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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT A. MASON, on behalf of himself, all others similarly situated and the general public,

Plaintiff,

v.

HEEL, Inc., a New Mexico Corporation

Defendant.

Case No.: **'12CV3056 GPC KSC**
Filed:
CLASS ACTION

COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT [CIV. CODE §§ 1750, *et seq.*]**
2. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [BUS. & PROF. CODE §§ 17200, *et seq.*]**
3. **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW [BUS & PROF. CODE §§ 17500, *et seq*]**
4. **BREACH OF EXPRESS WARRANTY**
5. **BREACH OF IMPLIED WARARANTY OF MERCHANTABILITY**
6. **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT [15 U.S.C. §§ 2301, *et seq.*]**

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all others similarly situated, and the general public ("Plaintiff"), alleges against Defendant Heel, Inc. ("Heel" or "Defendant") the following upon his own knowledge, or where there is no personal knowledge, upon information and belief and the investigation of his counsel:

JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005, because the matter in controversy, exclusive of interest and costs, exceeds the sum or value of $5,000,000.00 and is a class action where Plaintiff, a member of the class, is from a different state than Defendant. On information and belief, more than two-thirds of the members of the class are citizens of a state different from the Defendant. This Court also has original jurisdiction over the federal claim under the Magnuson-Moss Warranty Act pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Personal jurisdiction is derived from the fact that the Defendant conducts business within the State of California and within this judicial district.

3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2) because many of the acts and transactions, including the purchases and sales giving rise to this action, occurred in this district and because Defendant:

(i) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution and sale of its products in this district;

(ii) does substantial business in this district;

(iii) advertises to consumers residing in this district; and,

(iv) is subject to personal jurisdiction in this district.

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THE PARTIES

4. At all times relevant to this matter, Plaintiff Robert A. Mason was a resident of San Jacinto, California.

5. On information and belief, at all times relevant to this matter, Defendant Heel, Incorporated is a New Mexico corporation that maintains its principal place of business, corporate headquarters, and residence in New Mexico.

6. Members of the putative class reside in California.

7. Defendant is the manufacturer and seller of homeopathic products.

8. Defendant produces, markets, and sells homeopathic products throughout the United States, including California.

9. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned the Defendant and Defendant's employees were the agents, servants and employees of the Defendant, acting within the purpose and scope of that agency and employment.

10. In addition to selling its Products on the shelf in major retail stores, Defendant sells its Products directly to consumers online via its website, HeelUSA.com, and product specific websites such as traumeel.us. Defendant also distributes its Products to online third party retailers for sale directly to consumers through online transactions.

BACKGROUND FACTS

11. Homeopathy seeks to stimulate the body's ability to heal itself by giving very small doses of highly diluted substances. However, there is "little evidence" that homeopathy is effective, much less that people understand homeopathic dilution principles. *See* nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf.

12. Homeopathy is premised on two main principles; the principle of similars and the principle of dilutions. Under the "principle of similars" a disease

can be cured by a substance that produces similar symptoms in healthy people. *Id.* Thus, homeopathic drugs are intended to work by causing "aggravation," or a temporary worsening of symptoms initially, a fact that is not communicated to consumers. *See id.*

13. Under the "principle of dilutions" the more diluted an ingredient is, the more effective it becomes. *Id.* This is paradoxical, however, and contrary to scientific principles, notably chemistry and physics. *Id.* Further, in highly diluted remedies, there is a very low probability that even a single molecule of the original substance is present in the product. For example, a level of 12C dilution is the equivalent to a pinch of salt in both the North and South Atlantic Oceans. *See* www.healthguidance.org/entry/12178/1/An-Introduction-to-Homeopathic-Remedies.html (last visited Dec. 14, 2012).

14. Homeopathic remedies are not marketed and sold in the United States in the same manner as when they first originated, approximately 200 years ago. When homeopathic drugs first originated, people would typically consult with a licensed homeopathic practitioner, who would compound his or her own homeopathic remedy, or provide a prescription to the patient. Food and Drug Administration ("FDA") Compliance Policy Guide ("CPG") § 400.400.

