	Case 3:11-cv-01056-JAH -MDD Docum	ent 1 Filed 05/13/11 Page 1 of 20
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. ANDREW S. FRIEDMAN (<i>To be admitted</i> ELAINE A. RYAN (<i>To be admitted Pro Har</i> PATRICIA N. SYVERSON (203111) 2901 N. Central Avenue, Suite 1000 Phoenix, AZ 85012 Telephone: 602-274-1100 Facsimile: 602-274-1109 BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. TODD D. CARPENTER (234464) 600 W. Broadway, Suite 900 San Diego, California 92101 Telephone: 619-756-6978 Facsimile: 602-798-5860 FUTTERMAN HOWARD ASHLEY & WELTMAN, P.C. STEWART WELTMAN (<i>To be admitted Pr</i> 122 S. Michigan Avenue, Suite 1850 Chicago, Illinois 60603 Telephone: 312-427-3600 Fax: 312-427-1850 Attorneys for Plaintiff	c Vice) ro Hac Vice)
17		ES DISTRICT COURT RICT OF CALIFORNIA
 18 19 20 21 22 23 24 25 26 27 28 	LUIS LERMA, On Behalf of Himself and All Other Similarly Situated California Residents, V. SCHIFF NUTRITION INTERNATIONAL, INC., a Utah Corporation, Defendant.	Case No.: <u>'11CV1056 JAH MDD</u> <u>CLASS ACTION</u> 1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 et seq.; 2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 et seq.; and 3. BREACH OF EXPRESS WARRANTY. DEMAND FOR JURY TRIAL

Plaintiff Luis Lerma ("Plaintiff"), by and through his attorneys, brings this action on behalf of himself and all other similarly situated California residents against Defendant Schiff 2 Nutrition International ("Schiff" or "Defendant"), and alleges as follows: 3

NATURE OF ACTION

5 1. Forty-six million Americans suffer from arthritis. Osteoarthritis, also called 6 degenerative joint tissue disease, is the most prevalent and disabling form of arthritis. Osteoarthritis is caused by the breakdown of cartilage, which is the connective tissue that cushions the ends of bones within the joint. Osteoarthritis is characterized by pain, joint damage, and limited motion (hereafter referred to as the "three major symptoms of arthritis"). 10 The disease generally occurs late in life, and most commonly affects the hands and large 12 weight bearing joints, such as the knees, hips and back. There is no cure for the three major 13 symptoms of arthritis. Yet, Defendant promises a cure for each of the three major symptoms 14 of arthritis in the form of a pill which it manufactures, markets, and sells as the Move Free® 15 Advanced line of joint health dietary supplements.¹ 16

2. It has been the accepted standard for over four decades in both the medical 17 and scientific community that in order for someone to make a health benefit claim about a 18 19 product, the party making that claim must possess competent scientific evidence—meaning 20 that they have at least two adequate and well controlled clinical trials supporting a particular health benefit claim about a particular product (hereafter referred to as "competent scientific 22 evidence"). 23

On each and every Move Free[®] Advanced product label and/or package. 3. 24 Defendant prominently states that Move Free[®] Advanced, with its "clinically tested" premium 25 formula, will rebuild joint cartilage, improve joint function and reduce joint pain in less than 7 26

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²⁷ ¹ The Move Free[®] Advanced line includes: (1) Move Free[®] Triple Strength; Move Free[®] Plus MSM & Vitamin D; and Move Free[®] Advanced plus MSM (collectively, "Move Free[®] Advanced" or "the Products").

days.

1 In making these affirmative representations, Defendant represents to each 4. 2 purchaser of Move Free[®] Advanced that it has competent scientific evidence that these 3 4 products are effective in relieving and reducing the three major symptoms of arthritis and 5 other joint related ailments. 6 5. Yet, Defendant does not possess such competent scientific evidence. In fact, 7 the Move Free[®] Advanced products are not effective arthritis remedies. In short, Defendant 8 has not obtained the necessary scientific proof with regard to each of the Move Free[®] 9 Advanced products it markets and sells in order to make the representations that it has made 10 11 about each of these Products. 12 6. As a result, Defendant is guilty of deceptive conduct in its marketing and sale 13 of the Move Free[®] Advanced products. 14 7. Defendant is also guilty of deception by omission in that, after affirmatively 15 asserting that these Products are effective remedies against the three major symptoms of 16 arthritis, Defendant had a duty to tell Plaintiff and the Class members that it did not have 17 competent scientific evidence to support the efficacy representations that it makes about the 18

19 Move Free[®] Advanced products.

20 By making representations on the box of each Move Free[®] Advanced product 8. 21 that it was an arthritis remedy. Defendant represented (and continues to represent) to Plaintiff 22 and the Class members that it had competent scientific evidence to back up these assertions 23 when it did not possess such evidence. These were material misrepresentations concerning 24 the only reason that Plaintiff and the Class members would have purchased Defendant's 25 Move Free[®] Advanced products—that the Products were proven by competent scientific 26 27 evidence to be effective against the three major symptoms of arthritis.

