectively, "Prevagen").[1]

15. Defendants primarily advertise and promote the Products through labeling claims on the front of the Products' package. Label descriptions on the Products' packaging, taken as a whole, represent there are various benefits and characteristics to the Products. *See* Ex. A (Product Packaging.)

16. Defendants' Product advertising is also the subject of an extensive and comprehensive marketing campaign in various media, including the Internet.

17. The purported active ingredient in Prevagen is apoaequorin, which originally was derived from jellyfish, but which Defendants now allege to create synthetically. Original Prevagen and Prevagen Chewables claim to have 10 mg of apoaequorin; Extra Strength 20 mg apoaequorin; and Professional 40 mg apoequorin.

18. In addition to the foregoing, Defendants represent that Prevagen "supplements these [proteins that support our brain] during the natural process of aging;" "Prevagen ... is clinically shown to help with mild memory problems associated with aging;" "Prevagen® contains apoequorin, a protein which uniquely supports critical brain functions;" "In clinical studients Prevagen® improved memory within 90 days;" "In a computer assessed, double blinded, placebo controlled study, Prevagen® improved memory;" "a chart claiming "Prevagen Improves Memory" by "7.5%" within "8 days," "10%" within "30 days," and "20%" within "90 days." Defendants also claim: "Originally discovered in jellyfish, Prevagen® is now made in a controlled scientific process;" and that the product was "[d]eveloped by university researchers and scientists in Madison, Wisconsin." Defendants also reinforce their quick effectiveness of the Products through use of an image of a clock next to the word Prevagen on each package. *See* Ex. A.

19. Moreover, Defendants use a seal depicting a brain in white on a blue background, double surrounded by the words, "SUPPORTS HEALTHY BRAIN FUNCTION". *See id.*

20. Plaintiff was exposed to and reviewed the foregoing claims, taken as a whole, as listed *supra* in paragraphs 13, 15, 17-19 (*see also* Ex. A), and relied on them when deciding to purchase Prevagen Extra Strength at a Walgreens near his home in Pacheco, California in or around March 2014. He regularly

[1] Plaintiff reserves the right to add other products manufactured, marketed and sold by Defendants for purported brain or memory benefits, or other iterations of the Prevagen products, as discovery proceeds.

purchased and used the Product thereafter, buying it approximately 10-12 times from Walmart or Walgreens stores near his home; and stopped taking it in around December 2014 because he did not think it was working. Plaintiff paid approximately $40-$50 for each purchase of Prevagen.

21. Prevagen, however, is falsely and deceptively advertised because it does not work for the uses described on the label, i.e., it does not support memory or brain function at all, much less in the time described on the label. The Products are therefore worthless.

22. Indeed, the active ingredient in all Prevagen Products, apoaequorin, cannot survive the digestive tract and therefore can have no effect on the body.

23. Further, the Products are not "Clinically Tested." Only one clinical trial was performed, as Defendants' own label admits (*see* Exhibit A, back of package referring to "a computer assessed, double-blinded, placebo controlled study" but also claiming on the side label that the Products are backed by "clinical studies," plural).

24. In addition, the researcher that performed that sole study that allegedly shows apoaequorin survives the digestive tract (UW-Milwaukee psychologist, James Moyer, Jr.) has stated that more tests would be needed before any brain and memory function claims for apoaequorin could be clinically supported.

25. Defendants' clinical trial(s) fell below the standards that would be applied by a reasonable manufacturer of diet supplements to support its own products. The Federal Trade Commission ("FTC") enforces OTC drug advertising and applies the same standards as any consumer product: a "reasonable consumer" standard. The FTC requires OTC drug advertising to be truthful, non-deceptive, fair, and for manufacturers to contain evidence that backs up their claims. Defendants here do not have such evidence, despite advertising the Products as "Clinically Tested," possessing proof of effectiveness from "clinical studies," and being "made in a controlled scientific process," "developed by university researchers and scientists." *See* Ex. A.

26. Moreover, the only independent scientific studies on apoequorin in PubMeb are for uses other than brain function and memory. Therefore, there is no clinical testing and no clinical studies by which Defendants can claim expert endorsement or establishment claims for Prevagen Products.

27. At all times relevant herein, Defendants had a duty to disclose additional information to purchasing consumers, to correct all misunderstandings its omissions and misrepresentations created in the minds of those consumers.

28. The active ingredient in apoaequorin is not vitamin, mineral, amino acid, herb, botanical, or other dietary substance to support the diet in human beings. Therefore, the Products are unlawfully labeled as dietary supplements. *See* Exhibit B attached hereto (FDA warning letter issued to Defendants).

29. Further, Defendants' Products are unlawful new drugs because they purport to mitigate or cure a disease – memory loss. *See id.* But the Products are not supported by clinical trials and an approved new drug application.

30. Because Defendants' Products are unlawful new drugs, they are in violation of the California Sherman Law (Health & Safety Code §§ 109875, et seq.), which mirrors the federal Food, Drug and Cosmetic Act in all material respects (21 U.S.C. §§ 301, et seq.).

31. The Products are priced at $50 and above. Hence, Defendants' unfair and deceptive practices have enriched them at the expense of Plaintiff and consumers.

32. Absent the misrepresentations and omissions described herein, which are material to an average consumer, Plaintiff would not have purchased Prevagen.

33. In purchasing a product that were falsely or deceptively advertised, Plaintiff suffered injury in fact in the form of the lost purchase price of the Product.

34. Plaintiff seeks justice by means of this action to enjoin the ongoing deceptive practices described herein.

35. Defendants' marketing and promotion of the Products was supported by false and misleading claims containing material omissions and misrepresentations.

