

VENABLE LLP

Daniel S. Silverman (SBN 137864)

DSSilverman@venable.com

Bryan J. Weintrop (SBN 307416)

BJWeintrop@venable.com

2049 Century Park East, Suite 2300

Los Angeles, CA 90067

Telephone: (310) 229-9900

Facsimile: (310) 229-9901

Attorneys for Defendant
Synergy CHC Corp.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

GENEVA GONZALES and RUTH
MARTIN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

SYNERGY CHC CORP., A Nevada
Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 2:23-cv-03245

**DEFENDANT SYNERGY CHC
CORP.'S NOTICE OF REMOVAL**

[Los Angeles Superior Court Case No.
23STCV05927]

Action Filed: March 17, 2023
First Amended Complaint Filed: April
3, 2023
First Amended Complaint Served:
April 5, 2023
Removed: April 28, 2023

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, Defendant Synergy CHC Corp.
3 (“Defendant”) hereby removes the above-captioned case pending in the Superior
4 Court of the State of California, for the County of Los Angeles, as Case No.
5 23STCV05927. This putative class action is properly removed pursuant to the
6 Class Action Fairness Act (“CAFA”), as: (1) the putative class size exceeds 100
7 persons; (2) there is “minimal diversity between plaintiffs and defendants; and (3)
8 the amount in controversy exceeds \$5,000,000. The grounds for removal are as
9 follows:

10 1. CAFA grants district courts original jurisdiction over civil class action
11 lawsuits filed under Federal or State law in which any member of a class of
12 plaintiffs is a citizen of a State different from any defendant; the number of
13 members of all proposed plaintiff classes in the aggregate is over 100; and where
14 the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
15 interests and costs. 28 U.S.C. § 1332(d). CAFA authorizes removal of such
16 actions under 28 U.S.C. § 1446.

17 2. This action is properly removed to the United States District Court for
18 the Central District of California because this matter was filed in the Superior
19 Court of the State of California for the County of Los Angeles, which lies within
20 this District and Division. *See* 28 U.S.C. § 84(c)(2).

21 **PROCEDURAL BACKGROUND**

22 3. On March 17, 2023, Plaintiff Geneva Gonzales filed the above
23 captioned action in the Superior Court of the State of California, County of Los
24 Angeles, under Case No. 23STCV05927. Gonzales alleged claims against
25 Defendant under the California Consumer Legal Remedies Act, Cal. Civ. Code §
26 1750 *et seq.* (the “CLRA”) on behalf of a California putative class based on
27
28

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

1 Defendant’s purported false advertising of a dietary supplement. *See* Compl.
2 *generally*.

3 4. Defendant was not served with the original Complaint. *See*
4 Declaration of Daniel S. Silverman (“Silverman Decl.”) ¶ 2.

5 5. Plaintiff filed a First Amended Complaint (“FAC”) on April 3, 2023
6 adding Plaintiff Ruth Martin to the case (Martin and Gonzales are referred to
7 collectively as “Plaintiffs”). FAC *generally*. Plaintiffs also added a damages
8 claim and expanded the class to make it nationwide (whereas the original
9 Complaint only sought injunctive relief and was only asserted on behalf of a
10 California putative class). *Compare* Compl. ¶ 19 with FAC ¶ 19 and FAC at 6
11 (Prayer for Relief).

12 6. Defendant was served with the FAC via a Notice and
13 Acknowledgment of Receipt on April 5, 2023. *See* Silverman Decl. ¶ 3.

14 **THE REMOVAL IS TIMELY**

15 7. 28 U.S.C. § 1446(b) identifies two initial 30-day windows for
16 removal: (1) where the complaint’s removability is clear from the face of the
17 pleading; and (2) where the initial pleading does not reveal a basis for removal but
18 the defendant “receives an amended pleading, motion, or other paper from which it
19 can be ascertained from the face of the document that removal is proper.”
20 *Gallegos v. Costco Wholesale Corp.*, 2020 U.S. Dist. LEXIS 96911, at *5 (C.D.
21 Cal. June 2, 2020).

22 8. This removal is timely because the Defendant was never served with
23 original Complaint, and the FAC reveals facts indicating that the action is
24 removable. Specifically, the FAC reveals that the action is subject to removal
25 because the amount in controversy exceeds \$5,000,000 based on the inclusion of
26 claims for monetary damages.

