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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 JULIE CHOI, KIT LAU, and Plaintiff
DOES 1 through 1000

12 Plaintiffs,

13 v.

14 GIANTCEUTICAL INC., BIOCALTH
15 INTERNATIONAL (S.F.)
CORPORATION, JIE J. WEN (aka
16 JACKSON WEN), and Defendant DOES 1
through 200

17 Defendants.
18

CASE NO.

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES AND DAMAGES;
DEMAND FOR JURY TRIAL**

Health & Safety Code §25249.6
Bus. & Prof. Code §17200
Bus. & Prof. Code §17500
Bus. & Prof. Code §17533.7
Civil Code §§1750 *et seq.*

19 Plaintiffs allege and state as follows:

20 **INTRODUCTION**

21 1. Defendants Giantceutical Inc. and Biocalth International (S.F.) Corporation
22 (collectively the “Defendants”) have exposed numerous individuals to lead contained in calcium
23 supplements (the “Product”) made and sold by Defendants.

24 2. These Defendants know, while the general public does not, that the Product
25 (marketed as BioCalth®) contains lead. Consumers of Defendants’ Product, including small
26 children, take lead into their bodies each time they ingest the Defendants’ Product. The State of
27 California has officially determined that lead is known to cause reproductive damage by exposure
28 through ingestion. Lead can cause various other adverse health effects because it accumulates in

1 the body and adds to the total lead stored in the body; it is also transferred in maternal milk to
2 neonates.

3 3. The level of exposure from ingestion of the Product exceeds by several-fold the
4 warning-requirement level set for reproductive toxicants under the Safe Drinking Water and
5 Toxic Enforcement Act of 1986, California Health & Safety Code Sections 25249.5 *et seq.*
6 (popularly known as “Proposition 65”). Lead was listed as a reproductive toxicant for men and
7 women in 1987.

8 4. Years ago the calcium supplement industry agreed to reduce, and in some cases
9 eliminate, the presence of lead. In contrast, the level of lead in Defendants’ Product is
10 extraordinarily large, especially when viewed from the perspective of the amount of lead ingested
11 per 1,000 mg. of calcium.

12 5. Defendants have not provided any disclosures or warnings that the Product
13 contains lead. Defendants have not minimized the amount of lead in the Product.

14 6. By knowingly and intentionally exposing California consumers to lead without
15 proper warnings, Defendants have violated Proposition 65, as well as the Unfair Competition Law
16 (Business & Professions Code §§17200 and 17500) and Consumer Legal Remedies Act (§§ 1750
17 *et seq.* C.C.). Defendants have a legal duty to disclose material facts so as not to mislead
18 purchasers of the Product.

19 7. Further, Defendants’ claim that the Product is “Made in U.S.A.” is a violation of
20 Business & Professional Code §§17200 and 17533.7 because the Product is manufactured outside
21 of the United States.

22 **PARTIES**

23 8. Plaintiffs Julie Choi and Kit Lau are residents of California and citizens of the
24 United States. Plaintiffs Choi and Lau are a “person” within the meaning of California Health &
25 Safety Code §25249.11(a) and §§17204 and 17535 Business & Professional Code and a
26 “consumer” within the meaning of §1780 Civil Code. They are bringing this enforcement action
27 on behalf of themselves and, in the case of the Eighth Cause of Action, the class of individuals
28 who purchased the Product. Plaintiffs have purchased the Defendants’ Product, and have been

1 subjected to advertising related to the Product.

2 9. Plaintiff DOES 1 through 1000 are each a “person” under Health & Safety
3 Code §25249.11 and Business & Professions Code §§17204 and 17535 and a “consumer” within
4 the meaning of §1780 Civil Code. Plaintiff DOES 1 through 1000 are customers of Defendants
5 who have purchased the Product over the last four years. Their true names and identities are
6 unknown to Plaintiffs Choi and Lau at this time. When their identities are ascertained, and if they
7 wish to be added as individual plaintiffs, then the complaint shall be amended to reflect their true
8 names.

9 10. The term “PLAINTIFFS,” as used herein after, means Plaintiffs Choi and Lau as
10 well as all Plaintiff DOES 1 to 1000.

11 11. Defendant Giantceutical Inc. is a California corporation with its headquarters and
12 principal place of business located at 1871 Wright Street, LaVerne, California. Defendant
13 Biocalth International (S.F.) Corporation is a California corporation with it headquarters and
14 principal place of business located at 2254 Taraval Street, San Francisco, California. Defendants
15 Giantceutical Inc. and Biocalth International (S.F.) Corporation manufacture and/or distribute the
16 Product for sale and/or use in California.

17 12. Defendants Giantceutical Inc. and Biocalth International (S.F.) Corporation are
18 each a person in the course of doing business within the meaning of Health & Safety Code
19 §25249.11, a person within the meaning of Business & Professions Code §17201, and a
20 corporation or other liable entity within the meaning of §§17500 and 17535 B.&P.C. Defendants
21 Giantceutical Inc. and Biocalth International (S.F.) Corporation manufacture and/or distribute the
22 Product for sale and/or use in California.

23 13. Defendant Does 1 through 200 are each a person in the course of doing business
24 within the meaning of Health & Safety Code §25249.11, a person within the meaning of Business
25 & Professions Code §17201, and a corporation or other liable entity within the meaning of
26 §§17500 and 17535, Business & Professional Code. Defendant Does 1 through 200 manufacture
27 and/or distribute the Product for sale and/or use in California. The true names of Defendant Does
28 1 through 200 are unknown to PLAINTIFFS at this time. When their identities are ascertained,

1 the complaint shall be amended to reflect their true names.

