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Clerk of the Superior Court
By Margaret M Demaria, Deputy Clerk

5 Attorneys for Plaintiff and the Class

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

GINA DELAROSA, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

BOIRON USA, INC., a corporation of unknown
origin; and DOES 1-20, Inclusive,

Defendants.

Case No. 30-2010-00404262-CU-MT-CXC

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

HON. DAVID C. VELASQUEZ

DEPT CX101

I. INTRODUCTION

Defendants are defrauding Californians by claiming that a tablet called "Children's Coldcalm" pellets, will provide relief from: sneezing, runny nose, nasal congestion, sinus pain, headaches, and sore throat.

These assertions would be welcomed by many if they were accurate, but the claims are absolutely false. The product is nothing more than a sugar tablet. Plaintiff brings this lawsuit to enjoin ongoing deceptions and to recover the profits generated by these false and misleading claims.

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1 **II. THE PARTIES**

2 1. GINA DELAROSA ("Plaintiff") is a resident of California who purchased Children's
3 Coldcalm.

4 2. BOIRON USA, Inc., ("Defendant") is the manufacturer and distributor of Children's
5 Coldcalm, and is a business entity organized pursuant to the laws of Pennsylvania that does business in
6 California.

7 3. Plaintiff does not know the true names or capacities of the persons, or entities, sued
8 herein as DOES 1 to 20, and therefore, sues such defendants by such fictitious names. Plaintiff is
9 informed and believes and thereon alleges that each of the DOE defendants is in some manner legally
10 responsible for the damages suffered by Plaintiff and the members of the class as alleged herein.
11 Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when
12 they have been ascertained, along with appropriate charging allegations, as may be necessary.
13

14 **III. JURISDICTION AND VENUE**

15 4. This Court has jurisdiction over all causes of action asserted herein pursuant to the
16 California Constitution. This case involves an area of law reserved for state courts, as it neither
17 challenges whether the product is marketed in accordance with customary homeopathic theory nor
18 does it infringe upon the federal government's interest in assuring that homeopathic products are
19 properly labeled and packaged. Rather, this lawsuit sounds in fraud and involves consumers who have
20 suffered cognizable injury, advances legitimate state concerns in ensuring that marketers do not make
21 misleading claims beyond the scope of regulation by federal law, and is thus outside of the Federal
22 Drug Administration's regulatory role. Further, this case involves conduct unknown by the Federal
23 Drug Administration until the time a product is marketed, and advances California's very significant
24 interest in ensuring truth in advertising.

25 5. Venue is proper in this Court because Defendants have received substantial
26 compensation from sales in this County. Specifically, each Defendant knowingly engages in activities
27 directed at consumers in this County, and each Defendant obtains substantial benefits from the

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1 Defendants' common scheme perpetrated in this County. Plaintiff has filed concurrently herewith the
2 declaration of venue required by Civil Code Section 1780(d).

3 6. Defendants and other out-of-state participants can be brought before this Court pursuant
4 to California's "long-arm" jurisdictional statute.

5
6 **IV. FACTS**

7 7. Children's Coldcalm is nothing more than a sugar tablet. Defendant uniformly
8 advertises that Children's Coldcalm will relieve the common cold, including: sneezing, runny nose,
9 nasal congestion, sinus pain, headaches, and sore throat. True and correct copies of these advertising
10 claims are attached to this Complaint as Exhibit 1 and Exhibit 2.

11 8. Earlier this year, Plaintiff purchased Children's Coldcalm. She did so after reading,
12 believing, and relying upon the advertising claims attached as Exhibits 1 and 2. Plaintiff's family used
13 Children's Coldcalm as directed, but did not obtain the results promised by Defendant's advertising. It
14 was worthless to them and provided no benefits. In reality, Children's Coldcalm has no impact on the
15 common cold.

16 9. Defendants sell Children's Coldcalm for approximately \$10.00 per unit based on the
17 preceding false advertising claims. As a result, Defendants have wrongfully taken hundreds of
18 thousands of dollars from California consumers.

19 10. Children's Coldcalm appeals to consumers because of its labeling as a homeopathic
20 medicine.

21
22 **A. Homeopathy**

23 11. Children's Coldcalm belongs to a class of medicine known as "natural" or
24 "homeopathic" as prominently advertised on the packaging of Children's Coldcalm.

