

1 TRINETTE G. KENT (State Bar No. 222020)
2 Lemberg Law, LLC
3 1100 West Town & Country Rd.
4 Suite 1250
5 Orange, California 92868
6 Telephone: (480) 247-9644
7 Facsimile: (480) 717-4781
8 E-mail: tkent@leberglaw.com

9 Attorneys for Plaintiff
10 SEAN MIRAN

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 Sean Miran, *on behalf of himself and all*
15 *others similarly situated,*

16 Plaintiff,

17 vs.

18 Hard Eight Nutrition LLC d/b/a
19 BulkSupplements.com,

20 Defendant.

Case No.: 5:24-cv-00807-SSS-SHK

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Fraudulent Concealment;
- (2) Unjust Enrichment;
- (3) Breach of Express Warranty;
- (4) Violation of Cal. Bus. & Prof. Code §§ 17500, et seq.;
- (5) Violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, et seq.;
- (6) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.; and
- (7) Breach of Implied Warranty of Merchantability.

DEMAND FOR JURY TRIAL

21
22
23
24
25
26
27
28

1 For this First Amended Class Action Complaint, Plaintiff Sean Miran, by
2 undersigned counsel, states as follows:

3 **INTRODUCTION**

4 1. Defendant Hard Eight Nutrition LLC d/b/a BulkSupplements.com
5 (“Defendant” or “Bulk”) formulates, manufactures, advertises and sells “Magnesium
6 Glycinate Powder” dietary supplement powder (the “Magnesium Supplements” or the
7 “Supplements”) throughout the United States that purport to contain 400 mg of
8 Magnesium “as Magnesium Glycinate” per one serving comprised of 2,200
9 milligrams of powder. It prominently displays the magnesium content of the
10 Supplements as well as the number of servings contained in the product on the
11 product’s labels.

12 2. However, it is impossible to obtain 400 mg of magnesium derived from
13 magnesium glycinate in one 2,200 milligram serving of powder. Magnesium
14 glycinate simply possesses far too low a concentration of magnesium to do so.

15 3. Accordingly, the Magnesium Supplements do not contain 400 mg of
16 magnesium as magnesium glycinate per serving and thus do not contain the quantity
17 of magnesium that is advertised, and thus warranted, on each of the product’s labels.
18 Instead, the Supplements contain significantly less magnesium as magnesium
19 glycinate than what is claimed and displayed or zero magnesium derived from
20 magnesium glycinate.

21 4. In misstating the actual magnesium content of the Supplements, Bulk
22 violates federal and state law and regulations designed to prevent deceptive
23 supplement labeling and breaches the express warranty created by its labeling.
24 Defendant’s prominent misrepresentations regarding its Magnesium Supplements
25 form a pattern of unlawful and unfair business practices that visits harm on the
26 consuming public.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

5. Plaintiff Sean Miran (“Plaintiff”) is and at all times relevant hereto was an adult individual residing in Victorville, San Bernadino County, California. Plaintiff has purchased Bulk’s Magnesium Supplements within the last four years including on January 7, 2024, from Bulk’s online ebay.com store. Plaintiff viewed the front and back label of Defendant’s Magnesium Supplements when he purchased the product.

6. Defendant Hard Eight Nutrition LLC d/b/a BulkSupplements.com (“Bulk” or “Defendant”) is a Nevada limited liability company with a principal place of business at 7511 Eastgate Road, Henderson, Nevada 89011-4058. Bulk markets, advertises, distributes and sells a magnesium nutritional supplement product throughout the United States, including California.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005: (1) during the Class Period Bulk sold its Magnesium Supplements to more than 100 people, (2) in the same period those sales, combined with Plaintiff’s requested injunctive relief, punitive damages and attorneys’ fees, exceeds \$5,000,000, and (iii) there is minimal diversity because Plaintiff and Class Members and Defendant are citizens of different states.

8. Venue is proper in this district and this Court has specific jurisdiction over Bulk because Plaintiff resides in this District and purchased Bulk’s product at issue in this case from within this District.

FACTUAL ALLEGATIONS

a. Defendant misrepresents that one serving of the Magnesium Supplement contains 400 mg of magnesium derived from magnesium glycinate

9. The amount and type of magnesium, as well as the number of servings, contained within Defendant’s Magnesium Supplements are material to any consumer

1 seeking to purchase a magnesium supplement.

2 10. Defendant purports to sell its Magnesium Supplements in the form of
3 magnesium glycinate powder, which is known as a highly absorbable form of
4 magnesium.