2 14. On information and belief the PLAINTIFFS allege that Mr. Jackson Wen, listed on
3 the Secretary of State’s records as President of defendant Giantceutical Inc., and Mr. Jie J. Wen,
4 listed on the Secretary of State’s records as President of defendant Biocalth International (S.F.)
5 Corporation, are one and the same person (“Wen”). PLAINTIFFS further allege that Biocalth
6 International (S.F.) Corporation and Giantceutical Inc. are both dominated and controlled by
7 defendant Wen, and that the acts and actions noted herein by Biocalth International (S.F.)
8 Corporation and Giantceutical Inc. have been and are controlled, directed, and knowingly aided
9 by defendant Wen. Further, defendant Wen is a person within the meaning of Business &
10 Professions Code §§17201, 17500 and 17535, and a resident of the State of California.

11 15. PLAINTIFFS further allege on information and belief that Biocalth International
12 (S.F.) Corporation and Giantceutical Inc. are wholly dominated and controlled by Wen, are the
13 alter ego of each other and Wen, and that any individuality and separateness between Biocalth
14 International (S.F.) Corporation, Giantceutical Inc., and Wen has ceased to exist. Adherence to
15 the fiction of the separate existence of each corporation as an entity distinct from each other and
16 from Wen would permit an abuse of the corporate privilege and would sanction fraud and
17 promote injustice. Further, on information and belief, PLAINTIFFS allege that Biocalth
18 International (S.F.) Corporation and Giantceutical Inc. are undercapitalized, lack insurance and
19 resources for the risks that they face, failed to observe corporate formalities, and commingled
20 assets with each other and with those of Wen, each being a separate and independent basis for
21 disregarding the fiction of the separate existence of the Biocalth International (S.F.) Corporation
22 and Giantceutical Inc. from each other and from Wen.

23 16. The term “DEFENDANTS,” as used herein is defined to mean all defendant
24 parties named, as well as all Defendant Does 1 to 200 referred to herein.

25 **STATUTORY AND REGULATORY BACKGROUND**

26 17. The People of the State of California declared, in adopting Proposition 65 in 1986,
27 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects and
28 other reproductive harm.” Proposition 65, §1(b).

1 18. To effectuate this goal, Proposition 65 requires that individuals be provided with a
2 “clear and reasonable warning” before being exposed to chemicals listed by the State of
3 California as causing cancer or birth defects and other reproductive harm, unless the business
4 responsible for the exposure can prove that such exposure is otherwise lawful.

5 “no person in the course of doing business shall knowingly and
6 intentionally expose any individual to a chemical known to the state
7 to cause cancer or reproductive toxicity without first giving clear
and reasonable warning to such individual...”. H&S Code
§25249.6.

8 19. Under Prop. 65, an exposure in “knowing” where the party responsible for such
9 exposure has:

10 “knowledge of the fact that a discharge of, release of, or exposure
11 to a chemical listed pursuant to Health & Safety Code §25249.8(a)
12 is occurring. No knowledge that the discharge, release or exposure
is unlawful is required.” 22 California Code of Regulations
§12201(d).

13 This knowledge may be either actual or constructive. Final Statement of Reasons, 22 California
14 Code of Regulations, Section 12201.

15 20. On February 27, 1987, the Governor of the state of California officially listed lead
16 as a chemical known to cause reproductive toxicity. Lead became subject to the Prop. 65 “clear
17 and reasonable” reproductive toxicity warning requirement one year later, beginning on February
18 27, 1988. 22 California Code of Regulations §12000; Health & Safety Code §25249.5 *et seq.*

19 21. Lead, even in small doses, is well known to cause damage to both the male and
20 female reproductive systems. Agency for Toxic Substances and Disease Registry (“ATSDR”),
21 *ToxFAQs: Lead*, 1992 and *Toxicology Profile*, 1999. Prenatal exposure to lead can have harmful
22 developmental effects, including premature births, smaller babies, decreased mental ability in the
23 infant, learning difficulties, and reduced growth in young children, as well as teratogenic effects
24 such as brain damage and abortion. *Id.* Childhood exposure to lead can also have harmful
25 effects, including neurological damage and cancer. *Id.*

26 22. Any person has standing to enforce violations of Prop. 65 provided that such
27 person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and
28 such public enforcers are not diligently prosecuting the action within their respective jurisdictions

1 within such 60-day time period. Health & Safety Code §25249.7(d).

2 23. Proposition 65 provides for injunctive relief and civil penalties up to \$2,500 per
3 day for each violation of Prop. 65. An action for injunctive relief, restitution and disgorgement of
4 monies improperly acquired, among other remedies, is also specifically authorized under
5 Business & Professions Code §§17203 and 17535 and Civil Code §1780.

6 24. Health & Safety Code §25249.13 provides that “Nothing in this chapter shall alter
7 or diminish any legal obligation otherwise required in common law or by statute or regulation,
8 and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal
9 obligation. Penalties and sanctions imposed under this chapter shall be in addition to any
10 penalties or sanctions otherwise prescribed by law.”