36. When purchasing the Product, Plaintiff was seeking a remedy that would provide the benefits and had the endorsements, proof of efficacy, and characteristics that Defendants marketed, promised, represented and warranted.

37. Plaintiff purchased the Product believing it had the sought after qualities based on the Product's deceptive or false labeling, but the Product was actually unacceptable to him as it did not possess the benefits, endorsements, proof, and characteristics as advertised.

38. Moreover, like all reasonable consumers, Plaintiff considers a label's compliance with federal law a material factor in his purchasing decisions. Plaintiff is generally aware the federal government carefully regulates OTC products and therefore has come to trust that information conveyed on packaged OTC product labels is truthful, accurate, complete, and fully in accordance and compliance with federal law. As a result, Plaintiff trusts he can compare competing products on the basis of their labeling claims, to make a purchasing decision.

39. Like all reasonable consumers, Plaintiff would not purchase an OTC product he knew was misbranded under federal law, *see* 21 U.S.C. § 343, which the federal government prohibits selling, *id.* § 331, and which carries with its sale criminal penalties, *id.* § 333. Plaintiff could not trust that the label of a product misbranded under federal law is truthful, accurate and complete.

40. Similarly, like all reasonable consumers and members of the class, Plaintiff would not purchase an OTC product he knew was an illegally marketed new drug for which the FDA has not determined its safety and efficacy.

41. In light of the foregoing, reasonable consumers, including Plaintiff, were and are likely to be deceived by Defendants' advertising and marketing practices as detailed herein.

42. Further, Plaintiff purchased the Products instead of competing product(s) based on the false statements, misrepresentations and omissions described herein.

43. Instead of receiving a product that had the benefits, advantages, endorsements, proof, and characteristics as advertised, Plaintiff received a product worth much less, or which was worthless, because the Product does not work; caused no effect or effects reversal of that advertised; and did not possess the characteristics, benefits, endorsements, and proof of efficacy, as advertised by Defendants.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this class action for damages and other monetary relief on behalf of the following class:

> All purchasers of Prevagen original capsules, Prevagen Chewables, Prevagen Extra Strength, Prevagen Professional, and all iterations/variations of the aforementioned products, for personal or household use and not for resale, in California from March 23, 2011 to the Opt-Out or Objection Date (the "Class Period"). Excluded from the consumer class are governmental entities, the Defendants, any entity in which the Defendants have a controlling interest, its employees, officers,

directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, including parent corporations, class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

45. The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes the total number of Class members is at least in the tens of thousands, if not hundreds of thousands of persons in the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

46. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff and the Class and these common questions of fact and law include, but are not limited to, the following:

a. Whether the claims discussed above are true, misleading, or reasonably likely to deceive;

b. Whether Defendants' alleged conduct violates public policy;

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

d. Whether Defendants engaged in false or misleading advertising;

e. Whether the Plaintiff and Class members are entitled to declaratory and injunctive relief.

47. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by the Defendants' common course of conduct since they all relied on Defendants' representations concerning its Products and purchased the Products based on those representations.

48. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation in general and scientific claims, including for drug and diet supplements, in particular. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

49. Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of the Defendants unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

50. Adjudication of individual Class members' claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT

California Civil Code §§ 1750, et seq.

51. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

52. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff is a consumer as defined by California Civil Code § 1761(d). The Products are goods within the meaning of the Act.

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

- Representing [the Products have]...characteristics, ingredients, uses, benefits or quantities which [the Products] do not have. (Civ. Code, § 1770, subd. (a) (5).)

- Representing [the Products] are of a particular standard, quality or grade... if they are of another. (Civ. Code, § 1770, subd. (a) (7).)
- Advertising [the Products] ...with intent not to sell them as advertised. (Civ. Code, § 1770, subd. (a) (9).)
- Representing [the Products] have been supplied in accordance with a previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

54. Defendants violated the Act by representing through advertising of the Products as described above, when they knew, or should have known, the representations and advertisements were false or misleading.

55. Plaintiff reasonably relied upon the Defendants' representations as to the quality and attributes of the Products.

56. Plaintiff was deceived by Defendants' representations about the quality and attributes of the Products, including but not limited to the purported benefits of the Products, taken as a whole, that their Products provide, *inter alia*, effective relief of various symptoms and ailments. Plaintiff would not have purchased the Product had he known Defendants' claims were untrue.

57. Pursuant to California Civil Code § 1780(a), Plaintiff seeks an order of this Court enjoining Defendants from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law; and for actual damages, restitution, and punitive damages to Plaintiff and the Class.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

California Business and Professions Code §§ 17200, et seq.

58. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

59. California's Unfair Competition Law, Business and Professions Code § 17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendants has engaged in unfair, deceptive, untrue and misleading advertising in violation of the UCL.

60. The UCL also prohibits any "unlawful... business act or practice." Defendants violated the UCL's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations

and omissions of material facts, as set forth more fully herein, and by violating among others, California Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§ 109875, *et seq.* ("Sherman Law"), Cal. Bus. & Prof. Code §§ 12601, *et seq.* ("Fair Packaging and Labeling Act"), California Commercial Code § 2313(1), and the common law. Such conduct is ongoing and continues to this date. *See* Exs. 2-3.

61. Plaintiff reserves the right to allege other violations of law, which constitute other unlawful business acts or practices.

62. California Business and Professions Code § 17200 also prohibits any "unfair... business act or practice."

63. Defendants' acts, omissions, misrepresentations, practices and nondisclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. Such conduct is ongoing and continues to this date.

64. Plaintiff alleges violations of consumer protection, unfair competition and truth in advertising laws in California resulting in harm to consumers. Plaintiff asserts violation of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of the UCL. Such conduct is ongoing and continues to this date.

65. There were reasonable alternatives available to Defendants to further its legitimate business interests, other than the conduct described herein.