5 11. Bulk’s website advertises that “Magnesium Glycinate is a highly
6 bioavailable form of magnesium, allowing for better absorption and utilization by the
7 body compared to other forms.”¹ It further claims that Magnesium Glycinate provides
8 “Muscle Relaxation,” “Stress Relief,” “Bone Health,” and “Mood Support.”²

9 12. Bulk labels and advertises its Magnesium Supplements in a manner that
10 highlights the amount of magnesium as magnesium glycinate contained within each
11 serving, as well as the number of servings provided. As set forth in the below images,
12 Bulk prominently displays that the Supplements contain Magnesium Glycinate and that
13 one serving of 2,200 mg of powder contains 400 mg of “Magnesium (as Magnesium
14 Glycinate).” It also highlights the number of 2,200 mg servings contained within the
15 product (*e.g.*, 113 servings in its 250 gram product). Such representations constitute an
16 express warranty regarding the Magnesium Supplements’ magnesium content.
17

18
19
20
21
22
23
24
25
26

27 ¹ <https://www.bulksupplements.com/products/magnesium-glycinate-powder> (last
28 visited April 2, 2024).

² *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Best Before: XXXXXXXXX
000

XXXXXXXXXX
NEW - BulkSupplements.com Magnesium Glycinate Powder (250 Grams)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Magnesium Glycinate

250g (8.8oz)

SUPPLEMENT FACTS		
Serving Size: 2200 milligrams (about 4/5 tsp)		
Servings per container: 113		
Amount Per Serving	% Daily Value	
Magnesium (as Magnesium Glycinate)	400mg	95%

Other Ingredients: None

Free of: Sugar, soy, dairy, yeast, gluten, additives

Suggested Use: As a dietary supplement, take 2200mg (about 4/5 tsp) once or twice daily with water, or as directed by a physician.

Use an accurate milligram scale. Contents are sold by weight, not volume. Settling may occur.

Store in a dry, cool, dark place.

Distributed Exclusively by:

BulkSupplements.com
7511 Eastgate Rd
Henderson, NV 89011 US



NEW - BulkSupplements.com Magnesium Glycinate Powder (250 Grams)

WARNING:

This product is not intended to diagnose, treat, cure, or prevent any disease. Always consult a physician before taking any dietary supplement. Keep out of reach of children.

Lot Number: XXXXXXXX
Best Before: XXXXXXXX

000

13. Bulk sells its Magnesium Supplement in 100 gram, 250 gram, 500 gram, 1 kilogram, 5 kilogram and 25 kilogram packages. The labels for each Supplement product uniformly claim that one serving of 2,200 milligrams of the Supplement provides 400 mg of Magnesium (as Magnesium Glycinate) and note the number of 2,200 milligram servings provided.³

14. Upon information and belief, Bulk labeled its Magnesium Supplement in

³ <https://www.bulksupplements.com/products/magnesium-glycinate-powder?variant=32133429100655> (last visited April 3, 2024).

1 a materially identical manner throughout the Class Period, stating that one 2,200 mg
2 serving of the Supplement contains 400 mg of magnesium as magnesium glycinate.

3 15. The U.S. Department of Health & Human Services directs that “[t]he
4 Supplement Facts panel on a dietary supplement label declares the amount
5 of elemental magnesium in the product, not the weight of the entire magnesium-
6 containing compound.” See [https://ods.od.nih.gov/factsheets/Magnesium-
7 HealthProfessional/](https://ods.od.nih.gov/factsheets/Magnesium-HealthProfessional/) (last visited April 3, 2024). Here, the Supplement Facts note that
8 one serving of 2,200 mg of the Supplement contains “400 mg” of “Magnesium (as
9 Magnesium Glycinate).”

10 16. The Supplement Facts also note that the listed 400 mg of magnesium
11 derived from magnesium glycinate constitutes 95% of the recommended Daily Value
12 of magnesium. Under 21 C.F.R. § 101.9(c)(8), addressing “[t]he requirements related
13 to including a statement of the amount per serving of vitamins and minerals,” “[t]he
14 quantitative amounts of vitamins and minerals, excluding sodium, shall be the amount
15 of the vitamin or mineral included in one serving of the product, using the units of
16 measurement and the levels of significance given in paragraph (c)(8)(iv) of this
17 section.” 21 C.F.R. § 101.9(c)(8)(iii). With respect to magnesium, the recommended
18 Daily Value for adults and children over four years is 400 milligrams (mg) of
19 magnesium. 21 C.F.R. § 101.9(c)(8) (iv). 95% of 400 milligrams is 399 milligrams.
20

21 ***b. It is impossible for 2,200 mg of the Magnesium Supplement to contain 400 mg***
22 ***of magnesium as magnesium glycinate***

23 17. Defendant’s representations are false and misleading.

24 18. It is impossible for one 2,200 mg serving of Defendant’s Magnesium
25 Supplement to contain the advertised and warranted 400 mg of magnesium as
26 magnesium glycinate in light of the amount of magnesium contained in magnesium
27 glycinate.