11 25. Business & Professions Code §17205 provides that “the remedies or penalties
12 provided by this chapter are cumulative to each other and to the remedies or penalties available
13 under all other laws of this state.” Similarly Civil Code §1752 notes that its causes of actions and
14 remedies are not exclusive.

15 26. Defendants’ failure to provide proper warnings in violation of Prop. 65 constitutes
16 an act of unfair competition that may be enjoined by the Court pursuant to Health & Safety Code
17 §25249.7(a), Business & Professions Code §§17203 and 17535, and Civil Code §1780.

18 **JURISDICTION AND VENUE**

19 27. The Court has jurisdiction over this action pursuant to Health and Safety Code
20 §25249.7(a), Business & Professions Code §§17203, 17204 and 17535, and Civil Code §1780
21 that individually and collectively allow enforcement in any court of competent jurisdiction. The
22 California Superior Court has jurisdiction over this action pursuant to California Constitution
23 Article VI, Section 10, which grants the Superior court “original jurisdiction in all cases except
24 those given by statute to other trial courts.” The statutes pursuant to which this action is brought
25 do not grant jurisdiction to any other trial court.

26 28. This Court has jurisdiction over Defendants because, based on information and
27 belief, each is a corporation that has sufficient minimum contacts in California, is a citizen of
28 California, or otherwise intentionally avails itself of the California market either through the

1 distribution or sale of the Product in the State of California or by having a manufacturing,
2 distribution, or other facility located in California so as to render the exercise of jurisdiction over
3 it by the California courts consistent with traditional notions of fair play and substantial justice.

4 29. Venue is proper in the San Francisco Superior Court because substantial numbers
5 of the violations at issue arise in the County of San Francisco.

6 **CLASS ACTION**

7 30. Except as otherwise noted, Plaintiffs Choi and Lau reserve the right to amend this
8 Complaint and seek certification of a class action against all DEFENDANTS pursuant to
9 California Code of Civil Procedure §382.

10 31. Plaintiffs Choi and Lau bring class action claims against all DEFENDANTS
11 pursuant to California Civil Code §1781 on behalf of themselves and all persons who purchased
12 the Product within the last three years.

13 32. Excluded from the class are DEFENDANTS, any parent, subsidiary, affiliate, or
14 control person of DEFENDANTS, as well as the officers, directors, agents, servants, or
15 employees of DEFENDANTS, and the immediate family members of such persons. Also
16 excluded is any trial judge who may preside over this case.

17 33. The members of the Class are so numerous that joinder of all members would be
18 impracticable. Plaintiffs Choi and Lau reasonably estimate that there are at least a hundred
19 thousand individuals who purchased the Product over the last three years. The precise number of
20 class members and their addresses are unknown to Plaintiffs Choi and Lau, and can be
21 ascertained through appropriate discovery of DEFENDANTS' records. Class members may be
22 notified of the pendency of this action by publication and/or other notice.

23 34. The claims of Plaintiffs Choi and Lau are typical of the claims of the members of
24 the class as all members of the class are similarly affected by DEFENDANTS' wrongful conduct.
25 Having been solicited to purchase and purchasing the Product, the claims of Plaintiffs Choi and
26 Lau are typical of the claims of the Class members.

27 35. Moreover, Plaintiffs Choi and Lau are well suited to represent all class members
28 deceived by DEFENDANTS' unfair, illegal, and fraudulent practices. Plaintiffs Choi and Lau

1 have no interest antagonistic to each other, or the other members of the putative class.

2 36. Prosecution of separate actions by individual members of the class would create a
3 risk of inconsistent adjudications with respect to individual members of the class that would
4 substantially impair or impeded the interests of the other class members to protect their own
5 interests. A class action is superior to all other available methods of adjudication of this
6 controversy. Moreover, a class action will promote judicial efficiency to litigate common
7 questions of law and fact in one forum rather than in multiple courts.

8 37. Plaintiffs Choi and Lau are committed to the vigorous prosecution of this action,
9 and have retained competent counsel experienced in class actions and consumer litigation to
10 prosecute their claims. Accordingly, Plaintiffs Choi and Lau are adequate representatives of the
11 class and will fairly and adequately protect the interests of the class.

12 38. Plaintiffs Choi and Lau explicitly reserve the right to add additional class
13 representatives, provided that DEFENDANTS are provided the opportunity to conduct discovery
14 on the chosen representative(s). Plaintiffs Choi and Lau will identify and propose class
15 representatives with the filing of Plaintiffs' motion for class certification.

16 **FACTUAL BACKGROUND**

17 39. The calcium product manufactured, distributed, and sold by the DEFENDANTS
18 under the brand name "BioCalth[®]" for use in California contains lead at levels above those
19 permitted by Proposition 65.

20 40. The Product at issue is sold to be ingested. DEFENDANTS know, foresee, and
21 intend that the Product be ingested, thus exposing users to the lead contained in DEFENDANTS'
22 Product.

23 41. Over the last four years, if not longer, DEFENDANTS have failed, and continue to
24 fail, to provide clear and reasonable warnings regarding the reproductive toxicity or any other
25 adverse health effects caused by exposure to lead from the Product. Moreover, DEFENDANTS
26 have failed and continue to fail to disclose the fact that the Product contains lead and will expose
27 users to lead.

28 42. DEFENDANTS know or reasonable should know that their failure to disclose the

1 presence of lead in the Product, and that their failure to warn of its adverse health effects, is likely
2 to deceive and is deceiving the public in California regarding the nature and safety of
3 DEFENDANTS' Product.