66. The UCL also prohibits any "fraudulent business act or practice."

67. Defendants' claims, nondisclosures (i.e., omissions), and misleading statements, as more fully set forth above, were false, misleading and/or likely to deceive the consuming public within the meaning of the UCL. Such conduct is ongoing and continues to this date.

68. Defendants' conduct caused and continues to cause substantial injury to Plaintiff. Plaintiff has suffered injury in fact as a result of Defendants' unfair conduct.

69. Defendants has thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff to injunctive relief against Defendants, in the form of modified labeling claims and as set forth in the Prayer for Relief.

70. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an order requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendants to engage in a corrective advertising campaign.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW

California Business and Professions Code §§ 17500, et seq.

71. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

72. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance upon Defendants' marketing claims. Plaintiff used the Products as directed, but the Products did not work as advertised, nor provided any of the promised benefits.

73. Defendants' business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to California Business and Professions Code §§ 17500, *et seq.* because Defendants have advertised their Products in a manner that is untrue or misleading, or that is known to Defendants to be untrue or misleading.

74. Defendants' wrongful business practices have caused injury to Plaintiff.

75. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff seeks an order of this court enjoining the Defendants from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in the complaint.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against the Defendants as to each and every cause of action, including:

A. An order certifying this class as a class action, appointing Plaintiff its class representative and her counsel as class counsel;

B. An order awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein;

C. An order compelling Defendants to engage in a corrective advertising campaign, including to notify all members of the class, to inform the public concerning the true nature of their Products;

D. For her UCL claims, an order requiring Defendants to make restitution to the Class;

E. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

F. An order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

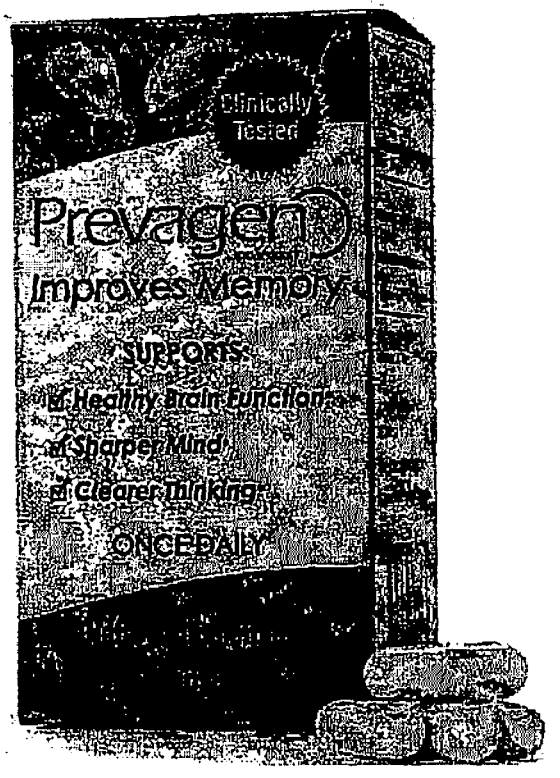
Dated: March 23, 2015

By: Ronald A. Marron

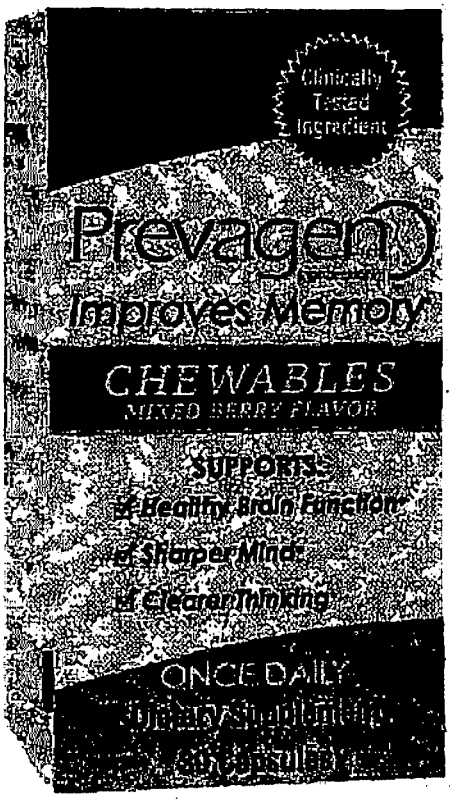
LAW OFFICES OF RONALD A. MARRON, APLC
SKYE RESENDES
ALEXIS M. WOOD
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