27
28

1 9. The removal is, thus, timely because this removal is being filed within
2 30 days of Defendant being served with the FAC. *See* Silverman Decl. ¶ 4.

3 **CAFA’S MINIMAL DIVERSITY OF CITIZENSHIP REQUIREMENT IS**
4 **SATISFIED**

5 10. This Court has original jurisdiction over the action under CAFA
6 because it is a civil class action in which at least one member of the proposed
7 putative class of plaintiffs is a citizen of a state different from any defendant. *See*
8 28 U.S.C. § 1332(d)(2)(A).

9 11. The FAC establishes that there is minimal diversity of citizenship
10 between the class and Defendants under CAFA. *See id.* A class need not be
11 certified before a court may assert federal jurisdiction over the action under CAFA.
12 *See* 28 U.S.C. § 1332(d)(8).

13 12. Specifically, and by the allegations of the FAC, Plaintiffs are residents
14 of California, while Defendant is a corporation incorporated in Nevada with its
15 principal place of business in Maine. *See* Compl. ¶¶ 4-5; *see also Johnson v.*
16 *Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“a
17 corporation is a citizen only of (1) the state where its principal place of business is
18 located, and (2) the state in which it is incorporated.”) Because Plaintiffs are
19 diverse from Defendant and purport to represent a class of California consumers,
20 minimal diversity is satisfied.¹

21
22
23
24
25
26
27 ¹ Although the Complaint fictitiously names Doe defendants, their citizenship is
28 disregarded for purposes of determining whether minimal diversity is satisfied.
See 28 U.S.C. § 1441(b)(1).

CAFA’S CLASS SIZE REQUIREMENTS ARE SATISFIED

13. CAFA grants district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which members of all proposed plaintiff classes in the aggregate is over 100. 28 U.S.C. § 1332(d).

14. Plaintiffs’ FAC alleges claims on behalf of a putative class comprised of themselves and all similarly situated nationwide consumers who made retail purchases of the Defendant’s Focus Factor product during the class period, which is three years prior to the filing of the Complaint.

15. In the three years preceding March 17, 2023, far more than 100 consumers have made retail purchases of the product.

16. CAFA’s class size requirement is, thus, satisfied.

CAFA’S AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

17. CAFA authorizes the removal of class action cases in which the amount in controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

18. Plaintiffs have not alleged a specific amount in controversy in the FAC. However, the failure of the FAC to specify the total amount of monetary relief sought by Plaintiff does not deprive this Court of jurisdiction. *Banta v. Am. Med. Response Inc.*, No. CV 11-03586 GAF (RZx), 2011 U.S. Dist. LEXIS 77558, at * 3 (C.D. Cal. Jul. 15, 2011) (observing that even where a pleading is indefinite on its face, a defendant can possess “sufficient information allowing it to ascertain that the amount in controversy exceeds the jurisdiction minimum” and thus may remove the action on that basis).

19. To remove a class action pursuant to CAFA, the removing party merely needs to file a “short and plain statement of the grounds of removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014). The court must accept the removing party’s amount in controversy allegation as long as the

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

1 allegation is made in good faith. *Id.* at 87. The removing party’s notice of removal
2 only needs to include a plausible allegation that the amount in controversy exceeds
3 the jurisdictional threshold. *Id.* at 89.

4 20. In considering whether the amount in controversy exceeds
5 \$5,000,000, the Court must “look beyond the complaint to determine whether the
6 putative class action meets the [amount in controversy] requirements” adding “the
7 potential claims of the absent class members” and attorneys’ fees. *Rodriguez*, 728
8 F.3d at 981 (*citing Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345 (2013));
9 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 705 (9th Cir. 2007).

10 21. Furthermore, “[i]n considering whether the amount in controversy is
11 clear from the face of the complaint, a court must assume that the allegations of the
12 complaint are true and that a jury will return a verdict for the plaintiff on all claims
13 made in the complaint.” *Altamirano v. Shaw Indus., Inc.*, C-13-0939 EMC, 2013
14 WL 2950600, at *4 (N.D. Cal. June 14, 2013) (*citing Korn v. Polo Ralph Lauren*
15 *Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)); *see also Muniz*, 2007 WL
16 1302504, at *3.

