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17 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

19 LUIS LERMA, On Behalf of Himself and  
All Other Similarly Situated California  
20 Residents,

21 Plaintiff,

22 v.

23 SCHIFF NUTRITION  
24 INTERNATIONAL, INC., a Utah  
25 Corporation,

26 Defendant.

Case No.: '11CV1056 JAH MDD

CLASS ACTION

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

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

4 **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.  
7 Osteoarthritis is caused by the breakdown of cartilage, which is the connective tissue that  
8 cushions the ends of bones within the joint. Osteoarthritis is characterized by pain, joint  
9 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  
11 weight bearing joints, such as the knees, hips and back. There is no cure for the three major  
12 symptoms of arthritis. Yet, Defendant promises a cure for each of the three major symptoms  
13 of arthritis in the form of a pill which it manufactures, markets, and sells as the Move Free<sup>®</sup>  
14 Advanced line of joint health dietary supplements.<sup>1</sup>

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17 2. It has been the accepted standard for over four decades in both the medical  
18 and scientific community that in order for someone to make a health benefit claim about a  
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  
21 health benefit claim about a particular product (hereafter referred to as “competent scientific  
22 evidence”).

23  
24 3. On each and every Move Free<sup>®</sup> Advanced product label and/or package,  
25 Defendant prominently states that Move Free<sup>®</sup> Advanced, with its “clinically tested” premium  
26 formula, will rebuild joint cartilage, improve joint function and reduce joint pain in less than 7

27 <sup>1</sup> The Move Free<sup>®</sup> Advanced line includes: (1) Move Free<sup>®</sup> Triple Strength; Move Free<sup>®</sup> Plus MSM & Vitamin  
28 D; and Move Free<sup>®</sup> Advanced plus MSM (collectively, “Move Free<sup>®</sup> Advanced” or “the Products”).

1 days.

2 4. In making these affirmative representations, Defendant represents to each  
3 purchaser of Move Free<sup>®</sup> Advanced that it has competent scientific evidence that these  
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<sup>®</sup> 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<sup>®</sup>  
9 Advanced products it markets and sells in order to make the representations that it has made  
10 about each of these Products.  
11

12 6. As a result, Defendant is guilty of deceptive conduct in its marketing and sale  
13 of the Move Free<sup>®</sup> 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 Move Free<sup>®</sup> Advanced products.  
19

20 8. By making representations on the box of each Move Free<sup>®</sup> Advanced product  
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<sup>®</sup> Advanced products—that the Products were proven by competent scientific  
26 evidence to be effective against the three major symptoms of arthritis.  
27  
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1           9.     Other than to use the Move Free<sup>®</sup> Advanced products to relieve these  
2 symptoms of arthritis, there is no reason for Plaintiff or the Class members to have purchased  
3 these Products. Plaintiff and the Class members would not have purchased a Move Free<sup>®</sup>  
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           10.    Thus, through the act of purchasing one of Defendant's Move Free<sup>®</sup>  
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           12.    Every purchase of the Move Free<sup>®</sup> Advanced products was tainted with  
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 representations.  
19

20           13.    Defendant's deceptive marketing and advertising, as well as the complete lack  
21 of any disclosure that no competent scientific evidence exists to substantiate the claim that  
22 Move Free<sup>®</sup> 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<sup>®</sup>  
24 Advanced. Defendant's deceptive marketing and advertising campaign has succeeded.  
25 According to Defendant, in 2010 sales of Move Free<sup>®</sup> Advanced exceeded \$100 million.<sup>2</sup>  
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<sup>2</sup> Sales figures are based on Fiscal Year 2010. See <http://www.schiffnutrition.com/movefree.asp> (last visited May 2, 2010).