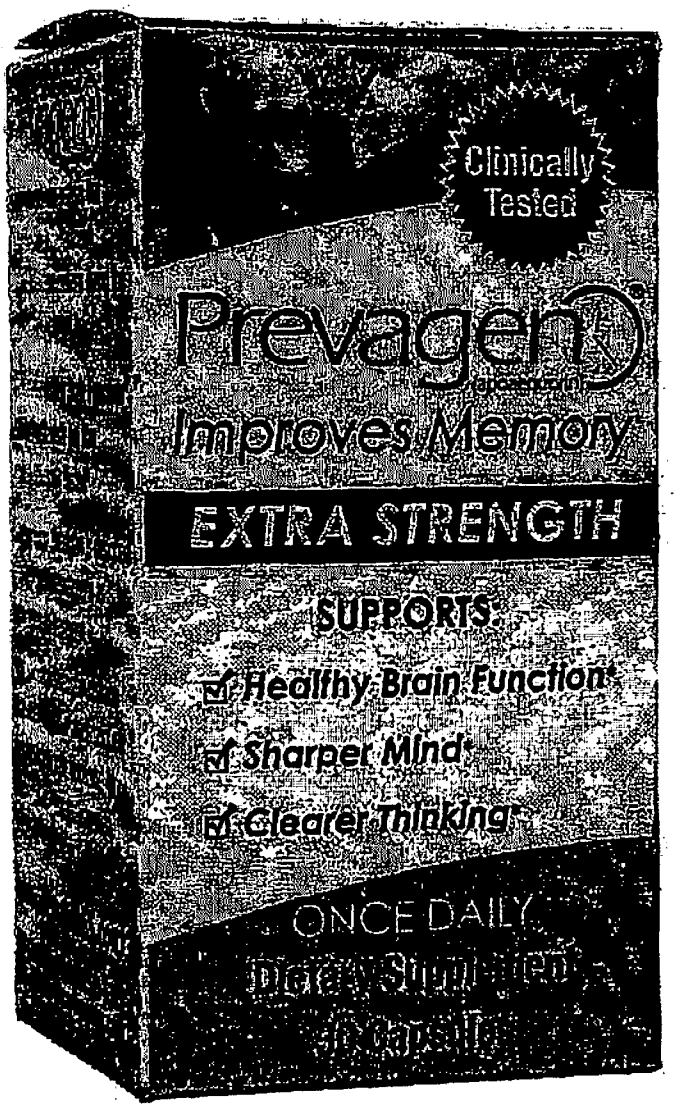
Attorneys for Plaintiff and the Putative Class

EXHIBIT A


Clinically Tested
Prevagen
Improves Memory
SUPPORTS:
Healthy Brain Function
Sharper Mind
Clearer Thinking
ONCE DAILY


Prevagen
Improves Memory
Professional Strength


Clinically Tested Ingredient
Prevagen
Improves Memory
CHEWABLES
MIXED BERRY FLAVOR
SUPPORTS
Healthy Brain Function
Sharper Mind
Clearer Thinking
ONCE DAILY


Clinically Tested
Prevagen
Improves Memory
EXTRA STRENGTH
SUPPORTS:
Healthy Brain Function*
Sharper Mind*
Clearer Thinking*
ONCE DAILY

Prevagen®

As we age, we lose proteins that support our brain.* Prevagen® supplements these proteins during the natural process of aging.*

- ☑ Supports Healthy Brain Function*
- ☑ Only One Capsule per Day
- ☑ Safe & Clinically Tested

Prevagen® (apoaequorin) is clinically shown to help with mild memory problems associated with aging.*

Prevagen® contains apoaequorin, a protein which uniquely supports critical brain functions.* In clinical studies Prevagen® improved memory within 90 days.*

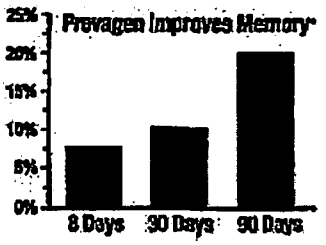
www.prevagen.com

Questions? Call 888.565.5385 or visit www.prevagen.com

SIDE LABEL

Clinically Tested

In a computer assessed, double-blinded, placebo controlled study, Prevagen® improved memory.*



Originally discovered in jellyfish, Prevagen® is now made in a controlled scientific process. Developed by university researchers and scientists in Madison, Wisconsin.

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.

BACK LABEL

TOP OF PACKAGE

EXHIBIT B

Inspections, Compliance, Enforcement, and Criminal Investigations

Quincy Bioscience Manufacturing Inc. 10/16/12

Department of Health and Human Services

Public Health Service
Food and Drug Administration
Minneapolis District Office
Central Region
250 Marquette Avenue, Suite 600
Minneapolis, MN 55401
Telephone: (612) 334-4100
FAX: (612) 334-4142

October 16, 2012

WARNING LETTER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Refer to MIN 13 - 0

Mark Y. Underwood
President
Quincy Bioscience Manufacturing Inc.
301 S. Westfield Road, Suite 200
Madison, Wisconsin 53717

Dear Mr. Underwood:

This letter concerns your products Prevagen, which is labeled to contain 10 mg apoaequorin, Prevagen Extra Strength, labeled to contain 20 mg apoaequorin, and Prevagen Professional, labeled to contain 40 mg apoaequorin. These products are labeled as dietary supplements.

FDA reviewed your websites at www.prevagen.com, www.prevagenES.com, www.prevagenpro.com, www.hopetrials.com, www.prevagenreviews.com, www.quincybioscience.com, www.facebook.com/prevagen and www.youtube.com/user/prevagen in August 2012. Based on this review the agency has determined that your products Prevagen, Prevagen Extra Strength, and Prevagen Professional are being promoted for conditions that cause these products to be drugs under section 201(g)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. § 321(g)(1)(B). The therapeutic claims on your websites (see "Unapproved New Drugs" section below) establish that these products are drugs because they are intended for use in the cure, mitigation, treatment, or prevention of disease. In addition, statements on your www.hopetrials.com website establish that Quincy Bioscience has been sponsoring clinical trials to investigate the use of apoaequorin to treat or prevent disease for which there is no investigational new drug application (IND) in effect. The investigation and marketing of your products for these uses violates the Act.

Under 21 U.S.C. §§ 331(d) and 355(a), a new drug may not be introduced or delivered for introduction into interstate commerce unless an FDA-approved application is in effect for it. Apoaequorin is not approved as a drug for marketing in the United States, and is not exempt from this requirement pursuant to 21 U.S.C. § 355(i), which governs the use of investigational new drugs. You may find the Act and related regulations through links on FDA's home page at http://www.fda.gov[1].

It has also come to our attention that the apoaequorin used in your Prevagen products is produced synthetically. According to your website www.quincybioscience.com, "Apoaequorin is no longer extracted from the jellyfish, rather rapidly dividing host cells are 'taught' to grow the unique protein. The end result is the exact composition of apoaequorin without any of the heavy metal pollution that jellyfish may be exposed to in the ocean." According to information in documents you provided to FDA, the apoaequorin used in your Prevagen products is produced from **(b)(4)**.