17 22. Here, Plaintiffs seek, on behalf of themselves and nationwide putative
18 class members, actual, statutory and punitive damages, injunctive relief, as well as
19 attorneys’ fees based on sales of Focus Factor during the class period. *See* FAC
20 ¶14, 14(B.iii.); *see also* FAC at 6 (Prayer for Relief).

21 23. In the three years preceding March 17, 2023, sales of the Product have
22 far exceeded \$5,000,000. Therefore, the amount in controversy far exceeds
23 \$5,000,000 such that the threshold for CAFA removal is met, even before any
24 amounts associated with statutory damages, punitive damages, injunctive relief or
25 attorney’s fees are taken into consideration.

26
27
28

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

THE OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED

24. Consent of other parties is not required for removal under CAFA’s class action jurisdiction. *See* 28 U.S.C. § 1453(b). Additionally, there are no parties other than Plaintiffs and the proposed classes and removing Defendant.

25. Defendant is filing herewith true and correct copies of the state court filings with which it has been served, including copies of all process, pleadings, and orders. *See* Silverman Decl. Exs. 1-7.

26. Pursuant to 28 U.S.C. § 1446(d), Defendant is filing with the clerk of the Superior Court of the State of California for the County of Los Angeles, and serving upon plaintiffs, a Notice to Adverse Party and State Court of Removal of Action to Federal Court. Proof of same will be filed with this Court. *See* Silverman Decl., Ex. 7.

27. No previous application has been made for the relief requested herein in this Action.

28. This Notice of Removal has been signed pursuant to Fed. R. Civ. P. 11.

29. Defendant reserves the right to amend or supplement this Notice of Removal.

Accordingly, Defendant respectfully requests that this action be removed to this Court.

Dated: April 28, 2023

VENABLE LLP

Daniel S. Silverman

Bryan J. Weintrop

By: */s/ Daniel S. Silverman*

Daniel S. Silverman

*Attorneys for Defendants,
Synergy CHC Corp.*

Electronically FILED by Superior Court of California, County of Los Angeles on 03/17/2023 10:01 AM David W. Slayton, Executive Officer/Clerk of Court, by D. Jackson Aubry, Deputy Clerk

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

PACIFIC TRIAL ATTORNEYS
A Professional Corporation
Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
Tel: (949) 706-6464
Fax: (949) 706-6469

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GENEVA GONZALEZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SYNERGY CHC CORP., a Nevada corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. **23STCV05927**

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT

1 **I. INTRODUCTION**

2 **Defendant sells a line of supplements known as “FocusFactor” (the “Product”) by falsely**
3 **claiming that it will improve “memory, concentration, and focus.” In reality, Defendant’s claims**
4 **have been proven false by overwhelming scientific evidence.**

5 **II. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over all causes of action asserted herein.

7 2. Venue is proper in this County in accordance with California Code of Civil Procedure
8 Section 394(b) because “none of the defendants reside in the state.” As such, venue is proper “in any
9 county that the plaintiff may designate in his or her complaint.”

10 3. Defendant is subject to jurisdiction under California’s “long-arm” statute found at
11 California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant
12 is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes
13 that Defendant generates a minimum of eight percent of its national website sales to Californians, such
14 that the website “is the equivalent of a physical store in California.” Since this case involves false
15 representations made in part on Defendant’s website, California courts can “properly exercise personal
16 jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v.*
17 *Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

18 **III. PARTIES**

19 4. Plaintiff is an individual and a consumer advocate who is a resident of California.

20 5. Defendant is a Nevada company with its principal place of business in Maine that
21 develops, manufactures, promotes, markets, distributes and/or sells the Product to consumers
22 nationwide. In a filing with the SEC, Defendant generally describes its business model: “An increased
23 focus on health, beauty and wellness by consumers has served as a tailwind for our brands. The
24 nutritional supplement market has experienced significant growth across a range of areas including
25 immune health, brain health, heart health, sleep/stress, and overall nutrition and wellness as a result of
26 an aging population, increased obesity, pandemic concerns and a desire for more natural solutions and
27 treatments.”

