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MARIN COUNTY SUPERIOR COURT  
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25 IN THE SUPERIOR COURT OF CALIFORNIA

26 IN AND FOR THE COUNTY OF MARIN

27 LARRY MEREDITH and DAVID  
28 GUMNER, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

CVS HEALTH, INC.,

Defendant.

CASE NO. C \ V 15 00 145

CLASS ACTION COMPLAINT

1. Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.)
2. False Advertising Law (Cal. Bus. & Prof. Code § 17500 et seq.)
3. Consumers Legal Remedies Act (Cal. Civil Code § 1750 et seq.)
4. Unjust Enrichment
5. Breach of Implied Warranty of Merchantability

DEMAND FOR JURY TRIAL

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5. Venue is appropriate in this judicial district pursuant to Code of Civil Procedure § 395 because substantial acts in furtherance of the alleged improper conduct, including the dissemination of deceptive information regarding the benefits of CVS's Advanced Eye Health supplement to Plaintiff Meredith and numerous other class members, occurred within this District.

6. CVS has sufficient minimum contacts with California, and otherwise has intentionally availed itself of the markets in California through the marketing and sale of its Advanced Eye Health supplement in California, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

## THE PARTIES

## Plaintiffs

7. Dr. Larry Meredith is a resident of California who was diagnosed with AMD in 2004. During the Class Period (as defined below), Dr. Meredith purchased CVS's Advanced Eye Health supplement from one or more CVS stores in California. When he bought CVS's Advanced Eye Health supplement, Dr. Meredith relied on the representations CVS made about the supplement, including that it (1) contained the AREDS2 formula, (2) would improve eye-health, and (3) would reduce his risk of developing advanced AMD. Based on CVS's representations, Dr. Meredith also believed that the Advanced Eye Health supplement was cheaper than, yet otherwise identical in content to, the Bausch + Lomb PreserVision supplement next to which CVS shelves its Advanced Eye Health supplement.

8. Mr. David Gummer is a resident of California who began experiencing AMD in 2007. During the Class Period (as defined below), Mr. Gummer purchased CVS's Advanced Eye Health supplement from one or more CVS stores in California. When he bought CVS's Advanced Eye Health supplement, Mr. Gummer relied on the representations CVS made about the supplement, including that it (1) contained the AREDS2 formula, (2) would improve eye-health, and (3) would reduce his risk of developing advanced AMD. Based on CVS's representations, Mr. Gummer also believed that the Advanced Eye Health supplement was cheaper than, yet otherwise identical in content to, the Bausch + Lomb PreserVision supplement next to which CVS

shelves its Advanced Eye Health supplement.

**Defendant**

9. CVS is an American Fortune 500 company whose retail division operates more than 7,700 CVS/pharmacy and Longs Drugs stores.<sup>4</sup> CVS is incorporated in Delaware and is headquartered in Woonsocket, Rhode Island.

**FACTUAL ALLEGATIONS**

10. Plaintiffs' and other reasonable consumers' eye-related health concerns – including concerns about AMD – motivate the purchase and consumption of CVS's Advanced Eye Health supplement, from which CVS significantly profits.

11. In 2004, about 10 million individuals in the United States had either intermediate AMD or advanced AMD, and scientists expect this number to double in the next 20 years.<sup>5</sup> AMD primarily affects those over the age of 60.

12. In May 2013, the National Institutes of Health published the results of its second clinical trial on AMD. The clinical trial was called the Age-Related Eye Disease Study 2 ("AREDS2"). AREDS2 followed an earlier study by NIH that concluded that daily supplementation with vitamin C, vitamin E, beta-carotene, zinc, and copper ("the original formula") could reduce the risk of developing advanced AMD by 25% after five years.<sup>6</sup>

13. NIH's follow-up study, AREDS2, examined the addition of (1) the carotenoids lutein and zeaxanthin, (2) the omega-3s DHA and EPA, or (3) both the carotenoids and omega-3s, to the original formula with and without beta-carotene (another carotenoid).

14. NIH found that the specific combination of vitamins and minerals – vitamin C,

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<sup>4</sup> CVS website, <http://www.cvshealth.com/> (last visited Oct. 2, 2014).