25 12. While marketed as drugs effective in the treatment for any ailment or condition,
26 homeopathic "drugs" are not held to the same rigorous standards as other drugs. This can and has lead
27 to serious confusion. At times, as shown by Children's Coldcalm, this confusion crosses the line into
28 intentional deception and fraud. Defendant is attempting to have its cake and eat it too. Defendant is

1 taking advantage of the public's desire for natural products, but also deceiving the public into
2 believing that Children's Coldcalm is an effective, regulated drug that is held to the same standards as
3 true medical drugs.

4 13. Homeopathic drugs are not classified as such by demonstrated effectiveness, but by
5 "provings" conducted in the 1800's and early 1900's. These "provings" did not show effectiveness in
6 curing ailments. In fact, the "provings" showed that the homeopathic substance caused symptoms
7 similar to those of the ailment. These "provings" were based on the "law of similars"—a notion that
8 symptoms of disease, ailment, or condition can be cured by extremely small amounts of substances
9 that produce similar symptoms in healthy people when administered in large amounts.

10 14. After being subjected to "provings" (showing that the substance was suspected to cause
11 the same symptoms as a specific ailment or condition), homeopathic solutions were then included in
12 the Homeopathic Pharmacopeia. The 1938 Federal Food, Drug, and Cosmetic Act ("FDCA")
13 recognized as drugs all substances included in the Homeopathic Pharmacopeia of the United States.
14 However, neither the Food & Drug Administration ("FDA") nor any law recognizes the drugs as
15 effective to treat anything; it recognizes them as fit for human consumption in very small quantities.
16 Even the Homeopathic Pharmacopeia does not list its drugs as fit to treat specific symptoms, ailments,
17 or conditions. The Homeopathic Pharmacopeia actually describes how the drugs are prepared for
18 homeopathic use and leaves the decision for reason for use up to the practitioner (or manufacturer).

19
20 **B. Homeopathic Effectiveness**

21 15. The effectiveness of homeopathy has been in dispute since its inception. There have
22 been numerous "studies" that claim to prove the effectiveness of homeopathic remedies. However,
23 when these studies are scrutinized, none has held up. For example, in 2005, the Government of
24 Switzerland conducted 110 placebo-controlled homeopathy trials. The study found that any positive
25 clinical effects of homeopathy are nothing more than placebo effects.

26 16. Health organizations such as the American Medical Association and the National
27 Health Service have issued statements that there is no scientific evidence to support the use of
28 homeopathic treatments in medicine. Even homeopathy's own supporters, such as the National Center

1 for Complementary and Alternative Medicine, admit that “[t]here is [] no condition for which
2 homeopathy has been proven to be an effective treatment.”

3
4 **C. Homeopathic Drug Preparation**

5 17. Homeopathic remedies are prepared through repeated dilution (“succussion”) of
6 “natural” ingredients. This serial dilution also includes repeated shaking and striking of the substance.
7 This process is posited to increase the effectiveness of the substance even if after the dilutions none of
8 the original substance remains. The homeopathic ingredients in Children’s Coldcalm range from
9 various flowers, vegetables, insects, metals, and poison. In order to not poison a user, the dilutions in
10 Children’s Coldcalm are claimed to be up to 3C and 6C.

11 18. To give an idea of the magnitude of the dilution, a 6C dilution gives one part ingredient
12 to 1 trillion parts of the solution. Dilutions to this extent leave the solution with no trace of the
13 original ingredient.

14 19. The idea that a substance could be completely physically lacking and still be effective
15 violates fundamental principles of science. In lower dilutions, the original substance is theoretically
16 present though not detectable even through the use of sensitive chemical analysis.

17 20. That a substance can be effective without actually being present or by being present in
18 such small quantities as to not be detectable runs contrary to dose-response relationship established by
19 pharmacology.

20 21. Defendant produces expensive sugar tablets and plays off of consumers’ trust and fears.
21 Consumers trust Defendant because Defendant misleads the consumer into believing that: 1) the
22 ingredients in Children’s Coldcalm have been proven effective and deemed as such by the FDA; 2)
23 Defendant’s ideas about medicine and treatment have been proven effective; and 3) the ingredients in
24 Children’s Coldcalm are actually present in Children’s Coldcalm. The facts are: 1) the FDA has never
25 deemed the Children’s Coldcalm as effective against any ailment or condition; 2) Defendants
26 treatments have never been proven effective, nor can they be since the tablets contain none of its
27 purported active ingredients; and 3) serial dilutions, such as those claimed by Defendant, render the
28 ingredients non-existent.