Section 201(ff)(1) of the Act, 21 U.S.C. § 321(ff)(1), defines "dietary ingredient" as a vitamin, mineral, amino acid, herb or other botanical, or dietary substance for use by man to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract or combination of an dietary ingredient from the preceding categories. Apoaequorin synthetically produced from **(b)(4)** is not a vitamin, mineral, amino acid, herb or other botanical, or dietary substance for use by man to supplement the diet by increasing the total dietary intake. Further, apoaequorin synthetically produced from **(b)(4)** is not a concentrate, metabolite, constituent, or extract of any dietary ingredient, nor is it a combination of dietary ingredients. Therefore, the synthetically produced apoaequorin used in your Prevagen products is not a dietary ingredient as defined in section 201(ff)(1) of the Act.

According to the labels of your Prevagen products, they contain no other dietary ingredient. Therefore, these products do not meet the definition of a dietary supplement, which requires that the product contain one or more dietary ingredient. See section 201(ff)(1) of the Act, 21 U.S.C. § 321(ff)(1). Accordingly, you Prevagen products could not be marketed as dietary supplements even if they were intended only to affec the structure or function of the body and not for use in the cure, mitigation, treatment, or prevention of disease.

Unapproved New Drugs

Examples of some of the claims made in videos posted on your website http://www.prevagen.com/watch/:

- "[F]irst and only dietary supplement that...protects the brain cells from death.... If you do just take one supplement, this may be the one to consider to protect and preserve your brain" (Healing Quest video at 2:40).

Regarding the use of pictures and videos on your websites, we remind you that an image may be considered a claim to diagnose, mitigate, treat, cure, or prevent disease if, in the context in which it is presented, the image suggests that the product has an effect on a disease or diseases. See, e.g., Title 21, Code of Federal Regulations (21 CFR), 101.93(g)(2)(iv)(E).

Your **website** www.prevagenreviews.com **also contains claims in the form of personal testimonials, including:**

- "My mother died of Alzheimer's disease.... I thought it was happening to me being too forgetful and so on. When I heard the commercial and them talking about this [Prevagen], it's the first product that I've ever ordered this way.... It proved to be very helpful...in a very short time. This is the first product I guess I've probably ever used that I could absolutely say it's miraculous for the short time I've been on it. I know my thinking and everything is more clearer and so on, just like it says" (testimonial from Rebecca R. from Phoenix).
- "I had a severe car accident that gave me a head injury where I could not remember things at all and Prevagen sounded exactly like what I needed. After about a month...I started noticing that I was recalling things much easier, things that I hadn't before.... Prevagen has made a huge, huge difference" (testimonial from Paul C. from Apple Valley).

Examples of some of the claims observed on your Facebook page at www.facebook.com/prevagen:

- "Prevagen will restore for you the lost protein so that you can gain your dignity back.... Alzheimer's disease is a heartache on any family. Dementia is tough to be around people that have dementia, let alone have it yourself. Prevagen gives you back your dignity and gives you back the proteins that are so precious that we use. No side effects whatsoever, doesn't matter what drugs you're on, this is a safe natural supplement" (Dr. Jan McBarron video at 1:16).

Furthermore, the "Research" and "Science" sections of your various websites marketing these products cite or link to a number of articles about the usefulness of the ingredient apoaequorin (sometimes referre to on your websites as "aequorin")[1] or the Prevagen products in treating and preventing diseases. When scientific references are used commercially by the seller of a product to promote the product to consumers, such references may become evidence of the product's intended use. Under 21 CFR 101.93(g)(2)(iv)(C), a citation of a publication or reference in the labeling of a product is considered to be a claim about disease treatment or prevention if the citation refers to a disease use, and if, in the context of the labeling as a whole, the citation implies treatment or prevention of a disease. The following are examples of citations to scientific references used to market your Prevagen products for disease treatment and prevention on your websites:

- Undated poster accessed via link on http://www.prevagenpro.com/practitioners/science: "Neuroprotective Effects of Aequorin on Hippocampal CA1 Neurons Following Ischemia. Julia A. Detert, Patrick K. Tao, Liviu Bunaciu, Melody L. Schmidt, & James R. Moyer, Jr., Departments of Psychology and Biological Sciences, University of Wisconsin-Milwaukee."
- Study report manuscript accessed via link on http://www.prevagenpro.com/practitioners/science: "Aequorin Protects Adult and Aging Hippocampal CA1 Neurons From Ischemic Cell Death. Julia A. Detert, Melody L. Schmidt, Nicholas D. Kampa, Patrick K. Tao, & James R. Moyer Jr., Departments of Psychology and Biological Sciences, University of Wisconsin-Milwaukee."
- Unpublished abstract accessed via link on http://www.prevagenpro.com/practitioners/science and posted at http://www.prevagen.com/research/apoaequorin-increases-brain-cell-survival: "Neuroprotection of hippocampal CA1 neurons from ischemic cell death using the calcium binding protein aequorin. J. A. Detert, J. D. Heisler, E. L. Hochstetter, T. M. Van Langendon, J. R. Moyer, Jr., Univ. of Wisconsin-Milwaukee. Presented at The Society For Neuroscience; 2009."
- Study report manuscript accessed via links at http://www.prevagen.com/research and http://www.prevagenpro.com/practitioners/science: "The Effects of the Calcium Binding Protein Apoaequorin on Memory and Cognitive Functioning in Older Adults. Mark Underwood, Peggy Sivesind Taylor Gabourie. Alzheimer's & Dementia: The Journal of the Alzheimer's Association, July 1, 2011, Vol. 7, Issue 4, Supplement, Page e65."