28

1 19. Magnesium glycinate contains only 14.1% magnesium by mass.⁴
2 Accordingly, approximately 2,830 mg of magnesium glycinate is needed to obtain 400
3 mg of magnesium.

4 20. In light of the foregoing, Defendant's representations that one serving of
5 2,200 mg of the Magnesium Supplements contains 400 mg of magnesium as
6 magnesium glycinate is impossible and false.

7 21. Instead, the Supplements either (1) contain less magnesium as magnesium
8 glycinate than advertised and/or (2) contain magnesium from undisclosed sources other
9 than the warranted and advertised magnesium glycinate.

10 22. For instance, if the magnesium provided by the Supplements only comes
11 from magnesium glycinate, then one 2,200 mg serving only provides 310 mg of
12 magnesium (as magnesium glycinate), 22.5% less than the advertised and warranted
13 400 mg. Additionally, in this scenario the number of servings providing 400 mg of
14 magnesium as magnesium glycinate is less than advertised. Thus, for Bulk's 250 gram
15 product, there are 88 servings of 400 mg of magnesium as magnesium glycinate, not
16 the 113 servings that Bulk advertises and warrants.⁵

17 23. In the alternative, the magnesium in the Supplement may be derived from
18 other sources of magnesium, such as magnesium oxide, which contains a higher
19 percentage of elemental magnesium than magnesium glycinate but which is less
20 desirable to consumers because, *inter alia*, it is not absorbed by the body as well as
21 magnesium glycinate and therefore is less desirable to those consumers who seek to
22 raise their magnesium levels.

23 24. The above misrepresentations regarding the contents and ingredients of
24
25

26 ⁴ See, e.g., https://en.wikipedia.org/wiki/Magnesium_glycinate (last visited April 3, 2024).

27 ⁵ 250 grams = 250,000 milligrams

28 2,836 milligrams of magnesium glycinate = 400 mg of magnesium

250,000 / 2,830 = 88

1 Defendant's Magnesium Supplements are unlawful under both state and federal law.
2 The Federal Food, Drug, and Cosmetic Act ("FDCA"), passed by Congress in 1938,
3 grants the Food and Drug Administration ("FDA") power to ensure "foods are safe,
4 wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A). In 1990,
5 Congress amended the FDCA with the Nutrition Labeling and Education Act
6 ("NLEA"), which sought to clarify and strengthen the FDA's legal authority to require
7 nutrition labeling on foods, and to establish the circumstances under which claims may
8 be made about nutrients in foods. 21 U.S.C. §§ 343, et seq.

9
10 25. Bulk's false and deceptive statements violate 21 U.S.C. § 343(a)(1), which
11 deems food (including nutritional supplements) misbranded when the label contains a
12 statement that is "false or misleading in any particular." Federal regulations also dictate
13 the manner in which Defendant must label its product and the methods it must use to
14 determine the magnesium contents of its product. Defendant failed to ensure the
15 accuracy of its Magnesium Supplements' labels in accordance with these federal
16 regulations.

17 26. California prohibits the misbranding of food in a way that parallels the
18 FDCA through the "Sherman Food, Drug, and Cosmetic Law," Cal. Health & Safety
19 Code § 109875, et seq. (the "Sherman Law"). The Sherman Law explicitly incorporates
20 by reference "[a]ll food labeling regulations and any amendments to those regulations
21 adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after
22 that date" as the food labeling regulations of Cal. Health & Safety Code § 110100(a).
23 Accordingly, the Sherman Law also provides that food or nutritional supplements are
24 misbranded if its labeling is "false or misleading in any particular." *Id.*

25 27. Bulk's representations regarding the magnesium contents of its
26 Magnesium Supplement – including its representation that there are 400 mg of
27 magnesium derived from magnesium glycinate in one 2,000 mg serving – are material.
28 Reasonable consumers of magnesium supplements base their purchasing decisions on

1 the advertised and warranted amount of magnesium contained therein and the source
2 from which such magnesium is derived. Consumers specifically prize magnesium
3 derived from magnesium glycinate over other sources of magnesium because of its
4 “high absorption,” as Defendant claims. Additionally, consumers reasonably rely of
5 Defendant’s label to accurately determine the identity, amount and source of any dietary
6 ingredients included within the Defendant’s Magnesium Supplements. Accordingly,
7 Plaintiff and Class Members, as reasonable consumers, were materially misled by
8 Defendant’s representations regarding the true nature and composition of the
9 Magnesium Supplements’ magnesium contents.

10
11 28. Further, such misrepresentations also breach Defendant’s express warranty
12 that each serving of the Magnesium Supplement contains magnesium “as magnesium
13 glycinate” in the amount listed on its label (400mg).

