

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.:

SHELLEY PENNEY, GLADYS MURPHY,
ADRIANAH SEELY, STEVEN MARKS,
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

WAIORA, LLC., WAIORA USA, INC.,
WAIORA INTERNATIONAL, INC., WAIORA
HOLDINGS, LLC, WAIORA AUSTRALIA, LLC,
WAIORA HONG KONG, LLC, WAIORA
SINGAPORE, LLC, ENO RESEARCH AND
CONSULTING SERVICES, LLC, NDA
CONSULTING, INC., STANLEY J.
CHERELSTEIN, ERIK J. DEITSCH, a/k/a RIK
DEITSCH, NORWOOD STONE,
JAMES FLOWERS and JOHN DOE MANUFACTURER,

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs, SHELLEY PENNEY (“PENNEY”), GLADYS MURPHY (“MURPHY”),
ADRIANAH SEELY (“SEELY”), and STEVEN MARKS (“MARKS”) (collectively, the
“Plaintiffs”), individually and on behalf of all similarly situated persons, bring this action against
Defendants, WAIORA, LLC, WAIORA USA, INC. (“WAIORA USA”), WAIORA
INTERNATIONAL, INC. (“WAIORA INT’L”), WAIORA HOLDINGS, INC. (“WAIORA
HOLDINGS”), WAIORA AUSTRALIA, LLC (“WAIORA AUSTRALIA”), WAIORA HONG
KONG, LLC (“WAIORA HONG KONG”), WAIORA SINGAPORE, LLC (“WAIORA
SINGAPORE”), ENO RESEARCH AND CONSULTING SERVICES, LLC (“ENO”), NDA
CONSULTING, INC. (“NDA”), STANLEY J. CHERELSTEIN (“CHERELSTEIN”), ERIK J.

DEITSCH a/k/a RIK DEITSCH (“DEITSCH”), NORWOOD “EDDIE” STONE (“STONE”), JAMES FLOWERS (“FLOWERS”) and JOHN DOE MANUFACTURER (collectively, the “Defendants”), and allege as follows:

INTRODUCTION

1. This is an action seeking to redress blatant misrepresentation on the part of numerous parties, which manufactured, marketed, and sold a product to the general public under false pretenses, and with false labeling.

2. As more fully set forth herein, the Defendants, through their respective acts and/or omissions, intentionally and/or negligently manufactured, marketed, and distributed a product known as Natural Cellular Defense (“NCD”), which was promoted as a nutritional supplement, but which in fact was little more than water.

3. Defendants manufactured, marketed, and/or sold 15ml bottles of NCD at exorbitant prices, representing on the label that each bottle contained a specified amount of an ingredient known as Zeolite, when in fact each bottle contained only a tiny fraction of the amount represented.

4. Plaintiffs, as well as thousands of similarly situated consumers, purchased NCD in reliance upon this misrepresentation, and as a consequence suffered damages.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to 28 USC §1332(d)(2), the Federal Class Action Fairness Act. Plaintiffs and Defendants are citizens of different states, and the amount in controversy exceeds Five Million Dollars (\$5,000,000), exclusive of interest, fees, and costs.

6. This Court has personal jurisdiction over the Defendants pursuant to 18 U.S.C. §1965, the Due Process Clause of the United States Constitution, and the Florida Long-Arm Statute, § 48.193, Florida Statutes.

7. Pursuant to 28 USC §1367, this Court has supplemental jurisdiction over Plaintiffs' additional claims arising under Florida law, including, *inter alia*, fraud, negligent misrepresentation, general negligence, unjust enrichment, and violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUPTA").

8. The requirements of 28 U.S.C. §1391(b)(1)-(2) have been satisfied, making venue appropriate within the Southern District of Florida. Some of the Plaintiffs and the majority of the Defendants reside in this jurisdiction, and a substantial amount of transactions and occurrences giving rise to this action occurred within the Southern District of Florida.

9. Defendants, directly and indirectly, have made, and continue to make, use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce and of the mails in connection with the acts, transactions, transgressions, practices and course of dealing alleged herein.

PARTIES

I. PLAINTIFFS

10. At all times material hereto, PENNEY was and is a resident of New Brunswick, Canada, was a consumer of NCD, over the age of eighteen (18), and otherwise *sui juris*.