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CLASS ACTION COMPLAINT

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Other than to use the Move Free[®] Advanced products to relieve these 9. 1 symptoms of arthritis, there is no reason for Plaintiff or the Class members to have purchased 2 these Products. Plaintiff and the Class members would not have purchased a Move Free[®] 3 4 Advanced product without believing that it was a proven effective arthritis remedy and that it 5 provided relief from the three major symptoms of arthritis. 6 Thus, through the act of purchasing one of Defendant's Move Free[®] 10 7 Advanced products, Plaintiff and each Class member necessarily was deceived by 8 Defendant's representations that these Products were effective arthritis remedies and would 9 provide relief from the three major symptoms of arthritis. 10 11 11. Plaintiff and the Class members were also deceived by Defendant in that, after 12 affirmatively asserting that these Products would provide relief for the three major symptoms 13 of arthritis, Defendant failed to inform Plaintiff and the Class members that it did not possess 14 competent scientific evidence to support these health benefit claims. 15 Every purchase of the Move Free[®] Advanced products was tainted with 12. 16 Defendant's deceptions in that just by looking at the package on the shelf or following the 17 directions for use, Plaintiff and the Class members would have seen Defendant's deceptive 18 19 representations. 20 Defendant's deceptive marketing and advertising, as well as the complete lack 13. 21 of any disclosure that no competent scientific evidence exists to substantiate the claim that 22 Move Free[®] Advanced will "protect" "replenish" "rebuild[] or "lubricate" joints – let alone 23 reduce joint pain "in less than 7 days"—is designed to cause consumers to buy Move Free[®] 24 Advanced. Defendant's deceptive marketing and advertising campaign has succeeded. 25 According to Defendant, in 2010 sales of Move Free[®] Advanced exceeded \$100 million.² 26 27 ² Sales figures are based on Fiscal Year 2010. See http://www.schiffnutrition.com/movefree.asp (last visited 28 May 2, 2010).

14. Plaintiff brings this action on behalf of himself and other similarly situated California consumers who have purchased the Products to halt the dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased Move Free[®] Advanced products. Plaintiff alleges violations of the Consumers Legal Remedies Act, the Unfair Competition Law, and Breach of Express Warranty created by Defendant's advertising, including false labeling.

JURISDICTION AND VENUE

15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which members of the class are citizens of a state different from Defendant.

16. This Court has personal jurisdiction over Defendant because Defendant is authorized to do and conduct business in California. Defendant has marketed, promoted, distributed, and sold the Move Free[®] Advanced products in California, and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred
while he resided in this judicial district. Venue is also proper under 18 U.S.C. §1965(a)
because Defendant transacts substantial business in this District.

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Plaintiff Luis Lerma resides in Imperial, California. During the Class Period,

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PARTIES

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Plaintiff Lerma was exposed to and saw Schiff's claims by reading the Move Free® 1 Advanced label, purchased the Move Free[®] Advanced products in reliance on those claims, 2 and suffered injury in fact and lost money. Had Plaintiff Lerma known the truth about 3 4 Schiff's misrepresentations and omissions, Plaintiff would not have purchased and used the 5 Move Free[®] Advanced products. 6 19. Defendant Schiff Nutrition International, Inc., is a corporation organized and 7 existing under the laws of the State of Utah. Defendant's headquarters is at 2002 South 5070 8 West, Salt Lake City, Utah 84104. Defendant manufactures, distributes, markets and sells 9 the Move Free[®] Advanced products to tens of thousands of consumers in California. 10 11 FACTUAL ALLEGATIONS 12 The Move Free[®] Advanced Products 13 20. Defendant develops, manufactures, markets, distributes and sells vitamins, 14 nutritional supplements and sports nutrition products nationwide. Defendant's "flagship 15 brand" is Move Free[®] Advanced. Move Free[®] Advanced is available in three different 16 formulas: (1) Move Free[®] Advanced Triple Strength; (2) Move Free[®] Advanced Plus MSM 17 18 & Vitamin D; and (3) Move Free[®] Advanced plus MSM. Defendant began manufacturing, 19 marketing and selling the Move Free[®] Advanced products nationwide in 1996.³ 20 The Move Free[®] Advanced products are sold in virtually every major food, 21. 21 drug, and mass retail outlet in California, including, but not limited to: BJ's Wholesale Club, 22 Costco, Sam's Club and Wal-Mart stores. The Move Free[®] Advanced products are also sold 23 through online retailers such as Costco.com, cvs.com, and walgreens.com. A 120-count 24 bottle of Move Free[®] Advanced retails for approximately \$30.00. The following are screen 25 26 shots of the Products: 27 28

³ In 2000, Schiff rebranded its joint dietary supplements as "Move Free". CLASS ACTION COMPLAINT



22. Since the Products' launch, Defendant has consistently conveyed the message to consumers throughout California that Move Free[®] Advanced, with its "clinically tested" formula will "protect," "replenish" and "rebuild" one's joints simply by taking the recommended number of tablets each day. According to Defendant, Move Free[®] Advanced will also "START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS." These claims are not substantiated by competent scientific evidence and are factually baseless.

23. The primary active ingredients in all the Move Free[®] Advanced products are glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The Products' labeling and packaging states the benefits associated with taking glucosamine hydrochloride: "Glucosamine—Helps by strengthening, protecting and rebuilding joints." There is no competent scientific evidence that taking glucosamine—let alone through oral administration —results in the body metabolizing it into something that strengthens, protects or rebuilds joints.