15. Also, historically, homeopathic drugs were not labeled and there was no direct-to-consumer advertising. *Id.* Instead, homeopathic remedies were primarily marketed to licensed homeopathic practitioners. *Id.*

16. There was good reason for this historical practice: Homeopathic drugs are intended to be "'individualized' or tailored to each person—it is not uncommon for different people with the same condition to receive different treatments." nccam.nih.gov/sites/nccam.nih.gov/files/ homeopathy.pdf.

17. Now, however, one-size-fits-all, combination homeopathic remedies are marketed directly to consumers in the over-the-counter ("OTC") aisles of major retail stores. CPG § 400.400.

18. "Today the homeopathic drug market has grown to become a multimillion dollar industry in the United States, with a significant increase shown in the importation and domestic marketing of homeopathic drug products." *Id.*

19. Health care costs in the United States reached almost $2.6 trillion in 2010, with 10% of that amount spent on retail and prescription drugs. www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx. But unless drug manufacturers disclose the complete truth to consumers, consumers are unable to make informed decisions about where to spend their limited healthcare dollars. *See id.*

20. Most consumers who purchase homeopathic drugs in the OTC aisles of retail stores are unaware of homeopathic dilution principles, and are merely seeking a natural alternative to prescription or other OTC non-homeopathic (i.e., allopathic) drugs.

21. Accordingly, the homeopathic drug industry strives to market its wares as natural, safe, and effective alternatives to prescription and non-homeopathic OTC drugs. But this latter category of drugs, which are all allopathic, have undergone rigorous scrutiny by the FDA and its appointed scientific committees.

22. In contrast, homeopathic drugs undergo no FDA approval of efficacy or labeling claims. *See* labels.fda.gov/.

23. Indeed, the FDA, itself, has publicly stated that it is aware of no scientific evidence that homeopathy is effective. *See id.*

24. Homeopathic drugs must comply with the minimal requirements set forth in the CPG. But, the FDA has cautioned that compliance with the CPG, "the

HPUS, USP, or NF does not establish that [a homeopathic drug] has been shown by appropriate means to be safe, effective, and not misbranded for its intended use." CPG § 400.400.

25. On August 26, 2011, the non-profit group, Center for Public Inquiry, petitioned the FDA to require homeopathic drug manufacturers to undergo the same efficacy requirements as other OTC products, and to label their drugs with a disclaimer that states: "The FDA has not determined that this product is safe, effective, and not misbranded for its intended use." *See Gallucci v. Boiron, Inc.*, Case No. 3:11-CV-2039 JAH (S.D. Cal.), Dkt. No. 93-1 at p. 18.

26. As a result of other class action litigation, such as the *Gallucci* case, *supra*, other homeopathic drug manufacturers have voluntarily agreed to implement a FDA disclaimer similar to the one noted above, along with additional injunctive relief, such as a dilution disclaimer and explanation of homeopathic dilution for consumers. *See*, *e.g.*, *Gallucci*, Dkt. No. 105 at pp. 13-15; Dkt. No. 125 at pp. 9-10. Thus, even those in the industry recognize a need to more truthfully label homeopathic drugs for the average consumer. *See id.*

27. At some point during the class period, and as a result of the *Gallucci* injunctive relief noted above, Defendant initiated a packaging change to its homeopathic products, labeling them with the vague and ambiguous phrase, "The [FDA] does not evaluate homeopathic products." This disclaimer does not achieve the same result as the *Gallucci* injunctive relief because it is not linked to any efficacy statements on Defendant's Products' packaging, and does not discuss dilution at all. Further, Defendant continues to market its Products with false or deceptive advertising claims that are not addressed by the disclaimer, as more fully described herein.

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FACTS

28. This is a consumer protection class action lawsuit on behalf of purchasers of Defendant's homeopathic pain relief product lines named Traumeel and Zeel (collectively, the "Products" or the "Pain Relief Products").

29. Defendant manufactures, advertises, distributes and sells its Products in OTC aisles in major retail stores throughout California.

30. Defendant primarily advertises and promotes its Pain Relief Products through labeling claims on the front of the Products' package. Label descriptions on the Products' packaging, taken as a whole, represent that there are various benefits and characteristics to the Products. *See* Ex. 1 for photographs of packaging.

