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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

NUTRACEUTICALS, INC., MK HEALTH FOOD THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

NUTRACEUTICALS, INC., MK HEALTH FOOD DISTRIBUTORS, INC., NATURAL BALANCE, INC., SOLARAY, INC., NBTY, INC., GOOD & NATURAL MANUFACTURING CORPORATION, NATURE'S BOUNTY, INC., SUNDOWN, INC., NATURAL ORGANICS LABORATORIES, INC., NATURE'S ANSWER, INC., NATURE'S SUNSHINE, INC., NATURE'S WAY PRODUCTS, INC., NOW HEALTH GROUP, INC., VITAMINE SHOPPE, INC.,

Defendants.

CASE NO: RG07329561

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY
(42. Other Civil Complaint)

I. INTRODUCTION

1. This complaint seeks an injunction to remedy defendants' failure to warn consumers that certain "red yeast rice" nutritional supplements contain lovastatin, a chemical known to the State of California to cause birth defects or other reproductive harm. Under the Safe Drinking Water and

Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

II. PARTIES

2. Plaintiffs are the People of the State of California, by and through the Attorney General of California, Edmund G. Brown Jr. Health and Safety Code section 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney General in the name of the People of the State of California. Government Code section 12607 authorizes the Attorney General to bring an action for equitable relief in the name of the People of the State of California against any person to protect the natural resources of the State from pollution, impairment, or destruction. Business and Professions Code section 17200 provides that actions to prohibit unfair and unlawful business practices may be brought by the Attorney General in the name of the People of the State of California.

3. Defendant Nutraceuticals, Inc., is a business entity that sells nutritional supplements containing red yeast rice, which contains lovastatin ("Red Yeast Rice Supplements") to consumers within the State of California, and is the parent of defendants MK Health Food Distributors, Inc., Natural Balance, Inc., and Solaray, Inc.

4. Defendant MK Health Food Distributors, Inc., (dba Nature's Life), is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is the subsidiary of defendant Nutraceuticals, Inc.

5. Defendant Natural Balance, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is a subsidiary of defendant Nutraceuticals, Inc.

6. Defendant Solaray, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is a subsidiary of defendant Nutraceuticals, Inc.

7. Defendant NBTY, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is the parent corporation of defendants Good & natural Manufacturing Corporation, Nature's Bounty, Inc., and Sundown, Inc.

8. Defendant Good & Natural Manufacturing Corporation, is a business entity that sells Red

Yeast Rice Supplements to consumers within the State of California, and is a subsidiary of defendant NBTY, Inc.

9. Defendant Nature's Bounty, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is a subsidiary of defendant NBTY, Inc.

10. Defendant Sundown, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California, and is a subsidiary of defendant NBTY, Inc.

11. Defendant Natural Organics Laboratories, Inc., (dba Nature's Plus), is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California.

12. Defendant Nature's Answer, Inc., is a business entity that sells supplements containing to consumers within the State of California.

13. Defendant Nature's Sunshine, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California.

14. Defendant Nature's Way Products, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California.

15. Defendant Now Health Group, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California.

16. Defendant Vitamin Shoppe, Inc., is a business entity that sells Red Yeast Rice Supplements to consumers within the State of California.

17. The true names and capacities of the defendants sued herein as Does 1 through 100 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of these defendants when they have been determined. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein.

III. JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

19. This Court has jurisdiction over the defendants named above because they do sufficient

business in California, or otherwise have sufficient minimum contacts in California to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

20. Venue is proper in this Court because the cause arises in the County of Alameda, where some of the violations of law have occurred.

IV. STATUTORY BACKGROUND

A. Proposition 65

21. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the People in November of 1986.

22. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10

23. Proposition 65 also establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code § 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (Id., § 25249.10, subd. (b).)

24. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To "threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur." (Id., § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to $2,500 per day for each violation, recoverable in a civil action. (Id., § 25249.7, subd. (b).) Actions to enforce the law "may be brought by the Attorney General in the name of the People of the State of California or by any district attorney". (Id., § 25249.7, subd. (c).)