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24. Chondroitin sulfate is a complex carbohydrate found in the body's connective
tissues. On the Products' labeling and packaging, Defendant claims that chondroitin "assists
in lubricating and cushioning joints." There is no competent scientific evidence that taking
chondroitin sulfate—let alone through oral administration—results in the body metabolizing

it into something that assists in lubricating and cushioning joints.

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All of the Move Free[®] Advanced products also contain lesser amounts of other 25 ingredients including Defendant's "patent-pending" ingredient Uniflex and hyaluronic acid. On its packaging and labeling, Defendant defines Uniflex as "a ground breaking dual bioflavonoid antioxidant system that protects joints from harmful antioxidants that accelerate the breakdown of cartilage and joint tissue." There is no competent scientific evidence that Uniflex or any of its individual ingredients—let alone through oral taking administration—results in the body metabolizing it into something that protects joints or slows the breakdown of cartilage or joint tissue.

26. Hyaluronic acid is a component of synovial fluid found in the eyes and joints. On the Products' labeling and packaging, Defendant claims that hyaluronic acid "helps lubricate, rejuvenate, re-hydrate, and repair joints." There is no competent scientific evidence that taking hyaluronic acid—let alone through oral administration—results in the body metabolizing it into something that helps lubricate, rejuvenate, re-hydrate or repair joints.

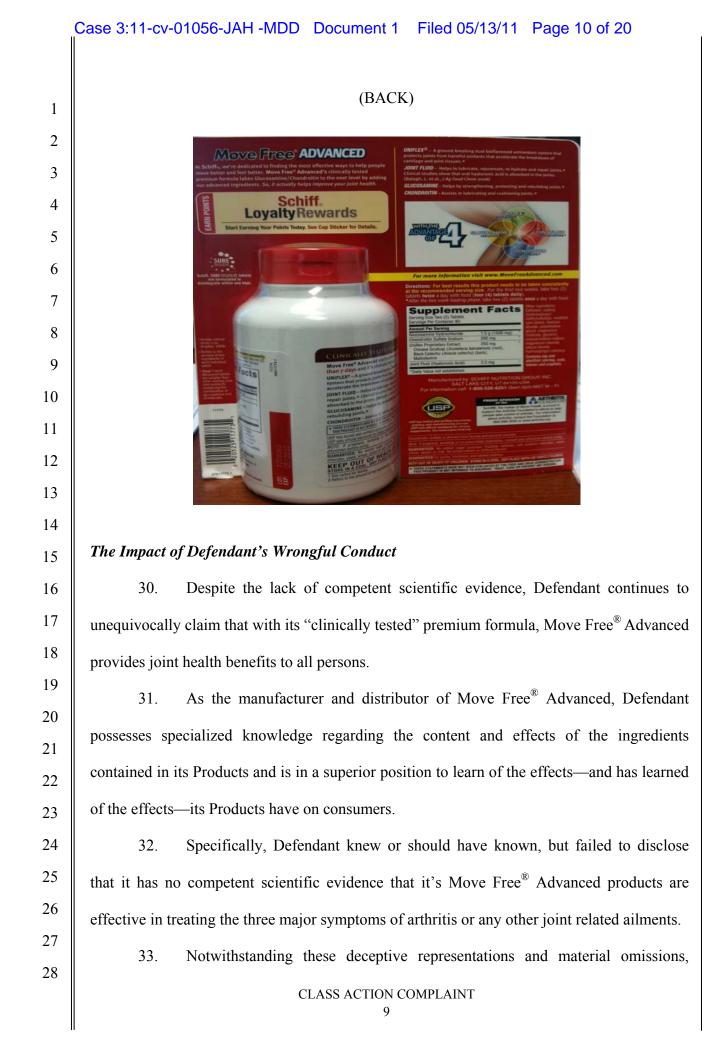
In addition to those ingredients, Move Free[®] Advanced plus MSM and Move 27. 18 Free® Advanced Plus MSM & Vitamin D also contain methylsulfonylmethane ("MSM"), an 19 20 organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and milk. There is no 21 competent scientific evidence that taking MSM—let alone through oral 22 administration—results in the body metabolizing it into something that relieves any of the 23 three major symptoms of arthritis or any other joint related ailments. 24

28. Contrary to the stated representations on all the Products' labeling and 25 packaging, Defendantt does not possess (and has not possessed) competent scientific 26 27 evidence that any of these ingredients, taken alone or in combination, are effective in treating

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any of the three major symptoms of arthritis or any other joint related ailments. 29. Despite inadequate testing and no scientifically valid confirmation that Move Free[®] Advanced is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for customers of all ages and for all stages of joint disease-Defendant states on the Products' packaging and labeling that Move Free[®] Advanced, with its "clinically tested" formula will, *inter alia*, "strengthen[], protect[] and rebuild[] joints" and "START[] COMFORTING SORE JOINTS IN LESS THAN 7 DAYS." Front and back shots of a representative Move Free[®] Advanced Triple Strength product label appear as follows: (FRONT) CLINICALLY TESTED PREMIUM FORMULA ARTHRITIS



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Defendant conveyed and continues to convey one uniform message: Move Free[®] Advanced, with its "clinically tested" formula, is effective in treating the three major symptoms of arthritis.