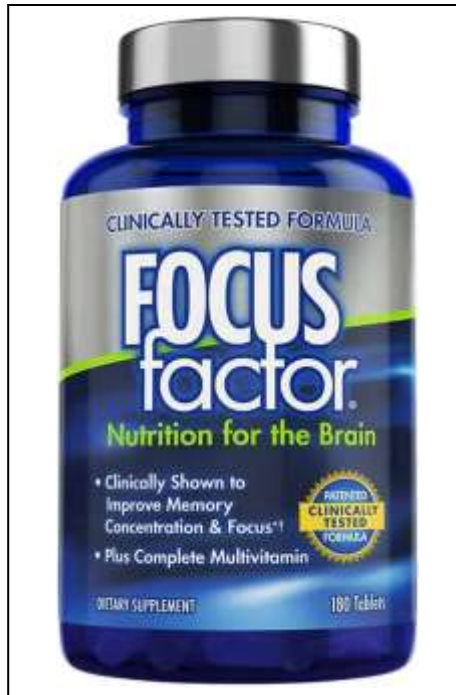
28 ///

6. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff will amend the Complaint to reflect the true names of the DOE Defendants when such identities become known.

IV. FACTS

7. Plaintiff is a consumer advocate with dual motivations for purchasing the Product. First, Plaintiff was genuinely interested in using the product as directed and obtaining the promised results, and Plaintiff’s desire to obtain the advertised benefits of the Product was a substantial, meaningful factor in Plaintiff’s decision to purchase the product. Second, Plaintiff is a “tester” who works to ensure that companies abide by the obligations imposed by California law. As someone who advances important public interests at the risk of vile personal attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

8. An example of the front and back labels of the Product are as follows:



The image shows the back of the Focus Factor bottle with the 'Supplement Facts' table. The table lists various vitamins and minerals with their amounts per serving and percentage of Daily Value (DV). A 'Synergistic and proprietary formulation' section lists additional ingredients.

Amount Per Serving		% DV	Amount Per Serving		% DV
Vitamin A (as CooCam® natural beta-carotene and Retinens® mixed carotenoids)	4,000 IU	80%	Phenylalanine acid (as D-calcium pantothenate)	12 mg	100%
Vitamin C (as ascorbic acid, sodium ascorbate, calcium ascorbate, potassium ascorbate, zinc ascorbate, and ascorbyl palmitate)	250 mg	477%	Calcium (as calcium citrate)	50 mg	10%
Vitamin D (as cholecalciferol)	100 IU	20%	Iron (as Ferrous® carbonyl iron)	5 mg	10%
Vitamin E (as natural d-alpha-tocopheryl succinate)	30 IU	100%	Iodine (as potassium iodide)	75 mcg	150%
Thiamin (as thiamin mononitrate)	2 mg	200%	Magnesium (as magnesium citrate)	100 mg	20%
Riboflavin	1.7 mg	100%	Magnesium malate and magnesium bis malate	10 mg	20%
Niacin (from nicotinyl hexanoate and 50% as niacinamide)	15 mg	155%	Zinc (as zinc citrate and zinc ascorbate)	10 mg	20%
Vitamin B6 (as pyridoxal-5-phosphate hydrochloride, pyridoxal-5-phosphate)	10 mg	200%	Selenium (as selenomethionine)	50 mcg	100%
Folate (as folic acid)	400 mcg	100%	Copper (as copper citrate)	0.4 mg	20%
Vitamin B12 (as cyanocobalamin)	20 mcg	333%	TPAC2® copper (picrate-chelate)	2 mg	100%
Biotin	300 mcg	100%	Manganese (as manganese citrate)	100 mcg	20%
			Chromium (as chromium polynicotinate)	100 mcg	20%
			Molybdenum (as molybdenum amino acid chelate)	90 mcg	180%
			Potassium (as potassium citrate)	50 mg	10%
			Potassium aspartate and potassium ascorbate	662 mg	-

Synergistic and proprietary formulation 662 mg
 Dimethylaminoethyl ester (as DMAE) bitartrate, L-glutamine, Saccap® (saccharin monohydrate extract; whole plant), L-cysteinamide acid, phosphatidylcholine, liposomal ascorbic acid concentrate (15%), DMAE from fish (sardines, sardines, and salmon) body oil, choline (as choline bitartrate), inositol, N-acetyl tyrosine, Silib® (full standardized extract (25%) and hydroxytyrosin, gamma-aminobutyric acid, grape skin extract and Active™ (grape seed extract), vitexifolin, Thera-Life electrolyte concentrate, Hesperidin A extract of hesperidin seeds, rose hips, lemon (as lemon citrate) and vanadium (as vanadyl sulfate).

