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9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11 KENT DELPHIA, on Behalf of Himself  
12 and All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 ARCADIA CONSUMER  
16 HEALTHCARE, INC. d/b/a KRAMER  
17 LABORATORIES, INC., a Florida  
18 Corporation,

19 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**  
**DEMAND FOR JURY TRIAL**

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1 Plaintiff, Kent Delphia (“Plaintiff”), by and through his attorneys, brings this  
2 action on behalf of himself and all others similarly situated against Defendant  
3 Arcadia Consumer Healthcare, Inc. and Kramer Laboratories, Inc. (“Defendant” or  
4 “Kramer Labs”). Plaintiff hereby alleges, on information and belief, except for  
5 information based on personal knowledge, which allegations are likely to have  
6 evidentiary support after further investigation and discovery, as follows:  
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### 9 INTRODUCTION

10 1. Kramer Labs is a Florida corporation, with its principal place of  
11 business in Bridgewater, New Jersey, which markets its Fungi-Nail products  
12 (“Product(s)”) as foot fungus treatment. Kramer Labs manufactures, distributes,  
13 and sells the Product. Defendant sells the Product by deceiving the public about the  
14 Product’s abilities to cure nail fungus.  
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17 2. Defendant claims on its advertising, packaging, and website  
18 (<http://funginail.com>) that its Products have many purported benefits such as: All  
19 Fungi-Nail® Products are Clinically Proven to Cure and Prevent Fungal Infections,  
20 Maximum Strength Medicine, Clinically Proven Ingredient to Cure and Prevent  
21 Fungal Infections, Triple Action Formula Kills Fungus, Stops Itching & Burning,  
22 Restores Skin Health.  
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25 3. Defendant misled Plaintiff and Class Members into believing that the  
26 Product would kill nail fungus. These claims are false and misleading.  
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1 4. Plaintiff and members of the classes purchased the Products for their  
2 ingredients, potency, and effects, and paid a premium for Defendant's Products  
3 over comparable products that were not promoted with the misrepresentations at  
4 issue here.  
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6 5. Defendant's representations concerning the Products are unfair,  
7 unlawful, and fraudulent, and have the tendency or capacity to deceive or confuse  
8 reasonable consumers. As such, Defendant's practices violate the California Unfair  
9 Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.* ("UCL"), the California  
10 Consumer Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"), and  
11 California False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.*  
12 ("FAL").  
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15 **JURISDICTION AND VENUE**  
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17 6. This Court has jurisdiction over this matter under the Class Action  
18 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2)(A), as the amount in controversy  
19 exceeds \$5 million, exclusive of interests and costs; it is a class action of over 100  
20 members; and the Plaintiff is a citizen of a state different from at least one  
21 Defendant.  
22

23 7. This Court has personal jurisdiction over Defendant. Defendant has  
24 sufficient minimum contacts with the state of California and purposefully availed  
25 itself, and continues to avail itself, of the jurisdiction of this California through the  
26 privilege of conducting its business ventures in the state of California, thus  
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1 rendering the exercise of jurisdiction by the Court permissible under traditional  
2 notions of fair play and substantial justice.

3 8. Venue is proper in this District under 28 U.S.C. § 1391(a) because a  
4 substantial part of the events or omissions giving rise to Plaintiff's claims occurred  
5 in this district, as Defendant does business throughout this district, and Plaintiff  
6 made his purchase of the Fungi-Nail product in Stanislaus County, California from  
7 a retail store in this District and his purchased Fungi-Nail product was delivered to,  
8 and used, in this District.  
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### 11 THE PARTIES