11. At all times material hereto, MURPHY was and is a resident of Florida, was a consumer of NCD, over the age of eighteen (18), and otherwise *sui juris*.

12. At all times material hereto, SEELY was and is a resident of Florida, a consumer of NCD, over the age of eighteen (18), and otherwise *sui juris*.

13. At all times material hereto, MARKS was and is a resident of Oklahoma, a consumer of NCD, over the age of eighteen (18), and is otherwise *sui juris*.

II. DEFENDANTS

14. At all times material hereto, WAIORA, LLC was and is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA, LLC perpetrated a multilevel marketing scheme selling NCD through its website and through a network of “distributors.”

15. At all times material hereto, WAIORA USA was and is a profit corporation organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA USA perpetrated a multilevel marketing scheme selling NCD through its website and through a network of “distributors.”

16. At all times material hereto, WAIORA INT’L was and is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA INT’L effectuated the sale and distribution of NCD to the general public.

17. At all times material hereto, WAIORA HOLDINGS was and is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA HOLDINGS effectuated the sale and distribution of NCD to the general public.

18. At all times material hereto, WAIORA AUSTRALIA was is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA AUSTRALIA effectuated the sale and distribution of NCD to the general public.

19. At all times material hereto, WAIORA HONG KONG was and is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA HONG KONG effectuated the sale and distribution of NCD to the general public.

20. At all times material hereto, WAIORA SINGAPORE was and is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business located in Boca Raton, Florida. WAIORA SINGAPORE effectuated the sale and distribution of NCD to the general public.

21. WAIORA, LLC, WAIORA USA, WAIORA INT'L, WAIORA HOLDINGS, WAIORA AUSTRALIA, WAIORA HONG KONG, and WAIORA SINGAPORE hereinafter shall be collectively referred to as "Waiora."

22. At all times material hereto, ENO was and is a limited liability company organized and existing under the laws of the State of North Carolina with its principal place of business located in Hillsborough, North Carolina. ENO was the manufacturer of NCD until September or October 2011.

23. At all times material hereto, NDA was and is a for-profit corporation organized and existing under the laws of the State of Florida with its principal place of business located in Coral Springs, Florida. NDA was engaged in the business of studying, researching, marketing and/or selling NCD.

24. At all times material hereto, CHERELSTEIN was and is a resident of Florida, over the age of eighteen (18), and otherwise *sui juris*. Moreover, CHERELSTEIN is the president and chief executive officer and/or managing member of Waiora; he has been instrumental in the manufacturing and marketing of NCD; and he has actively represented to the general public that NCD provides health benefits as a result of its Zeolite content.

25. At all times prior to May or June 2011, STONE was and is a resident of North Carolina, over the age of eighteen (18), and otherwise *sui juris*. STONE was co-founder of Waiora; he has been instrumental in the manufacturing and marketing of NCD; and he has actively represented to the general public that NCD provides health benefits as a result of its Zeolite content.

26. At all times material hereto, FLOWERS was and is a resident of North Carolina, over the age of eighteen (18), and otherwise *sui juris*. FLOWERS is the president and chief executive officer and/or managing member of ENO; he has been instrumental in the manufacture of NCD, and has actively represented that NCD has Zeolite content matching claims made on its label.

27. At all times material hereto, DEITSCH was and is a resident of Florida, over the age of eighteen (18), and is otherwise *sui juris*. Moreover, DEITSCH is an officer of NDA; he has a financial interest in the success of Waiora and NCD; he was instrumental in researching, manufacturing and marketing NCD; and he has actively represented to the public that NCD provides health benefits as a result of its Zeolite contents.

28. At all times material hereto, Defendant, JOHN DOE MANUFACTURER, is any manufacturer of NCD prior to October 2011, the identity of which has yet to be discovered.

FACTUAL ALLEGATIONS

29. The Waiora entities were formed by CHERELSTEIN and STONE. CHERELSTEIN and STONE had previously been involved in a number of enterprises, and were very familiar with multilevel marketing schemes. CHERELSTEIN's history and activities with Phar-Mor and Rexall Showcase will be more specifically set forth during the course of this matter, as will STONE's history with "Nu Skin" and Rexall Showcase. CHERELSTEIN and/or STONE have made false and outlandish representation to the general public about Waiora

products; including, as just one example, that NCD “can help those concerned” about the health effects of Japan’s nuclear meltdown.