34. Plaintiff and Class members have been and will continue to be deceived or misled by Defendant's deceptive representations touting the effectiveness of the Move Free[®] Advanced products. Plaintiff purchased and used the Move Free[®] Advanced products during the Class period and in doing so, read, considered and based his decisions to buy the Products on the above cited representations. Because the Products' sole purpose is to provide joint relief for the three major symptoms of arthritis or other joint related ailments, Defendant's representations and omissions were a material factor in influencing Plaintiff's decision to purchase and use the Move Free[®] Advanced products. There is no other reason for Plaintiff to have purchased the Move Free[®] Advanced products and Plaintiff would not have purchased the Products had he known that Defendant did not possess competent scientific evidence to support the claims that it made about these Products.

As a result, Plaintiff and the Class members have been damaged in their
 purchases of these Products and have been deceived into purchasing Products that they
 believed, based on Defendant's representations, were proven to be effective in treating the
 three major symptoms of arthritis and other joint related ailments when, in fact, they are not.

36. Defendant, by contrast, reaped enormous profits from its false marketing and sale of these Products, generating more than \$100 million in sales revenue in 2010 alone.

CLASS ALLEGATIONS

37. Plaintiff brings this action on behalf of himself and all other similarly situated
California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
Procedure and seeks certification of the following Class:

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1	All California residents who, within the applicable statute of limitations, purchased Move Free [®] Advanced products ⁴ .
2 3	Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the
4	Move Free [®] Advanced products for the purpose of resale.
5	38. Members of the Class are so numerous and geographically dispersed that
6	joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that
7	basis alleges, that the proposed Class contains many thousands of members. The precise
8	number of Class members is unknown to Plaintiff.
9 10	39. Common questions of law and fact exist as to all members of the Class and
10	predominate over questions affecting only individual Class members. The common legal
12	and factual questions include, but are not limited to, the following:
13	• Whether Defendant had competent scientific evidence to support each
14	of the claims that it made about its Products;
15	• Whether the claims discussed herein that Defendant made about its
16	Products were or are misleading, or reasonably likely to deceive;
17 18	• Whether Defendant's alleged conduct violates public policy;
10	• Whether the alleged conduct constitutes violations of the laws asserted
20	herein;
21	• Whether Defendant engaged in false and misleading advertising;
22	• Whether Plaintiff and Class members have sustained monetary loss and
23	the proper measure of that loss;
24	• Whether Plaintiff and Class members are entitled to restitution,
25 26	disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
20 27	
28	⁴ The Move Free [®] Advanced products include: (1) Move Free [®] Triple Strength; (2) Move Free [®] Plus MSM & Vitamin D; and (3) Move Free [®] Advanced plus MSM. CLASS ACTION COMPLAINT 11

• Whether Plaintiff and Class members are entitled to an award of compensatory damages.

40. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class, as the claims arise from the same course of conduct by Defendant, and the relief sought is common. Plaintiff and Class members suffered uniform damages caused by their purchase of the Move Free[®] Advanced products manufactured, marketed, and sold by Defendant.

41. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class litigation.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

1	43. In the alternative, the Class also may be certified because Defendant has acted
2	or refused to act on grounds generally applicable to the Class thereby making appropriate
3	final declaratory and/or injunctive relief with respect to the members of the Class as a whole.
4	44. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
5	behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and
6	prevent Defendant from engaging in the acts described, and requiring Defendant to provide
7	full restitution to Plaintiff and Class members.
8 9	45. Unless a Class is certified, Defendant will retain monies received as a result
10	of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide
11	injunction is issued, Defendant will continue to commit the violations alleged, and the
12	members of the Class and the general public will continue to be misled.
13	COUNT I
14	Violation of the Consumers Legal Remedies Act – Civil Code §1750 <i>et seq</i> .
15	46. Plaintiff re-alleges and incorporates by reference the allegations contained in
16	the paragraphs above as if fully set forth herein.
17	47. This cause of action is brought under the Consumers Legal Remedies Act,
18 19	California Civil Code §1750, et seq. (the "Act"). Plaintiff is a consumer as defined by
20	California Civil Code §1761(d). Defendant's Move Free® Advanced products are goods
21	within the meaning of the Act.
22	48. Defendant violated and continues to violate the Act by engaging in the
23	following practices proscribed by California Civil Code §1770(a) in transactions with
24	Plaintiff and the Class which were intended to result in, and did result in, the sale of
25	Defendant's Move Free [®] Advanced products:
26	(5) Representing that [the Move $Free^{\mathbb{R}}$ Advanced products have]
27 28	characteristics, uses [or] benefits which [they] do not have.
28	CLASS ACTION COMPLAINT
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	* * *			
1	(7) Representing that [the Move Free [®] Advanced products are] of a particular			
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3	standard, quality or grade, if [they are] of another.			
4	* * *			
5	(9) Advertising goods with the intent not to sell them as advertised.			
6 7	* * *			
8	(16) Representing that [the Move Free [®] Advanced products have] been supplied in			
9	accordance with a previous representation when [they have] not.			
10	49. Defendant violated and continues to violate the Act by representing the Move			
11	Free [®] Advanced products, <i>inter alia</i> , increase mobility and flexibility, improve joint health,			
12	build cartilage and reduce joint pain in less than 7 days when Defendant knew that these			
13	representations were unsubstantiated, false and misleading.			
14	50. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order			
15 16	enjoining the above-described wrongful acts and practices of Defendant and for restitution			
10	and disgorgement.			
18	51. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by			
19	certified mail of the particular violations of §1770 of the Act and demanded that Defendant			
20	rectify the problems associated with the actions detailed above and give notice to all affected			
21	consumers of Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit			
22	Α.			
23	52. If Defendant fails to rectify or agree to rectify the problems associated with			
24 25	the actions detailed above and give notice to all affected consumers within 30 days of the			
25 26	date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add			
20 27	claims for actual, punitive and statutory damages, as appropriate.			
28	enamis for actual, paintive and statutory damages, as appropriate.			
	CLASS ACTION COMPLAINT 14			