12 9. Plaintiff, Kent Delphia, is a natural person and a citizen of Stanislaus  
13 County, California. Plaintiff purchased the Fungi-Nail Product from a local  
14 retailer. Prior to his purchase, Plaintiff saw and reviewed Defendant's advertising  
15 claims on the Product packaging and labeling itself, and he made his purchase of  
16 the Product in reliance thereon. Plaintiff specifically relied upon representations  
17 made by Defendant. Plaintiff did not receive the promised benefits or receive the  
18 full value of his purchase.  
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22 10. Defendant, Kramer Laboratories, Inc., is a Florida corporation with its  
23 principal place of business Bridgewater, New Jersey. Defendant is licensed to  
24 conduct business in Florida.  
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26 11. Defendant, Arcadia Consumer Healthcare, Inc., is headquartered in  
27 Bridgewater, New Jersey.  
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1 12. Plaintiff reserves the right to amend this Complaint to add a different  
2 or additional Defendant, including without limitation any officer, director,  
3 employee, supplier, or distributor of Defendant who has knowingly and willfully  
4 aided, abetted, or conspired in the false and deceptive conduct alleged herein.  
5

6 **FACTUAL ALLEGATIONS**  
7

8 13. Fungal nail infections, also known as “onychomycosis,” are very  
9 common. They may affect up to 14% of the general population. <sup>1</sup>  
10

11 14. Toenail fungus is an infection that gets in through cracks in your nail  
12 or cuts in your skin. Because toes are often warm and damp, fungus grows well  
13 there. Different kinds of fungi and sometimes yeast affect different parts of the  
14 nail. Left untreated, an infection could spread to other toenails, skin, or even your  
15 fingernails.  
16

17 15. Infected nails are usually thicker than normal and could be warped or  
18 oddly shaped. They can break easily. Nails with fungus might look yellow.  
19 Sometimes a white dot shows up on the nail and then gets bigger. When fungus  
20 builds up under your nail, it can loosen and even separate the nail from the bed.  
21 The fungus can also spread to the skin around your nail.  
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23 16. With toenail fungus, your nail becomes thick and yellow and may  
24 show white spots and streaks. A type of mold called a dermatophyte causes tinea  
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28 <sup>1</sup> See <https://www.cdc.gov/fungal/nail-infections.html> (last accessed May 25, 2023)

1 unguium, the most common nail fungus. Tinea unguium most frequently targets  
2 your toenails, but it can also affect your fingernails. Onychomycosis is another  
3 name for the condition.

4  
5 17. Kramer Labs manufactures, distributes, advertises, and sells the  
6 Product, which for all relevant purposes are identical. At all relevant times, Kramer  
7 Labs has marketed the Product in a consistent and uniform manner relating to  
8 ingredients, potency, and effect. Kramer Labs sells the Product on its website and  
9 through various distributors nationwide.  
10

11 18. Fungi-Nail is advertised as a treatment for nail fungus, but the  
12 supposed medication is ineffective against nail fungus. For this reason, Kramer  
13 Labs has been the subject of an investigation by the Federal Trade Commission  
14 and has numerous consumer complaints.  
15

16  
17 19. Kramer Labs misleadingly advertises that the Fungi-Nail product is a  
18 treatment for nail fungus. The Product name is clear – Fungi-Nail – every  
19 reasonable consumer will immediately assume the Product is a nail fungus  
20 treatment.  
21

22 20. The front of the package states “FUNGI NAIL ANTIFUNGAL  
23 LIQUID” in bold lettering with a picture of an infected looking toenail:  
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21. All of the misrepresentations at issue here were consistently made at all times during the class period. Kramer Labs made uniform misrepresentations about the Product that Plaintiff and all class members were exposed to the same misleading advertisements.

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22. The misleading name is on the front label of every Product. The Product label further states “CLINICALLY PROVEN TO CURE AND PREVENT FUNGUL INFECTIONS.” Kramer Lab’s website states the same claims right above the picture of an infected toenail.

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23. Further, Kramer Lab’s advertisements feature misleading instructions showing the Product being applied to the toenail even though the Product does not kill nail fungus:



## EASY TO APPLY WITH PINPOINT BRUSH APPLICATOR

Delivers the right amount of treatment  
right where you need it around the toenail

24. The misrepresentation identified above, when viewed in the context of the labeling as a whole and the product at issue, has the tendency or capacity to deceive or confuse reasonable consumers into believing that the Product will treat nail fungus.

