

NATURE OF THE CASE

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- 1. Age-Related Macular Degeneration ("AMD") is the leading cause of blindness in the developed world, and accounts for more than 50% of all blindness in the United States. Two National Institutes of Health ("NIH") studies found a specific formula of nutritional supplements effective in slowing AMD's progression and in reducing the risk of developing the disease as well. These studies are referred to as Age-Related Eye Disease Studies ("AREDS").
- 2. CVS Health, Inc. ("CVS") markets its Advanced Eye Health supplement by calling it "comparable to" the NIH study formula. But the Advanced Eye Health supplement is in no way comparable to the NIH study formula. It only contains ingredients that the NIH found ineffective at slowing the progression of AMD (omega-3 fatty acids), and two carotenoids that NIH said could be used as an alternative to the originally studied carotenoid beta-carotene. NIH's study did not find that these two carotenoids have any independent effect on AMD.
- 3. Plaintiffs Larry Meredith and David Gumner ("Plaintiffs") bring this proposed class action on behalf of consumers deceived³ by CVS's misrepresentations of Advanced Eye Health's comparability to the AMD formula NIH found effective and who unwittingly bought the CVS product thinking, incorrectly, that it would slow the progression of AMD, or would help avoid contracting the disease altogether.

JURISDICTION AND VENUE

4. This Court has jurisdiction over all causes of action asserted herein, pursuant to California Constitution, Article VI, Sec. 10, because this case involves causes of action not given by statute to other trial courts.

¹ Emily Y. Chew et al., Lutein + Zeaxanthin and Omega-3 Fatty Acids for Age-Related Macular Degeneration: The Age-Related Eye Disease Study 2 (AREDS 2) Randomized Clinical Trial, 309 JAMA 2005 (May 15, 2013) (herein, "AREDS2 Article") (citing N. Congdon et al., Eye Diseases Prevalence Research Group: Causes and Prevalence of Visual Impairment Among Adults in the United States, 122 Archives Ophthalmology 477 (2004)).

² NIH refers to the first study as "AREDS" and the second, more recent study, as "AREDS2."

³ The terms "deceive," "deceptive," "deceptively," and "deception" encompass other descriptive terms, including various forms of the words: mislead, misrepresent, untrue, unfair, false, disparage, and unlawful as used in the Civil Code of California, the California Unfair Competition Law and the California Health and Safety Code.

5. Venue is appropriate in this judicial district pursuant to Code of Civil Procedure § 395 because substantial acts in furtherance of the alleged improper conduct, including the dissemination of deceptive information regarding the benefits of CVS's Advanced Eye Health supplement to Plaintiff Meredith and numerous other class members, occurred within this District.

6. CVS has sufficient minimum contacts with California, and otherwise has intentionally availed itself of the markets in California through the marketing and sale of its Advanced Eye Health supplement in California, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

THE PARTIES

Plaintiffs

- 7. Dr. Larry Meredith is a resident of California who was diagnosed with AMD in 2004. During the Class Period (as defined below), Dr. Meredith purchased CVS's Advanced Eye Health supplement from one or more CVS stores in California. When he bought CVS's Advanced Eye Health supplement, Dr. Meredith relied on the representations CVS made about the supplement, including that it (1) contained the AREDS2 formula, (2) would improve eye-health, and (3) would reduce his risk of developing advanced AMD. Based on CVS's representations, Dr. Meredith also believed that the Advanced Eye Health supplement was cheaper than, yet otherwise identical in content to, the Bausch + Lomb PreserVision supplement next to which CVS shelves its Advanced Eye Health supplement.
- 8. Mr. David Gumner is a resident of California who began experiencing AMD in 2007. During the Class Period (as defined below), Mr. Gumner purchased CVS's Advanced Eye Health supplement from one or more CVS stores in California. When he bought CVS's Advanced Eye Health supplement, Mr. Gumner relied on the representations CVS made about the supplement, including that it (1) contained the AREDS2 formula, (2) would improve eye-health, and (3) would reduce his risk of developing advanced AMD. Based on CVS's representations, Mr. Gumner also believed that the Advanced Eye Health supplement was cheaper than, yet otherwise identical in content to, the Bausch + Lomb PreserVision supplement next to which CVS