1 misleading information. 3 54. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affida 4 showing that this action has been commenced in the proper forum. 5 COUNT II 6 Violation of Business & Professions Code §17200, et seq. 7 55. Plaintiff re-alleges and incorporates by reference the allegations contained 8 the paragraphs above as if fully set forth herein. 9 56. As alleged herein, Plaintiff has suffered injury in fact and lost money 9 property as a result of Defendant's conduct because he purchased the Move Free [®] Advance 11 products. 13 57. In the course of conducting business, Defendant committed unlawful busine 14 practices by, <i>inter alia</i> , making the representations (which also constitute advertising with 15 the meaning of §17200) and omissions of material facts, as set forth more fully herein, a 16 violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions Code 17 §§ 18 58. Plaintiff and the Class reserve the right to allege other violations of la 19 which constitute other unlawful business acts or practices. Such conduct is ongoing a 20 continues to this date. 21				
2 misleading information. 3 54. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidat 4 showing that this action has been commenced in the proper forum. 5 COUNT II 6 COUNT II 7 55. Plaintiff re-alleges and incorporates by reference the allegations contained 8 the paragraphs above as if fully set forth herein. 9 56. As alleged herein, Plaintiff has suffered injury in fact and lost money 10 property as a result of Defendant's conduct because he purchased the Move Free [#] Advance 12 products. 13 57. In the course of conducting business, Defendant committed unlawful busines 14 practices by, <i>inter alia</i> , making the representations (which also constitute advertising with 15 the meaning of §17200) and omissions of material facts, as set forth more fully herein, a 16 violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions Cod 17 §§ 17200, <i>et seq.</i> , 17500, <i>et seq.</i> , and the common law. 18 58. Plaintiff and the Class reserve the right to allege other violations of law 19 which constitute other unlawful business acts or practices. Such conduct is ongoing a 20 isclosures as alleged herein also constitute "unfair" bu	1	53. Defendant's conduct is malicious, fraudulent and wanton, and provides		
4 showing that this action has been commenced in the proper forum. 5 COUNT II 6 Violation of Business & Professions Code §17200, et seq. 7 55. Plaintiff re-alleges and incorporates by reference the allegations contained the paragraphs above as if fully set forth herein. 9 56. As alleged herein, Plaintiff has suffered injury in fact and lost money property as a result of Defendant's conduct because he purchased the Move Free [®] Advance products. 11 57. In the course of conducting business, Defendant committed unlawful busines practices by, <i>inter alia</i> , making the representations (which also constitute advertising with the meaning of §17200) and omissions of material facts, as set forth more fully herein, at violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business & Professions Code §§17200, et seq., 17500, et seq., and the common law. 18 58. Plaintiff and the Class reserve the right to allege other violations of lawich constitute other unlawful business acts or practices. Such conduct is ongoing a continues to this date. 22 59. Defendant's acts, omissions, misrepresentations, practices and not disclosures as alleged herein also constitute "unfair" business acts and practices within 1 24 substantia 25 Defendant's acts, omissions, misrepresentations, practices and not disclosures as alleged herein also constitute "unfair" business acts and practices within 1 26 sub-consumers, offends public policy, and is immoral, unethical, oppressive, a unscrupulous as the gravity of the conduct o		misleading information.		
Sector COUNT II COUNT II Violation of Business & Professions Code §17200, et seq. Station of Business & Professions Code §17200, et seq. Station of Business & Professions Code §17200, et seq. Station of Business & Professions Code §17200, et seq. Station of Business & Professions Code §17200, et seq. Station of Business and incorporates by reference the allegations contained the paragraphs above as if fully set forth herein. Station of Business and Incorporates by reference the allegations contained property as a result of Defendant's conduct because he purchased the Move Free [®] Advance products. Station of \$17200 Station of \$17200 practices by, inter alia, making the representations (which also constitute advertising with the meaning of \$17200 stating Civil Code \$\$1572, 1573, 1709, 1711, 1770, Business & Professions Cod \$\$17200, et seq., 17500, et seq., and the common law. Station of Business and Professions, misrepresentations, practices and no disclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of Business and Professions Code \$17200 et seq., in that its conduct is substantia injurious to consumers, offends public policy, and is immoral, unethical, oppressive, at unscrupulous as the gravity of the	3	54. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidavit		
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	28	CLASS ACTION COMPLAINT		