25. Implementing regulations promulgated by the Health and Welfare Agency provide that the warning method "must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure." (Cal. Code Regs., tit. 22, § 12601(a).)

26. The regulations prescribe certain types of warnings that are considered valid, including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling, signs, menus, or a combination thereof," and (C) " a system of signs, public advertising identifying the system and toll-free information services, that provides clear and reasonable warnings." (Cal. Code Regs., tit. 22, §§ 12601(b)(1)(A)-(C).)

B. The Unfair Competition Act

27. California Business and Professions Code section 17200 provides that "unfair competition shall mean and include unlawful, unfair or fraudulent business practice." Section 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction."

28. Section 17206(a) provides that any person violating Section 17200 "shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney." Under section 17205, these penalties are "cumulative to each other and to the remedies or penalties available under all other laws of this state."

V. FACTS

29. Lovastatin was listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity, under the sub-category "developmental toxicity," which means that the chemical harms the developing fetus, on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd. (c).) "Lovastatin" is a chemical used in anti-cholesterol medications given by prescription only. When drugs containing lovastatin are given by prescription, the U.S. Food and Drug Administration requires that "it should be administered to women of childbearing age only when such patients are highly unlikely to conceive. If the patient become pregnant while taking this drug [it] should be discontinued immediately and the patient should be apprised of the potential hazard to the fetus." (Mevacor Product Description, Merck & Co., Inc., pp. 8, 13, November 2005.)

30. Red Yeast Rice Supplements contain lovastin, which is created by the deliberate use of a fermentation process in the manufacturing of the product.

31. The lovastatin in Red Yeast Rice Supplements is ingested by persons who consume those products in their intended manner. Plaintiffs are informed and believe, and based on that information and belief allege, that each defendant has known since at least June 7, 2003 that the Red Yeast Rice Supplements that it sells, distributes, or manufactures, contain lovastatin and cause consumers of the of the Red Yeast Rice Supplements to be exposed to lovastatin.

32. Each defendant has failed to provide consumers of the Red Yeast Rice Supplements with a clear and reasonable warning in compliance with Proposition 65 and its implementing regulations that they are being exposed to a chemical known to the State of California to cause reproductive toxicity.

VI. FIRST CAUSE OF ACTION

(For Violation of Proposition 65)

33. Paragraphs 1 through 32 are realleged as if fully set forth herein.

34. Plaintiffs are informed and believe, and based on such information and belief allege, that each defendant employs ten or more persons.

35. By committing the acts alleged above, each defendant has, in the course of doing business, knowingly and intentionally exposed individuals to lovastatin, a chemical known to the state of California to cause reproductive toxicity, without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

36. Said violations render each defendant liable to plaintiff for civil penalties of up to $2,500 per day for each violation.

VII. SECOND CAUSE OF ACTION

(For Unlawful Business Practices)

37. Paragraphs 1 through 36 are re-alleged as if fully set forth herein.

38. By committing the acts alleged above, each defendant has engaged in unlawful business practices which constitute unfair competition within the meaning of Business and Professions Code section 17200.

39. Said violations render each defendant liable to plaintiff for civil penalties of up to $2,500 for each violation.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court:

1. Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;

2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other orders prohibiting each defendant from exposing persons within the State of California to lovastatin without providing clear and reasonable warnings, as plaintiffs shall specify in further application to the court;

3. Award plaintiffs their costs of suit;

4. Grant such other and further relief as the court deems just and proper.

Dated: June 6, 2007

Respectfully submitted,

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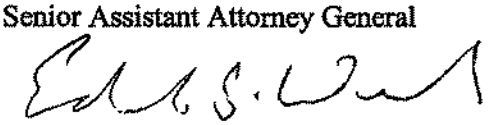
Attorney General of the State of California

THEODORA P. BERGER
Senior Assistant Attorney General



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