*Daily Value not established.

9. The accompanying marketing materials of the Product found at www.focusfactor.com claim that the Product is “NUTRITION FOR THE BRAIN” that will “Improve memory, concentration

1 & focus”, that has been “America's brain health supplement brand for over 20 years”, and consists of
2 “Patented and clinically tested formulas.”

3 10. Defendant’s efficacy claims are not simply unsubstantiated, they have been proven to
4 false by the overwhelming weight of scientific evidence. Numerous scientific studies conclusively
5 prove that the ingredients in the Product do not and cannot the promised benefits.

6 11. If and when the Court deems it appropriate (and subject to any required protective
7 order), Plaintiff will submit a non-exhaustive list of clinical studies demonstrating the falsity of
8 Defendant’s efficacy claims, along with a brief summary of the key findings of each study.

9 12. Plaintiff purchased the Product in substantial part based upon the above-referenced
10 efficacy claims. Plaintiff used the Product as directed but did not experience any of the benefits
11 promised by the Product.

12 13. The “Who, What, When, Where, and How of the misconduct” is as follows:

- 13 a. **The “Who”:** The party responsible for promulgating the false efficacy claims is
14 Defendant Synergy CHC Corp. based in Maine.
- 15 b. **The “What”:** The claims on the label of Defendant’s product and accompanying
16 marketing materials that the product will “Improve memory, concentration & focus.”
- 17 c. **The “When”:** The false claims were made throughout the class period, and Plaintiff
18 purchased the product in 2022;
- 19 d. **The “Where”:** Plaintiff purchased the product at CVS in Los Angeles County,
20 California.
- 21 e. **The “How”:** By making demonstrably false claims that its product provides memory
22 benefits that it does not and cannot provide, Defendant has illegally collected millions
23 of dollars from unsuspecting consumers.

24 **V. CLASS ALLEGATIONS**

25 14. Plaintiff brings this action individually and on behalf of all others similarly situated (the
26 “Class”) defined as follows:

27 **All persons within California who purchased the Product for personal use**
28 **during the Class Period.**

1 A. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the
2 number to be in the thousands, if not more. The exact identities of Class Members may be ascertained
3 by the records maintained by Defendant and its authorized retailers.

4 B. COMMONALITY: Common questions of fact and law exist as to all class members,
5 and predominate over any questions affecting only individual members of the Class. Such common
6 legal and factual questions, which do not vary between Class members, and which may be determined
7 without reference to the individual circumstances of any Class Member, include but are not limited to
8 the following:

- 9 i. Whether Defendant violated the law;
- 10 ii. The amount of damages; and
- 11 iii. The proper injunctive relief.

12 C. TYPICALITY: As a person who purchased the product for personal use and used it as
13 directed, Plaintiff is asserting claims that are typical of the Class.

14 D. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members
15 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals
16 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
17 would otherwise be improper are excluded.

18 E. SUPERIORITY: A class action is superior to other available methods of adjudication
19 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even
20 if every Class Member could afford individual litigation, the court system could not. It would be
21 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

22 **VI. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **Violations of the Consumer Legal Remedies Act,**

25 **Cal. Civ. Code §§ 1750 et seq.**

26 15. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
27 forth in full herein.

28 ///

1 16. California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, et
2 seq., prohibits deceptive practices in connection with the conduct of a business that provides goods,
3 property, or services primarily for personal, family, or household purposes.

4 17. Defendant’s false and misleading labeling and advertising was designed to, and did,
5 induce the purchase and use of the Product for personal, family, or household purposes by Plaintiff
6 and Class Members, and violated and continue to violate the following sections of the CLRA:

- 7 i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do
8 not have; and
- 9 ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they
10 are of another.

11 18. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised
12 Product to unwary consumers. Defendant’s wrongful business practices constituted, and constitute, a
13 continuing course of conduct in violation of the CLRA.