4 43. On or about July 11, 2005, Plaintiffs provided the required 60-Day "Notice of
5 Violation of Proposition 65" (the "Notice") to the California Attorney General, the District
6 Attorneys of every county in California, the City Attorneys of every California city with a
7 population greater than 750,000, and to each named Defendant, and further complied with the
8 Notice requirements. See Exhibit "A" for a copy of the Notice and the additional documents sent
9 to named Defendants. None of the public enforcer recipients of said Notices have commenced
10 any legal actions against these named Defendants. Further, on or about August 22, 2005
11 Plaintiffs sent to the named Defendants Giantceutical Inc. and Biocalth International (S.F.)
12 Corporation by certified mail, return receipt requested, a 30-Day Notice of Violation and Demand
13 for Remedy (Exhibit "B") pursuant to the Consumer Legal Remedies Act. Plaintiffs also caused
14 the Notice to be served upon the named Defendants in the same manner as a civil summons (see
15 Exhibit "D" for copies of the return-receipt documents and the proofs of service). Further, on or
16 about September 12, 2005 Plaintiffs sent to the named Defendant Wen by certified mail, return
17 receipt requested, a 30-Day Notice of Violation and Demand for Remedy (Exhibit "B") pursuant
18 to the Consumer Legal Remedies Act. See Exhibit "D" for copies of the return-receipt
19 documents.

20 **FIRST CAUSE OF ACTION**

21 **(Violations of Health & Safety Code §25249.6 et seq.**

22 **By all DEFENDANTS Except Wen Regarding Lead As a Reproductive Toxicant)**

23 44. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
24 herein Paragraphs 1 through 43, inclusive.

25 45. DEFENDANTS have failed, and continue to fail, to provide clear and reasonable
26 warning regarding the reproductive toxicity of lead to users of the Product.

27 46. By committing the acts alleged above, DEFENDANTS have, over the last year,
28 violated Prop. 65 by knowingly and intentionally exposing individuals to lead without first giving

1 them clear and reasonable warning regarding the reproductive toxicity of lead.

2 47. By the above-described acts DEFENDANTS are liable pursuant to Section
3 25249.7(b) for a civil penalty of \$2,500 per day as a result of the exposure of the public to the
4 Product. Plaintiffs Choi and Lau request an award of 25% of all such penalties pursuant to
5 Section 25192 of the California Health & Safety Code.

6 48. Continuing commission of the acts alleged herein by DEFENDANTS will
7 irreparably harm PLAINTIFFS and the general public of California, harm for which the
8 PLAINTIFFS have no plain, speedy or adequate remedy of law. Therefore, the PLAINTIFFS
9 request that the Court preliminarily and permanently enjoin DEFENDANTS, pursuant to Section
10 25249.7 H.&S.C. from offering the Product for sale without providing that warning required by
11 Proposition 65.

12 49. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to
13 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
14 attorney's fees pursuant to Section 1021.5 C.C.P.

15 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
16 hereafter.

17 **SECOND CAUSE OF ACTION**

18 **(Violations of Business & Professions Code §17200 et seq, Based on Unlawful Acts of**
19 **Knowingly And Intentionally Exposing Individuals To Lead in Violation of**
20 **Health & Safety Code §25249.6 and Violation of Business & Professions**
21 **Code §17500, By All DEFENDANTS)**

22 50. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
23 herein Paragraphs 1 through 43 and 45 through 48, inclusive.

24 51. Over the last four years, DEFENDANTS have engaged in conduct that violates
25 Health & Safety Code §25249.6. The DEFENDANTS' conduct includes knowingly and
26 intentionally exposing individuals to lead contained in the Product without first providing such
27 individuals with a clear and reasonable warning regarding the reproductive toxicity of lead.

28 52. DEFENDANTS have also committed a violation of Business & Professions Code

1 §17500 *et seq.* by knowingly disseminating false and misleading advertising about the quality,
2 safety, and content of the Product. The failure to provide a clear and reasonable warning as
3 mandated by Proposition 65 constitutes a false and misleading statement about the Product’s
4 quality, safety, and content.

5 53. By committing the acts alleged above, DEFENDANTS have engaged in unlawful
6 business practices that constitute unfair competition within the meaning of Business &
7 Professions Code §17200.

8 54. Continuing commission of the alleged acts above by DEFENDANTS will
9 irreparably harm PLAINTIFFS and the general public of California, for which harm the
10 PLAINTIFFS have no plain, speedy or adequate remedy at law. Therefore, the PLAINTIFFS
11 request that the Court preliminarily and permanently enjoin DEFENDANTS from offering the
12 Product for sale without curing their unfair business practices and all of their false and misleading
13 advertising in the media, on the label of the Product, and upon their web site, and also providing
14 that warning required by Proposition 65.

15 55. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to
16 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
17 attorney’s fees pursuant to Section 1021.5 C.C.P.

18 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
19 hereafter.

20 **THIRD CAUSE OF ACTION**

21 **(Violations of Business & Professions Code §17200 *et seq.* Based On Violation Of Health &**
22 **Safety Code §110545 [Adulterated Products] and of Violation of Business & Professions**
23 **Code §17500, By All DEFENDANTS)**

24 56. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
25 herein Paragraphs 1 through 43, inclusive.