1 shelves its Advanced Eye Health supplement. 2 Defendant 3 9. -CVS is an American Fortune 500 company whose retail division operates more than 7,700 CVS/pharmacy and Longs Drugs stores. 4 CVS is incorporated in Delaware and is 4 5 headquartered in Woonsocket, Rhode Island. 6 FACTUAL ALLEGATIONS 7 10. Plaintiffs' and other reasonable consumers' eye-related health concerns -8 including concerns about AMD - motivate the purchase and consumption of CVS's Advanced Eye Health supplement, from which CVS significantly profits. 10 11. In 2004, about 10 million individuals in the United States had either intermediate AMD or advanced AMD, and scientists expect this number to double in the next 20 years.⁵ AMD 11 12 primarily affects those over the age of 60. 12. 13 In May 2013, the National Institutes of Health published the results of its second clinical trial on AMD. The clinical trial was called the Age-Related Eye Disease Study 2 14 ("AREDS2"). 15 AREDS2 followed an earlier study by NIH that concluded that daily 16 supplementation with vitamin C, vitamin E, beta-carotene, zinc, and copper ("the original formula") could reduce the risk of developing advanced AMD by 25% after five years.⁶ 17 18 13. 19

- NIH's follow-up study, AREDS2, examined the addition of (1) the carotenoids lutein and zeaxanthin, (2) the omega-3s DHA and EPA, or (3) both the carotenoids and omega-3s, to the original formula with and without beta-carotene (another carotenoid).
 - NIH found that the specific combination of vitamins and minerals vitamin C, 14.

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²³ CVS website, http://www.cvshealth.com/ (last visited Oct. 2, 2014).

Emily Y. Chew et al., Lutein + Zeaxanthin and Omega-3 Fatty Acids for Age-Related Macular Degeneration: The Age-Related Eye Disease Study 2 (AREDS 2) Randomized Clinical Trial, 309 JAMA 2005 (May 15, 2013) (herein, "AREDS2 Article") (citing N. Congdon et al., Eye Diseases Prevalence Research Group: Causes and Prevalence of Visual Impairment Among Adults in the United States, 122 Archives Ophthalmology 477 (2004)).

NIH's findings are limited to people with intermediate AMD – a population with a high risk of developing advanced AMD. In 2004, an estimated 8 million Americans suffered from intermediate AMD. AREDS2 Article at 2005.

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vitamin E, zinc, copper, and either beta-carotene or both lutein and zeaxanthin – reduced the riskof developing advanced AMD. NIH noted that because beta-carotene potentially "increased incidence of lung cancer in former smokers, lutein + zeaxanthin could be an appropriate carotenoid substitute [for beta-carotene] in the AREDS [original] formulation."

- 15. However, NIH concluded that the addition of omega-3 fatty acids DHA and EPA to the AREDS2 formula did nothing to slow or stop the progression of AMD.8
- 16. In order to capitalize on the AREDS2 study and the health concerns of elderly consumers, CVS markets its Advanced Eye Health supplement by stating prominently on the label that it is "COMPARABLE TO ONGOING STUDY FORMULA IN AREDS2." This claim is false. The Advanced Eye Health supplement does not contain the AREDS2 formula that NIH found would reduce the risk of developing advanced AMD. Instead, it contains only ingredients that NIH found might be a good substitute for beta-carotene (lutein and zeaxanthin), and ingredients NIH found were completely ineffective at reducing the risk of developing advanced AMD (DHA and EPA).
- 17. From on or before July 2012 to the present, CVS has engaged in a widespread marketing campaign to deceive Plaintiffs and other reasonable consumers about the nature, composition, and nutritional and health benefits of its Advanced Eye Health supplement in order to make the product more desirable to those consumers, increase sales, and gain market share.
- 18. CVS markets its Advanced Eye Health supplement using the following deceptive representations.

AREDS2 Claims

19. CVS claims that its Advanced Eye Health supplement contains ingredients "COMPARABLE TO ONGOING STUDY FORMULA IN AREDS2." See Illustration 1 below (emphasis added). However, the ingredients in the Advanced Eye Health supplement are not

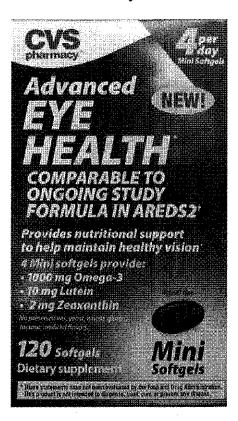
AREDS2 Article at 2014.

NIH found that the "addition of lutein + zeaxanthin, DHA + EPA, or both" to the original formula "did not further reduce [the] risk of progression to advanced AMD." AREDS2 Article at

⁹ See Illustration 1 below.