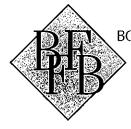
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	Case 3:11-cv-01056-JAH -IVIDD Document 1 Flied 05/13/11 Page 17 of 20		
1	60. As stated in this complaint, Plaintiff alleges violations of consumer		
2	protection, unfair competition and truth in advertising laws resulting in harm to consumers.		
3	Plaintiff asserts violations of the public policy of engaging in false and misleading		
4	advertising, unfair competition and deceptive conduct towards consumers. This conduct		
5	constitutes violations of the unfair prong of Business & Professions Code §17200 et seq.		
6	61. There were reasonably available alternatives to further Defendant's legitimate		
7 8	business interests, other than the conduct described herein.		
8 9	62. Defendant's claims, nondisclosures and misleading statements, as more fully		
10	set forth above, are also false, misleading and/or likely to deceive the consuming public		
11	within the meaning of Business & Professions Code §17200 et seq.		
12	63. Defendant's labeling and packaging as described herein, also constitute		
13	unfair, deceptive, untrue and misleading advertising.		
14	64. Defendant's conduct caused and continues to cause substantial injury to		
15	Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost		
16 17	money as a result of Defendant's unfair conduct.		
17 18	65. Plaintiff, on behalf of himself, and all other similarly situated California		
19	residents, seeks restitution of all money obtained from Plaintiff and the members of the Class		
20	collected as a result of unfair competition, an injunction prohibiting Defendant from		
21			
22	continuing such practices, corrective advertising and all other relief this Court deems		
23	appropriate, consistent with Business & Professions Code §17203.		
24	<u>COUNT III</u> Breach of Express Warranty		
25	66. Plaintiff re-alleges and incorporates by reference the allegations contained in		
26	the paragraphs above as if fully set forth herein.		
27			
28	CLASS ACTION COMPLAINT 16		

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1	67. Plaintiff, and each member of the Class, formed a contract with Defendant at		
2	the time Plaintiff and the other members of the Class purchased the Move Free® Advanced		
3	products. The terms of that contract include the promises and affirmations of fact made by		
4	Defendant on its Move Free [®] Advanced products' labels and packages, as described above.		
5	These representations constitute express warranties, became part of the basis of the bargain,		
6	and are part of a standardized contract between Plaintiff and the members of the Class on the		
7 8	one hand, and Defendant on the other.		
o 9	68. All conditions precedent to Defendant's liability under this contract have been		
10	performed by Plaintiff and the Class.		
11	69. Defendant breached the terms of this contract, including the express		
12	warranties, with Plaintiff and the Class by not providing products that could provide the		
13	benefits described above which was the only reason Plaintiff and Class members purchased		
14	the Move Free [®] Advanced products.		
15 16	70. As a result of Defendant's breach of its warranty, Plaintiff and Class members		
10	have been damaged in the amount of the purchase price of the Move Free [®] Advanced		
18	products they purchased.		
19	PRAYER FOR RELIEF		
20	Wherefore, Plaintiff prays for a judgment:		
21	A. Certifying the class as requested herein;		
22	B. Awarding Plaintiff and the proposed Class members damages;		
23 24	C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff		
24 25	and the proposed Class members;		
26	D. Awarding declaratory and injunctive relief as permitted by law or equity,		
27	including enjoining Defendant from continuing the unlawful practices as set		
28			
	CLASS ACTION COMPLAINT 17		
I	· · · · · · · · · · · · · · · · · · ·		

1	forth herein, and directing Defendant to identify, with court supervision,		
2	victims of its conduct and pay them restitution and disgorgement of all monies		
3	acquired by Defendant by means of any act or practice declared by this Court		
4	to be wrongful;		
5	E. Ordering Defendant to engage in a corrective advertising campaign;		
6	F. Awarding attorneys' fees and costs; and		
7	G. Providing such further relief as may be just and proper.		
8 9	JURY DEMAND		
10	Plaintiff demands a trial by jury on all issues so triable.		
11			
12	May 13, 2011		
13	BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.		
14			
15	s/ Patricia N. Syverson		
16	ANDREW S. FRIEDMAN (<i>To be admitted Pro Hac</i> Vice)		
17	ELAINE A. RYAN (To be admitted Pro Hac Vice) PATRICIA N. SYVERSON (203111)		
18	2901 N. Central Avenue, Suite 1000		
19	Phoenix, Arizona 85012 Telephone: (602) 274-1100		
20	Facsimile: (602) 798-5860 afriedman@bffb.com		
21	eryan@bffb.com psyverson@bffb.com		
22	BONNETT, FAIRBOURN, FRIEDMAN		
23	& BALINT, P.C.		
24	TODD D. CARPENTER (234464) 600 West Broadway Suite 900		
25	San Diego, California 92101 Telephone: (619) 756-6978		
26	Facsimile: (602) 798-5860 tcarpenter@bffb.com		
27			
28			
	CLASS ACTION COMPLAINT 18		

	Case 3:11-cv-01056-JAH -MDD D	Ocument 1	Filed 05/13/11	Page 20 of 20
1			N HOWARD ASI	HLEY
2		& WELTMA STEWART W		e admitted Pro Hac Vice)
2		122 S. Michig Chicago, Illin	gan Avenue, Suite	1850
4		Telephone: 3 Fax: 312-4	12-427-3600	
5			a futterman	HOWARD.COM
6		Attorneys for	Plaintiff	
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20	CLA	ASS ACTION CO 19	OMPLAINT	