14 19. Contemporaneous with the filing of this Complaint, Plaintiff provided notice in
15 accordance with section 1782 of the CLRA and demanded that Defendant rectify the actions described
16 above. Notwithstanding anything to the contrary herein, at this time Plaintiff only seeks injunctive
17 relief pursuant to Cal. Civ. Code § 1782(d). Plaintiff will amend the Complaint to include a request
18 for damages if Defendant does not provide a timely and complete “correction, repair, or replacement”
19 within 30 days.

20 **VII. PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for judgment against Defendant for:

- 22 i. Appropriate class certification and management orders;
- 23 ii. Actual, statutory and punitive damages;

24 ///

25 ///

26 ///


27 ///

28 ///

- iii. An award of attorneys' fees and costs; and
- iv. All other relief at law or in equity as may be proper.

Dated: March 17, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott J. Ferrell
Attorneys for Plaintiff

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

1 PACIFIC TRIAL ATTORNEYS
A Professional Corporation
2 Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
3 Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
4 4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
5 Tel: (949) 706-6464
Fax: (949) 706-6469

6 Attorneys for Plaintiffs
7

FILED
Superior Court of California
County of Los Angeles

04/03/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 GENEVA GONZALES and RUTH MARTIN,
12 individuals and on behalf of all others similarly
situated,

13 Plaintiffs,

14 v.

15 SYNERGY CHC CORP., a Nevada corporation;
16 and DOES 1 through 10, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. 23STCV05927

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF THE
CONSUMER LEGAL REMEDIES ACT**

1 **I. INTRODUCTION**

2 **Defendant sells a line of supplements known as “FocusFactor” (the “Product”) by falsely**
3 **claiming that it will improve “memory, concentration, and focus.” In reality, Defendant’s claims**
4 **have been proven false by overwhelming scientific evidence.**

5 **II. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over all causes of action asserted herein.

7 2. Venue is proper in this County in accordance with California Code of Civil Procedure
8 Section 394(b) because “none of the defendants reside in the state.” As such, venue is proper “in any
9 county that the plaintiff may designate in his or her complaint.”

10 3. Defendant is subject to jurisdiction under California’s “long-arm” statute found at
11 California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant
12 is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiffs believe
13 that Defendant generates a minimum of eight percent of its national website sales to Californians, such
14 that the website “is the equivalent of a physical store in California.” Since this case involves false
15 representations made in part on Defendant’s website, California courts can “properly exercise personal
16 jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield*
17 *Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

18 **III. PARTIES**

19 4. Plaintiffs are individuals and consumer advocates who are residents of California.

20 5. Defendant is a Nevada company with its principal place of business in Maine that
21 develops, manufactures, promotes, markets, distributes and/or sells the Product to consumers
22 nationwide. In a filing with the SEC, Defendant generally describes its business model: “An increased
23 focus on health, beauty and wellness by consumers has served as a tailwind for our brands. The
24 nutritional supplement market has experienced significant growth across a range of areas including
25 immune health, brain health, heart health, sleep/stress, and overall nutrition and wellness as a result of
26 an aging population, increased obesity, pandemic concerns and a desire for more natural solutions and
27 treatments.”

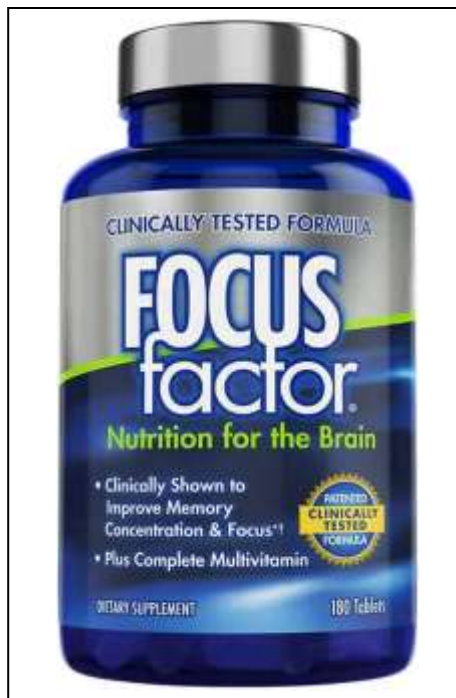
28 ///

6. The true names and capacities of the Defendants sued herein as DOE DEFENDANTS are currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Plaintiffs will amend the Complaint to reflect the true names of the DOE Defendants when such identities become known.