1 27. ADEQUACY: Plaintiff will fairly and adequately represent and protect the interests of
2 the Class. Plaintiff has no interest adverse to that of the class. Plaintiff has retained counsel with
3 substantial experience in handling complex class action litigation. Plaintiff and his counsel are
4 committed to vigorously prosecuting this action on behalf of the Class. Plaintiff has retained counsel
5 that are widely recognized as some of the most successful and effective class action litigators in
6 California, who frequently lecture at approved MCLE seminars regarding class action strategy, and
7 whose trial victories have been publicized on CNN, Fox News, MSNBC, and nearly every major
8 California newspaper. Plaintiff's counsel has also been certified as lead class counsel in similar class
9 actions.

10 28. SUPERIORITY: A class action is superior to other available methods for the fair and
11 efficient adjudication of the present controversy. Individual joinder of all members of the class is
12 impracticable. Even if individual class members had the resources to pursue individual litigation, it
13 would be unduly burdensome to the courts in which the individual litigation would proceed.
14 Individual litigation magnifies the delay and expense to all parties in the court system of resolving the
15 controversies engendered by Defendants' common course of conduct. The class action device allows
16 a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and
17 efficient handling of all class members' claims in a single forum. The conduct of this action as a class
18 action conserves the resources of the parties and of the judicial system and protects the rights of the
19 class members. Furthermore, for many, if not all, a class action is the only feasible mechanism that
20 allows an opportunity for legal redress and justice. Adjudication of individual class members' claims
21 with respect to the Defendants would, as a practical matter, be dispositive of the interests of other
22 members not parties to the adjudication, and could substantially impair or impede the ability of other
23 class members to protect their interests.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT**

4 **(On Behalf of Plaintiff and Class against Defendants)**

5 29. Plaintiff incorporates by this reference the allegations contained in paragraphs 1
6 through 28 as if fully set forth herein and, to the extent necessary, pleads this cause of action in the
7 alternative.

8 30. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
9 lost money as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this
10 action, Plaintiff purchased Children's Coldcalm for her own personal use. In so doing, she reviewed,
11 believed, and relied upon each of the preceding marketing claims.

12 31. Plaintiff consumed Children's Coldcalm as directed, but it did not work as advertised,
13 nor did Plaintiff experience any of the promised benefits. Children's Coldcalm was worthless to
14 Plaintiff and the advertising claims attached as Exhibit 1 and 2 were false and misleading.

15 32. Prior to filing this action, Plaintiff's counsel mailed to Defendants, by certified mail,
16 return receipt requested, the written notice required by Civil Code Section 1782(a). An accurate copy
17 of that letter is attached to this Complaint as Exhibit 3.

18 33. Plaintiff has filed concurrently herewith the declaration of venue required by Civil
19 Code Section 1780(d).

20 34. Defendant's wrongful business practices constituted, and constitute, a continuing
21 course of conduct in violation of the California Consumer Legal Remedies Act since Defendants
22 continuously and falsely represented Children's Coldcalm as having characteristics and benefits that it
23 does not. As such, Children's Coldcalm has injured Plaintiff and the Class.

24 35. Plaintiff's primary goal in bringing this action is to enjoin the false marketing claims
25 referenced above, and to recover restitution and damages for herself and the Class, and seeks all
26 remedies available under the Consumer Legal Remedies Act.

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36. Plaintiff and the Class seek:

(a) an order of this court enjoining Defendants from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in the complaint pursuant to California Civil Code Section 1780(a)(2);

(b) actual damages pursuant to Civil Code Section 1780(a)(1);

(c) punitive damages pursuant to California Civil Code Section 1780(a)(4) due to the fraudulent, malicious, and willful nature of Defendant's conduct;

(d) statutory damages of no less than \$1,000 per class member pursuant to California Civil Code Section 1780(a)(1);

(e) statutory damages of \$5,000 for each class member who is a senior citizen as defined by California Civil Code Section 1761(f) or a disabled person as defined by California Civil Code Section 1761(g) and who has suffered substantial physical, emotional, or economic damages pursuant to California Civil Code Section 1780(b)(1); and

(f) any other equitable or legal relief that the Court deems proper pursuant to California Civil Code Section 1780(a)(5).

SECOND CAUSE OF ACTION

FRAUD

(On Behalf of the Class)

37. Plaintiff incorporates by this reference the allegations contained in paragraphs 1 through 36 as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

38. Defendant approved and caused to be disseminated the false Children's Coldcalm claims. Defendant knew when it began making claims about Children's Coldcalm, and knows now, that its claims regarding Children's Coldcalm were false, contrary to established medical authority, and were likely to mislead consumers. These misrepresentations were prominently displayed on every

1 package of Children's Coldcalm, causing plaintiff and each class member to be subjected to the same
2 fraudulent labeling each time they purchased Children's Coldcalm.