1 Plaintiff Lerma was exposed to and saw Schiff's claims by reading the Move Free<sup>®</sup>  
2 Advanced label, purchased the Move Free<sup>®</sup> Advanced products in reliance on those claims,  
3 and suffered injury in fact and lost money. Had Plaintiff Lerma known the truth about  
4 Schiff's misrepresentations and omissions, Plaintiff would not have purchased and used the  
5 Move Free<sup>®</sup> 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<sup>®</sup> Advanced products to tens of thousands of consumers in California.  
10

### 11 **FACTUAL ALLEGATIONS**

#### 12 ***The Move Free<sup>®</sup> 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<sup>®</sup> Advanced. Move Free<sup>®</sup> Advanced is available in three different  
16 formulas: (1) Move Free<sup>®</sup> Advanced Triple Strength; (2) Move Free<sup>®</sup> Advanced Plus MSM  
17 & Vitamin D; and (3) Move Free<sup>®</sup> Advanced plus MSM. Defendant began manufacturing,  
18 marketing and selling the Move Free<sup>®</sup> Advanced products nationwide in 1996.<sup>3</sup>  
19

20 21. The Move Free<sup>®</sup> Advanced products are sold in virtually every major food,  
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<sup>®</sup> 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<sup>®</sup> Advanced retails for approximately \$30.00. The following are screen  
25 shots of the Products:  
26  
27

28 <sup>3</sup> 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<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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.

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

1 it into something that assists in lubricating and cushioning joints.

2 25. All of the Move Free<sup>®</sup> Advanced products also contain lesser amounts of other  
3 ingredients including Defendant's "patent-pending" ingredient Uniflex and hyaluronic acid.  
4 On its packaging and labeling, Defendant defines Uniflex as "a ground breaking dual  
5 bioflavonoid antioxidant system that protects joints from harmful antioxidants that accelerate  
6 the breakdown of cartilage and joint tissue." There is no competent scientific evidence that  
7 taking Uniflex or any of its individual ingredients—let alone through oral  
8 administration—results in the body metabolizing it into something that protects joints or  
9 slows the breakdown of cartilage or joint tissue.  
10

11 26. Hyaluronic acid is a component of synovial fluid found in the eyes and joints.  
12 On the Products' labeling and packaging, Defendant claims that hyaluronic acid "helps  
13 lubricate, rejuvenate, re-hydrate, and repair joints." There is no competent scientific  
14 evidence that taking hyaluronic acid—let alone through oral administration—results in the  
15 body metabolizing it into something that helps lubricate, rejuvenate, re-hydrate or repair  
16 joints.  
17

18 27. In addition to those ingredients, Move Free<sup>®</sup> Advanced plus MSM and Move  
19 Free<sup>®</sup> Advanced Plus MSM & Vitamin D also contain methylsulfonylmethane ("MSM"), an  
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

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



1 any of the three major symptoms of arthritis or any other joint related ailments.

2 29. Despite inadequate testing and no scientifically valid confirmation that Move  
3 Free<sup>®</sup> Advanced is an effective joint treatment—let alone an effective treatment for *all* joints  
4 in the human body, for customers of *all* ages and for *all* stages of joint disease—Defendant  
5 states on the Products’ packaging and labeling that Move Free<sup>®</sup> Advanced, with its “clinically  
6 tested” formula will, *inter alia*, “strengthen[], protect[] and rebuild[] joints” and “START[]  
7 COMFORTING SORE JOINTS IN LESS THAN 7 DAYS.” Front and back shots of a  
8 representative Move Free<sup>®</sup> Advanced Triple Strength product label appear as follows:  
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10 (FRONT)



(BACK)

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***The Impact of Defendant’s Wrongful Conduct***

30. Despite the lack of competent scientific evidence, Defendant continues to unequivocally claim that with its “clinically tested” premium formula, Move Free® Advanced provides joint health benefits to all persons.

31. As the manufacturer and distributor of Move Free® Advanced, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in its Products and is in a superior position to learn of the effects—and has learned of the effects—its Products have on consumers.

32. Specifically, Defendant knew or should have known, but failed to disclose that it has no competent scientific evidence that it’s Move Free® Advanced products are effective in treating the three major symptoms of arthritis or any other joint related ailments.

33. Notwithstanding these deceptive representations and material omissions,

1 Defendant conveyed and continues to convey one uniform message: Move Free<sup>®</sup> Advanced,  
2 with its “clinically tested” formula, is effective in treating the three major symptoms of  
3 arthritis.