<sup>5</sup> Emily Y. Chew et al., *Lutein + Zeaxanthin and Omega-3 Fatty Acids for Age-Related Macular Degeneration: The Age-Related Eye Disease Study 2 (AREDS 2) Randomized Clinical Trial*, 309 JAMA 2005 (May 15, 2013) (herein, "AREDS2 Article") (citing N. Congdon et al., *Eye Diseases Prevalence Research Group: Causes and Prevalence of Visual Impairment Among Adults in the United States*, 122 Archives Ophthalmology 477 (2004)).

<sup>6</sup> NIH's findings are limited to people with intermediate AMD – a population with a high risk of developing advanced AMD. In 2004, an estimated 8 million Americans suffered from intermediate AMD. AREDS2 Article at 2005.

1 vitamin E, zinc, copper, and either beta-carotene or both lutein and zeaxanthin – reduced the risk  
2 of developing advanced AMD. NIH noted that because beta-carotene potentially “increased  
3 incidence of lung cancer in former smokers, lutein + zeaxanthin could be an appropriate  
4 carotenoid substitute [for beta-carotene] in the AREDS [original] formulation.”<sup>7</sup>

5 15. However, NIH concluded that the addition of omega-3 fatty acids DHA and EPA  
6 to the AREDS2 formula did nothing to slow or stop the progression of AMD.<sup>8</sup>

7 16. In order to capitalize on the AREDS2 study and the health concerns of elderly  
8 consumers, CVS markets its Advanced Eye Health supplement by stating prominently on the  
9 label that it is “COMPARABLE TO ONGOING STUDY FORMULA IN AREDS2.”<sup>9</sup> This claim  
10 is false. The Advanced Eye Health supplement does not contain the AREDS2 formula that NIH  
11 found would reduce the risk of developing advanced AMD. Instead, it contains only ingredients  
12 that NIH found might be a good substitute for beta-carotene (lutein and zeaxanthin), and  
13 ingredients NIH found were completely ineffective at reducing the risk of developing advanced  
14 AMD (DHA and EPA).

15 17. From on or before July 2012 to the present, CVS has engaged in a widespread  
16 marketing campaign to deceive Plaintiffs and other reasonable consumers about the nature,  
17 composition, and nutritional and health benefits of its Advanced Eye Health supplement in order  
18 to make the product more desirable to those consumers, increase sales, and gain market share.

19 18. CVS markets its Advanced Eye Health supplement using the following deceptive  
20 representations.

#### 21 **AREDS2 Claims**

22 19. CVS claims that its Advanced Eye Health supplement contains ingredients  
23 “COMPARABLE TO ONGOING STUDY FORMULA IN AREDS2.” See Illustration 1 below  
24 (emphasis added). However, the ingredients in the Advanced Eye Health supplement are not

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25 <sup>7</sup> AREDS2 Article at 2014.

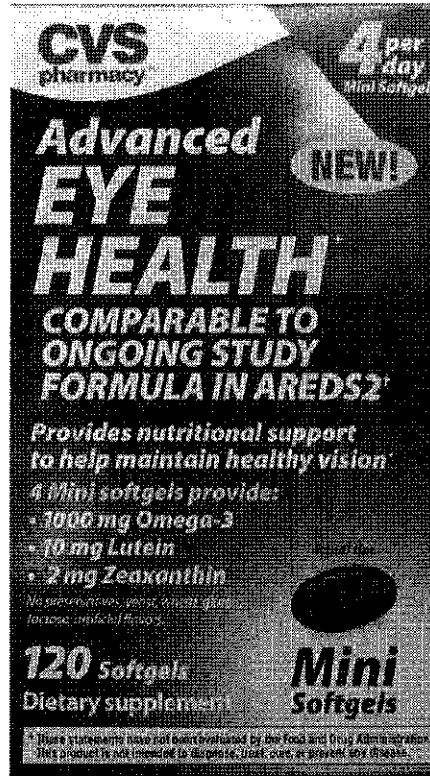
26 <sup>8</sup> NIH found that the “addition of lutein + zeaxanthin, DHA + EPA, or both” to the original  
27 formula “did not further reduce [the] risk of progression to advanced AMD.” AREDS2 Article at  
28 2014.

<sup>9</sup> See Illustration 1 below.

comparable to the AREDS2 formula.

### Illustration 1

#### CVS Advanced Eye Health



20. Plaintiffs and other reasonable consumers, as well as the Oxford English dictionary, understand “comparable” to mean “similar,” or “of equivalent quality.” CVS’s claim that its Advanced Eye Health supplement is “comparable” to the AREDS2 formula is false and deceptive.