Your Prevagen, Prevagen Extra Strength, and Prevagen Professional products are not generally recognized as safe and effective for the above referenced uses and, therefore, these products are "new drugs" under section 201(p) of the Act, 21 U.S.C. § 321(p). New drugs may not be legally marketed in the United States without prior approval from FDA as described in section 505(a) of the Act, 21 U.S.C. § 355(a). FDA approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate that the drug is safe and effective.

Your Prevagen products are offered for conditions that are not amenable to self-diagnosis and treatment by individuals who are not medical practitioners; therefore, adequate directions for use cannot be written so that a layperson can use these drugs safely for their intended purposes. Therefore, your products are also misbranded within the meaning of section 502(f)(1) of the Act, 21 U.S.C. § 352(f)(1), in that the labeling fails to bear adequate directions for use. The introduction of a misbranded drug into interstate commerce is a violation of section 301(a) of the Act, 21 U.S.C. § 331(a).

Clinical Investigations Which Require an IND

Statements on your website www.hopetrials.com describe clinical trials you have been conducting to study apoaequorin for use in treating or preventing a variety of diseases:

- "HOPE Trials research consists of a variety of human trials measuring the effect of apoaequorin...a unique compound, originating from a jellyfish, that helps to regulate intracellular calcium levels and alleviate the toxic effects of excess calcium in the brain.... Numerous investigators have linked a variety of medical conditions to ineffectual control of calcium levels. While neurodegenerative disorders, inflammatory diseases, auto-immune conditions and endocrine disorders affect the body in different ways...they often have a common denominator, a loss of the ability to closely regulate the excessive influx of calcium ions."

FDA regulations (21 CFR Part 312) contain procedures and requirements governing the use of investigational new drugs. Specifically, the regulations require that a sponsor submit an investigational new drug application (IND) to the FDA if the sponsor intends to conduct a clinical investigation with an investigational new drug, 21 CFR 312.20(a), and have an IND in effect before the investigational drug is administered to study subjects, 21 CFR 312.20(b).

A clinical investigation is defined as "any experiment in which a drug is administered or dispensed to, or used involving, one or more human subjects," 21 CFR 312.3(b). Our investigation, including an inspection of your headquarters and warehouse facility at 301 S. Westfield Road in Madison, Wisconsin, between October 24 and December 22, 2011, indicates that you initiated and were responsible for the conduct of clinical investigations of apoaequorin, an investigational drug. Accordingly, you were the sponsor and were required to have an IND in effect before proceeding with the clinical investigations of apoaequorin.

As noted above, the Act provides that a new drug may not be introduced or delivered for introduction into interstate commerce without prior approval, 21 U.S.C. § 355(a). Apoaequorin is not approved as a drug for marketing in the United States, and is not exempt from this requirement pursuant to 21 U.S.C. § 355(i), which governs the use of investigational new drugs. Therefore, your use of the unapproved new drug apoaequorin in conducting a clinical investigation without an investigational new drug application in effect is a violation of section 505(a) of the Act and prohibited by section 301(d) of the Act. Further, you violated 21 CFR 312.20 by administering the investigational new drug apoaequorin to subjects without an IND in effect.

The violations cited in this letter are not intended to be an all-inclusive statement of violations that exist in connection with your products. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence or the occurrence of other violations. It is your responsibility to ensure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, but not limited to, seizure and injunction. The Act authorizes the seizure of illegal products and injunction against manufacturers and distributors of those products, 21 U.S.C. §§ 332 and 334.

Firm's Response to Inspectional Observations on Claims and IND Issues

At the end of FDA's inspection of your headquarters and warehouse facility in Madison, Wisconsin, our investigator issued a list of inspectional observations on Form FDA 483 and met with you and Mr. Mark Roeder, Technical and Quality Manager, to discuss the use of therapeutic claims on your websites and in other promotional materials, among other concerns (see "Comments on Other Inspectional Observations and Firm Response"). You responded on January 13, 2012, promising corrective action; however, a current review of your websites reveals the continued use of therapeutic claims for your Prevagen products and the continued use of apoaequorin in clinical trials without an IND. Therefore, your response is inadequate.

Comments on Other Inspectional Observations and Firm's Response

Because your products are labeled as dietary supplements, FDA initially evaluated them under the laws and regulations governing dietary supplements, including the adverse event reporting and recordkeeping requirements for dietary supplements in section 761 of the Act, 21 U.S.C. § 379aa-1, and the current good manufacturing practice (CGMP) regulations for dietary supplements in 21 CFR Part 111. As noted on the

list of inspectional observations issued to your headquarters and warehouse facility in Madison, Wisconsin on December 22, 2011, our inspection of that facility revealed that you failed to report serious adverse events associated with your Prevagen products to FDA, as required by section 761(b)(1) of the Act. Specifically, you failed to report to FDA adverse events like seizures, strokes, and worsening symptoms of multiple sclerosis that had been reported to your firm as being associated with use of Prevagen products. Some of these adverse events resulted in hospitalization. In total, our inspection found records of more than 1000 adverse events and product complaints that had been reported to your firm between May 2008 and December 1, 2011. Some of these involved heart arrhythmias, chest pain, vertigo, tremors, and syncope (fainting), in addition to the seizures, strokes, and worsening of multiple sclerosis already mentioned. As of the beginning of the inspection, only two of these adverse events had been reported to FDA or investigated by your firm.