26 57. California Health & Safety Code section 110545 provides the following:

27 “Any food is adulterated if it bears or contains any poisonous or
28 deleterious substance that may render it injurious to health of man
or any animal that may consume it. The food is not considered

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adulterated if the substance is a naturally occurring substance and if the quantity of the substance in the food does not render it injurious to health.”

58. The Product contains lead, a listed substance, and is thus an adulterated food in that the State of California has determined that lead causes reproductive toxicity, and thus is injurious to the health of humans in violation of Health & Safety Code section 110545.

59. DEFENDANTS have also committed a violation of Business & Professions Code §17500 *et seq.* by knowingly disseminating false and misleading advertising about the quality, safety, and content of the Product. The sale of adulterated food constitutes a false and misleading statement about the Product’s quality, safety, and content.

60. By committing the acts alleged above in violation of Health & Safety Code section 110545 and §17500 B.&P.C., DEFENDANTS have been and continue to be engaged in unlawful and/or unfair business practices within the meaning of Business & Professions Code §§17200 *et seq.*

61. Continuing commission of the acts alleged above by DEFENDANTS will irreparably harm PLAINTIFFS and the general public of California, for which harm the PLAINTIFFS have no plain, speedy of adequate remedy at law. Therefore, the PLAINTIFFS request that the Court preliminarily and permanently enjoin DEFENDANTS from offering the Product for sale without curing their unfair business practices and all of their false and misleading advertising in the media, on the label of the Product, and upon their web site.

62. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to cure the legal violations and harm noted herein, the Plaintiffs request their attorney’s fees pursuant to Section 1021.5 C.C.P.

Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth hereafter.

FOURTH CAUSE OF ACTION

(Violations of Business & Professions Code §17200 *et seq.*)

Based on Unfair Acts of Knowingly, Intentionally And Unnecessarily

Exposing Individuals to Lead, By All DEFENDANTS)

63. PLAINTIFFS reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 43, 45 through 46, 50 through 51, 57 through 59, 72, and 78 through 83, inclusive.

64. DEFENDANTS placed the Product into the stream of commerce with knowledge that, through the intended use of such product, individuals – including pregnant women and children – would be exposed to lead.

65. DEFENDANTS know or should know that lead is known to cause birth defects or other reproductive harm. DEFENDANTS know or should know that lead is also known to cause other adverse health effects including, but not limited to, learning disability, behavioral problems, and (at very high levels), seizures, coma and even death. The fact that the Product sold by the DEFENDANTS contains lead and the health risks associated with the presence of lead are both a material fact which consumers are entitled to know before they purchase and use the Product.

66. Nevertheless, DEFENDANTS have failed to inform consumers and users of the Product, including the parents of young children, of those health hazards. Moreover, DEFENDANTS have failed to even disclose that lead is contained in the Product.

67. Defendants have further acted to conceal and suppress the information that the Product contains lead and the health dangers from those substances by engaging in advertising and public relations campaigns designed to shift the public’s attention away from such health dangers and to claim benefits for a wide variety of ailments and conditions (as noted in Paragraph 77 hereinafter).

68. The conduct described above offends established public policy, is immoral and unethical. Consequently, DEFENDANTS have engaged in and continue to engage in unfair acts pursuant to Business & Professions Code §§17200 *et seq.*

69. Continuing commission of the acts alleged above by DEFENDANTS will irreparably harm PLAINTIFFS and the general public of California, for which harm the PLAINTIFFS have no plain, speedy of adequate remedy at law. Therefore, the PLAINTIFFS request that the Court preliminarily and permanently enjoin DEFENDANTS from offering the

1 Product for sale without curing all of their unfair business practices.

2 70. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to
3 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
4 attorney's fees pursuant to Section 1021.5 C.C.P.

5 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
6 hereafter.

7 **FIFTH CAUSE OF ACTION**

8 **(Violations Of Business & Professions Code §17200 *et seq.* Based On Fraudulent Acts of**
9 **Deceptively Marketing Lead-Containing Product With No Warning Or Disclosure**
10 **Regarding Presence Of Lead In The Product, By All DEFENDANTS)**

11 71. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
12 herein Paragraphs 1 through 43, 45 through 46, 50 through 51, 57 through 59, and 78 through 83,
13 inclusive.

14 72. DEFENDANTS' failure to disclose the presence of lead in the Product to the
15 general public and to users of the Product is likely to deceive the general public and users in
16 California regarding the presence of lead in the Product. Moreover, DEFENDANTS' failure to
17 inform users of the Product that the Product contains lead, a chemical known to cause
18 reproductive harm and other adverse health effects, is likely to deceive the general public in
19 California regarding the quality, nature, and safety of DEFENDANTS' Product.

20 73. By committing the acts alleged above, DEFENDANTS have engaged in fraudulent
21 business practices that constitute unfair competition within the meaning of Business &
22 Professions Code §17200.

23 74. Continuing commission of the acts alleged above by DEFENDANTS will
24 irreparably harm PLAINTIFFS and the general public of California, for which harm the
25 PLAINTIFFS have no plain, speedy of adequate remedy at law. Therefore, the PLAINTIFFS
26 request that the Court preliminarily and permanently enjoin DEFENDANTS from offering the
27

1 Product for sale without curing their unfair business practices and all of their false and misleading
2 advertising in the media, on the label of the Product, and upon their web site.

3 75. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to
4 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
5 attorney's fees pursuant to Section 1021.5 C.C.P.