21. CVS makes its AREDS2 and eye-health claims based on the four ingredients in the Advanced Eye Health supplement: lutein, zeaxanthin, DHA, and EPA.

22. The Advanced Eye Health supplement does not contain any vitamin C, vitamin E, zinc, or copper – all a part of the specific formula that NIH found to be effective at reducing the risk of developing advanced AMD.

23. CVS’s Advanced Eye Health supplement lacks all but one component of NIH’s tested formula, and as such, is ineffective at slowing or stopping the progression of AMD.

1       24.       In other words, the ingredients in the Advanced Eye Health supplement alone do  
2 not constitute the AREDS2 formula. And the National Institutes of Health did not find the  
3 ingredients in the Advanced Eye Health supplement on their own to have any effect on preventing  
4 the progression of AMD.<sup>10</sup>

5       25.       In its marketing campaign, CVS thus claims that its Advanced Eye Health  
6 supplement possesses certain characteristics, uses, or benefits that it does not have.

7       26.       CVS makes AREDS2 and eye-health claims for its Advanced Eye Health  
8 supplement on its website<sup>11</sup> and on product packaging.

9       27.       CVS's claims deceive Class Members into believing that its Advanced Eye  
10 Health supplement contains the AREDS2 formula, and that taking its Advanced Eye Health  
11 supplement can help prevent deterioration of eye health and progression of AMD. These claims  
12 are false, illegal, and deceptive.

13       28.       By comparing its product to the formula used in the AREDS2 NIH study, CVS  
14 deceptively represents that its Advanced Eye Health supplement can be used in the diagnosis,  
15 cure, mitigation, treatment, or prevention of AMD. Thus, CVS's deceptive representations are  
16 illegal disease prevention claims.<sup>12</sup>

17       29.       CVS also claims that its Advanced Eye Health supplement "[p]rovides nutritional  
18 support to help maintain healthy vision."<sup>13</sup>

19       30.       However, AREDS2 did not find that the four ingredients found in CVS's  
20 Advanced Eye Health supplement, by themselves, will do anything to "help maintain healthy  
21

22 <sup>10</sup> See AREDS2 Article; Nat'l Inst. of Health, Health Professional Vitamin A Fact Sheet,  
23 *available at* <http://ods.od.nih.gov/factsheets/VitaminA-HealthProfessional/> (confirming that  
24 adding lutein and zeaxanthin and/or omega-3 fatty acids to the AREDS original formula did not  
confer any additional benefits; confirming that AREDS2 found that beta-carotene was not a  
required ingredient in the original formula).

25 <sup>11</sup> CVS website, [http://www.cvs.com/shop/product-detail/CVS-Advanced-Eye-Health-Softgels?](http://www.cvs.com/shop/product-detail/CVS-Advanced-Eye-Health-Softgels?skuId=893716)  
26 [skuId=893716](http://www.cvs.com/shop/product-detail/CVS-Advanced-Eye-Health-Softgels?skuId=893716) (last visited Oct. 14, 2014).

27 <sup>12</sup> Cal. Health & Safety Code § 109875 *et seq.* California's Sherman Law expressly adopts the  
28 federal labeling requirements of the Federal Food, Drug, and Cosmetic Act and the Nutrition  
Labeling and Education Act.

<sup>13</sup> See Illustration 1.