After our investigators discussed the adverse event reporting requirements for dietary supplements with firm representatives, you submitted two additional reports of serious adverse events to FDA while the inspection was still in progress. We also acknowledge receipt of your January 13, 2012, response to the list of inspectional observations issued to the Madison, Wisconsin, facility which documented your investigations of a number of additional adverse events reported to you. Your January 13, 2012, response also included adverse event reports on Form FDA 3500A for those adverse events that your investigation determined to be serious, as well as a revised standard operating procedure (SOP) for documenting and grading the severity of adverse events reported to your firm and documentation of retraining that you conducted for employees who take reports of adverse events.

A separate FDA inspection of your manufacturing and laboratory facility at 2010 Pinehurst Drive in Middleton, Wisconsin, between October 24 and December 22, 2011, documented that you failed to comply with the CGMP requirements for dietary supplements in several important respects, as noted on the list of inspectional observations issued on Form FDA 483 (the 483) at the end of that inspection. For example, you failed to perform identity testing for finished batches of Prevagen products manufactured between January 2011 and August 2011; did not complete all steps in the master manufacturing record for certain batches; failed to establish and/or follow written procedures for certain laboratory operations; failed to establish release criteria for several manufacturing steps where control is necessary to ensure that specifications for identity, purity, strength, and composition are met; and omitted required elements from your master manufacturing record.

We acknowledge your response dated January 13, 2012, reporting that identity testing is now being performed on all finished batches of your products, describing updates to your master manufacturing record and existing SOPs and the creation of new SOPs to address other observations from the 483, and reporting the results of batch investigations and testing performed in response to the 483. If your Prevagen products were dietary supplements, we would consider your response with regard to our CGMP and adverse event reporting observations to be adequate, but because the products are drugs, the CGMP and adverse event reporting requirements for drugs apply.

Within 15 working days of receipt of this letter, please notify this office in writing of the specific steps tha you have taken to correct the violations cited above. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you cannot complete the corrective actions within 15 working days, state the reason for the delay and when you will complete the corrections.

Your written response should be directed to the attention of Compliance Officer Demetria L. Lueneburg at the address listed above. If you have any questions regarding this letter, please contact Ms. Lueneburg at (612) 758-7210.

Sincerely,
/S/

Michael Dutcher, DVM
Director
Minneapolis District

xc: Mark Y. Underwood
President
Quincy Bioscience Manufacturing Inc.
2010 Pinehurst Drive
Middleton, WI 53562

[1] A review of your websites and other product labeling revealed that you use the terms "apoaequorin" and "aequorin" interchangeably at times to refer to the ingredient that you manufacture and sell in varying strengths in your Prevagen products. In fact, however, apoaequorin and aequorin are distinct chemical entities. Apoaequorin is an apoprotein found in aequorin, which also contains the prosthetic group coelenterazine.

Page Last Updated: 10/19/2012
Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

Links on this page:

1. http://www.fda.gov/

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT (Check one): ☐ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)	CASE NUMBER:

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: Time: Dept.: Div.: Room:

Address of court *(if different from the address above)*:

☐ **Notice of Intent to Appear by Telephone, by** *(name)*:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. ☐ This statement is submitted by party *(name)*:
   b. ☐ This statement is submitted **jointly** by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*:
   b. ☐ The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served *(specify names and explain why not)*:
      (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) ☐ have had a default entered against them *(specify names)*:
   c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and date by which they may be served)*:

4. **Description of case**
   a. Type of case in ☐ complaint ☐ cross-complaint *(Describe, including causes of action)*:

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. July 1, 2011]

Cal. Rules of Court, rules 3.720–3.730
www.courts.ca.gov

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☐ days *(specify number):*
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. E-mail address:
f. Fax number:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative dispute resolution (ADR)**
a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.
(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.
b. **Referral to judicial arbitration or civil action mediation** (if available).
(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in *(check all that apply and provide the specified information)*:

	The party or parties completing this form are willing to participate in the following ADR processes *(check all that apply)*:	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes *(attach a copy of the parties' ADR stipulation)*:
(1) Mediation	☐	☐ Mediation session not yet scheduled ☐ Mediation session scheduled for (*date*): ☐ Agreed to complete mediation by (*date*): ☐ Mediation completed on (*date*):
(2) Settlement conference	☐	☐ Settlement conference not yet scheduled ☐ Settlement conference scheduled for (*date*): ☐ Agreed to complete settlement conference by (*date*): ☐ Settlement conference completed on (*date*):
(3) Neutral evaluation	☐	☐ Neutral evaluation not yet scheduled ☐ Neutral evaluation scheduled for (*date*): ☐ Agreed to complete neutral evaluation by (*date*): ☐ Neutral evaluation completed on (*date*):
(4) Nonbinding judicial arbitration	☐	☐ Judicial arbitration not yet scheduled ☐ Judicial arbitration scheduled for (*date*): ☐ Agreed to complete judicial arbitration by (*date*): ☐ Judicial arbitration completed on (*date*):
(5) Binding private arbitration	☐	☐ Private arbitration not yet scheduled ☐ Private arbitration scheduled for (*date*): ☐ Agreed to complete private arbitration by (*date*): ☐ Private arbitration completed on (*date*):
(6) Other (*specify*):	☐	☐ ADR session not yet scheduled ☐ ADR session scheduled for (*date*): ☐ Agreed to complete ADR session by (*date*): ☐ ADR completed on (*date*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. **Insurance**
    a. ☐ Insurance carrier, if any, for party filing this statement *(name):*
    b. Reservation of rights: ☐ Yes ☐ No
    c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

12. **Jurisdiction**
    Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.
    ☐ Bankruptcy ☐ Other *(specify):*
    Status:

13. **Related cases, consolidation, and coordination**
    a. ☐ There are companion, underlying, or related cases.
        (1) Name of case:
        (2) Name of court:
        (3) Case number:
        (4) Status:
        ☐ Additional cases are described in Attachment 13a.
    b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

14. **Bifurcation**
    ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

15. **Other motions**
    ☐ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*

16. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☐ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date

    c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated *(specify):*

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. **Economic litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

19. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

20. Total number of pages attached *(if any):* _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

Exhibit 2

CALL & JENSEN
A Professional Corporation
Matthew R. Orr, Bar No. 211097
Joshua G. Simon, Bar No. 264714
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Tel: (949) 717-3000
Fax: (949) 717-3100
morr@calljensen.com
jsimon@calljensen.com

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

RICK MUSGRAVE, on behalf of himself, and all others similarly situated, and the general public, Plaintiff, vs. QUINCY BIOSCIENCE, LLC, a Wisconsin limited liability company; QUINCY BIOSCIENCE HOLDING CO., INC., a Wisconsin corporation; and DOES 1-15, inclusive, Defendants.	Case No. C15-00532 Assigned for all purposes to: Hon. Barry P. Goode, Dept. 17 **GENERAL DENIAL AND AFFIRMATIVE DEFENSES OF QUINCY BIOSCIENCE, LLC AND QUINCY BIOSCIENCE HOLDING CO., INC.** **DEMAND FOR JURY TRIAL**

Complaint Filed: March 24, 2015
Trial Date: None Set

Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc. ("Defendants"), in response to Plaintiff Rick Musgrave's ("Plaintiff") unverified Class Action Complaint ("Complaint"), hereby answers the allegations of the Complaint as follows:

GENERAL DENIAL

Pursuant to *California Code of Civil Procedure* section 431.30(d), Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc. ("Defendants") deny, generally and specifically, conjunctively and disjunctively, each and every allegation of the Complaint, and each and every cause of action contained and asserted therein. Defendants further deny that it is or will be liable to Plaintiff

to any degree and in any sum whatsoever. Defendants further deny, generally and specifically, that Plaintiff has suffered damages in the amount alleged, or in any sum, or that Plaintiff is entitled to any relief at all, by reason of any wrongful act or omission or purported act or omission of Defendants. Defendants further deny that this case is appropriate for class or representative treatment.

AFFIRMATIVE DEFENSES

Without admitting any of the facts alleged in the Complaint, Defendants further allege the following separate and independent affirmative defenses, without prejudice to Defendants' right to argue that Plaintiff bears the burden of proof or persuasion as to any one or more of said defenses.

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim and/or sufficient facts upon which relief can be granted. Plaintiff's Complaint fails to allege the time, place, manner and substance regarding her purported reliance on Defendants' alleged representations.

SECOND AFFIRMATIVE DEFENSE

Defendants' compliance with FDA and FTC regulations is a complete and/or partial defense to Plaintiff's claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are preempted by federal law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of primary jurisdiction.

/ / /

/ / /

/ / /

/ / /

FIFTH AFFIRMATIVE DEFENSE

Certain additional defenses to the Complaint, or to one or more of the purported causes of action contained therein, may be available to Defendants. However, these additional defenses require discovery before they can be properly alleged. Defendants will move to amend its Answer, if necessary, to allege such defenses once they have been ascertained or according to proof at that time.

Dated: July 9, 2015

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Joshua G. Simon

By: _____
Joshua G. Simon

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

DEMAND FOR JURY

Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc. hereby demand a jury on all issues raised in the Complaint of Plaintiff.

Dated: July 9, 2015

CALL & JENSEN
A Professional Corporation
Matthew R. Orr
Joshua G. Simon

By: _____
Joshua G. Simon

Attorneys for Defendants Quincy Bioscience, LLC and Quincy Bioscience Holding Co., Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On July 9, 2015, I served the foregoing document described as **GENERAL DENIAL AND AFFIRMATIVE DEFENSES OF QUINCY BIOSCIENCE, LLC AND QUINCY BIOSCIENCE HOLDING CO., INC.** on the following person(s) in the manner indicated:

SEE ATTACHED SERVICE LIST

[ ] **(**BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

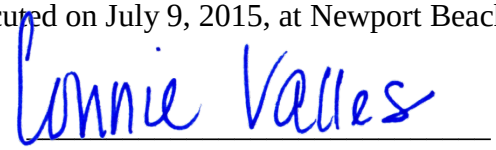
[X] (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

[ ] (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary business practices.

[ ] (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

[ ] (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of _____the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 9, 2015, at Newport Beach, California.



Connie Valles

SERVICE LIST

Ronald A. Marron, Esq.
Skye Resendes, Esq.
Alexis M. Wood, Esq.
Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive
San Diego, CA 92103
Tel: (619) 696-9006
Fax: (619) 564-6665
ron@consumeradvocates.com
skye@consumeradvocates.com
alexis@consumeradvocates.com

Attorneys for

Plaintiff Rick Musgrave

JS 44 (Rev. 12/12) cand rev (1/15/13)

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

RICK MUSGRAVE, on behalf of himself, and all others similarly situated, and the general public

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Ronald A. Marron, Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive, San Diego, CA 92103 / (619) 696-9006

DEFENDANTS

QUINCY BIOSCIENCE, LLC, a Wisconsin limited liability company; QUINCY BIOSCIENCE HOLDING CO., INC.,

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

Attorneys *(If Known)*
Matthew R. Orr, Joshua G. Simon, Call & Jensen
610 Newport Center Drive, Suite 700, Newport Beach, CA 92660
(949) 717-3000

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

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

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

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

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

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

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

TORTS

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

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

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

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

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

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

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

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

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

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

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

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

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

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ❒ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ❒ 3 Remanded from Appellate Court
- ❒ 4 Reinstated or Reopened
- ❒ 5 Transferred from Another District *(specify)*
- ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. §§ 1332, 1441, 1446, and 1453

Brief description of cause:

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
09/30/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Joshua G. Simon

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) ☑ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

3:15-cv-4505

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.