3 39. Defendant acted fraudulently and deceitfully with knowledge that Plaintiff and the
4 Class would rely on its actions and omissions.

5 40. In purchasing Children's Coldcalm, Plaintiff expressly relied on the representations of
6 Defendant and had no reason to doubt or dispute those representations. Indeed, due to the uniformity
7 of the misrepresentations, Plaintiff and the Class at all times are presumed to have reasonably and
8 justifiably relied both directly and indirectly on the actions and representations of Defendant.

9 41. As a direct and proximate result of Defendant's fraud, Plaintiff and the Class have
10 suffered actual damages in an amount not presently known, but which will be shown by proof at time
11 of trial, including incidental and consequential damages, interest, and reasonable attorneys' fees.

12 42. Plaintiff is informed and believes and thereon alleges that Defendant undertook the
13 aforesaid illegal acts intentionally or with conscious disregard of the rights of Plaintiff and the Class,
14 and did so with fraud, oppression, and malice. Therefore, Plaintiff and the Class are also entitled to
15 punitive damages against Defendant in an amount that will be shown by proof at trial.

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18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**

20 **CODE SECTIONS 17200, 17500, ET SEQ.**

21 **(By Plaintiff and Class Against Defendants)**

22 43. Plaintiff incorporates by this reference the allegations contained in paragraphs 1
23 through 42 as if fully set forth herein and, to the extent necessary, pleads this cause of action in the
24 alternative.

25 44. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
26 lost money as a result of Defendant's false advertising and unfair business practices. Specifically,
27 prior to the filing of this action, Plaintiff purchased Children's Coldcalm for her own personal use. In
28

1 so doing, she relied upon the false representations referenced above. She has consumed Children's
2 Coldcalm but it has not worked as advertised and was worthless.

3 45. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive
4 business practice within the meaning of California Business and Professions Code section 17200 in
5 that Defendant's actions are unfair, unlawful, and misleading, and because the advertising statements
6 attached as Exhibit 1 are false and misleading within the meaning of California Business and
7 Professions Code sections 17500, et seq.

8 46. Plaintiff seeks all remedies available under Section 17200 of the California Business
9 and Professions Code, including restitutionary and injunctive relief, as well as attorneys' fees and
10 costs.

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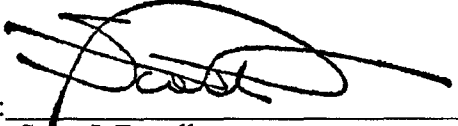
PRAYER FOR RELIEF

13 Wherefore, Plaintiff and members of the Class request that the Court enter an order or
14 judgment against Defendants as follows:

- 15 1. Certification of the proposed classes and notice thereto to be paid by Defendants;
- 16 2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;
- 17 3. For all legal and equitable remedies available under the Consumer Legal Remedies Act;
- 18 4. For all legal and equitable remedies available under the Unfair Business Practices Act;
- 19 5. For any and all other legal and equitable remedies that may be available, including
20 damages, statutory penalties, attorneys' fees, costs, and pre-judgment and post-judgment interest; and
- 21 6. For any and all such other and further relief that this Court may deem just and proper.

22 Dated: August 31, 2010

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell



By: _____
Scott J. Ferrell

Attorneys for Plaintiffs and the Class


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1 I, Gina De La Rosa, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that Orange County is a county in which
8 Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12
13 
14 Gina De La Rosa

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HOMEOPATHY

CONSUMER/CAREGIVER

PRODUCTS

EDUCATION

NEWSROOM

ABOUT BOIRON

PRODUCTS

> By Family * Children's Coldcalm® Pellets



Children's Coldcalm® Pellets

Cold

WHERE TO BUY






Information

DIRECTIONS

Children 3 years of age and older: At the onset of cold symptoms, take 5 pellets every 20 minutes for 1 hour. Then take 5 pellets every 2 hours until symptoms are relieved. Allow the pellets to dissolve in the mouth.

Children younger than 3 years of age: Ask a doctor before use.