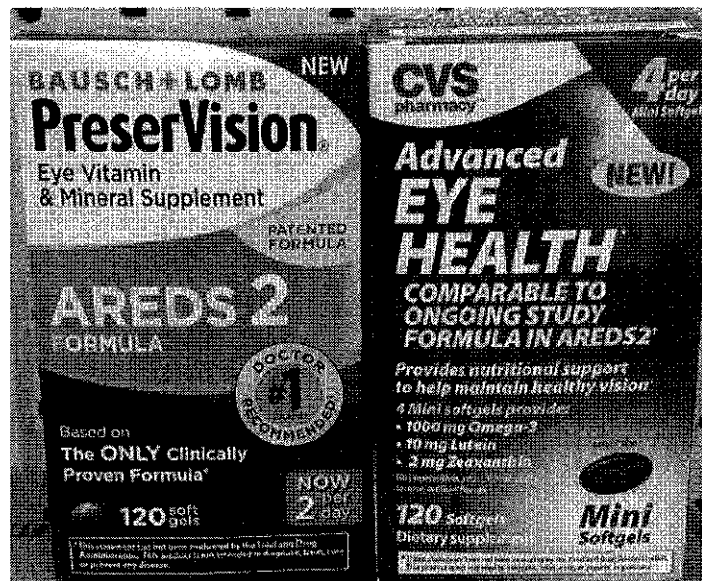
vision.”<sup>14</sup>

## **Misleading Packaging and Placement**

31. CVS shelves its Advanced Eye Health supplement directly next to Bausch + Lomb’s PreserVision supplement to represent to Plaintiffs and other reasonable consumers that its Advanced Eye Health supplement is simply a generic, but identical version of the Bausch + Lomb PreserVision supplement. CVS’s AREDS2 claims on its supplement’s packaging draws Plaintiffs’ and other consumers’ attention away from the fact that a material difference exists between the Bausch + Lomb PreserVision supplement and the Advanced Eye Health supplement. See Illustration 2 below.

### **Illustration 2**

#### **Advanced Eye Health and PreserVision in CVS store**



32. Both supplements make prominent AREDS2 claims. However, the two supplements contain very different ingredients: the Bausch + Lomb PreserVision supplement contains the exact combination of effective ingredients from the AREDS2 study that NIH found reduced the risk of developing advanced AMD. On the other hand, CVS’s Advanced Eye Health supplement only contains ingredients that NIH did not find, on their own, to do anything to help

<sup>14</sup> See Illustration 1.



1 maintain healthy vision or reduce the risk of progression of AMD.

2 33. Because both supplements are shelved side-by-side and both make AREDS2  
3 claims, Plaintiffs and other reasonable consumers were and are misled into believing that (1) the  
4 CVS Advanced Eye Health supplement contains the same ingredients – and will provide the same  
5 eye-health benefits – as the Bausch + Lomb PreserVision supplement, and (2) the CVS  
6 supplement is a less expensive version of the Bausch + Lomb PreserVision supplement. CVS  
7 manages to deceive Plaintiffs and other reasonable consumers on both accounts.

8 34. Plaintiffs and other reasonable consumers who rely on CVS's representations are  
9 deceived into purchasing a supplement containing only ingredients that NIH did not find, on their  
10 own, to provide any eye-health benefits.<sup>15</sup>

11 35. Furthermore, CVS prices a package of its Advanced Eye Health supplement so  
12 that Plaintiffs and other reasonable consumers will believe that it is significantly cheaper than the  
13 PreserVision supplement – further encouraging those consumers to choose the CVS-brand eye-  
14 health supplement.

15 36. As of the date of filing the complaint, a bottle of CVS's Advanced Eye Health  
16 supplement is about half the price of Bausch + Lomb's PreserVision supplement, and contains  
17 half the number of pills (60 instead of 120) per package.<sup>16</sup> Thus, although CVS's Advanced Eye  
18 Health supplement appears to be cheaper than Bausch + Lomb's PreserVision supplement, in fact  
19 the two products are similarly priced. Thus, Plaintiffs and other reasonable consumers are  
20 deceived into paying about the same amount for the Advanced Eye Health supplement as they  
21 would for the Bausch + Lomb PreserVision supplement – all without receiving the AREDS2  
22 formula or any of the accompanying eye-health benefits.

23 37. Plaintiffs and other reasonable consumers should not be forced to look beyond  
24 CVS's deceptive representations on the Advanced Eye Health supplement's packaging to

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25 <sup>15</sup> *Id.*

26 <sup>16</sup> Until recently, CVS sold its Advanced Eye Health supplement with 120 pills (rather than the  
27 60 pills it now contains), but consumers were required to take four pills instead of the two pills in  
28 the current packaging to obtain the same quantity of ingredients. Thus, both the prior number of  
pills and the current number of pills provide half the dosage of the Bausch + Lomb's PreserVision  
supplement, without the same possible benefits.

1 discover that they will not receive the formula that NIH found would reduce the risk of  
2 developing advanced AMD.

3 38. Even if Plaintiffs or other reasonable consumers looked beyond CVS's deceptive  
4 representations on the supplement's packaging to discover the true ingredients, they would have  
5 no way of knowing whether the ingredients in CVS's Advanced Eye Health supplement were the  
6 same ingredients in the AREDS2 study, or whether CVS's eye-health claims were true. Without  
7 a degree in nutrition science and the AREDS2 study on hand, no consumer could discover CVS's  
8 deception.