4 34. Plaintiff and Class members have been and will continue to be deceived or  
5 misled by Defendant’s deceptive representations touting the effectiveness of the Move Free<sup>®</sup>  
6 Advanced products. Plaintiff purchased and used the Move Free<sup>®</sup> Advanced products during  
7 the Class period and in doing so, read, considered and based his decisions to buy the  
8 Products on the above cited representations. Because the Products’ sole purpose is to  
9 provide joint relief for the three major symptoms of arthritis or other joint related ailments,  
10 Defendant’s representations and omissions were a material factor in influencing Plaintiff’s  
11 decision to purchase and use the Move Free<sup>®</sup> Advanced products. There is no other reason  
12 for Plaintiff to have purchased the Move Free<sup>®</sup> Advanced products and Plaintiff would not  
13 have purchased the Products had he known that Defendant did not possess competent  
14 scientific evidence to support the claims that it made about these Products.  
15

16  
17 35. As a result, Plaintiff and the Class members have been damaged in their  
18 purchases of these Products and have been deceived into purchasing Products that they  
19 believed, based on Defendant’s representations, were proven to be effective in treating the  
20 three major symptoms of arthritis and other joint related ailments when, in fact, they are not.

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

### 23 **CLASS ALLEGATIONS**

24  
25 37. Plaintiff brings this action on behalf of himself and all other similarly situated  
26 California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil  
27 Procedure and seeks certification of the following Class:  
28

1 All California residents who, within the applicable statute of  
2 limitations, purchased Move Free<sup>®</sup> Advanced products<sup>4</sup>.

3 Excluded from the Class are Defendant, its parents, subsidiaries,  
4 affiliates, officers and directors, and those who purchased the  
5 Move Free<sup>®</sup> Advanced products for the purpose of resale.

6 38. Members of the Class are so numerous and geographically dispersed that  
7 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that  
8 basis alleges, that the proposed Class contains many thousands of members. The precise  
9 number of Class members is unknown to Plaintiff.

10 39. Common questions of law and fact exist as to all members of the Class and  
11 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 • Whether Defendant's alleged conduct violates public policy;
- 18 • Whether the alleged conduct constitutes violations of the laws asserted  
19 herein;
- 20 • Whether Defendant engaged in false and misleading advertising;
- 21 • Whether Plaintiff and Class members have sustained monetary loss and  
22 the proper measure of that loss;
- 23 • Whether Plaintiff and Class members are entitled to restitution,  
24 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and  
25

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28 <sup>4</sup> The Move Free<sup>®</sup> Advanced products include: (1) Move Free<sup>®</sup> Triple Strength; (2) Move Free<sup>®</sup> Plus MSM &  
Vitamin D; and (3) Move Free<sup>®</sup> Advanced plus MSM.

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

3           40.    The claims asserted by Plaintiff in this action are typical of the claims of the  
4 members of the Class, as the claims arise from the same course of conduct by Defendant, and  
5 the relief sought is common. Plaintiff and Class members suffered uniform damages caused  
6 by their purchase of the Move Free<sup>®</sup> Advanced products manufactured, marketed, and sold  
7 by Defendant.

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

11           42.    A class action is superior to other available methods for the fair and efficient  
12 adjudication of this controversy. The expense and burden of individual litigation would  
13 make it impracticable or impossible for proposed Class members to prosecute their claims  
14 individually. It would thus be virtually impossible for the Class, on an individual basis, to  
15 obtain effective redress for the wrongs done to them. Furthermore, even if Class members  
16 could afford such individualized litigation, the court system could not. Individualized  
17 litigation would create the danger of inconsistent or contradictory judgments arising from the  
18 same set of facts. Individualized litigation would also increase the delay and expense to all  
19 parties and the court system from the issues raised by this action. By contrast, the class  
20 action device provides the benefits of adjudication of these issues in a single proceeding,  
21 economies of scale, and comprehensive supervision by a single court, and presents no  
22 unusual management difficulties under the circumstances here.  
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(7) Representing that [the Move Free<sup>®</sup> Advanced products are] of a particular standard, quality or grade, . . . if [they are] of another.

\* \* \*

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

\* \* \*

(16) Representing that [the Move Free<sup>®</sup> Advanced products have] been supplied in accordance with a previous representation when [they have] not.

49. Defendant violated and continues to violate the Act by representing the Move Free<sup>®</sup> Advanced products, *inter alia*, increase mobility and flexibility, improve joint health, build cartilage and reduce joint pain in less than 7 days when Defendant knew that these representations were unsubstantiated, false and misleading.

50. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

51. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent to so act. A copy of the letter is attached hereto as Exhibit A.