6 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
7 hereafter.

8 **SIXTH CAUSE OF ACTION**

9 **(Violations of Business & Professions Code §17200 *et seq.* Based On**
10 **Violation Of §17500 Business & Professions Code, 16 C.F.R. §255.2,**
11 **and 21 U.S.C. §§ 321(g) & 343(r) By All DEFENDANTS)**

12 76. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
13 herein Paragraphs 1 through 43, inclusive.

14 77. At all times herein mentioned, DEFENDANTS operated businesses that sold the
15 Product.

16 78. Over the last four years and continuing to the present time, DEFENDANTS have
17 engaged in advertising to the public, including PLAINTIFFS, and offering for sale the Product.
18 The advertising consists of a variety of misleading claims that have been conveyed in a variety of
19 media.

20 79. Among those misleading claims made on their web site, in the print media, and in
21 television advertisements are the following which are made for the Product:

- 22 a. The Product is a positive treatment for a wide variety of ailments, such as lumbar
23 pain, night cramps, wrist joint pain, leg weakness, stiff joints, cartilage related
24 diseases, sciatic nerve pain, disc hernia, and bone fractures.
- 25 b. The Product enhanced various physical processes, such as energy levels, "bone
26 mechanics" and collagen production.
- 27 c. The Product did not interfere with any prescription medications.
- 28 d. The Product provided a "natural way" for "bone formation and remodeling", will

- 1 make bones “strong yet pliable”, and make “joints soft.”
- 2 e. The consumer should take twice the recommended daily dose (a total of six
- 3 tablets) of the Product for “pain, cramps, and weakness.”
- 4 f. Claiming that the Product, without more, prevented osteoporosis in post-
- 5 menopausal women.
- 6 g. Claiming that the Product is in compliance with Proposition 65 (due to the absence
- 7 of compliance with the mandatory duty to set forth a warning as required by
- 8 Proposition 65).
- 9 h. Claiming that the Product will protect the intelligence, increase the I.Q., and
- 10 “perfect the structure of the cerebral tissue” of children.

11 A true and correct copy of DEFENDANTS’ advertising as it pertains to the misleading and false

12 claims noted herein is attached hereto, marked Exhibits “E-1” [internet], “E-2” [television

13 advertisements], and “E-3” [print advertisements] and incorporated by reference.

14 80. DEFENDANTS have engaged in the advertising herein alleged with the intent to

15 directly or indirectly sell the Product described herein and/or induce the public to enter into an

16 obligation relating to the purchase of the Product.

17 81. DEFENDANTS’ advertising was untrue or misleading and is likely to deceive the

18 public regarding the Product, calcium supplements marketed under the name BioCalth[®].

19 82. In making and disseminating the statement(s) herein alleged, DEFENDANTS

20 knew, or by the exercise of reasonable care should have known, that the statement(s) was/were

21 untrue or misleading and so acted in violation of Business and Professions Code Section 17500.

22 Further DEFENDANTS lack adequate scientific substantiation for the claims made as noted in

23 Paragraph 79 herein, as required by 16 C.F.R. §255.2. Additionally, DEFENDANTS did not use

24 actual consumers, as also required by 16 C.F.R. §255.2, for their so-called customer

25 endorsements. By committing the acts alleged, DEFENDANTS have engaged in unlawful

26 business practices that constitute unfair competition within the meaning of Business &

27 Professions Code §17200.

28 83. By making the numerous misleading claims noted herein and by lacking

1 substantiation to support the claims made, DEFENDANTS' Product is a "drug" for purposes of
2 the Federal Food, Drug, and Cosmetic Act. However, the Product has not been approved as a
3 drug by the Food and Drug Administration. In making and disseminating the statement(s) herein
4 alleged, in particular by falsely stating that the Product is a "dietary supplement",
5 DEFENDANTS knew, or by the exercise of reasonable care should have known, that the
6 statement(s) was/were untrue or misleading and so acted in violation of Business and Professions
7 Code Section 17500. By committing the acts alleged, DEFENDANTS have engaged in unlawful
8 business practices that constitute unfair competition within the meaning of Business &
9 Professions Code §17200.

10 84. PLAINTIFFS have suffered injury in fact and have lost money as a result of the
11 violations alleged above in this complaint, in that the PLAINTIFFS bought the Product without
12 knowing that the Product did not have the origin, characteristics, contents, quality, and potential
13 dangers that the Product has.

14 85. Unless restrained by this court, DEFENDANTS will continue to engage in untrue
15 and misleading advertising, as alleged above, in violation of Business and Professions Code
16 Section 17500, and to advertise in violation of 16 C.F.R. §§255.0 *et seq.*, and 21 U.S.C. §§ 321(g)
17 & 343(r), thus tending to render judgment in the instant action ineffectual. PLAINTIFFS have no
18 adequate remedy at law in that DEFENDANTS will continue to engage in untrue and misleading
19 advertising, as alleged above, thus engendering a multiplicity of judicial proceedings. Therefore,
20 the PLAINTIFFS request that the Court preliminarily and permanently enjoin DEFENDANTS
21 from offering the Product for sale without curing their unfair business practices and all of their
22 false and misleading advertising in the media, on the label of the Product, and upon their web site.

23 86. Because the Plaintiffs Choi Lau and are benefiting the general public by seeking to
24 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
25 attorney's fees pursuant to Section 1021.5 C.C.P.