BONNETT, FAIRBOURN, FRIEDMAN & BALINT, PC

JERRY C. BONNETT FRANCIS J. BALINT, JR. C. KEVIN DYKSTRA ANDREW Q. EVERROAD JONATHAN S. WALLACK CHRISTINA L. BANNON WILLIAM F. KING ANDREW M. EVANS KEVIN R. HANGER WILLIAM G. FAIRBOURN VAN BUNCH ELAINE A. RYAN KATHRYN A. HONECKER GUY A. HANSON MANFRED P. MUECKE¹ TONNA K. FARRAR² TY D. FRANKEL ERIC D. ZARD ANDREW S. FRIEDMAN ROBERT J. SPURLOCK WENDY J. HARRISON PATRICIA N. SYVERSON KIMBERLY C. PAGE TODD D. CARPENTER¹ T. BRENT JORDAN³ LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

¹ Admitted Only In California ² Admitted Only in California, Missouri and Kansas ³ Admitted Only in Pennsylvania

May 13, 2011

VIA CERTIFIED MAIL (RETURN RECEIPT) (RECEIPT NO. 7009-0080-0000-4200-3874)

Tarang Amin Chief Executive Officer Schiff Nutrition International, Inc. 2002 South 5070 West Salt Lake City, Utah 84104

Re: Lerma v. Schiff Nutrition International, Inc.

Dear Mr. Amin:

Our law firm represents Luis Lerma and all other similarly situated California Residents in an action against Schiff Nutrition International, Inc. ("Schiff"), arising out of, *inter alia*, misrepresentations, either express or implied, by Schiff to consumers that the Move Free[®] Advanced line of joint dietary supplements¹ are effective treatments for arthritis and other joint related ailments.

Mr. Lerma and others similarly situated purchased the Move Free[®] Advanced products unaware that Schiff's representations found on the Products' labels and packages were not substantiated by competent scientific evidence, including that Move Free[®] Advanced will rebuild joint cartilage, improve joint function and reduce joint pain in less than 7 days. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

These representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Schiff with the intent to result in the sale of Move Free[®] Advanced to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

¹ The Move Free[®] Advanced line includes: (1) Move Free[®] Triple Strength; (2) Move Free[®] Plus MSM & Vitamin D; and (3) Move Free[®] Advanced plus MSM (collectively, "Move Free[®] Advanced" or "the Products").

(5) Representing that [Move Free[®] Advanced has] . . . characteristics, . . . uses [or] benefits. . .which [it does] not have.

* * *

(7) Representing that [Move Free[®] Advanced is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

(9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

(16) Representing that [Move Free[®] Advanced has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Schiff's claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California residents that Schiff immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Schiff should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Schiff address this problem immediately.

Schiff must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Schiff will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Move Free[®] Advanced purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these Products are effective at treating arthritis related symptoms or any other joint ailments when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Very truly yours,

Patricia N. Syverson For the Firm

PNS:lmg Enclosures

1	Case 3:11-cv-01056-JAH -MDD Docum	ent 1-2 Filed 05/13/11 Page 1 of 3						
1 2	BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. ANDREW S. FRIEDMAN (To be admitted Pro Hac Vice) ELAINE A. RYAN (To be admitted Pro Hac Vice)							
3	PATRICIA N. SYVERSON (203111) 2901 N. Central Avenue, Suite 1000							
4	Phoenix, AZ 85012							
5	Telephone: 602-274-1100 Facsimile: 602-274-1199							
6	BONNETT, FAIRBOURN, FRIEDMAN							
7	& BALINT, P.C. TODD D. CARPENTER (234464)							
8 9	600 W. Broadway, Suite 900 San Diego, California 92101							
10	Telephone: 619-756-6978 Facsimile: 602-798-5860							
11	FUTTERMAN HOWARD ASHLEY							
12	& WELTMAN, P.C. STEWART WELTMAN (To be admitted Pro	o Hac Vice)						
13	122 S. Michigan Avenue, Suite 1850 Chicago, Illinois 6060 Telephone: 312-427-3600							
14								
15	Fax: 312-427-1850							
16	Attorneys for Plaintiff							
17	UNITED STATES DISTRICT COURT							
18	SOUTHERN DIST	RICT OF CALIFORNIA						
19	LUIS LERMA, On Behalf of Himself and	Case No.:						
20	All Other Similarly Situated California							
21	Residents,	CLASS ACTION						
22	Plaintiff,	DECLARATION OF PATRICIA N. SYVERSON PURSUANT TO CALIFORNIA						
23	v.	CIVIL CODE §1780(d)						
24	SCHIFF NUTRITION							
25	INTERNATIONAL, INC., a Utah Corporation,							
26	Defendant.							
27								
28								