9 39. All supplements, including the Advanced Eye Health supplement, are what  
10 economists call "credence goods."<sup>17</sup> A credence good is a good whose qualities consumers are  
11 not perfectly able to judge, even after they consume it, due to both the nature of the product as  
12 well as unequal access to information.<sup>18</sup> In other words, reasonable consumers (including  
13 Plaintiffs) cannot fully evaluate credence attributes or credence goods – "includ[ing] the  
14 therapeutic value of a medicine" – even after purchase. This means that Plaintiffs and other  
15 reasonable consumers cannot determine the efficacy of CVS's Advanced Eye Health – whether  
16 they received the expected benefit of reducing their risk of developing advanced AMD – even  
17 after they buy and take CVS's supplement as directed.

#### 18 **CLASS ACTION ALLEGATIONS**

19 40. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal  
20 Rules of Civil Procedure. The class that Plaintiffs seek to represent (the "Class") is composed of  
21 and defined as follows:

22 All United States residents who purchased CVS's Advanced Eye Health  
23 supplement at any time four years prior to the filing date of this Complaint ("Class  
24 Period"). Excluded from the Class are Defendant's officers and directors and the  
25 immediate families of Defendant's officers and directors. Also excluded from the  
Class are the Defendant's legal representatives, heirs, successors or assigns, and  
any entity in which Defendant has or has had a controlling interest.

26 <sup>17</sup> Matthew G. Nagler et al., *How Do Consumers Value a Credence Good?*, available at  
27 [www.cide.info/conf/2009/iceee2009\\_submission\\_39.pdf](http://www.cide.info/conf/2009/iceee2009_submission_39.pdf) ("Medications conform well to the  
credence good model.").

28 <sup>18</sup> See Phillip Nelson, *Information and Consumer Behavior*, 78 J. Political Econ. 311 (1970).

1       41.       The subclass that Plaintiffs seek to represent (the "Subclass") is composed of and  
2 defined as follows:

3           All California residents who purchased CVS's Advanced Eye Health supplement  
4 at any time four years prior to the filing date of this Complaint. Excluded from the  
5 Subclass are Defendant's officers and directors and the immediate families of  
6 Defendant's officers and directors. Also excluded from the Subclass are the  
7 Defendant's legal representatives, heirs, successors or assigns, and any entity in  
8 which Defendant has or has had a controlling interest.

9       42.       This action has been brought and may properly be maintained as a class action  
10 against CVS pursuant to the provisions of Federal Rule of Civil Procedure 23 because there is a  
11 well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

12       43.       Numerosity: Plaintiffs do not know the exact size of the Class, but given the  
13 nature of the claims and CVS's sales of its Advanced Eye Health supplement, Plaintiffs believe  
14 that the Class numbers at least in the thousands and is so numerous that joinder of all members of  
15 the Class and Subclass is impracticable.

16       44.       Common Questions Predominate: This action involves common questions of law  
17 and fact to the potential Class because each Class Member's claim derives from the same  
18 allegedly deceptive action. The common questions of law and fact involved predominate over  
19 questions that affect only Plaintiffs or individual Class Members. Thus, proof of a common or  
20 single set of facts will establish the right of each member of the Class to recover. Among the  
21 questions of law and fact common to the Class are:

- 22       •       Whether CVS marketed and sold its Advanced Eye Health supplement to  
23 Plaintiffs, and those similarly situated, using deceptive statements or  
24 representations;
- 25       •       Whether CVS omitted or misrepresented material facts in connection with the  
26 marketing and sale of its Advanced Eye Health supplement;
- 27       •       Whether CVS engaged in the common course of conduct complained of herein;
- 28       •       Whether CVS's marketing and sales of its Advanced Eye Health supplement  
constitutes a deceptive practice; and
- Whether, and to what extent, injunctive relief should be imposed on CVS to  
prevent such conduct in the future.

45.       Typicality: Plaintiffs' claims are typical of the Class because they bought the  
Advanced Eye Health supplement making CVS's deceptive representations during the Class

1 Period. CVS's allegedly deceptive actions concern the same business practices described herein,  
2 irrespective of where they occurred or were received. Thus, Plaintiffs and Class Members  
3 sustained the same injuries and damages arising out of CVS's conduct. The injuries and damages  
4 of each Class Member were caused directly by CVS's wrongful conduct in violation of law as  
5 alleged herein.