30. Waiora’s primary “science officer” is DEITSCH. DEITSCH has mastered the art of explaining nonsense or “junk” science, and has mastery over complex-sounding but substantively empty scientific lingo. DEITSCH has made many false claims to the general public, including that NCD has a U.S. patent, and that at least thirteen (13) clinical trials have been performed on the product. Further and more striking false claims made by DEITSCH will be revealed as this case proceeds.

31. Waiora, CHERELSTEIN, and STONE along with NDA and DEITSCH, claim that NCD has been thoroughly researched and is a valuable nutrition and health supplement because of its Zeolite content. NCD is nothing but Zeolite and water. In order to assure the general public that NCD has the promised Zeolite content (and is not just water), FLOWERS has represented that after “extensive analysis” of NCD (produced by his company), has shown that “each drop contains 9-10 mg of Zeolite (i.e. 27mg – 30mg per serving).

I. ZEOLITE AND NCD: TRUTH VS. MYTH

32. NCD was and is marketed to the general public as a health supplement that supports the immune system, helps remove heavy metals and other toxic substances from the body, and helps balance pH levels in the body. It has been touted as an appropriate course of treatment for various infirmities, including autism, cancer, and a wide array of other serious medical conditions.

33. According to NCD marketing materials, the product’s healing properties are the result of a mineral called Zeolite, which “works at the cellular level, trapping heavy metals and toxins.” NCD marketing materials represent to the consuming public that “zeolites act as

magnets drawing toxins to it, capturing them in its cage and removing them from the body.”

According to its label, NCD contains only two ingredients: Zeolite and water.

34. From its inception, the packaging for NCD represented that there are one hundred (100) servings per bottle, that three (3) drops are equal to one serving, and that each serving has twenty four milligrams (24mg) of Zeolite (with the remainder being water). Accordingly, per the NCD label, there is 2400 mg of Zeolite per bottle (24 mg per serving multiplied by 100 servings). Millions of bottles of NCD (i.e. Zeolite and water) have been sold to the general public, including gravely ill and specifically targeted individuals, at an average of over Fifty Dollars (\$50.00) per bottle.

35. Beginning in late 2010, independent third party laboratory testing came to light, revealing that—despite being sold to untold thousands (or hundreds of thousands) as a cure-all for serious illnesses—NCD bottles contained almost nothing but water. First, in December 2010, a testing laboratory known as “The Mineral Lab” conducted x-ray fluorescence and x-ray diffraction testing on a sample consisting of ten (10) bottles of NCD. Those tests showed that each bottle of NCD contained an average of only 230 mg of solid materials (in contrast to the 2400 mg of Zeolite represented to be in every bottle of NCD). Those solid materials were tested, and were themselves determined to be only about 67% Zeolite (with the rest being various minerals and materials not listed on the NCD label). Accordingly, each bottle contained an average of approximately 154mg of Zeolite – less than 7% of the amount represented on the label.

36. In September 2011, another independent laboratory, Mineralogy, Inc., tested additional NCD bottles. Those tests concluded that each bottle contained an average of 27 mg of solids per bottle of NCD. Those solids were not tested, and could have contained little or no Zeolite whatsoever. However, even assuming those solids to be one hundred percent (100%)

Zeolite, each bottle of NCD contained only about one percent (1%) of the Zeolite content represented on the label.

37. Waiora has sold hundreds of thousands or millions of tiny bottles of water at over \$50 per bottle to ill and dying people under the pretense that Zeolite in NCD would have a positive health benefit. In some cases, reliant on Waiora's marketing hype, patients forewent traditional medical treatments, relying instead on the Zeolite within NCD – Zeolite which did not even exist.

38. Through the date of this filing, Waiora's website assures its consuming public that while the amount of solids in each bottle may vary, the amount of Zeolite is standardized, remains constant in each bottle, and meets the label claims in every bottle.

II. PENNEY BRINGS THE FACTS TO WAIORA

39. In mid-2011, PENNEY became aware of the facts outlined above. These facts were extremely troubling to PENNEY, who had purchased thousands of dollars of NCD and had recommended and advocated the use of NCD to hundreds of people, including seriously ill individuals.