14 29. The difference between the Magnesium Supplements promised and the
15 products sold is significant and material because the sold products do not contain 400
16 mg of magnesium derived from magnesium glycinate per serving. The amount and
17 source of actual magnesium provided, and the measure of magnesium per serving, has
18 real impacts on the benefits provided to consumers by the Magnesium Supplements and
19 the actual value of the Supplements. Persons requiring a certain amount of magnesium
20 supplementation – whether for “Muscle Relaxation,” “Stress Relief,” “Bone Health,”
21 and “Mood Support” as Bulk claims – are left to ingest less magnesium as magnesium
22 glycinate than Defendant states will be provided and/or are left to ingest magnesium
23 that is derived from sources of magnesium that are inferior and less desirable than the
24 magnesium glycinate promised by the Defendant.

25 30. Because Plaintiff and Class Members purchased a product that contains
26 less magnesium as magnesium glycinate than advertised and warranted, Plaintiff and
27 Class Members have suffered an injury-in-fact. Misbranded nutritional supplements
28 cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded

1 nutritional supplements have no economic value and are worthless as a matter of law,
2 and purchasers of misbranded nutritional supplements are entitled to a restitution refund
3 of the purchase price of the misbranded nutritional supplements. Additionally, had
4 Plaintiff and Class Members known the true nature and composition of the magnesium
5 content of the Magnesium Supplements, they would not have purchased such Products,
6 or would have only paid for the magnesium as magnesium glycinate actually delivered
7 with the Supplements.

8
9 31. On March 14, 2024, prior to initiating this action, Plaintiff’s counsel sent
10 a demand letter to Bulk on behalf of Plaintiff. The letter, *inter alia*, (1) alleged that
11 Bulk mislabels and falsely misrepresents the contents of its Magnesium Supplements
12 and the Supplements contain less magnesium as magnesium glycinate than advertised
13 in light of the amount of magnesium in magnesium glycinate; (2) alleged that Bulk
14 breached its written and implied warranties and violated, *inter alia*, the Sherman
15 Food, Drug, and Cosmetic Law, the California Consumers Legal Remedies Act, and
16 the Magnuson-Moss Warranty Act; (3) alleged that Plaintiff and similarly situated
17 consumers had been harmed and injured because they were misled into purchasing
18 Bulk’s Magnesium Supplements and would have paid significantly less for or not
19 purchased the supplements had they known about the true magnesium content of the
20 supplements; and (4) demanded that “Bulk immediately cease the above unlawful
21 practices, cease mislabeling and misbranding Bulk’s Magnesium Supplements,”
22 demanded that it provide Plaintiff “and all other United States purchasers of the
23 Magnesium Supplements within the last four years with full restitution of all improper
24 revenues and ill-gotten profits derived from Bulk’s wrongful conduct to the fullest
25 extent permitted by law,” and asserted that “purchasers of misbranded nutritional
26 supplements like Mr. Miran are entitled to a restitution refund of the purchase price of
27 the misbranded supplements.”

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ACTION ALLEGATIONS

A. The Class

32. Plaintiff brings this action on his own behalf and on behalf of the following Classes of persons pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3) an/or 23(c)(5):

Class: All persons who purchased Defendant’s Magnesium Supplements during the four year period preceding the filing of the complaint.

California Subclass: All persons residing in California who purchased Defendant’s Magnesium Supplements during the four year period preceding the filing of the complaint.

33. Any legal entity, Defendant and its employees or agents are excluded from the Class.

34. The complete scope and extent of Defendant’s sale of the Magnesium Supplement (*e.g.*, in which states Defendant sold the Supplements, which states comprise the majority of Defendant’s sales) is currently unknown. As the case develops, Plaintiff may seek certification of a modified Class that is comprised of those persons who purchased the Supplements in states with substantive laws that are materially identical to the laws of California when applied to the facts at issue in this case. “Provided a complaint gives adequate notice of the claim being asserted, the definition contained in the complaint does not dictate the exact class that can be certified, nor does it prevent modifications of the class definition after certification.” *Webb v. Circle K Stores Inc.*, 2022 WL 16649821, at *2 (D. Ariz. Nov. 3, 2022) (internal citations omitted).

B. Numerosity

35. Upon information and belief, the Classes are so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, Plaintiff believes, and on that basis

1 alleges, that Bulk has sold its Magnesium Supplements to thousands of United States
2 and California residents during the Class Period and therefore there are thousands of
3 members of each of the Classes.