25. Further, Kramer Labs intentionally misleads consumers by mischaracterizing the Products as clinically proven and stating:

- Fungi Nail's maximum strength medicine is so powerful it helps Cure AND Prevent fungal infections.



- 1 • Plus, its triple action formula kills fungus, stops itching and burning, and
- 2 restores skin health.
- 3 • Get maximum strength medicine without a prescription with Fungi-Nail.
- 4

5 26. Plaintiff and Class members would not have purchased the Product or  
6 would not have paid as much for the Product, had they known the truth about the  
7 mislabeled and falsely advertised Product.

8  
9 27. Plaintiff would purchase the Product again, however; at this time  
10 Plaintiff is unable to rely on the labeling of these Products because he is unsure  
11 whether those representations are truthful.

### 12 CLASS ACTION ALLEGATIONS

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14 28. Plaintiff brings this action on behalf of himself and the following  
15 Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3).

16 Specifically, the Classes are defined as:

17  
18 **National Class:** All persons in the United States who purchased the  
19 Products during the fullest period of law.

20 In the alternative, Plaintiff brings this action on behalf of the following State  
21 Sub-Class:

22  
23 **California Sub-Class:** All persons in the State of California who purchased  
24 the Products during the fullest period of law.

25 29. Excluded from the Classes are (a) any person who purchased the  
26 Products for resale and not for personal or household use, (b) any person who  
27 signed a release of any Defendant in exchange for consideration, (c) any officers,  
28

1 directors or employees, or immediate family members of the officers, directors or  
2 employees, of any Defendant or any entity in which a Defendant have a controlling  
3 interest, (d) any legal counsel or employee of legal counsel for any Defendant, and  
4  
5 (e) the presiding Judge in this lawsuit, as well as the Judge's staff and their  
6 immediate family members.

7           30. Plaintiff reserves the right to amend the Class definitions if further  
8 investigation and discovery indicates that the Class definitions should be narrowed,  
9 expanded, or otherwise modified.

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11           31. **Numerosity and Ascertainability:** Plaintiff does not know the exact  
12 number of members of the putative classes. Due to Plaintiff's initial investigation,  
13 however, Plaintiff is informed and believes that the total number of Class members  
14 is at least in the tens of thousands, and that members of the Class are numerous and  
15 geographically dispersed throughout California and the United States. While the  
16 exact number and identities of the Class members are unknown at this time, such  
17 information can be ascertained through appropriate investigation and discovery,  
18 including Defendant's records, either manually or through computerized searches.  
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22           32. **Typicality and Adequacy:** Plaintiff's claims are typical of those of  
23 the proposed Class, and Plaintiff will fairly and adequately represent and protect  
24 the interests of the proposed Class. Plaintiff does not have any interests that are  
25 antagonistic to those of the proposed Class. Plaintiff has retained counsel  
26 competent and experienced in the prosecution of this type of litigation.  
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1           33.   **Commonality:** The questions of law and fact common to the Class  
2 members, some of which are set out below, predominate over any questions  
3 affecting only individual Class members:  
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5           a. whether Defendant committed the conduct alleged herein;

6           b. whether Defendant's conduct constitutes the violations of laws alleged  
7 herein;

8           c. whether Defendant's labeling, sale and advertising set herein are unlawful,  
9 untrue, or are misleading, or reasonably likely to deceive;

10           d. whether the Fungi-Nail products are adulterated and/or misbranded under  
11 the California Health & Safety Code or federal law;

12           e. whether Defendant knew or should have known that the representations  
13 were false or misleading;

14           f. whether Defendant knowingly concealed or misrepresented material facts  
15 for the purpose of inducing consumers into spending money on the Fungi Nail  
16 products;

17           g. whether Defendant's representations, concealments and non-disclosures  
18 concerning the Fungi-Nail products are likely to deceive consumers;

19           h. whether Defendant's representations, concealments and non-disclosures  
20 concerning the Fungi-Nail products violate California consumer laws and/or  
21 the common law;  
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1 i. whether Defendant should be permanently enjoined from making the claims  
2 at issue; and