Case 3:11-cv-01056-JAH -MDD Document 1-2 Filed 05/13/11 Page 2 of 3

	Ŭ l
1	I, Patricia N. Syverson, declare as follows:
2	1. I am an attorney duly licensed to practice before all of the courts of the State of
3	California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C.,
4	the counsel of record for plaintiff in the above-entitled action.
5	2. Defendant Schiff Nutrition International, Inc., has done and is doing business in
6	the Southern District of California. Such business includes the marketing, distributing and sale
7	of its Move Free [®] Advanced line of joint dietary supplements. Furthermore, Plaintiff Lerma
8	purchased the Move Free [®] Advanced product in Imperial, California.
9	I declare under penalty of perjury under the laws of the State of California that the
10	
11 12	foregoing is true and correct.
12	Executed this 13th day of May 2011, at Phoenix, Arizona.
14	BONNETT, FAIRBOURN, FRIEDMAN
15	& BALINT, P.C. ANDREW S. FRIEDMAN
16	ELAINE A. RYAN PATRICIA N. SYVERSON (203111)
17	
18	Patricia N. Syverson
19	
20	2901 N. Central Avenue, Suite 1000 Phoenix, Arizona 85012
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22	afriedman@bffb.com eryan@bffb.com
23	psyverson@bffb.com
24	BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
25 26	TODD D. CARPENTER (234464)
26 27	600 West Broadway Suite 900 San Diego, California 92101
27 28	Telephone: (619) 756-6978 Facsimile: (602) 798-5860 tcarpenter@bffb.com

1	Case 3:11-cv-01056-JAH -MDD	Document 1-2	Filed 05/13/11	Page 3 of 3		
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2		FUTTERMAN HO		EΥ		
3		STEWART WELT	& WELTMAN, P.C. STEWART WELTMAN (<i>To be admitted Pro Hac Vice</i>)			
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5			Telephone: 312-427-3600			
6			SWELTMAN@FUTTERMANHOWARD.COM			
7		Attorneys for Plair	ntiff			
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SJS 44 (Rev. 12/07) Case 3:11-cv-01056-JAL TOP COVER SHEET Filed 05/13/11 Page 1 of 2

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS			DEFENDANTS			
Luis Lerma			Schiff Nutrition International, Inc.			
(b) County of Residence of First Listed Plaintiff Imperial (EXCEPT IN U.S. PLAINTIFF CASES)			NOTE: IN LANI	of First Listed Defendant (IN U.S. PLAINTIFF CASE D CONDEMNATION CASES, INVOLVED.	Salt Lake SONLY) USE THE LOCATION OF THE	
Patricia N. Syverson/	e, Address, and Telephone Number) Bonnett, Fairbourn, Friedman & Balin Sta, 1000, Dhaaniy, AZ, 85012	it, P.C.	Attorneys (If Known)	'11CV1056	JAH MDD	
	, Ste. 1000, Phoenix, AZ 85012 DICTION (Place an "X" in One Box Only)	III. CIT	TIZENSHIP OF P	RINCIPAL PARTIE	\mathbf{S} (Place an "X" in One Box for Plaintiff	
□ 1 U.S. Government Plaintiff	IX 3 Federal Question (U.S. Government Not a Party)			IF DEF →→→y⊕b Incorporated or of Business In 7		
□ 2 U.S. Government Defendant	अत्त्रन्4− yieby (Indicate Citizenship of Parties in Item III)			 2 □ 2 Incorporated an of Business I 3 □ 3 Foreign Nation 	In Another State	
NATURE OF SUI	Tal		gn Country			
CONTRACT	T (Place an "X" in One Box Only) TORTS	FOR	FEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
 & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 	□ 330 Federal Employers' Liability Injury Product Liability □ 340 Marine PERSONAL PROPER □ 345 Marine Product □ 370 Other Fraud	- 620 C ce 625 I - 0 C y 630 I 640 P 640 P 660 C STY 690 C 2 - 710 P e 720 I 7 70 I 2 7 70 I 7 70 I 7 70 P 2 - 70 C 7 70 P - 70 C -	Agriculture Other Food & Drug Drug Related Seizure of Property 21 USC 881 Liquor Laws R.R. & Truck Airline Regs. Occupational Safety/Health Other LABOR Fair Labor Standards Act Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Eabor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Eabor/Mgmt. Relations Eabor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Labor/Mgmt. Relations Empl. Ret. Inc. Security Act IMMIGRATION Naturalization Application Habeas Corpus - Nien Detainee Other Immigration Actions	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	 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 810 Selective Service 850 Securities/Commodities/ Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 895 Freedom of Information Act 900Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 	
I Original □ 2 R	tate Court Appellate Court	Reoper	ned speci	ferred from D 6 Multidi er district Litigati	on Judgment	
	Cite the U.S. Civil Statute under which you a 28 U.S.C. 1332(d)(2)	are filing (Do	o not cite jurisdiction:	al statutes unless diversity	^{):} 28:1331 yeb	
VI. CAUSE OF ACTI	ON Brief description of cause: Violation of Civil Code 1750, Bu	siness &	Protessional Co	de 17200. Breach of	Express Warranty	
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTIO		MAND \$		ly if demanded in complaint:	
VIII. RELATED CAS IF ANY	E(S) (See instructions): JUDGE			DOCKET NUMBER		
DATE 05/13/2011	signature of a s/ Patricia N. S		FRECORD			
FOR OFFICE USE ONLY						
RECEIPT # A	MOUNT APPLYING IFP		JUDGE	MAG.	JUDGE	

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.C.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; 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 clerks 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 seven 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

 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
 Do not cite jurisdictional statutes

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 dollar amount (in thousands of dollars) 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.