6       46.       Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class  
7 Members because it is in their best interests to prosecute the claims alleged herein to obtain full  
8 compensation they are due for the illegal conduct of which they complain. Plaintiffs also have no  
9 interests that conflict with, or are antagonistic to, the interests of Class Members. Plaintiffs have  
10 retained competent and experienced class action attorneys to represent their interests and that of  
11 the Class. No conflict of interest exists between Plaintiffs and Class Members because all  
12 questions of law and fact regarding liability of CVS are common to Class Members and  
13 predominate over the individual issues that may exist, such that by prevailing on their own claim,  
14 Plaintiffs necessarily will establish CVS's liability to all Class Members. Plaintiffs and their  
15 counsel have the necessary financial resources to adequately and vigorously litigate this class  
16 action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class  
17 Members and are determined to diligently discharge those duties seeking the maximum possible  
18 recovery for the Class.

19       47.       Superiority: There is no plain, speedy, or adequate remedy other than by  
20 maintenance of this class action. The prosecution of individual remedies by members of the Class  
21 will tend to establish inconsistent standards of conduct for CVS and result in the impairment of  
22 Class Members' rights and disposition of their interests through actions to which they were not  
23 parties. Class action treatment will permit a large number of similarly situated persons to  
24 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
25 unnecessary duplication of effort and expense that numerous individual actions would engender.  
26 Furthermore, as the damages suffered by each individual member of the Class may be relatively  
27 small, the expenses and the burden of individual litigation would make it difficult or impossible  
28 for individual members of the Class to redress the wrongs done to them, while an important

1 public interest will be served by addressing the matter as a class action.

2 48. The prerequisites to maintaining a class action for injunctive or equitable relief  
3 pursuant to Fed. R. Civ. P. 23(b)(2) are met as CVS has acted or refused to act on grounds  
4 generally applicable to the Class and Subclass, thereby making appropriate final injunctive or  
5 equitable relief with respect to the Class as a whole.

6 49. Plaintiffs are unaware of any difficulties that are likely to be encountered in the  
7 management of this action that would preclude its maintenance as a class action.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of California's Unfair Competition Law,**  
10 **California Business & Professions Code §§ 17200 et seq., the "UCL")**

11 50. The UCL prohibits any "unlawful," "unfair," or "fraudulent" business act or  
12 practice.

13 51. Plaintiffs and Subclass Members are consumers who purchased CVS's Advanced  
14 Eye Health supplement for personal, family, or household purposes.

15 52. CVS had a statutory duty to refrain from unlawful, unfair or deceptive acts and  
16 practices in the manufacturing, marketing, distributing, and selling of the Advanced Eye Health  
17 supplement.

18 53. CVS violated this duty through its deceptive marketing and labeling practices  
19 with respect to its CVS Advanced Eye Health supplement.

20 54. Plaintiffs and Subclass Members were likely to be deceived by CVS's deceptive  
21 marketing and labeling practices with respect to its Advanced Eye Health supplement.

22 55. As a result of CVS's deceptive marketing and labeling practices with respect to its  
23 Advanced Eye Health supplement, Plaintiffs and Subclass Members were directly and  
24 proximately injured in that they purchased a product they otherwise would not have purchased  
25 CVS's Advanced Eye Health supplement absent CVS's deceptive marketing and labeling  
26 practices.

27 56. As a result of CVS's deceptive marketing and labeling practices with respect to its  
28 Advance Eye Health supplement, Plaintiffs and Subclass Members suffered an ascertainable loss

1 and are entitled to relief in an amount to be determined at trial.

2 57. CVS's deceptive marketing and labeling practices with respect to its Advanced  
3 Eye Health supplement constitute unlawful, unfair, or fraudulent acts and practices in violation of  
4 California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

5 58. Plaintiffs and Subclass Members seek remedies authorized by the UCL necessary  
6 to restore to Plaintiffs and Subclass Members any money that CVS acquired by means of its  
7 deceptive marketing and labeling practices with respect to its Advanced Eye Health supplement.