31. Defendant's advertising of its Pain Relief Products is also the subject of an extensive and comprehensive marketing campaign in various media including the Internet. *See* Ex. 2.

32. During the class period, Plaintiff was exposed to and saw Defendant's claims about Traumeel Gel, which claimed, *inter alia*, that the product was a natural and effective remedy for pain relief.

33. During the class period, Plaintiff purchased Defendant's Traumeel Gel Product on various occasions at a GNC store in San Jacinto, California for approximately $15.00 each purchase. Plaintiff is a consumer as described herein.

34. In purchasing Defendant's Traumeel Gel Product, Plaintiff relied upon various representations Defendant made on the Product's label, including but not limited to: "Doctor Recommended," "Clinically Proven," "Advanced Relief for Muscular Pain & Inflammation," "Proven Safe and Effective for Sports Injuries, Sprains, Bruises," "On The Spot Relief," "Used By Doctors," "Pain Relief" for "Muscular Pain & Joint Pain," "Anti-Inflammatory Analgesic,"

"Traumeel® consists of 14 natural ingredients," and is "a safe, effective formula used by doctors worldwide." *See* Ex. 1.

35. Defendant's Product did not work for Plaintiff as advertised.

THE PAIN RELIEF PRODUCTS

36. Generally, Defendant advertises its Pain Relief Products through misrepresentations and omissions, including but not limited to, claims that the Products:

- provide "Natural" pain relief when, in fact, the Products contain large portions of non-natural ingredients;
- provide "On the Spot" pain relief when, in reality, homeopathic products allegedly work by aggravating symptoms initially;
- are "Proven" or "Clinically Proven" as "Effective" when such clinical proof, if it even exists, consists either of biased studies performed by investigators compensated by Defendant or its parent or subsidiary corporations or studies that fall short of relevant agency advertising standards, facts which are not disclosed to consumers;
- as being "Doctor Recommended," "Used By Doctors," and "Used by Doctors Worldwide," which is untrue, or even if true, is communicated to the public without disclosing whether these doctors are allopathic practitioners or homeopathic practitioners.

A. Traumeel (Ointment, Gel, Tablets, and Oral Solution)

37. Through its packaging, Defendant advertises that Traumeel is "Used By Doctors;" "Doctor Recommended;" "Clinically Proven;" "Proven Safe and Effective for Sports Injuries, Sprains, Bruises;" provides "On The Spot Relief;" "Pain Relief That Doesn't Hurt;" "The Natural Science of Pain Relief;" "Pain Relief You Can Feel Good About!;" "Relieves Minor Joint and Muscular Pain,

Naturally;" "Advanced Relief for Muscular Pain & Joint Pain;" "Advanced Relief for Muscular Pain & Inflammation;" an "Anti-Inflammatory Analgesic;" "consists of 14 natural ingredients;" and is "a safe, effective formula used by doctors worldwide." Ex. 1.

38. In purchasing Traumeel, Plaintiff and consumers reasonably relied upon the various representations Defendant makes on the Product's packaging label and its prevalent advertising campaign, including online advertising, as described herein. *See* Ex. 2 for picture of one of Defendant's web site pages.

39. The purportedly active ingredients in the Traumeel Products include: Calendula officinalis 1X, Hamamelis virginiana 1X, Arnica montana, radix 3X, Aconitum napellus 3X, Belladonna 3X, Bellis perennis 1X, Chamommilla 1X, Echinacea 1X, Echinacea purpurea 1X, Millefolium 1X, Hepar sulphuris calcareum 8X, Mercurius solubilis 8X, Symphytum officinale 4X, and Hypericum perforatum 6X. Ex. 3. The inactive ingredients in Traumeel Gel are Carbopol 980, Purified Water, Sodium Hydroxide, Ethanol (27% by volume). *Id.* Traumeel Ointment includes Cetylstearyl alcohol and Ethanol as inactive ingredients as well, both of which are not natural since they are synthetic and/or chemically reduced. *See id.*

40. However, the active ingredients, even if they were otherwise effective, are so greatly diluted as to be effectively non-existent in the Product such that the Product is ineffective for its intended uses.