Illustration 1

CVS Advanced Eye Health



- 20. Plaintiffs and other reasonable consumers, as well as the Oxford English dictionary, understand "comparable" to mean "similar," or "of equivalent quality." CVS's claim that its Advanced Eye Health supplement is "comparable" to the AREDS2 formula is false and deceptive.
- 21. CVS makes its AREDS2 and eye-health claims based on the four ingredients in the Advanced Eye Health supplement: lutein, zeaxanthin, DHA, and EPA.
- 22. The Advanced Eye Health supplement does not contain any vitamin C, vitamin E, zinc, or copper all a part of the specific formula that NIH found to be effective at reducing the risk of developing advanced AMD.
- 23. CVS's Advanced Eye Health supplement lacks all but one component of NIH's tested formula, and as such, is ineffective at slowing or stopping the progression of AMD.

24.	In other words, the ingr	edients in the Adva	anced Eye Health sup	plement alone do
not constitute	the AREDS2 formula.	And the National	Institutes of Health	did not find the
ingredients in	the Advanced Eye Health	supplement on thei	r own to have any eff	ect on preventing
the progression	n of AMD. ¹⁰			

- 25. In its marketing campaign, CVS thus claims that its Advanced Eye Health supplement possesses certain characteristics, uses, or benefits that it does not have.
- 26. CVS makes AREDS2 and eye-health claims for its Advanced Eye Health supplement on its website¹¹ and on product packaging.
- 27. CVS's claims deceive Class Members into believing that its Advanced Eye Health supplement contains the AREDS2 formula, and that taking its Advanced Eye Health supplement can help prevent deterioration of eye health and progression of AMD. These claims are false, illegal, and deceptive.
- 28. By comparing its product to the formula used in the AREDS2 NIH study, CVS deceptively represents that its Advanced Eye Health supplement can be used in the diagnosis, cure, mitigation, treatment, or prevention of AMD. Thus, CVS's deceptive representations are illegal disease prevention claims.¹²
- 29. CVS also claims that its Advanced Eye Health supplement "[p]rovides nutritional support to help maintain healthy vision." 13
- 30. However, AREDS2 did not find that the four ingredients found in CVS's Advanced Eye Health supplement, by themselves, will do anything to "help maintain healthy

See AREDS2 Article; Nat'l Inst. of Health, Health Professional Vitamin A Fact Sheet, available at http://ods.od.nih.gov/factsheets/VitaminA-HealthProfessional/ (confirming that adding lutein and zeaxanthin and/or omega-3 fatty acids to the AREDS original formula did not confer any additional benefits; confirming that AREDS2 found that beta-carotene was not a required ingredient in the original formula).

CVS website, http://www.cvs.com/shop/product-detail/CVS-Advanced-Eye-Health-Softgels? skuId=893716 (last visited Oct. 14, 2014).

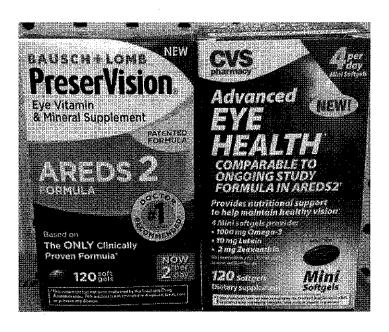
Cal. Health & Safety Code § 109875 et seq. California's Sherman Law expressly adopts the federal labeling requirements of the Federal Food, Drug, and Cosmetic Act and the Nutrition Labeling and Education Act.

¹³ See Illustration 1.

Misleading Packaging and Placement

31. CVS shelves its Advanced Eye Health supplement directly next to Bausch + Lomb's PreserVision supplement to represent to Plaintiffs and other reasonable consumers that its Advanced Eye Health supplement is simply a generic, but identical version of the Bausch + Lomb PreserVision supplement. CVS's AREDS2 claims on its supplement's packaging draws Plaintiffs' and other consumers' attention away from the fact that a material difference exists between the Bausch + Lomb PreserVision supplement and the Advanced Eye Health supplement. See Illustration 2 below.

Illustration 2 Advanced Eye Health and PreserVision in CVS store



32. Both supplements make prominent AREDS2 claims. However, the two supplements contain very different ingredients: the Bausch + Lomb PreserVision supplement contains the exact combination of effective ingredients from the AREDS2 study that NIH found reduced the risk of developing advanced AMD. On the other hand, CVS's Advanced Eye Health supplement only contains ingredients that NIH did not find, on their own, to do anything to help

¹⁴ See Illustration 1.

maintain healthy vision or reduce the risk of progression of AMD.