4 **C. Common Questions of Law and Fact**

5 36. There are questions of law and fact common to the Classes that
6 predominate over any questions affecting only individual Class members. These
7 questions include:

- 8 a. Whether Defendant labels, markets and otherwise advertises its
9 Magnesium Supplements in a deceptive, false, or misleading manner by
10 misstating the product’s magnesium content;
- 11 b. Whether Defendant’s sale of the Magnesium Supplements constitutes
12 unfair methods of competition and unfair or deceptive acts or practices in
13 violation of, *inter alia*, Cal. Bus. & Prof. Code §§ 1770 *et seq.*, including:
14 whether Defendant misrepresents the source, sponsorship, approval, or
15 certification of their Magnesium Supplements; whether Defendant
16 represents that the Magnesium Supplements are of a particular standard or
17 quality if it is of another; and whether Defendant advertises its Magnesium
18 Supplements with intent not to sell them as advertised;
- 19 c. Whether Defendant’s sale of the Magnesium Supplements constitutes
20 misleading and deceptive advertising under, *inter alia*, Cal. Bus. & Prof.
21 Code § 17500;
- 22 d. Whether Defendant’s sale of the Magnesium Supplements constitutes
23 “unlawful,” “unfair,” or “fraudulent” business acts or practices under, *inter*
24 *alia*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, including: whether
25 Defendant’s sale of the Magnesium Supplements constitutes “unlawful” or
26 “unfair” business practices by violating the public policies set out in Cal.
27 Bus. & Prof. Code §§ 1770 *et seq.*, Cal. Bus. & Prof. Code §§ 17500 and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

other California and federal statutes and regulations; whether Defendant’s sale of the Magnesium Supplements is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers; and whether Defendant’s sale of the Magnesium Supplements constitutes an “unfair” business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers;

- e. Whether Defendant’s sale of the Magnesium Supplements constitutes a breach of warranty;
- f. Whether Defendant concealed material facts concerning the Magnesium Supplements;
- g. Whether Defendant engaged in unconscionable commercial practices in failing to disclose material information concerning the Magnesium Supplements;
- h. The nature and extent of damages, restitution, equitable remedies, and other relief to which Plaintiff and the Class are entitled; and
- i. Whether Plaintiff and the Class should be awarded attorneys’ fees and the costs of suit.

D. Typicality

37. The Plaintiff’s claims are typical of the claims of the Class since Plaintiff purchased the Magnesium Supplements within the last four years, as did each member of the Class. Furthermore, Plaintiff and all members of the Class sustained economic injuries arising out of Defendant’s wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent Class members.

E. Protecting the Interests of the Class Members

38. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced in handling class actions and claims involving

1 unlawful business practices. Neither Plaintiff nor his counsel has any interest which
2 might cause them not to vigorously pursue this action.

3 **F. Proceeding Via Class Action is Superior and Advisable**

4 39. A class action is the superior method for the fair and efficient
5 adjudication of this controversy. The injury suffered by each individual Class
6 member is relatively small in comparison to the burden and expense of individual
7 prosecution of the complex and extensive litigation necessitated by Defendant's
8 conduct. It would be virtually impossible for members of the Class individually to
9 redress effectively the wrongs done to them. Even if the members of the Class could
10 afford such individual litigation, the court system could not. Individualized litigation
11 presents a potential for inconsistent or contradictory judgments. Individualized
12 litigation increases the delay and expense to all parties, and to the court system,
13 presented by the complex legal and factual issues of the case. By contrast, the class
14 action device presents far fewer management difficulties, and provides the benefits of
15 single adjudication, an economy of scale, and comprehensive supervision by a single
16 court.

17
18 40. Defendant has acted, and refused to act, on grounds generally applicable
19 to the Class, thereby making appropriate final equitable relief with respect to the Class
20 as a whole.

21 **FIRST CAUSE OF ACTION**

22 **Fraudulent Concealment**

23 **(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

24 41. Plaintiff incorporates by reference all allegations contained in this
25 Complaint as though fully stated herein.

26 42. Plaintiff brings this fraudulent concealment claim under California law.

27 43. By failing to disclose and concealing the contents of the Magnesium
28 Supplements from Plaintiff and Class Members (i.e., the Magnesium Supplements do
not include the amount of magnesium derived from magnesium glycinate advertised

1 and warranted), Defendant concealed and suppressed material facts concerning the
2 Magnesium Supplements.

3 44. Defendant knew or should have known that the Magnesium Supplements
4 did not contain the amount of magnesium as magnesium glycinate advertised and
5 warranted and were not suitable for their intended use.