41. The active ingredients used in Traumeel provide no health benefits. Moreover, at the stupendously high dilutions used to prepare the product, the odds are astronomically high that even a single molecule derived from the original "extract" of the "active ingredients" could be present in the Product sold to consumers. As some of the Pain Relief Products are applied externally, most or all

of the purported active ingredients will never permeate the skin due to the exceptionally small amount of active ingredients actually present in the Products.

42. Defendant knows there are no or just trace amounts of active ingredients present in the Products and therefore must be aware that the Products cannot relieve any symptoms for which the Defendant advertises them.

43. Defendant's Products also contain synthetic ingredients, and therefore do not provide "Natural" pain relief. For example, Ethanol is synthetically produced and, as a major constituent of the Products, its presence means the Products are not "Natural." Carbopol 980, Cetylstearyl alcohol, magnesium stearate, and sodium hydroxide, which make up the remaining major portions of what constitutes the Products, are also not "Natural." *See* Ex. 3.

44. The back of Traumeel Gel package claims it contains "14 natural ingredients." Ex. 1 (language appears upside down). But on the back of the Traumeel X package, which contains the very same 14 ingredients, Defendant admits that some of the same 14 ingredients are actually not natural. *Id.* (there is no asterisk next to Hepar Sulphuris Calcareum and Mercurius Solubilis, which admits they are not "* Natural Ingredients"). Accordingly, the Products are falsely or deceptively advertised to consumers.

45. Defendant's Products also contain non-HPUS ingredients, whereby they are not homeopathic drugs. *See id.* (Traumeel X package, referring to dilutions of "H" and "N" for chamomile, calendula, and Echinacea, for example).

46. Defendant's misleading and deceptive business activity also includes encouraging retailers to sell the Products in the OTC aisle of retail chain drug stores next to allopathic, FDA monograph-approved OTC drugs, thus enhancing consumer confusion as to the true nature of Defendant's Products.

47. Defendant does not explain to consumers the nature of homeopathic medicine or the method of measurement used for the ingredients its Products. For

example, Defendant fails to state what the dilution levels of X, C, K and similar dilution levels mean, in a language understandable to an average consumer.

48. Defendant is also free to label Indications of Use without any regulatory oversight, a fact that is not disclosed to consumers.

49. In addition, Defendant's Products do not relieve pain, much less, provide "Advanced Relief" for pain. Defendant has even gone so far as to advertise Traumeel by comparing it to anti-inflammatory drugs like ibuprofen (NSAIDs), claiming that Traumeel is faster, more effective, and has no side effects.

50. Defendant's Products also do not provide "On The Spot Relief" for pain because homeopathy allegedly works by initially aggravating one's symptoms, a fact that is not disclosed to consumers.

51. Defendant's claims are also misleading and false because the Products have not been "Clinically Proven" or "Proven … Effective" by credible scientific evidence suitable to meet relevant, federal agency advertising standards.

52. Similarly, Defendant's claims of "Doctor Recommended," "Used By Doctors," and "used by doctors worldwide" are false and deceptive because they do not meet federal agency endorsement standards. These claims are further false and deceptive because a reasonable consumer is likely to believe the Products are used, endorsed, or recommended by doctors practicing allopathic medicine. Defendant does not distinguish whether the doctors, if any, are homeopathic practitioners or allopathic practitioners.

53. The Federal Trade Commission ("FTC") enforces OTC drug advertising and applies the same standards as any consumer product: a "reasonable consumer" standard. The FTC requires OTC drug advertising to be truthful, non-deceptive, fair, and for manufacturers to contain evidence that backs up their claims.

54. At all times relevant herein, Defendant had a duty to disclose additional information to purchasing consumers, to correct all misunderstandings its omissions and misrepresentations created in the minds of those consumers.

55. Traumeel is sold in ointment, gel, tablet, and oral solution (and with a Tablet-ointment combination pack) with prices for each package ranging from $13.49 to $24.99. Hence, Defendant's unfair and deceptive practices have enriched them by millions of dollars, at the expense of tens of thousands of Americans.

56. Absent the misrepresentations and omissions described herein, which are material to an average consumer, Plaintiff and other consumers would not have purchased the Traumeel Products.