- 33. Because both supplements are shelved side-by-side and both make AREDS2 claims, Plaintiffs and other reasonable consumers were and are misled into believing that (1) the CVS Advanced Eye Health supplement contains the same ingredients and will provide the same eye-health benefits as the Bausch + Lomb PreserVision supplement, and (2) the CVS supplement is a less expensive version of the Bausch + Lomb PreserVision supplement. CVS manages to deceive Plaintiffs and other reasonable consumers on both accounts.
- 34. Plaintiffs and other reasonable consumers who rely on CVS's representations are deceived into purchasing a supplement containing only ingredients that NIH did not find, on their own, to provide any eye-health benefits.¹⁵
- 35. Furthermore, CVS prices a package of its Advanced Eye Health supplement so that Plaintiffs and other reasonable consumers will believe that it is significantly cheaper than the PreserVision supplement further encouraging those consumers to choose the CVS-brand eye-health supplement.
- 36. As of the date of filing the complaint, a bottle of CVS's Advanced Eye Health supplement is about half the price of Bausch + Lomb's PreserVision supplement, and contains half the number of pills (60 instead of 120) per package. ¹⁶ Thus, although CVS's Advanced Eye Health supplement appears to be cheaper than Bausch + Lomb's PreserVision supplement, in fact the two products are similarly priced. Thus, Plaintiffs and other reasonable consumers are deceived into paying about the same amount for the Advanced Eye Health supplement as they would for the Bausch + Lomb PreserVision supplement all without receiving the AREDS2 formula or any of the accompanying eye-health benefits.
- 37. Plaintiffs and other reasonable consumers should not be forced to look beyond CVS's deceptive representations on the Advanced Eye Health supplement's packaging to

¹⁵ *Id*.

Until recently, CVS sold its Advanced Eye Health supplement with 120 pills (rather than the 60 pills it now contains), but consumers were required to take four pills instead of the two pills in the current packaging to obtain the same quantity of ingredients. Thus, both the prior number of pills and the current number of pills provide half the dosage of the Bausch + Lomb's PreserVision supplement, without the same possible benefits.

discover that they will not receive the formula that NIH found would reduce the risk of developing advanced AMD.

- 38. Even if Plaintiffs or other reasonable consumers looked beyond CVS's deceptive representations on the supplement's packaging to discover the true ingredients, they would have no way of knowing whether the ingredients in CVS's Advanced Eye Health supplement were the same ingredients in the AREDS2 study, or whether CVS's eye-health claims were true. Without a degree in nutrition science and the AREDS2 study on hand, no consumer could discover CVS's deception.
- 39. All supplements, including the Advanced Eye Health supplement, are what economists call "credence goods." A credence good is a good whose qualities consumers are not perfectly able to judge, even after they consume it, due to both the nature of the product as well as unequal access to information. In other words, reasonable consumers (including Plaintiffs) cannot fully evaluate credence attributes or credence goods "includ[ing] the therapeutic value of a medicine" even after purchase. This means that Plaintiffs and other reasonable consumers cannot determine the efficacy of CVS's Advanced Eye Health whether they received the expected benefit of reducing their risk of developing advanced AMD even after they buy and take CVS's supplement as directed.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class that Plaintiffs seek to represent (the "Class") is composed of and defined as follows:

All United States residents who purchased CVS's Advanced Eye Health supplement at any time four years prior to the filing date of this Complaint ("Class Period"). Excluded from the Class are Defendant's officers and directors and the immediate families of Defendant's officers and directors. Also excluded from the Class are the Defendant's legal representatives, heirs, successors or assigns, and any entity in which Defendant has or has had a controlling interest.

Matthew G. Nagler et al., *How Do Consumers Value a Credence Good?*, available at www.cide.info/conf/2009/iceee2009_submission_39.pdf ("Medications conform well to the credence good model.").

See Phillip Nelson, Information and Consumer Behavior, 78 J. Political Econ. 311 (1970).

Period. CVS's allegedly deceptive actions concern the same business practices described herein, irrespective of where they occurred or were received. Thus, Plaintiffs and Class Members sustained the same injuries and damages arising out of CVS's conduct. The injuries and damages of each Class Member were caused directly by CVS's wrongful conduct in violation of law as alleged herein.

- Adequacy: Plaintiffs will fairly and adequately protect the interests of all Class Members because it is in their best interests to prosecute the claims alleged herein to obtain full compensation they are due for the illegal conduct of which they complain. Plaintiffs also have no interests that conflict with, or are antagonistic to, the interests of Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and that of the Class. No conflict of interest exists between Plaintiffs and Class Members because all questions of law and fact regarding liability of CVS are common to Class Members and predominate over the individual issues that may exist, such that by prevailing on their own claim, Plaintiffs necessarily will establish CVS's liability to all Class Members. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class Members and are determined to diligently discharge those duties seeking the maximum possible recovery for the Class.
- A7. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for CVS and result in the impairment of Class Members' rights and disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the Class may be relatively small, the expenses and the burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important

ingredients contained in its Advanced Eye Health supplement. Consumers, including Plaintiffs, necessarily and reasonably relied on these materials concerning the Advanced Eye Health supplement. Consumers, including Plaintiffs and the Subclass, were among the intended targets of such representations.