3 j. whether Plaintiff and the Class are entitled to restitution and damages.  
4

5 34. **Predominance and Superiority:** Common questions, some of which  
6 are set out above, predominate over any questions affecting only individual Class  
7 members. A class action is the superior method for the fair and just adjudication of  
8 this controversy. The expense and burden of individual suits makes it impossible and  
9 impracticable for members of the proposed Class to prosecute their claims  
10 individually and multiplies the burden on the judicial system presented by the  
11 complex legal and factual issues of this case. Individualized litigation also presents  
12 a potential for inconsistent or contradictory judgments. In contrast, the class action  
13 device presents far fewer management difficulties and provides the benefits of single  
14 adjudication, economy of scale, and comprehensive supervision by a single court on  
15 the issue of Defendant's liability. Class treatment of the liability issues will ensure  
16 that all claims and claimants are before this Court for consistent adjudication of the  
17 liability issues. A class action is superior to other available methods for the fair and  
18 efficient adjudication of this controversy for at least the following reasons:  
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23 a. given the complexity of issues involved in this action and the expense of  
24 litigating the claims, few, if any, Class members could afford to seek legal  
25 redress individually for the wrongs that Defendant committed against them,  
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1 and absent Class members have no substantial interest in individually  
2 controlling the prosecution of individual actions;

3  
4 b. when Defendant’s liability has been adjudicated, claims of all Class members  
5 can be determined by the Court;

6  
7 c. this action will cause an orderly and expeditious administration of the Class  
8 claims and foster economies of time, effort, and expense, and ensure  
9 uniformity of decisions; and

10  
11 d. without a class action, many Class members would continue to suffer injury,  
12 and Defendant’s violations of law will continue without redress while  
13 Defendant continues to reap and retain the substantial proceeds of their  
14 wrongful conduct.  
15

16  
17 35. **Manageability:** The trial and litigation of Plaintiff’s and the proposed  
18 Class claims are manageable. Defendant has acted and refused to act on grounds  
19 generally applicable to the Class, making appropriate final injunctive relief and  
20 declaratory relief with respect to the Class as a whole.  
21

22 **FED. R. CIV. P. 9(b) ALLEGATIONS**

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24 36. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n  
25 alleging fraud or mistake, a party must state with particularity the circumstances  
26 constituting fraud or mistake.” To the extent necessary, as detailed in the paragraphs  
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1 above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing  
2 the following elements with sufficient particularity.

3 37. **WHO:** Defendant made material misrepresentations and/or omissions  
4 of fact in its labeling and marketing of the Products by representing that the Products  
5 are for treatment of nail fungus.  
6

7 38. **WHAT:** Defendant's conduct here was and continues to be fraudulent  
8 because it has the effect of deceiving consumers into believing that the Products are  
9 for the treatment of nail fungus. Defendant omitted from Plaintiff and Class  
10 Members that the Products are not for treating nail fungus. Defendant knew or  
11 should have known this information is material to all reasonable consumers and  
12 impacts consumers' purchasing decisions. Yet, Defendant has and continues to  
13 represent that the Products are for the treatment of nail fungus when they are not and  
14 have omitted from the Products' labeling the fact, they are not suitable for the nail  
15 fungus treatment.  
16  
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18 39. **WHEN:** Defendant made material misrepresentations and/or omissions  
19 detailed herein, including that the Products are for the treatment of nail fungus  
20 continuously throughout the applicable Class period(s).  
21  
22

23 40. **WHERE:** Defendant's material misrepresentations and omissions, that  
24 the Products are for nail fungus treatment, were located on the very center of the  
25 front label of the Products in bold lettering surrounded by a gold star that contrasts  
26 with the background of the packaging, which instantly catches the eye of all  
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1 reasonable consumers, including Plaintiff, at the point of sale in every transaction.