IV. FACTS

7. Plaintiffs are consumer advocates with dual motivations for purchasing the Product. First, Plaintiffs were genuinely interested in using the product as directed and obtaining the promised results, and Plaintiffs’ desire to obtain the advertised benefits of the Product was a substantial, meaningful factor in Plaintiffs’ decisions to purchase the product. Second, Plaintiffs are “testers” who work to ensure that companies abide by the obligations imposed by California law. As persons who advance important public interests at the risk of vile personal attacks, Plaintiffs should be “praised rather than vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

8. An example of the front and back labels of the Product are as follows:



Amount Per Serving		% DV	Amount Per Serving		% DV
Vitamin A (as CooCam® natural beta-carotene and Retinex® mixed carotenoids)	4,000 IU	80%	Panthothenic acid (as D-calcium pantothenate)	12 mg	100%
Vitamin C (as ascorbic acid, sodium ascorbate, calcium ascorbate, potassium ascorbate, zinc ascorbate, and ascorbyl palmitate)	250 mg	477%	Calcium (as calcium citrate, calcium ascorbate and calcium ascorbate)	50 mg	5%
Vitamin D (as cholecalciferol)	100 IU	20%	Iron (as Ferroxyl® carbonyl iron)	3 mg	28%
Vitamin E (as natural d-alpha-tocopheryl succinate)	30 IU	100%	Yohimbe (as yohimbinum hydrobromide)	75 mg	75%
Thiamin (as thiamin mononitrate)	3 mg	200%	Magnesium (as magnesium citrate, magnesium malate and magnesium L-threonate)	300 mg	28%
Riboflavin	1.7 mg	100%	Zinc (as zinc citrate and zinc ascorbate)	10 mg	50%
Niacin (from nicotinyl hexanoate and 50% as nicotinamide)	15 mg	155%	Selenium (as selenomethionine)	50 mcg	71%
Vitamin B6 (as pyridoxal-5-phosphate hydrochloride, pyridoxal-5-phosphate)	15 mg	750%	Copper (as copper citrate, TPAAC® copper picrate-chelate)	0.4 mg	20%
Folate (as folic acid)	400 mcg	100%	Manganese (as manganese citrate)	2 mg	100%
Vitamin B12 (as cyanocobalamin)	20 mcg	333%	Chromium (as chromium polynicotinate)	100 mcg	83%
Biotin	300 mcg	100%	Molybdenum (as molybdenum amino acid chelate)	90 mcg	13%
			Potassium (as potassium citrate, potassium aspartate and potassium ascorbate)	50 mg	1%
Synergistic and proprietary formulation			662 mg		
Dimethylaminoethyl propanoate (DMAE) bitartrate, L-glutamine, Bacopa® (Bacopa monnina extract), white plant, L-tyrosine, L-phenylalanine, phosphatidylserine, liponchalcone, ascorbic acid concentrate (15%), DMAE from fish (antibody, sardine, and salmon body oil), choline (as choline bitartrate), inositol, N-acetyl tyrosine, Salberry® full standardized extract (25%), anthocyanosides, gamma-aminobutyric acid, grape skin extract and Active™ grape seed extract, vitexifolin, Trace Life electrolyte concentrate, Hesperidin A extract of hesperidin seeds, carnitine, biotin (as biotin citrate) and vanadium (as vanadyl sulfate).					
*Daily Value not established.					

9. The accompanying marketing materials of the Product found at www.focusfactor.com claim that the Product is “NUTRITION FOR THE BRAIN” that will “Improve memory, concentration

1 & focus”, that has been “America's brain health supplement brand for over 20 years”, and consists of
2 “Patented and clinically tested formulas.”

3 10. Defendant’s efficacy claims are not simply unsubstantiated, they have been proven to
4 false by the overwhelming weight of scientific evidence. Numerous scientific studies conclusively prove
5 that the ingredients in the Product do not and cannot the promised benefits.

6 11. If and when the Court deems it appropriate (and subject to any required protective order),
7 Plaintiffs will submit a non-exhaustive list of clinical studies demonstrating the falsity of Defendant’s
8 efficacy claims, along with a brief summary of the key findings of each study.