6 45. Defendant was under a duty to Plaintiff and Class Members to disclose
7 and/or not misrepresent the contents of the Magnesium Supplements because:

- 8 a. Defendant was in a superior position to know the true state of facts about
9 the magnesium contents of Defendant's Magnesium Supplements,
10 including the type of magnesium Defendant included in the Supplements;
11 b. Plaintiff and Class Members could not reasonably have been expected to
12 learn or discover that the Magnesium Supplements do not contain the
13 amount of magnesium as magnesium glycinate advertised and warranted;
14 and,
15 c. Defendant knew that Plaintiff and Class Members could not reasonably
16 have been expected to learn about or discover the true magnesium contents
17 of Defendant's Magnesium Supplements.
18

19 46. On information and belief, Defendant still has not made full and adequate
20 disclosures, and continues to defraud consumers by concealing material information
21 regarding the contents of the Magnesium Supplements.

22 47. The facts concealed or not disclosed by Defendant to Plaintiff and Class
23 Members are material in that a reasonable person would have considered them to be
24 important in deciding whether or not to purchase the Magnesium Supplements.

25 48. Plaintiff and the Classes relied on Defendant to disclose material
26 information it knew, such as the defective nature and contents of the Magnesium
27 Supplements, and not to induce them into a transaction they would not have entered had
28 the Defendant disclosed this information.

1 49. By failing to disclose the true contents of the Magnesium Supplements,
2 Defendant knowingly and intentionally concealed material facts and breached its duty
3 not to do so.

4 50. Had Plaintiff and other Class Members known that Magnesium
5 Supplements did not contain the amount of advertised and warranted magnesium as
6 magnesium glycinate, they would not have purchased the Magnesium Supplements or
7 would have paid less for them.

8 51. As a result of Defendant’s misconduct, Plaintiff and the other Class
9 Members have been harmed and have been injured.

10 52. Accordingly, Defendant is liable to Plaintiff and Class Members for
11 damages in an amount to be proven at trial.

12 53. Defendant’s actions and omissions were done maliciously, oppressively,
13 deliberately, with intent to defraud, and in reckless disregard of Plaintiff’ and the Class’s
14 rights and well-being, to enrich Defendant. Defendant’s conduct warrants an assessment
15 of punitive damages in an amount sufficient to deter such conduct in the future, which
16 amount is to be determined according to proof.

17 54. Furthermore, as the intended and expected result of its fraud and conscious
18 wrongdoing, Defendant has profited and benefited from Plaintiff’s and Class Members’
19 purchases of falsely advertised and misbranded Magnesium Supplements. Defendant
20 has voluntarily accepted and retained these profits and benefits with full knowledge and
21 awareness that, as a result of Defendant’s misconduct alleged herein, Plaintiff and Class
22 Members were not receiving magnesium supplements of the quality, nature, fitness, or
23 value that had been represented by Defendant, and that a reasonable consumer would
24 expect.

25 55. Defendant has been unjustly enriched by its fraudulent, deceptive, and
26 otherwise unlawful conduct in connection with the sale of the Magnesium Supplements
27 and by withholding benefits from Plaintiff and Class Members at the expense of these
28

1 parties. Equity and good conscience militate against permitting Defendant to retain
2 these profits and benefits, and Defendant should be required to make restitution of its
3 ill-gotten gains resulting from the conduct alleged herein.
4

5 **SECOND CAUSE OF ACTION**

6 **Unjust Enrichment**

7 **(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

8 56. Plaintiff incorporates by reference all allegations contained in this
9 Complaint as though fully stated herein.

10 57. Plaintiff brings this unjust enrichment claim under California law.

11 58. As a result of Defendant's fraudulent acts, and omissions related to the
12 magnesium contents of the Supplement, Defendant obtained monies which rightfully
13 belong to Plaintiff, and the Class Members to the detriment of Plaintiff and Class
14 Members.

15 59. Defendant appreciated, accepted, and retained the non-gratuitous benefits
16 conferred by Plaintiff and the proposed Class Members who, without knowledge of the
17 true contents of the Supplements, paid a higher price for Supplements, which actually
18 had lower values. Defendant also received monies for Supplements that Plaintiff and
19 the Class Members would not have otherwise purchased or leased.

20 60. It would be inequitable and unjust for Defendant to retain these wrongfully
21 obtained profits.

22 61. Defendant's retention of these wrongfully obtained profits would violate
23 the fundamental principles of justice, equity, and good conscience.

24 62. As a result of Defendant's unjust enrichment, Plaintiff and Class Members
25 have suffered damages.

26 63. Plaintiff does not seek restitution under his Unjust Enrichment claim.
27 Rather, Plaintiff and Class Members seek non-restitutionary disgorgement of the
28 financial profits that Defendant obtained as a result of its unjust conduct.

1 of magnesium as magnesium glycinate as alleged above.

2 70. As a result of Defendant's breach of its contract, Plaintiff and the Class
3 have been damaged in the amount of the different purchase price of any and all of the
4 Magnesium Supplements they purchased and the price of a product which provides
5 the benefits and contents as warranted.