- 71. The above acts of CVS, in disseminating said deceptive statements throughout the State of California to consumers, including Plaintiffs and members of the Subclass, were and are likely to deceive reasonable consumers, including Plaintiffs and other members of the Subclass, by obfuscating the true nature of the Advanced Eye Health supplement, all in violation of the "misleading prong" of California Business and Professionals Code § 17500.
- As a result of the above violations of the "misleading prong" of the Business and Professions Code §§ 17500 *et seq.*, CVS has been unjustly enriched at the expense of Plaintiffs and the other members of the Subclass. Plaintiffs and the Subclass, pursuant to Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of the CVS, and such other orders and judgments which may be necessary to disgorge CVS's ill-gotten gains and restore to any person in interest any money paid for the Advanced Eye Health supplement as a result of the wrongful conduct of CVS.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

- 73. As a result of CVS's deceptive marketing and sale of its Advanced Eye Health supplement, as described above, CVS was enriched, at the expense of Plaintiffs and the Class Members, through the payment of the purchase price for the Advanced Eye Health supplement.
- 74. Under the circumstances, it would be against equity and good conscience to permit CVS to retain the ill-gotten benefits that it received from Plaintiffs and the Class Members, in light of the fact that the Advanced Eye Health supplement purchased by the Plaintiffs, and those similarly situated, was not what CVS purported it to be. Thus, it would be unjust or inequitable for CVS to retain the benefit without restitution to Plaintiffs and the Class Members for monies paid to CVS for its Advanced Eye Health supplement.

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FIFTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability)

- 75. Plaintiffs and other Class members purchased CVS's Advanced Eye Health supplement, which was marketed as healthful and having particular healthful characteristics as set forth above. Pursuant to these sales, CVS impliedly warranted that its product would be merchantable and fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in CVS's marketing, packaging, and labeling. As a result, Plaintiffs and Class members relied on CVS's representations that its Advanced Eye Health supplement was healthful and had particular healthful characteristic as set forth above. By CVS's representations regarding the reputable nature of its companies and related entities, and by its marketing, packaging, and labeling of its Advanced Eye Health supplement, CVS warranted that its Advanced Eye Health supplement is healthful, has particular healthful characteristics, and a specific combination of ingredients as set forth above. Plaintiffs and Class members bought CVS's Advanced Eye Health supplement, relying on representations that the product was healthful and had particular characteristics and ingredients when, in fact, it is not healthful in that it does not contain the represented health benefits or ingredients described in CVS's marketing materials. These representations do not conform to CVS's warranties.
- 76. CVS breached the warranty implied at the time of the sale in that Plaintiffs and Class members did not receive goods that were healthful or had healthful characteristics or ingredients represented and, thus, the goods were not merchantable as fit for the ordinary purposes for which such goods are used or as marketed.
- 77. As a proximate result of this breach of warranty by CVS, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, amount other things, they purchased and paid a premium for CVS's Advanced Eye Health supplement that did not conform to what was promised in CVS's marketing, packaging, and labeling. In addition, Plaintiffs and Class members were deprived of the benefit of their bargain and spent money on the Advanced Eye Health supplement, when it had less value than warranted. Plaintiffs and Class members would not have purchased the Advanced Eye Health supplement had they known the

1	true facts abo	out the product.			
2	PRAYER FOR RELIEF				
3	WHEREFORE, Plaintiffs ask the Court to enter the following judgment:				
4	A.	A. Certifying the Class and Subclass, appointing Plaintiffs as representatives of th			
5	Class and Su	bclass, and designating	their counsel as counsel for the Class and Subclass;		
6	В.	Declaring that CVS	has committed the violations alleged herein;		
7	C.	Granting all available	le equitable relief to Plaintiffs and the Class and Subclass;		
8	D.	D. Granting declaratory and injunctive relief to enjoin CVS from engaging in the			
9	unlawful prac	ctices described in this	Complaint;		
10	E.	Granting interest at t	the legal rate on the forgoing sums;		
11	F.	Granting attorneys'	fees and costs of suit incurred; and		
12	G. Granting further relief as this Court may deem proper.				
13		<u>n</u>	URY TRIAL DEMANDED		
14	Plaint	iffs hereby demand a tr	rial by jury on all claims so triable.		
15	DATED: Jan	uary <u>13</u> , 2015	STANLEY LAW GROUP		
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