2 The Products are sold numerous retail stores and online stores.

3 41. **HOW:** Defendant made written misrepresentations right on the front  
4 label of the Products that the Products were for nail fungus treatment even though  
5 they are not. As such, Defendant's claims are false and misleading. Moreover,  
6 Defendant omitted from the Product labeling the fact that the Product is not suitable  
7 for the nail fungus treatment. And as discussed in detail throughout this Complaint,  
8 Plaintiff and Class Members read and relied on Defendant's representations and  
9 omissions before purchasing the Products.  
10

11  
12 42. **WHY:** Defendant misrepresented their Products as being for suitable  
13 for nail fungus treatment and omitted from the Products' labeling the fact that they  
14 are not for the express purpose of inducing Plaintiff and Class Members to purchase  
15 the Products at a substantial price premium. As such, Defendant profited by selling  
16 the misrepresented Products to at least thousands of consumers throughout the  
17 nation.  
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21 **FIRST CAUSE OF ACTION**

22 **Violations of the California Consumers Legal Remedies Act,  
23 Cal. Civ. Code § 1750, et seq.**

24 43. Plaintiff incorporates all preceding factual allegations as if fully set  
25 forth here.

26 44. Plaintiff brings this claim on his own behalf and on behalf of each  
27 member of the Class.  
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1 45. Plaintiff and each member of the Class are consumers who purchased  
2 the Product from Defendant for personal, family, or household purposes.

3 46. Plaintiff and the Class are “consumers” as that term is defined by the  
4 California Consumers Legal Remedies Act (the “CLRA”) in Cal. Civ. Code §  
5 1761(d).  
6

7 47. Defendant’s products sold to Plaintiff and Class members are “goods”  
8 within the meaning of Cal. Civ. Code §1761(a).  
9

10 48. Defendant’s sales of its product to Plaintiff and Class members are a  
11 “service” within the meaning of Cal. Civ. Code § 1761(b).  
12

13 49. Defendant’s actions, representations, and conduct are covered by the  
14 CLRA, because they extend to transactions that were intended to result, or which  
15 have resulted in, the sale of goods to consumers.  
16

17 50. Defendant sold the Product to Plaintiff and the Class members without  
18 adequately disclosing the product does not treat nail fungus.

19 51. Cal. Civ. Code § 1770(a)(5), prohibits “[r]epresenting that goods or  
20 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
21 quantities which they do not have or that a person has a sponsorship, approval,  
22 status, affiliation, or connection which he or she does not have.” By engaging in  
23 the conduct set forth herein, Defendant violated and continues to violate CLRA  
24 Section 1770(a)(5), because Defendant’s conduct constitutes unfair methods of  
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1 competition and unfair or fraudulent acts or practices, in that Defendant  
2 misrepresents the particular characteristics, benefits and quantities of its services.

3 52. Cal. Civ. Code § 1770(a)(7) prohibits representing that goods or  
4 services are of a particular standard, quality, or grade, or that goods are of a  
5 particular style or model if they are of another. By engaging in the conduct set  
6 forth herein, Defendant violated and continues to violate CLRA Section  
7 1770(a)(7), because Defendant’s conduct constitutes unfair methods of competition  
8 and unfair or fraudulent acts or practices, in that Defendant misrepresents the  
9 particular standard, quality or grade of its services.  
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12 53. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
13 with intent not to sell them as advertised.” By engaging in the conduct set forth  
14 herein, Defendant violated and continues to violate Section 1770(a)(9), because  
15 Defendant’s conduct constitutes unfair methods of competition and unfair or  
16 fraudulent acts or practices, in that Defendant advertises services with the intent  
17 not to sell the services as advertised.  
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21 54. Cal. Civ. Code § 1770(a)(14) prohibits “[r]epresenting that a  
22 transaction confers or involves rights, remedies, or obligations that it does not have  
23 or involve, or that are prohibited by law.” By engaging in the conduct set forth  
24 herein, Defendant violated and continues to violate CLRA Section 1770(a)(14),  
25 because Defendant’s conduct constitutes unfair methods of competition and unfair  
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1 or fraudulent acts or practices, in that Defendant misrepresents the rights,  
2 remedies, and obligations of its services.