57. In purchasing Products that were falsely or deceptively advertised, Plaintiff suffered injury in fact in the form of the lost purchase price of the Products.

58. Plaintiff seeks justice for himself and similarly-situated consumers of Traumeel, by means of this action to enjoin the ongoing deceptive practices described herein.

B. <u>Zeel</u>

59. Zeel is the Pain Relief Product that Defendant markets primarily toward the older adult; whereas Traumeel is marketed for the younger, more active adult seeking a pain relief product.

60. The purportedly active ingredients of Zeel Tablets and Zeel Ointment (together, "Zeel") are: Silicea 6X, Arnica montana, radix 1X, Rhus toxicodendron 1X, Sulphur 6X, Sanguinaria canadensis 3X, Cartilago suis 4X, Embryo suis 4X, Runiculus umbilicalis suis 4X, Placenta suis 4X, Dulcamara 2X, Symphytum officinale 8X, alpha-Lipoicum acidum 6X, Coenzyme A 6X, Nadidum 6X, and Natrum oxalaceticum 6X. *See* Ex. 2. However, the active ingredients, even if they

were otherwise effective, are so greatly diluted as to be effectively non-existent, such that the Zeel is ineffective for its intended uses. Nevertheless, Defendant claims that the Products contain active ingredients, by gram weight, which will relieve pain.

61. Defendant advertises Zeel as a "Doctor Recommended," "Clinically Proven," "Advanced Relief for Arthritic Pain & Stiffness, "Proven … Effective for Joint Mobility," "Natural Cox 2 Alternative," among other representations. Ex. 1.

62. In purchasing Zeel, consumers reasonably relied on these and similar claims Defendant made on its Products' packaging.

63. Defendant's claims are misleading and false because the Products have not been "Proven … Effective for Joint Mobility" and are not "Clinically Proven" according to scientific evidence suitable to meet relevant federal advertising standards.

64. In addition, Defendant's advertising claim, "Natural Cox 2 Alternative," seeks to take advantage of widely publicized dangers of certain Cox-2 inhibitors such as Vioxx and Celebrex. However, Cox-2 is itself natural as it is an enzyme naturally produced by the body and its genes exist in human DNA. Therefore, this language is confusing and deceptive for the consumer.

65. Defendant's claims that the Products are "Doctor Recommended" are false and deceptive for implying a type of and level of physician endorsement that does not exist. For example, in addition to the way Defendant's market their Products as OTC alternatives, a reasonable consumer is likely to believe the Products are used, endorsed, or recommended by doctors practicing allopathic medicine. Further, Defendant does not distinguish whether the doctors endorsing its Products, if any, are homeopathic practitioners or allopathic practitioners, omitting material information from consumers.

66. Further, Defendant's claims are expert endorsements and do not meet the relevant, federal agency expert endorsement standards due to Defendant's misrepresentations and omissions.

67. Defendant's representations are also false and deceptive because the Products contain synthetic ingredients and, therefore, do not provide "Natural" pain relief. For example, Zeel contains Coenzyme A, which is a synthetic, as well as Ethanol, Magnesium stearate and Cetylstearyl alcohol, all of which are synthetically made or chemically reduced. Thus, Defendant's repeated use of the word "Natural" implies a quality to the Products that is false and deceptive.

68. In addition, Defendant's advertising is false and deceptive because the Products do not relieve pain, much less, provide "Advanced Relief" for arthritic pain and stiffness.

69. Defendant's Products are intended to initially aggravate symptoms under the homeopathic principle of the law of similars, a fact that is not disclosed to consumers.

70. Defendant's misleading and deceptive business activity includes marketing the Products in the OTC aisle of retail chain drug stores next to allopathic, FDA monograph-approved OTC drugs, thus enhancing consumer confusion as to the true nature of Defendant's Products.

71. Defendant also knows there are no or just trace amounts of active ingredients present in Zeel and therefore must be aware that Zeel cannot relieve any symptoms for which Defendant advertises the Product. Zeel's efficacy, if any, is attributable to nothing more than the placebo effect, with zero or a trace of the claimed active ingredients in the Products. As some forms of Zeel are also intended for topical application, there is little to no chance that the minute quantities of the "active ingredients" in the Products, if any, will permeate the skin whereby they can have any effect on pain relief or joint stiffness.