8 59. The unlawful business acts and practices of CVS present a threat and reasonable  
9 likelihood of deception to Plaintiffs and members of the Subclass in that CVS has systematically  
10 perpetrated and continued to perpetrate such acts or practices on members of the Subclass by  
11 means of its deceptive marketing and labeling practices with respect to its Advanced Eye Health  
12 supplement.

## 13 **SECOND CAUSE OF ACTION**

### 14 **(Violation of the Consumers Legal Remedies Act, 15 California Civil Code §§ 1750 et seq., the "CLRA")**

16 60. Plaintiffs and Subclass Members are "consumers" within the meaning of the  
17 CLRA.

18 61. CVS's sale of its Advanced Eye Health supplement to Plaintiffs and the Subclass  
19 were "transactions" within the meaning of the CLRA.

20 62. CVS's deceptive marketing and labeling practices with respect to its Advanced  
21 Eye Health supplement violate Cal. Civ. Code sections 1770(2) ("[m]isrepresenting the source,  
22 sponsorship, approval, or certification of goods or services; 1770(5) ("[r]epresenting that goods or  
23 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities  
24 which they do not have . . ."); and 1770(7) ("[r]epresenting that goods or services are of a  
25 particular standard, quality, or grade, if they are of another").

26 63. As a result of CVS's deceptive marketing and labeling practices with respect to its  
27 Advanced Eye Health supplement, Plaintiffs and Subclass Members were directly and  
28 proximately injured in that they purchased a product they otherwise would not have purchased if

1 not for the benefits promised by CVS in its marketing and labeling.

2 64. Plaintiffs and Subclass Members would not have purchased CVS's Advanced Eye  
3 Health supplement absent CVS's deceptive marketing and labeling practices.

4 65. As a result of CVS's deceptive marketing and labeling practices with respect to its  
5 Advance Eye Health supplement, Plaintiffs and Subclass Members suffered an ascertainable loss  
6 and are entitled to relief in an amount to be determined at trial.

7 66. Plaintiffs have sent a pre-suit demand letter as required by the CLRA. At this  
8 time, until 30 days after the date of the pre-suit demand letter, Plaintiffs seek only equitable relief  
9 and not damages under the CLRA. If CVS does not comply in full with Plaintiffs' demand letter,  
10 Plaintiffs will amend this Complaint to add a claim for damages after 30 days.

11 67. Pursuant to section 1780(d) of the CLRA, attached hereto as Exhibit A is an  
12 affidavit showing that this action has been commenced in the proper forum.

13 **THIRD CAUSE OF ACTION**

14 **(California Business and Professions Code §§ 17500 *et seq.*,  
15 Untrue or Misleading Advertising)**

16 68. The acts of CVS described above constitute misleading and deceptive advertising  
17 under California Business and Professions Code §§ 17500 *et seq.*

18 69. At all material times, CVS engaged in a scheme of offering its Advanced Eye  
19 Health supplement for sale to Plaintiffs and other members of the Subclass by way of, *inter alia*,  
20 commercial marketing. These marketing materials misrepresented or omitted the true results of  
21 taking this supplement. Said advertisements and inducements were made within the State of  
22 California and come within the definition of advertising as contained in Business and Professions  
23 Code §§ 17500 *et seq.* in that such marketing materials were intended as inducements to purchase  
24 the Advanced Eye Health supplement and are statements disseminated by CVS to Plaintiffs and  
25 the Subclass and were intended to reach members of the Subclass. CVS knew, or in the exercise  
26 of reasonable care should have known, that these statements were deceptive.

27 70. In furtherance of this plan and scheme, CVS has prepared and distributed within  
28 the State of California via commercial marketing, statements that deceptively represent the

1 ingredients contained in its Advanced Eye Health supplement. Consumers, including Plaintiffs,  
2 necessarily and reasonably relied on these materials concerning the Advanced Eye Health  
3 supplement. Consumers, including Plaintiffs and the Subclass, were among the intended targets  
4 of such representations.

5 71. The above acts of CVS, in disseminating said deceptive statements throughout the  
6 State of California to consumers, including Plaintiffs and members of the Subclass, were and are  
7 likely to deceive reasonable consumers, including Plaintiffs and other members of the Subclass,  
8 by obfuscating the true nature of the Advanced Eye Health supplement, all in violation of the  
9 “misleading prong” of California Business and Professions Code § 17500.