3 55. Cal. Civ. Code § 1770(a)(16) prohibits “[r]epresenting that the subject  
4 of a transaction has been supplied in accordance with a previous representation  
5 when it has not.” By engaging in the conduct set forth herein, Defendant violated  
6 and continue to violate CLRA Section 1770(a)(16), because Defendant’s conduct  
7 constitutes unfair methods of competition and unfair or fraudulent acts or practices,  
8 in that Defendant misrepresents that its product has been supplied in accordance  
9 with its previous representations when they have not.

10 56. Plaintiff and the Class acted reasonably when they purchased the  
11 Product from Defendant on the belief that Defendant’s representations were true  
12 and lawful.

13 57. Plaintiff and the Class suffered injuries caused by Defendant because  
14 (a) they would not have purchased the Product from Defendant absent Defendant’s  
15 representations regarding the Product’s nail fungus treatment capabilities; (b) they  
16 paid a price premium for the Product they purchased from Defendant based on  
17 Defendant’s misrepresentations; and (c) Defendant’s Product sales did not have the  
18 characteristics, benefits, or quantities as consumers were led to believe.  
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25 58. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and the Class  
26 seek injunctive and equitable relief for Defendant’s CLRA violations. Plaintiff has  
27 mailed an appropriate demand letter consistent with California Civil Code §  
28

1 1782(a). If Defendant fails to take corrective action within 30 days of receipt of the  
2 demand letter, Plaintiff will amend his complaint to include a request for claims for  
3 actual, punitive, and statutory damages, as appropriate.  
4

5 **SECOND CAUSE OF ACTION**  
6 **Violations of the California Unfair Competition Law**  
7 **Cal. Bus. & Prof. Code § 17200**

8 59. Plaintiff incorporates all preceding factual allegations as if fully set  
9 forth here.

10 60. Plaintiff brings this claim on his own behalf and on behalf of each  
11 member of the Class.

12 61. Cal. Bus. & Prof Code § 17200, *et seq.* (the “UCL”) prohibits acts of  
13 “unfair competition,” including any unlawful, fraudulent, or unfair business acts or  
14 practices.  
15

16 62. Under the “unlawful” prong of the UCL, a violation of another law is  
17 treated as unfair competition and is independently actionable.  
18

19 63. Defendant committed unlawful practices because it violated *inter alia*  
20 Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a), which declares  
21 unlawful unfair and deceptive acts or practices in or affecting commerce.  
22 Defendant’s conduct as alleged herein is both unfair and deceptive.  
23

24 64. Defendant also committed unlawful practices because it violated *inter*  
25 *alia* the Consumers Legal Remedies Act, the False Advertising Law, and other  
26 applicable laws as described herein.  
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1 65. Plaintiff reserves the right to allege other violations of law which  
2 constitute other unlawful business acts or practices as Defendant's conduct is  
3 ongoing and continues to this date.

4  
5 66. Under the "unfair" prong of the UCL, a business practice is unfair if  
6 that practice offends an established public policy or when the practice is immoral,  
7 unethical, oppressive, unscrupulous, or substantially injurious to consumers.

8  
9 67. Defendant's acts and practices are unfair because the gravity of the  
10 consequences of Defendant's conduct as described above outweighs any  
11 justification, motive, or reason.

12  
13 68. Defendant's acts and practices are also immoral, unethical,  
14 unscrupulous, and offend established public policy and are substantially injurious to  
15 Plaintiff and the other members of the Class and could not have been reasonably  
16 avoided by Plaintiff and the Class.

17  
18 69. Plaintiff and the Class acted reasonably when they purchased the  
19 Product from Defendant on the belief that the Product would treat nail fungus.

20  
21 70. As a result of Defendant's unlawful, unfair, and fraudulent business  
22 practices, Plaintiff and the Class have suffered an injury in fact and have lost money  
23 in an amount to be determined at the trial of this action.