6 **FOURTH CAUSE OF ACTION**

7 **Violation of Cal. Bus. & Prof. Code §§ 17500, et seq.- Untrue, Misleading and**
8 **Deceptive Advertising**
9 **(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

10 71. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 72. At all material times, Defendant engaged in a scheme of offering the
13 Magnesium Supplements for sale to Plaintiff and other members of the Classes by
14 way of, *inter alia*, commercial marketing, and advertising, internet content, product
15 packaging and labelling, and other promotional materials.

16 73. These materials, advertisements and other inducements misrepresented
17 and/or omitted the true contents and benefits of the Magnesium Supplements as
18 alleged herein. Such advertisements and inducements appear on the labels of
19 Defendant's Magnesium Supplements and Defendant's website.

20 74. Defendant's advertisements and other inducements come within the
21 definition of advertising as contained in Cal. Bus. Prof. Code §§ 17500, et seq., in that
22 such promotional materials were intended as inducements to purchase Defendant's
23 Magnesium Supplements and are statements disseminated by Defendant to Plaintiff
24 and other members of the Class.

25 75. Defendant knew, or in the exercise of reasonable care should have
26 known, that the statements regarding its Magnesium Supplements' magnesium
27 content, and specifically the amount of magnesium as magnesium glycinate, were
28 false, misleading and/or deceptive.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

76. Consumers, including Plaintiff and members of the Classes, necessarily and reasonably relied on Defendant’s statements regarding the contents of its products. Consumers, including Plaintiff and members of the Classes, were among the intended targets of such representations.

77. The above acts of Defendant, in disseminating said misleading and deceptive statements, including to Plaintiff and members of the Classes, were and are likely to deceive reasonable consumers by obfuscating the true nature and amount of the ingredients in Defendant’s Magnesium Supplements, including the true source and amount of magnesium, and thus were violations of Cal. Bus. Prof. Code §§ 17500, et seq.

78. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the Cal. Bus. Prof. Code §§ 17500, et seq. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

79. Accordingly, Plaintiff and members of the Classes seek damages including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded nutritional supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded nutritional supplements are entitled to a restitution refund of the purchase price of the misbranded supplements.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION

**Violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* - Misrepresentation of a product’s standard, quality, sponsorship approval, and/or certification
(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

80. Plaintiff incorporates by reference all allegations contained in this Complaint as though fully stated herein.

81. Defendant’s Magnesium Supplements are a “good” as defined by California Civil Code §1761(a).

82. Defendant is a “person” as defined by California Civil Code § 1761(c).

83. Plaintiff and Class members are “consumers” within the meaning of California Civil Code § 1761(d) because they purchased their Magnesium Supplements for personal, family or household use.

84. The sale of Defendant’s Magnesium Supplements to Plaintiff and Class members is a “transaction” as defined by California Civil Code §1761(e).

85. By labeling their Magnesium Supplements as containing a specific amount of magnesium as magnesium glycinate when in fact these products contained less than the advertised amount of magnesium, Defendant violated California Civil Code §§ 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its Magnesium Supplements.

86. As a result of Defendant’s conduct, Plaintiff and Class members were harmed and suffered actual damages as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature and/or not falsely represented its Magnesium Supplements’ magnesium content, Plaintiff and the Class would not have been misled into purchasing Defendant’s Magnesium Supplements, or, alternatively, would have paid significantly less for them.

87. Additionally, misbranded nutritional supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional

1 supplements have no economic value and are worthless as a matter of law, and
2 purchasers of misbranded nutritional supplements are entitled to a refund of the
3 purchase price of the misbrand nutritional supplements.

4 88. On March 14, 2024, Plaintiff provided Defendant with notice of its
5 alleged violations of the CLRA pursuant to California Civil Code § 1782(a) via
6 certified mail, demanding that Defendant correct such violations. Accordingly,
7 Plaintiff seeks all available damages under the CLRA for all violations complained of
8 herein, including, but not limited to, statutory damages, punitive damages, attorney’s
9 fees and cost and any other relief that the Court deems proper.

10 **SIXTH CAUSE OF ACTION**

11 **Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§**
12 **17200, et seq.**

13 **(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

14 89. Plaintiff incorporates by reference all allegations contained in this
15 Complaint as though fully stated herein.

16 90. The Sherman Law, Cal. Health & Safety Code §§ 109875 et seq., broadly
17 prohibits the misbranding of any food or drug products.

18 91. Defendant is a person within the meaning of Cal. Health & Safety Code
19 § 109995.