72. Zeel is sold in 100-count boxes and 50-gram tubes of ointment. The price is approximately $18.99 per 100-tablet package and $20.99 per 50-gram ointment container. Hence, Defendant' unfair and deceptive practices have enriched them by millions of dollars, at the expense of tens of thousands of Americans.

73. At all times relevant herein, Defendant had a duty to disclose additional information to purchasing consumers, to correct all misunderstandings its omissions and misrepresentations created in the minds of those consumers.

74. Absent the misrepresentations and omissions described herein, which were material to the average consumer, purchasing consumers would not have purchased Zeel.

75. Plaintiff seeks justice for himself and similarly-situated consumers, by means of this action to enjoin the ongoing deceptive practices described herein.

C. Allegations as to all Products

76. Defendant's marketing and promotion of the Products was supported by false and misleading claims containing material omissions and misrepresentations.

77. When purchasing the Products, Plaintiff and the class were seeking pain remedies that would provide the benefits and had the endorsements, proof of efficacy, and characteristics that Defendant marketed, promised, represented and warranted.

78. Plaintiff and the class purchased the Products believing they had the qualities they sought, based on the Products' deceptive or false labeling, but the Products were actually unacceptable to them as they did not possess the benefits, endorsements, proof, and characteristics as advertised.

79. Moreover, like all reasonable consumers and members of the class, Plaintiff considers a label's compliance with federal law a material factor in his

purchasing decisions. Plaintiff is generally aware that the federal government carefully regulates OTC products and therefore has come to trust that information conveyed on packaged OTC product labels is truthful, accurate, complete, and fully in accordance and compliance with federal law. As a result, Plaintiff trusts he can compare competing products on the basis of their labeling claims, to make a purchasing decision.

80. Like all reasonable consumers and members of the classes, Plaintiff would not purchase an OTC product he knew was misbranded under federal law, *see* 21 U.S.C. § 343, which the federal government prohibits selling, *id.* § 331, and which carries with its sale criminal penalties, *id.* § 333. Plaintiff could not trust that the label of a product misbranded under federal law is truthful, accurate and complete.

81. Similarly, like all reasonable consumers and members of the class, Plaintiff would not purchase an OTC product he knew was an illegally marketed new drug for which the FDA has not determined its safety and efficacy.

82. In light of the foregoing, reasonable consumers, including Plaintiff and other members of the class, were and are likely to be deceived by Defendant's advertising and marketing practices as detailed herein.

83. Further, Plaintiff and other members of the class purchased the Products instead of competing products based on the false statements, misrepresentations and omissions described herein.

84. Instead of receiving a product that had the benefits, advantages, endorsements, proof, and characteristics as advertised, Plaintiff and other members of the class received a product worth much less, or which was worthless, since the Products do not work; cause no effect or effects reverse of that advertised; and did not possess the characteristics, benefits, endorsements, and proof of efficacy, as advertised by Defendant.

85. Plaintiff lost money as a result of Defendant's deception in that Plaintiff did not receive what he had paid for.

86. Plaintiff altered his position to his detriment and suffered damages in an amount equal to the amount he paid for the Products over the class period.

CLASS ACTION ALLEGATIONS

87. Pursuant to Rules 23(a), (b)(3) and/or (b)(2) of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and a California consumer class, initially defined as follows:

> All purchasers of Heel, Inc.'s homeopathic Pain Relief Products, including, but not limited to, Traumeel and Zeel, and all iterations/variations of the aforementioned products, for personal or household use and not for resale, in California from December 21, 2008 to the present (the "Class Period"). Excluded from the consumer class are governmental entities, the Defendant, any entity in which the Defendant has a controlling interest, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, including parent corporations, class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

88. The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes the total number of Class members is at least in the tens of thousands, if not hundreds of thousands of persons in the State of California. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and

discovery. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

89. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief and damages as to its Products appropriate with respect to the Class as a whole. In particular, Defendant has failed to disclose the true nature of the Products being marketed and distributed, as detailed herein.

90. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff and the Class and these common questions of fact and law include, but are not limited to, the following:

a. Whether the claims discussed above are true, misleading, or reasonably likely to deceive;

b. Whether Defendant's alleged conduct violates public policy;

c. Whether the alleged conduct constitutes violations of the laws asserted herein;

d. Whether Defendant engaged in false or misleading advertising;

e. Whether the Plaintiff and Class members are entitled to declaratory and injunctive relief.

91. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by the Defendant's common course of conduct since they all relied on Defendant's representations concerning its Products and purchased the Products based on those representations.

92. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation in general and scientific claims, including for homeopathic drugs, in particular. Plaintiff and his counsel are committed to

vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

93. Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of the Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

94. Adjudication of individual Class members' claims with respect to the Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

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FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT

California Civil Code §§ 1750, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

95. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

96. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq*. (the "Act"). Plaintiff and the members of the Class are consumers as defined by California Civil Code § 1761(d). The Products are goods within the meaning of the Act.

97. Defendant violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Products:

- Representing that [the Products have]…characteristics, ingredients, uses, benefits or quantities which [the Products] do not have. (Civ. Code, § 1770, subd. (a) (5).)
- Representing that [the Products] are of a particular standard, quality or grade… if they are of another. (Civ. Code, § 1770, subd. (a) (7).)
- Advertising [Products] …with intent not to sell them as advertised. (Civ. Code, § 1770, subd. (a) (9).)
- Representing that [the Products] have been supplied in accordance with a previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

98. Defendant violated the Act by representing through advertising of the Products as described above, when they knew, or should have known, that the representations and advertisements were false or misleading.

99. Plaintiff and members of the Class reasonably relied upon the Defendant's representations as to the quality and attributes of the Products.

100. Plaintiff and other members of the Class were deceived by Defendant's representations about the quality and attributes of the Products, including but not limited to the purported benefits of the Products, taken as a whole, that their Products provide, *inter alia*, Defendant advertise their Products are effective in relieving various symptoms and ailments. *See* Exs. 1-2, for other false claims. Plaintiff and other Class members would not have purchased the Products had they known the Defendant's claims were untrue, and had they known the true nature of the Products.

101. Pursuant to section 1782 *et seq*. of the Act, Plaintiff notified the Defendant in writing by certified mail of the particular violations of § 1770 of the Act as to their Products and demanded the Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act. Defendant's wrongful business practices regarding the Products constituted, and constitute, a continuing course of conduct in violation of the California's Consumers Legal Remedies Act since Defendant are still representing that the Products have characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class. A copy of Plaintiff 's letter is attached as Exhibit 4 hereto.

102. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an order of this Court enjoining the Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law.

103. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class seek a Court order enjoining the above-described wrongful acts and practices of the Defendant with respect to their Products.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

California Business and Professions Code §§ 17200, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

104. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

105. California's Unfair Competition Law, Business and Professions Code § 17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has engaged in unfair, deceptive, untrue and misleading advertising in violation of the UCL.

106. The UCL also prohibits any "unlawful… business act or practice." Defendant violated the UCL's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and by violating among others, California Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§ 109875, *et seq*. ("Sherman Law"), Cal. Bus. & Prof. Code §§ 12601, *et seq*. ("Fair Packaging and Labeling Act"), California Commercial Code § 2313(1), and the common law. Such conduct is ongoing and continues to this date. *See* Exs. 2-3.

107. Plaintiff and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices.

108. California Business and Professions Code § 17200 also prohibits any "unfair… business act or practice."

109. Defendant's acts, omissions, misrepresentations, practices and nondisclosures as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and

unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. Such conduct is ongoing and continues to this date.

110. Plaintiff alleges violations of consumer protection, unfair competition and truth in advertising laws in California and other states resulting in harm to consumers. Plaintiff asserts violation of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes violations of the unfair prong of the UCL. Such conduct is ongoing and continues to this date.

111. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

112. The UCL also prohibits any "fraudulent business act or practice."

113. Defendant's claims, nondisclosures (i.e., omissions), and misleading statements, as more fully set forth above, were false, misleading and/or likely to deceive the consuming public within the meaning of the UCL. Such conduct is ongoing and continues to this date.

114. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact as a result of Defendant's unfair conduct.

115. Defendant has thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff to injunctive relief against Defendant, as set forth in the Prayer for Relief.

116. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendant to engage in a corrective advertising campaign.

117. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of Defendant's Products, which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW

California Business and Professions Code §§ 17500, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

118. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

119. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance upon Defendant's marketing claims. Plaintiff used the Products as directed, but the Products did not work as advertised, nor provided any of the promised benefits.

120. Defendant's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to California Business and Professions Code §§ 17500, *et seq*. because Defendant has advertised their Products in a manner that is untrue or misleading, or that is known to Defendant to be untrue or misleading.

121. Defendant's wrongful business practices have caused injury to Plaintiff and the Class.

122. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff and the Class seek an order of this court enjoining the Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in the complaint.

123. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of Defendant's Products, which were unjustly acquired through acts of unlawful, unfair, deceptive and/or fraudulent competition.

FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

(On Behalf of Plaintiff and all Class Members, as Against Defendant)

124. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

125. On the Products' labels and through their marketing campaign as described above, Defendant made affirmations of fact or promises, or description of goods, which formed "part of the basis of the bargain" at the time of purchase. *See* Ex. 2, Misrepresentation Chart (containing statement alleged to be warranties).

126. The warranties were breached because the Products did not live up to their warranties, and that breach caused injury in the form of the lost purchase price for the Products. *See* Cal. Com. Code § 2313(1); *see also Zwart v. Hewlett-Packard Co*., 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions can create warranties).

127. As a result of Defendant's breach of their warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Products they purchased.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(On Behalf of Plaintiff and the Class, as Against Defendant)

128. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

129. Defendant, through their acts and omissions as set forth herein, in their sale, marketing and promotion of their Products, made representations to

Plaintiff and the members of the Class that their Products provide the claimed health benefits, among other representations. *See* Ex. 2, Misrepresentation Chart.

130. Plaintiff and the Class bought the Products manufactured, advertised and sold by Defendant.

131. Defendant is a merchant with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied warranty that those goods were merchantable.

132. However, Defendant breached that warranty implied in the sale of goods in that their Products do not provide the purported claimed health benefits, as set forth in detail herein.

133. As a result of Defendant's conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendant to be merchantable in that they did not conform to the promises and affirmations made on the container or label of the goods.

134. Plaintiff and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,

15 U.S.C. §§ 2301, *et. seq*.

(On Behalf of Plaintiff and the Class, as Against Defendant)

135. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

136. Plaintiff brings this claim individually and on behalf of the members of the Class. Plaintiff asserts state law warranty claims arising under the laws of the State of California.

137. In addition, Defendant's Products are consumer products as defined in 15 U.S.C. § 2301(1).

138. Plaintiff and the other Class members are consumers as defined in 15 U.S.C. § 2301(3).

139. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

140. In connection with the sale of the Products, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Products offer relief from various ailments and symptoms, and possessed certain attributes and qualities, as described herein, when in fact, these Products do not provide relief for any of these ailments or symptoms.

141. By breaching the express written warranties as described herein, Defendant violated the statutory rights of Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq., thereby damaging Plaintiff and other Class members.

142. Plaintiff notified the Defendant in writing of their claims and that the Plaintiff is acting on behalf of the Classes. *See* Ex. 4.

PRAYER FOR RELIEF

143. Wherefore, Plaintiff, on behalf of himself, all others similarly situated and the general public, pray for judgment against the Defendant as to each and every cause of action, including:

A. An order declaring this action to be a proper Class Action and requiring Defendant to bear the costs of Class notice;

B. An order awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein;

C. An order awarding restitution and disgorgement of Defendant's revenues from the Products to Plaintiff and the proposed Class members, under the UCL and FAL;

D. An order awarding damages under Plaintiff and the Class' warranty claims for relief;

E. An order compelling Defendant to engage in a corrective advertising campaign to inform the public concerning the true nature of their Products;

F. An order awarding attorneys' fees and costs to Plaintiff and the Class;

G. An order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

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

Dated: December 21, 2012 */s/ Ronald A. Marron*

By: Ronald A. Marron

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