24  
25 71. Plaintiff and the other members of the Class are entitled to an order  
26 pursuant to Cal. Bus. & Prof Code §17203, enjoining Defendant's unlawful and  
27 unfair conduct, and such other orders and judgments necessary to disgorge  
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1 Defendant's ill-gotten gains and to restore to Plaintiff and the Class any amounts  
2 assessed and/or paid as a result of Defendant's wrongful conduct.

3  
4 **THIRD CAUSE OF ACTION**  
5 **Violations of the California False Advertising Law,**  
6 **Cal. Bus. & Prof. Code § 17500, *et seq.***

7 72. Plaintiff incorporates all preceding factual allegations as if fully set  
8 forth here.

9 73. Plaintiff brings this claim on his own behalf and on behalf of each  
10 member of the Class.

11 74. California's False Advertising Law (the "FAL"), Cal. Bus. & Prof.  
12 Code §§ 17500, *et seq.*, makes it "unlawful for any person to make or disseminate  
13 or cause to be made or disseminated before the public in this state . . . in any  
14 advertising device . . . or in any other manner or means whatever, including over the  
15 Internet, any statement, concerning . . . personal property or services, professional  
16 or otherwise, or performance or disposition thereof, which is untrue or misleading  
17 and which is known, or which by the exercise of reasonable care should be known,  
18 to be untrue or misleading."  
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22 75. Defendant misleads consumers regarding its Fungi-Nail Products as  
23 having fungus treatment capabilities without adequately disclosing that the Products  
24 are not capable of treating nail fungus. Defendant's advertisements and omissions  
25 were made in and originated from California and fall within the definition of  
26 advertising as contained in the FAL in that advertisements were intended to induce  
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1 consumers to purchase the Product from Defendant. Defendant knew that those  
2 advertisements and omissions were false and misleading.

3 76. Defendant's advertising regarding the Products' nail fungus treatment  
4 qualities was false and misleading to a reasonable consumer, including Plaintiff.  
5

6 77. Defendant violated the FAL by misleading Plaintiff and the Class to  
7 believe that its Products were suitable for treating nail fungus.  
8

9 78. Defendant knew or should have known, through the exercise of  
10 reasonable care, that its advertisements about its Products were misleading.

11 79. Plaintiff and the Class lost money or property as a result of Defendant's  
12 FAL violations because (a) they would not have the Product absent Defendant's  
13 misrepresentations; (c) they paid a price premium for the Product based on  
14 Defendant's misrepresentations; and (d) Defendant's Product did not have the  
15 characteristics, benefits, or quantities as consumers were led to believe.  
16  
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18 **FOURTH CAUSE OF ACTION**  
19 **Negligent Misrepresentation**

20 80. Plaintiff incorporates all preceding factual allegations as if fully set  
21 forth here.  
22

23 81. Plaintiff brings this claim on h own behalf and on behalf of each  
24 member of the Class.  
25

26 82. Defendant misrepresented that its Fungi-Nail Products have nail fungus  
27 treatment capabilities. However, Defendant's Products do not treat nail fungus.  
28

1 83. At the time Defendant made these representations, Defendant knew or  
2 should have known that these representations were false or made them without  
3 knowledge of their truth or veracity.

4  
5 84. Defendant also negligently misrepresented and/or negligently omitted  
6 material facts about the Products' nail fungus treatment qualities.

7  
8 85. The negligent misrepresentations and omissions made by Defendant,  
9 upon which Plaintiff and the Class reasonably and justifiably relied, were intended  
10 to induce, and actually induced Plaintiff and the Class to purchase the Products from  
11 Defendant.

12  
13 86. Plaintiff and the Class would not have purchased the Products from  
14 Defendant if the true facts had been known.

15  
16 87. The negligent actions of Defendant caused damage to Plaintiff and the  
17 Class members, who are entitled to damages and other legal and equitable relief as  
18 a result.

19  
20 **FIFTH CAUSE OF ACTION**  
21 **Unjust Enrichment**

22 88. Plaintiff incorporates all preceding factual allegations as if fully set  
23 forth here.