RELATED MEDICATIONS

-  **Children's Chestal®**
-  **Children's Oscillococcinum®**
-  **Coldcalm®**

Ingredients

Warnings

Other Information

Active Ingredients

Allium cepa 3C HPUS	Relieves sneezing and runny nose
Apis mellifica 6C HPUS	Relieves nasal congestion
Belladonna 6C HPUS*	Relieves colds with a sudden onset
Eupatorium perfoliatum 3C HPUS	Relieves sinus pain
Gelsemium sempervirens 6C HPUS	Relieves headaches associated with colds
Kali bichromicum 6C HPUS	Relieves nasal discharge
Nux vomica 3C HPUS	Relieves sneezing attacks
Phytolacca decandra 6C HPUS	Relieves sore throat associated with colds
Pulsatilla 6C HPUS	Relieves colds with a loss of taste and smell

*Contains less than 10-6 mg alkaloids

Inactive Ingredients

Lactose, sucrose

The letters HPUS indicate that these ingredients are officially included in the Homeopathic Pharmacopoeia of the United States.



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How do I use
Children's Coldcalm Pellets?



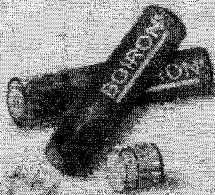
NUG 0226-9/04 87

children's for ages 3 & older

Coldcalm[®]

PELLETS

MULTI-SYMP TOM COLD RELIEF
Sneezing • Runny Nose
Nasal Congestion • Minor Sore Throat



SAFE • NO SIDE EFFECTS • GREAT TASTE • EASY TO TAKE
HOMEOPATHIC MEDICINE

BOIRON[®]

June 4, 2010

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Boiron USA, Inc.
6 Campus Blvd.
Newton Square, PA 19073

Attn: Chief Executive Officer

Re: Ongoing Violations of California Consumer Legal Remedies Act

Dear Sir or Madam:

Please give this letter your complete and immediate attention.

I. Introduction

I am writing on behalf of Jane Doe, as well as a class of similarly situated persons, to advise you that Boiron USA, Inc. (“Defendant”) has violated and continues to violate the California Consumer Legal Remedies Act.

II. Factual Background

Defendant profits from the marketing, advertising, and distribution of the product “Children’s Coldcalm.” Specifically, Defendant:

1. Falsely claims that Children’s Coldcalm has no side-effects¹;
2. Falsely claims that Children’s Coldcalm is safe;

¹ Various known side effects of the ingredients in Children’s Coldcalm include: liver damage (eupatorium perfoliatum), dermatitis (kali bichromicum), and violent convulsions (nux vomica).

3. Falsely claims that the ingredients in Children's Coldcalm relieves: sneezing, runny nose, nasal congestion, sinus pain, headaches, nasal discharge, and sore throat;
4. Falsely claims that ingredients in Children's Coldcalm relieves colds through the removal of the "loss of taste and smell";
5. Falsely claims that Children's Coldcalm does not cause drowsiness;
6. Falsely claims that Children's Coldcalm has no drug interactions; and
7. Falsely claims that Children's Coldcalm carries no risk of overdose.

III. Summary of Violations

Defendant's conduct violates the California Consumer Legal Remedies Act by, without limitation:

1. Falsely representing that Children's Coldcalm has characteristics, uses and benefits which it does not have;
2. Falsely representing that Children's Coldcalm does not have characteristics which it does in fact have;
3. Falsely representing that Children's Coldcalm is of a particular standard, quality, or grade;
4. The claims are facially violative of the F.T.C. Guides Concerning the Use of Endorsements and Testimonials in Advertising, which went into effect in December of 2009. The guides specifically require you to clearly disclose the actual results that most consumers can reasonably expect to achieve, unless you claim that these preceding claims are typical;
5. Failing to disclose side effects and actually going so far as to claim that there are no side effects; and

June 4, 2010

Page 3

6. The packaging and marketing leave a misleading overall net impression by its failure to adequately disclose that testimonial results are not typical and that purported benefits are not without known risks.

IV. Demand for Relief

We respectfully request that you agree to irrevocably stop all false and misleading advertising of Children's Coldcalm and identify all consumers who have purchased Children's Coldcalm within the applicable limitations period and provide such consumers with appropriate refund. In the alternative, we request that you make the appropriate disclosures noted above.

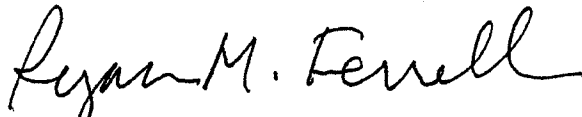
V. Offer of Compromise

If Defendant will agree to the preceding request, we will take no further action in this matter, nor will we make any claim for attorneys' fees.

Please contact me at any time if you would like to discuss this matter.

Very truly yours,

NEWPORT TRIAL GROUP
A Professional Corporation



Ryan M. Ferrell

RMF/lb