52. If Defendant fails to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add claims for actual, punitive and statutory damages, as appropriate.









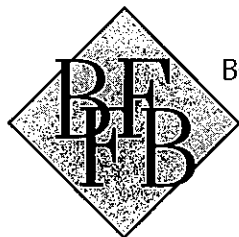




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<sup>2</sup> Admitted Only in California, Missouri  
and Kansas  
<sup>3</sup> Admitted Only in Pennsylvania

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<sup>®</sup> Advanced line of joint dietary supplements<sup>1</sup> are effective treatments for arthritis and other joint related ailments.

Mr. Lerma and others similarly situated purchased the Move Free<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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:

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

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

\* \* \*

- (7) Representing that [Move Free<sup>®</sup> 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<sup>®</sup> 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;

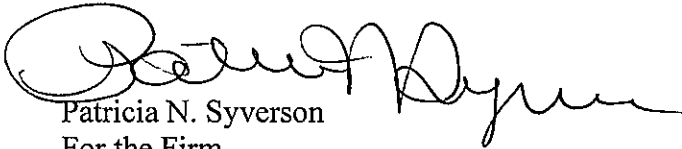
2. Notify all such purchasers so identified that upon their request, Schiff will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Move Free<sup>®</sup> 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

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 & BALINT, P.C.  
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 122 S. Michigan Avenue, Suite 1850  
 13 Chicago, Illinois 6060  
 Telephone: 312-427-3600  
 14 Fax: 312-427-1850

15 Attorneys for Plaintiff

17 UNITED STATES DISTRICT COURT  
 18 SOUTHERN DISTRICT OF CALIFORNIA

19 LUIS LERMA, On Behalf of Himself and  
 20 All Other Similarly Situated California  
 Residents,

22 Plaintiff,

23 v.

24 SCHIFF NUTRITION  
 25 INTERNATIONAL, INC., a Utah  
 Corporation,

26 Defendant.

Case No.:

CLASS ACTION

DECLARATION OF PATRICIA N.  
 SYVERSON PURSUANT TO CALIFORNIA  
 CIVIL CODE §1780(d)

27  
 28



1 I, Patricia N. Syverson, declare as follows:

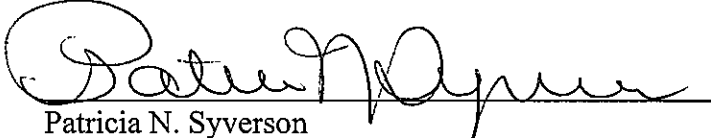
2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C.,  
4 the counsel of record for plaintiff in the above-entitled action.

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<sup>®</sup> Advanced line of joint dietary supplements. Furthermore, Plaintiff Lerma  
8 purchased the Move Free<sup>®</sup> Advanced product in Imperial, California.  
9

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12 Executed this 13th day of May 2011, at Phoenix, Arizona.

13  
14 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
15 ANDREW S. FRIEDMAN  
16 ELAINE A. RYAN  
PATRICIA N. SYVERSON (203111)

17  
18   
Patricia N. Syverson

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FUTTERMAN HOWARD ASHLEY  
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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Luis Lerma
(b) County of Residence of First Listed Plaintiff Imperial
(c) Attorney's (Firm Name, Address, and Telephone Number)
Patricia N. Syverson/Bonnett, Fairbourn, Friedman & Balint, P.C.
2901 N. Central Ave., Ste. 1000, Phoenix, AZ 85012

DEFENDANTS
Schiff Nutrition International, Inc.
County of Residence of First Listed Defendant Salt Lake
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
'11CV1056 JAH MDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 yeb (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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
DEF yeb
DEF yeb

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
TORTS
PERSONAL INJURY
PERSONAL INJURY
FORFEITURE/PENALTY
BANKRUPTCY
OTHER STATUTES
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
LABOR
SOCIAL SECURITY
FEDERAL TAX SUITS
IMMIGRATION

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
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2)
Brief description of cause:
Violation of Civil Code 1750, Business & Professional Code 17200, Breach of Express Warranty

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
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 05/13/2011
SIGNATURE OF ATTORNEY OF RECORD s/ Patricia N. Syverson

FOR OFFICE USE ONLY
RECEIPT # AMOUNT 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

**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.