24 89. Plaintiff brings this claim on his own behalf and on behalf of each  
25 member of the Class.

26  
27 90. As a result of its unjust conduct, Defendant has been unjustly enriched.  
28

1 91. By reason of Defendant's wrongful conduct, Defendant have benefited  
2 from improper receipt of funds, and under principles of equity and good conscience,  
3 Defendant should not be permitted to keep this money.

4  
5 92. As a result of Defendant's conduct, it would be unjust and/or  
6 inequitable for Defendant to retain the benefits of its conduct without restitution to  
7 Plaintiffs and the Class. Accordingly, Defendant must account to Plaintiff and the  
8 Class for its unjust enrichment.  
9

10 **SIXTH CAUSE OF ACTION**

11 **Fraud**  
12 **(Nationwide Class)**

13 93. Plaintiff incorporates all preceding factual allegations as if fully set  
14 forth here.

15 94. Plaintiff brings this claim on his own behalf and on behalf of each  
16 member of the Class.  
17

18 95. As alleged herein, Defendant knowingly made material  
19 misrepresentations and omissions regarding the Products on the Products' labeling  
20 and packaging in the Products' advertisements, and/or on its website, specifically  
21 the nail fungus treatment representations and omissions alleged more fully herein.  
22

23 96. Defendant made these material representations and omissions in order  
24 to induce Plaintiff and putative Nationwide Class Members to purchase the Products.  
25  
26  
27  
28



1 97. Defendant knew the representations and omissions regarding the  
2 Products were false and misleading but nevertheless made such representations  
3 through the marketing, advertising and on the Products' labeling.  
4

5 98. In reliance on these nail fungus treatment representations and  
6 omissions, Plaintiff and putative Nationwide Class Members were induced to, and  
7 did, pay monies to purchase the Products.  
8

9 99. Had Plaintiff and the Nationwide Class known the truth about the  
10 Products, they would not have purchased the Products.  
11

12 100. As a proximate result of the fraudulent conduct of Defendant, Plaintiff  
13 and the putative Nationwide Class paid monies to Defendant, through their regular  
14 retail sales channels, to which Defendant are not entitled, and have been damaged in  
15 an amount to be proven at trial.  
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of all others similarly  
19 situated members of the Classes, pray for relief and judgment, including entry of an  
20 order:  
21

22 A. Declaring that this action is properly maintained as a class action,  
23 certifying the proposed Class(es), appointing Plaintiff as Class Representative and  
24 appointing Plaintiff's counsel as Class Counsel;  
25

26 B. Directing that Defendant bear the costs of any notice sent to the  
27 Class(es);  
28

1 C. Declaring that Defendant must disgorge, for the benefit of the Class(es),  
2 all or part of the ill-gotten profits they received from the sale of the Products, or  
3 order Defendant to make full restitution to Plaintiff and the members of the  
4 Class(es);  
5

6 D. Awarding restitution and other appropriate equitable relief;  
7

8 E. Granting an injunction against Defendant to enjoin them from  
9 conducting their business through the unlawful, unfair, and fraudulent acts or  
10 practices set forth herein;  
11

12 F. Granting an Order requiring Defendant to fully and appropriately recall  
13 the Products and/or to remove the claims on its website and elsewhere, including the  
14 representations regarding the Products' nail fungus treatment capabilities;  
15

16 G. Ordering a jury trial and damages according to proof;  
17

18 H. Enjoining Defendant from continuing to engage in the unlawful and  
19 unfair business acts and practices as alleged herein;  
20

21 I. Awarding attorneys' fees and litigation costs to Plaintiff and members  
22 of the Class(es);  
23

24 J. Awarding civil penalties, prejudgment interest and punitive damages as  
25 permitted by law; and  
26  
27  
28

1 K. Ordering such other and further relief as the Court deems just and  
2 proper.

3  
4 **JURY DEMAND**

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

6 DATED: May 25, 2023

*s/Manfred Muecke*

**Manfred, APC**

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Fungi-Nail Products Are Misbranded, Ineffective](#)

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