26 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
27 hereafter.

28 **SEVENTH CAUSE OF ACTION**

1 **(Violations of Business & Professions Code §17200 et seq. Based On**
2 **Violation Of §17533.7 Business & Professions Code, By All DEFENDANTS)**

3 87. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
4 herein Paragraphs 1 through 43, inclusive.

5 88. Over the last four years, DEFENDANTS have engaged in conduct that violates §
6 17533.7 Business & Professions Code in that they have labeled the Product as “Made in U.S.A.”
7 or words of similar import when in fact the Product is manufactured outside of the United States.
8 See Exhibit “F”.

9 89. By committing the acts alleged above, DEFENDANTS have engaged in unlawful
10 business practices that constitute unfair competition within the meaning of Business &
11 Professions Code §17200.

12 90. Continuing commission of the alleged above by DEFENDANTS will irreparably
13 harm PLAINTIFFS and the general public of California, for which harm the PLAINTIFFS have
14 no plain, speedy or adequate remedy at law. Therefore, the PLAINTIFFS request that the Court
15 preliminarily and permanently enjoin DEFENDANTS from offering the Product for sale without
16 curing their unfair business practices and all of their false and misleading advertising in the
17 media, on the label of the Product, and upon their web site.

18 91. Because the Plaintiffs Choi and Lau are benefiting the general public by seeking to
19 cure the legal violations and harm noted herein, the Plaintiffs Choi and Lau request their
20 attorney’s fees pursuant to Section 1021.5 C.C.P.

21 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
22 hereafter.

23 **EIGHTH CAUSE OF ACTION**

24 **(Violation of Sections 1750 et seq. Civil Code, By All DEFENDANTS)**

25 92. PLAINTIFFS reallege and incorporate by reference as if specifically set forth
26 herein Paragraphs 1 through 43, 79, and 82 through 83, inclusive.

27 93. Plaintiffs Choi and Lau are members of a class of consumers, and the members of
28 this class of consumers, as noted hereinabove, are similarly situated and similarly affected by the

1 misrepresentations of DEFENDANTS in violation of Section 1770(4 and 5) Civil Code, as noted
2 in the 30-day Notice of Violation sent to Defendants (Exhibit “B”).

3 94. Over the last three years the DEFENDANTS have engaged in a continuous
4 campaign to mislead consumers as to the geographic origin of the Product, and to mislead
5 consumers about the characteristics, ingredients, uses, and benefits of the Product. Specifically,
6 DEFENDANTS made misrepresentations as to the following:

- 7 a. In violation of §1770(4) C.C., claiming that the Product was “Made In
8 U.S.A.” or words of similar import, when in fact the Product was not so
9 manufactured. See Exhibit “F”.
- 10 b. In violation of §1770(5) C.C., claiming that the Product was compliance
11 with Proposition 65 (due to the absence of compliance with the mandatory
12 duty to set forth a warning as required by Proposition 65).
- 13 c. In violation of §1770(5) C.C., claiming that the Product is a positive
14 treatment for a wide variety of ailments, such as lumbar pain, night cramps,
15 wrist joint pain, leg weakness, stiff joints, cartilage related diseases, sciatic
16 nerve pain, disc hernia, and bone fractures.
- 17 d. In violation of §1770(5) C.C., claiming that the Product enhanced various
18 physical processes, such as energy levels, “bone mechanics” and collagen
19 production.
- 20 e. In violation of §1770(5) C.C., claiming that the Product did not interfere
21 with any prescription medications.
- 22 f. In violation of §1770(5) C.C., claiming that the Product provided a “natural
23 way” for “bone formation and remodeling”.
- 24 g. In violation of §1770(5) C.C., for recommending that for “pain, cramps,
25 and weakness” that the consumer take twice the recommended daily dose
26 (a total of six tablets).
- 27 i. In violation of §1770(5) C.C., claiming that the Product, without more,
28 prevented osteoporosis in post-menopausal women.

1 95. DEFENDANTS intended their misrepresentations, contained on their Product and
2 its packaging, on their web site and in their media advertising regarding the Product, to induce
3 consumers to purchase the Product and ingest the “calcium supplements” (see Exhibits “E”).
4 These misrepresentations were in violation of Section 1770(4 & 5) Civil Code.

5 96. The notices and demands notified the named Defendants of the above-mentioned
6 violations of the Civil Code that resulted in the sale of its product to Plaintiffs Choi and Lau and
7 in similar sales of the Product to members of the class of consumers that Plaintiff Choi and Lau
8 are representing and demanded that the named Defendants remedy the violations. Any notice and
9 demand made subsequently to any of the Defendant DOES 1 to 200 will also notify these entities
10 of the above-mentioned violations of the Civil Code that resulted in the sale of the Product to
11 Plaintiffs Choi and Lau and in similar sales of the Product to members of the class of consumers
12 that Plaintiff Choi and Lau are representing and will also demand that the Defendant DOES
13 remedy the violations.

14 97. By reason of the above-mentioned violations of the Civil Code, Plaintiffs Choi and
15 Lau, and each member of the class of consumers of which Plaintiffs are a member, have suffered
16 damages in the amount of approximately \$32.50 to \$38.50 or more per bottle purchased of
17 “calcium supplements”, as determined by the retail price for which each bottle of 90 tablets, more
18 or less, is sold. As such, each PLAINTIFF in the class is entitled to an award of not less than
19 \$1,000 pursuant to Section 1780(a)(1) Civil Code.