20 92. Additionally, California has adopted as its own, and as the Sherman Law
21 expressly incorporates, “[a]ll food labeling regulations and any amendments to those
22 regulations adopted pursuant to the federal act, in effect on January 1, 1993, or
23 adopted on or after that date" as "the food labeling regulations of this state.” Cal.
24 Health & Safety Code § 110100(a). Federal statutes and regulations, including, but
25 not limited to, 21 U.S.C. §§ 321, 343, prohibit the mislabeling and misbranding of
26 food products, including nutritional supplements. See 21 U.S.C. § 321(ff) (“a dietary
27 supplement shall be deemed to be a food within the meaning of this chapter.”).

28 93. Federal statutes and regulations prohibit misleading consumers by

1 misrepresenting a product’s nutritional ingredients and including an ingredient or an
2 amount of an ingredient on the Magnesium Supplements’ nutritional labels that is not
3 actually included in the products themselves.

4 94. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits
5 mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or
6 certification of food products, as noted above.

7 95. The business practices alleged above are unlawful under Business and
8 Professional Code §§ 17500, et seq., California Civil Code §§ 1770(a)(2), (5), (7) and
9 (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive,
10 and/or misleading marketing, advertisement, packaging and labelling of food products
11 and dietary supplements.

12 96. As a result of Defendant’s above unlawful, unfair and fraudulent acts and
13 practices, Plaintiff and members of the Classes have suffered a substantial injury by
14 virtue of buying a product that misrepresented and/or omitted the true contents and
15 benefits of the Magnesium Supplements’ magnesium contents. Had Plaintiff and
16 members of the Class known that Defendant’s materials, advertisement and other
17 inducements misrepresented and/or omitted the true contents and benefits of the
18 Magnesium Supplements, they would not have purchased said products. Likewise,
19 Defendant’s misleading and deceptive practices caused Plaintiff to purchase
20 Defendant’s Magnesium Supplements and/or pay more than they would have
21 otherwise had they know the true nature of the contents of the Magnesium
22 Supplements.

23 97. As a result of Defendant’s above unlawful, unfair and fraudulent acts and
24 practices, Plaintiff, on behalf of himself and all others similarly situated, and as
25 appropriate, on behalf of the general public, seeks damages including full restitution
26 of all improper revenues and ill-gotten profits derived from Defendant’s wrongful
27 conduct to the fullest extent permitted by law. Misbranded nutritional supplements
28

1 cannot legally be manufactured, held, advertised, distributed or sold. Thus,
2 misbranded nutritional supplements have no economic value and are worthless as a
3 matter of law, and purchasers of misbranded nutritional supplements are entitled to a
4 restitution refund of the purchase price of the misbranded product.

5 **SEVENTH CAUSE OF ACTION**

6 **Breach of Implied Warranty of Merchantability Pursuant to Cal. Com. Code §**
7 **2314**

8 **(Plaintiff on behalf of the Class or in the alternative the California Subclass)**

9 98. Plaintiff incorporates by reference all allegations contained in this
10 Complaint as though fully stated herein.

11 99. Defendant is a merchant with respect to the Magnesium Supplements.

12 100. The Magnesium Supplements were subject to implied warranties of
13 merchantability running from the Defendant to Plaintiff and Class Members.

14 101. An implied warranty that the Magnesium Supplements were
15 merchantable arose by operation of law as part of the sale of the Magnesium
16 Supplements.

17 102. Defendant breached the implied warranty of merchantability in that the
18 Magnesium Supplements do not contain the amount of advertised magnesium derived
19 from magnesium glycinate, do not provide the benefits associated with the warranted
20 and advertised 400 mg of magnesium as magnesium glycinate per serving, and thus
21 were not in merchantable condition when Plaintiff and Class Members purchased
22 them, or at any time thereafter, and they were unfit for the ordinary purposes for
23 which such nutritional supplements are used.

24 103. Defendant has breached the implied warranty of merchantability because
25 the Magnesium Supplements when sold would not pass without objection in the trade.

26 104. As a result of Defendant's breach of the applicable implied warranties,
27 purchasers of the Magnesium Supplements suffered an ascertainable loss, were
28 harmed, and suffered actual damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment against Defendant as follows:

- a. An order certifying the proposed Classes, designating Plaintiff as named representative of the Classes, and designating the undersigned as Class Counsel;
- b. An order awarding Plaintiff and class members their actual damages, incidental and consequential damages, punitive damages, statutory damages and/or other form of monetary relief provided by law;
- c. An order awarding Plaintiff and the class restitution, disgorgement, or other equitable relief as the Court deems proper;
- d. An order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;
- e. Reasonable attorneys’ fees and costs;
- f. Pre-judgment and post-judgment interest, as provided by law;
- g. Such other and further relief as this Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: June 28, 2024

By: /s/ Trinette G. Kent
 Trinette G. Kent, Esq.
 Lemberg Law, LLC
 Attorneys for Plaintiff