10 72. As a result of the above violations of the “misleading prong” of the Business and  
11 Professions Code §§ 17500 *et seq.*, CVS has been unjustly enriched at the expense of Plaintiffs  
12 and the other members of the Subclass. Plaintiffs and the Subclass, pursuant to Business and  
13 Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on  
14 the part of the CVS, and such other orders and judgments which may be necessary to disgorge  
15 CVS’s ill-gotten gains and restore to any person in interest any money paid for the Advanced Eye  
16 Health supplement as a result of the wrongful conduct of CVS.

#### 17 **FOURTH CAUSE OF ACTION**

##### 18 **(Unjust Enrichment)**

19 73. As a result of CVS’s deceptive marketing and sale of its Advanced Eye Health  
20 supplement, as described above, CVS was enriched, at the expense of Plaintiffs and the Class  
21 Members, through the payment of the purchase price for the Advanced Eye Health supplement.

22 74. Under the circumstances, it would be against equity and good conscience to  
23 permit CVS to retain the ill-gotten benefits that it received from Plaintiffs and the Class Members,  
24 in light of the fact that the Advanced Eye Health supplement purchased by the Plaintiffs, and  
25 those similarly situated, was not what CVS purported it to be. Thus, it would be unjust or  
26 inequitable for CVS to retain the benefit without restitution to Plaintiffs and the Class Members  
27 for monies paid to CVS for its Advanced Eye Health supplement.  
28



1 **FIFTH CAUSE OF ACTION**

2 **(Breach of Implied Warranty of Merchantability)**

3 75. Plaintiffs and other Class members purchased CVS's Advanced Eye Health  
4 supplement, which was marketed as healthful and having particular healthful characteristics as set  
5 forth above. Pursuant to these sales, CVS impliedly warranted that its product would be  
6 merchantable and fit for the ordinary purposes for which such goods are used and conform to the  
7 promises or affirmations of fact made in CVS's marketing, packaging, and labeling. As a result,  
8 Plaintiffs and Class members relied on CVS's representations that its Advanced Eye Health  
9 supplement was healthful and had particular healthful characteristic as set forth above. By CVS's  
10 representations regarding the reputable nature of its companies and related entities, and by its  
11 marketing, packaging, and labeling of its Advanced Eye Health supplement, CVS warranted that  
12 its Advanced Eye Health supplement is healthful, has particular healthful characteristics, and a  
13 specific combination of ingredients as set forth above. Plaintiffs and Class members bought  
14 CVS's Advanced Eye Health supplement, relying on representations that the product was  
15 healthful and had particular characteristics and ingredients when, in fact, it is not healthful in that  
16 it does not contain the represented health benefits or ingredients described in CVS's marketing  
17 materials. These representations do not conform to CVS's warranties.

18 76. CVS breached the warranty implied at the time of the sale in that Plaintiffs and  
19 Class members did not receive goods that were healthful or had healthful characteristics or  
20 ingredients represented and, thus, the goods were not merchantable as fit for the ordinary  
21 purposes for which such goods are used or as marketed.

22 77. As a proximate result of this breach of warranty by CVS, Plaintiffs and Class  
23 members have suffered damages in an amount to be determined at trial in that, amount other  
24 things, they purchased and paid a premium for CVS's Advanced Eye Health supplement that did  
25 not conform to what was promised in CVS's marketing, packaging, and labeling. In addition,  
26 Plaintiffs and Class members were deprived of the benefit of their bargain and spent money on  
27 the Advanced Eye Health supplement, when it had less value than warranted. Plaintiffs and Class  
28 members would not have purchased the Advanced Eye Health supplement had they known the

1 true facts about the product.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs ask the Court to enter the following judgment:

- 4 A. Certifying the Class and Subclass, appointing Plaintiffs as representatives of the  
5 Class and Subclass, and designating their counsel as counsel for the Class and Subclass;  
6 B. Declaring that CVS has committed the violations alleged herein;  
7 C. Granting all available equitable relief to Plaintiffs and the Class and Subclass;  
8 D. Granting declaratory and injunctive relief to enjoin CVS from engaging in the  
9 unlawful practices described in this Complaint;  
10 E. Granting interest at the legal rate on the forgoing sums;  
11 F. Granting attorneys' fees and costs of suit incurred; and  
12 G. Granting further relief as this Court may deem proper.

13 **JURY TRIAL DEMANDED**

14 Plaintiffs hereby demand a trial by jury on all claims so triable.

15 DATED: January 13, 2015

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