9 12. Plaintiffs purchased the Product in substantial part based upon the above-referenced
10 efficacy claims. Plaintiffs used the Product as directed but did not experience any of the benefits
11 promised by the Product.

12 13. The “Who, What, When, Where, and How of the misconduct” is as follows:

- 13 a. **The “Who”:** The party responsible for promulgating the false efficacy claims is
14 Defendant Synergy CHC Corp. based in Maine.
- 15 b. **The “What”:** The claims on the label of Defendant’s product and accompanying
16 marketing materials that the product will “Improve memory, concentration & focus.”
- 17 c. **The “When”:** The false claims were made throughout the class period, and Plaintiffs
18 purchased the product in 2022;
- 19 d. **The “Where”:** Plaintiff Gonzales purchased the product at CVS in Los Angeles County,
20 California, and Plaintiff Martin purchased the product at CVS in Fresno County,
21 California.
- 22 e. **The “How”:** By making demonstrably false claims that its product provides memory
23 benefits that it does not and cannot provide, Defendant has illegally collected millions of
24 dollars from unsuspecting consumers.

25 **V. CLASS ALLEGATIONS**

26 14. Plaintiffs brings this action individually and on behalf of all others similarly situated (the
27 “Class”) defined as follows:
28

1 **All persons within the United States who purchased the Product for personal**
2 **use during the Class Period.**

3 A. NUMEROSITY: Plaintiffs do not know the number of Class Members but believes the
4 number to be in the thousands, if not more. The exact identities of Class Members may be ascertained
5 by the records maintained by Defendant and its authorized retailers.

6 B. COMMONALITY: Common questions of fact and law exist as to all class members, and
7 predominate over any questions affecting only individual members of the Class. Such common legal
8 and factual questions, which do not vary between Class members, and which may be determined without
9 reference to the individual circumstances of any Class Member, include but are not limited to the
10 following:

- 11 i. Whether Defendant violated the law;
- 12 ii. The amount of damages; and
- 13 iii. The proper injunctive relief.

14 C. TYPICALITY: As a person who purchased the product for personal use and used it as
15 directed, Plaintiffs are asserting claims that are typical of the Class.

16 D. ADEQUACY: Plaintiffs will fairly and adequately protect the interests of the members
17 of The Class. Plaintiffs have retained attorneys experienced in the class action litigation. All individuals
18 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
19 would otherwise be improper are excluded.

20 E. SUPERIORITY: A class action is superior to other available methods of adjudication
21 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even
22 if every Class Member could afford individual litigation, the court system could not. It would be unduly
23 burdensome to the courts in which individual litigation of numerous cases would proceed.

24 ///
25 ///
26 ///
27 ///
28 ///

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violations of the Consumer Legal Remedies Act,**

4 **Cal. Civ. Code §§ 1750 et seq.**

5 15. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set
6 forth in full herein.

7 16. California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq.,
8 prohibits deceptive practices in connection with the conduct of a business that provides goods, property,
9 or services primarily for personal, family, or household purposes.

10 17. Defendant's false and misleading labeling and advertising was designed to, and did,
11 induce the purchase and use of the Product for personal, family, or household purposes by Plaintiffs and
12 Class Members, and violated and continue to violate the following sections of the CLRA:

- 13 i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do
14 not have; and
15 ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they
16 are of another.

17 18. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised
18 Product to unwary consumers. Defendant's wrongful business practices constituted, and constitute, a
19 continuing course of conduct in violation of the CLRA.

20 19. Contemporaneous with the filing of this Complaint, Plaintiffs provided notice in
21 accordance with section 1782 of the CLRA and demanded that Defendant rectify the actions described
22 above.

23 **VII. PRAYER FOR RELIEF**

24 Wherefore, Plaintiffs pray for judgment against Defendant for:

- 25 i. Appropriate class certification and management orders;
26 ii. Actual, statutory and punitive damages;
27 iii. An award of attorneys' fees and costs; and
28

1 iv. All other relief at law or in equity as may be proper.
2

3 Dated: March 31, 2023

PACIFIC TRIAL ATTORNEYS, APC

4 By: 
5 Scott. J. Ferrell
6 Attorneys for Plaintiffs
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FocusFactor Memory, Concentration-Boosting Claims Disproven by Science, Class Action Says](#)