40. PENNEY brought the independent test lab results to the attention Waiora, and relentlessly sought explanations from Waiora officials, including CHERELSTEIN, STONE and DEITSCH. The response came as a series of nonsensical and contradictory comments from DEITSCH, which can best be described as pseudo-scientific "mumbo jumbo."

41. Growing increasingly upset and concerned, in September 2011, PENNEY pressed harder for answers, but Waiora stood strongly by its product (even in the face of the independent lab test results), insisting that the label-amount of Zeolite was in each bottle. Notwithstanding these representations, during this time period, Waiora fired ENO as its manufacturer, and began using a completely new company to create the product.

42. NCD made by the new manufacturer (“new NCD”) has been tested, and appears to meet label claims. This new NCD is a visibly thicker substance; it has a different taste, a different color, a different texture, it clumps inside the dropper and visible solids settle to the bottom after shaking. In short, anyone familiar with NCD knows that the “new NCD” is not the same product.

43. On January 4, 2012, during a recorded conference call with Waiora distributors throughout the country, Waiora made a number of candid admissions. First, it specifically stated that new NCD has more Zeolite than the old NCD. The old NCD had the following label:

Supplement Facts		
Serving Size: 3 drops		
Servings Per Container: 100		
Amount Per Serving	% Daily Value	
Sodium Aluminosilicate zeolite (clinoptilolite)	24mg	†
† Daily Value not established.		
Other ingredients: Water		

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Accordingly, labels for the old NCD represented 2400mg of Zeolite per bottle. Labels for the new NCD (which Waiora promotes as having more Zeolite than the old product) has the following label:

Supplement Facts		
Serving Size 3 drops		
Servings Per Container 90		
Amount Per Serving	% Daily Value	
Natural Zeolite (as clinoptilolite)	24 mg	†
† Daily Value not established.		
Other ingredients: Water		

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Labels for the new NCD thus represent that there are 2160 mg of Zeolite per bottle (24mg per serving and 90 servings per bottle). Accordingly, taking Waiora’s own marketing materials as true, it is impossible for the old NCD label to have been accurate.

44. In that same recorded conference call, addressing concerns about label claims, DEITSCH freely admits that the amount of Zeolite measured for label purposes in the old (pre-September 2011) NCD was determined not by measuring Zeolite, but by measuring a Zeolite “slurry” – in other words, Defendants mixed Zeolite with water to create a “slurry,” and then – for purposes of labeling – proceeded as though that “slurry” was pure Zeolite. Defendants then mixed that “slurry” with more water to make the final NCD product. The result was a product so diluted that it contained almost no Zeolite whatsoever, and no relationship to the information on the label.

III. DEFENDANTS KNEW OR SHOULD HAVE KNOWN ABOUT GROSSLY INADEQUATE LEVELS OF ZEOLITE CONTAINED IN NCD.

45. Between 2004 and October 2011, Defendants manufactured, marketed, and/or sold millions of bottles of NCD, at approximately \$58 per bottle. This price was paid not only by people wanting to supplement their diets, but also by gravely and even terminally ill people, desperate for any help they could find.

46. Waiora’s pre-October 2011 sale of millions of bottles of NCD containing little more than water, to thousands (or hundreds of thousands) of people, was a negligent or intentionally fraudulent escapade of gross magnitude, which was aided and abetted by all of the corporate and individual Defendants, and which robbed innocent people looking for ways to improve their health of many millions of dollars.

47. Waiora, as the chief creator, marketer, and distributor of NCD, as well as the individuals who created, manufactured, and marketed the product, knew or should have known that NCD contained almost no Zeolite.

48. CHERELSTEIN as president and/or chief executive officer of Waiora knew or should have known that NCD contained almost no Zeolite.

49. STONE as an owner and founder of Waiora knew or should have known that NCD contained almost no Zeolite.

50. NDA as one of the chief researchers, creators and marketers of NCD, knew or should have known that NCD contained almost no Zeolite.

51. DEITSCH as an officer of NDA, and as the “science face” of the product, knew or should have known that NCD contained little or no Zeolite.

52. ENO as manufacturer of NCD until October 2011, knew or should have known that NCD contained almost no Zeolite.

53. FLOWERS as president and chief executive officer of ENO and as an individual representing to the general public the NCD contained Zeolite as represented on the label, knew or should have known that NCD contained almost no Zeolite.