20 98. As noted herein and in Paragraphs 79, 82, and 83 above, DEFENDANTS continue
21 to engage in the above-described deceptive practices and unless enjoined from doing so will
22 continue to do so, all to the damage of its consumers who will purchase its “calcium
23 supplements” on the basis of its misrepresentations as herein alleged. Therefore, the
24 PLAINTIFFS request that the Court, pursuant to § 1780 C.C., preliminarily and permanently
25 enjoin DEFENDANTS from offering the Product for sale without curing all of their false and
26 misleading advertising and other misstatements in the media, on the label of the Product, and
27 upon their web site.

28 99. As noted herein and in Paragraphs 79, 82, and 83 above, the aforementioned

1 violations of the Civil Code by DEFENDANTS were and are willful and fraudulent.

2 PLAINTIFFS are therefore entitled to punitive damages.

3 100. Because their actions are benefiting the public and the members of the class,
4 Plaintiffs Choi and Lau request an award of their attorney's fees pursuant to Section 1780 Civil
5 Code.

6 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as set forth
7 hereafter.

8
9 **PRAYER FOR RELIEF**

10 PLAINTIFFS prays for judgment against DEFENDANTS as follows:

11 **On The First and Second Causes of Action (Proposition 65 and 17200):**

12 1. That the Court, pursuant to Health & Safety Code §25149.7(a) and §§17203 and
13 17535 Business and Professions Code, preliminarily and permanently enjoin DEFENDANTS
14 from offering the Product for sale without disclosing the presence of lead in the Product in a
15 manner that complies with the disclosure requirements of Proposition 65.

16 **On the Third Cause of Action (Unfair Competition Law and Adulterated Product):**

17 2. That the Court, pursuant to Business & Professions Code §§17203 and 17535,
18 preliminarily and permanently enjoin DEFENDANTS from offering the Product for sale without
19 disclosing the presence of lead in such product in a manner that complies with these statutory
20 requirements.

21 **On the Fourth through Seventh Causes of Action (Unfair Competition Law):**

22 3. That the Court, pursuant to Business & Professions Code §§17203 and 17535 (as
23 appropriate), preliminarily and permanently enjoin DEFENDANTS from offering the Product for
24 sale until this Court determines that DEFENDANTS have cured their unfair business practices.

25 **On the First and Second Causes of Action (Proposition 65):**

26 4. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
27 penalties against each DEFENDANT in the amount of \$2,500.00 per day for each violation of
28 Proposition 65 for the last four years.

1 5. That Plaintiffs Choi and Lau be awarded 25% of all such penalties pursuant to
2 Section 25192 of the California Health & Safety Code.

3 **On the Second Through Seventh Causes of Action (Unfair Competition Law):**

4 6. That the Court order each DEFENDANT to notify each and every customer of
5 such DEFENDANT who purchased the Product in the last four years, and thereby provide such
6 customers an opportunity to obtain restitution from such DEFENDANT.

7 7. That the Court order the DEFENDANTS to pay restitution, disgorge illicit profits
8 and be subject to such other relief as may be necessary to restore any purchaser of the Product
9 any money or property, real or personal, which may have been acquired by means of the
10 DEFENDANTS' acts alleged herein that occurred over the last four years.

11 **On the Eighth Cause of Action (Consumer Legal Remedies Act):**

12 7. That the Court, pursuant to § 1780 C.C., preliminarily and permanently enjoin
13 DEFENDANTS from offering the Product for sale without disclosing the presence of lead in such
14 Product in a manner that complies with these statutory requirements;

15 8. That the Court, pursuant to § 1780 C.C., preliminarily and permanently enjoin
16 DEFENDANTS from offering the Product for sale without curing all of their false and misleading
17 advertising in the media, on the label of the Product, and upon their web site;

18 9. That the Court award damages according to proof, but in no case for an amount
19 less than \$1,000 for each PLAINTIFF.

20 10. That the Court award punitive damages for the willful and intentional fraud of
21 DEFENDANTS, as noted herein.

22 11. That the Court order each DEFENDANT to notify each and every customer of
23 such DEFENDANT who purchased the Product in the last three years, and thereby provide such
24 customers an opportunity to obtain restitution from such DEFENDANT;

25 12. That the Court order the DEFENDANTS to pay restitution, disgorge illicit profits
26 and be subject to such other relief as may be necessary to restore any purchaser of the Product
27 any money or property, real or personal, which may have been acquired by means of the
28 DEFENDANTS' acts alleged herein that occurred over the last three years.

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On All Causes of Action:

- 13. For costs of this action;
- 14. For attorney's fees pursuant to Section 1021.5 C.C.P. and Section 1780 C.C.;
- 15. For interest according to law;
- 16. For such other and further relief as this Court may deem just and proper.

Dated: September 26, 2005

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Thomas H. Clarke, Jr.
THOMAS H. CLARKE, JR.
CHI HUNG CHAN
DENNIS J. BYRNE
Attorneys for Plaintiffs
JULIE CHOI AND KIT LAU

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on each and every cause of action.

DATED: September 26, 2005

Respectfully submitted,

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Thomas H. Clarke, Jr.
THOMAS H. CLARKE, JR.
CHI HUNG CHAN
DENNIS J. BYRNE
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Julie Choi and Kit Lau