54. The negligent or intentional acts described hereinabove violate multiple duties owed by these Defendants to the consuming public, which are imposed both in tort and by statute; each and every individual who bought a bottle of NCD prior to September 2011 – under the false pretense that they were buying a bottle containing 2400 mg of Zeolite – is legally entitled to a complete refund for each such bottle, as well as ancillary and potentially punitive damages.

55. Putting aside the real question of whether Zeolite has any nutritional value at all¹ (which may be an issue for future litigation), there is no question that Defendants went into the business of selling NCD (Zeolite and water) to the general public, on the basis of claims made about Zeolite, for the purpose of selling NJCD to the general public.

¹Defendants’ unbridled effort to sell their product ignores not only science, but religion. Days before this lawsuit was drafted, the Rabbinical Kashrut (kosher) supervisory agency put out the following alert: “Please be aware that **Waiora Natural Cellular Defense** is not authorized to bear the AKC (Atlanta Kosher) kosher logo and is not under AKC kosher certification.”

CLASS ACTION ALLEGATIONS

56. Plaintiffs bring this action on their own behalf and as a class action pursuant to Federal Rule of Civil Procedure (23)(a)(b), on behalf of all other persons and entities who purchased any bottle of NCD at any time prior to September 2011 (the “Class”).

57. Excluded from the Class are:

- a. The Defendants;
- b. Members of the immediate family of each of the Defendants that are not corporate entities;
- c. Any person who was or is an executive, officer, employee and/or director of any of the Defendant corporations during the relevant time period;
- d. Any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is affiliated with any of the Defendants; and
- e. The legal representatives, affiliates, agents, heirs, successors in interest or assigns of any such excluded party.

58. The members of the Class—i.e. purchasers of NCD at any time prior to September 2011—are so numerous that joinder of all members is impracticable. While the exact number of people within the Class can only be determined through discovery, Plaintiffs’ believe that the Class will consist of between five thousand (5,000) and twenty five thousand (25,000) individuals, and possibly more.

59. Plaintiffs’ claims are typical of the claims of members of the entire Class. Plaintiffs and all members of the Class suffered damage as a result of Defendants’ unlawful course of conduct, including, but not limited to, fraud, negligent misrepresentation, general negligence, unjust enrichment, and violations of FDUPTA.

60. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained competent counsel experienced in class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the members of the Class that Plaintiffs seek to represent.

61. A class action is superior to other methods for adjudicating this controversy. Damages suffered by individual class members may be relatively small, some less than as Sixty Dollars (\$60); therefore, the expense and burden of individual litigation makes it virtually impossible for the Class members to individually seek redress for Defendants' wrongful conduct.

62. Common questions of law and fact exist as to all members of the Class and predominate over questions solely affecting any individual Class member. Among questions of law and fact common to each member of the Class is:

a. Whether Defendants breached duties imposed in tort by selling each member of the Class one or more bottles of NCD that failed to contain Zeolite as listed on the product label;

b. Whether Defendants have breached duties imposed in contract by selling each member of the Class one or more bottles of NCD that failed to contain Zeolite as listed on the product label;

c. Whether Defendants have violated one or more statutory obligations by selling each member of the Class one or more bottles of NCD that failed to contain Zeolite as listed on the product label.

63. Plaintiffs know of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

64. The names and addresses of Defendants' customers who purchased NCD prior to October 2011 are obtainable from information in the possession of Defendants or their various

“distributors.” Notice can be delivered to all purchasers of NCD by U.S. Mail or electronic mail using techniques and a form of notice similar to those customarily used in class action litigation.

COUNT I
FRAUD
(CHERELSTEIN, DEITSCH, STONE & FLOWERS)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

65. CHERELSTEIN, DEITSCH, STONE & FLOWERS have represented to the general public including Plaintiffs (and other similarly situated consumers) that NCD contained 2400 mg of Zeolite per bottle.

66. CHERELSTEIN, DEITSCH, STONE & FLOWERS knew or should have known that their representations were false when made, and that NCD did not contain anywhere near the amount of Zeolite represented.

67. CHERELSTEIN, DEITSCH, STONE & FLOWERS upon information and belief, intended that their false representations, made to the general public, would induce Plaintiffs (and other similarly situated consumers) to purchase NCD bottles, at exorbitant prices.

68. Plaintiffs (and other similarly situated consumers) were, in fact, induced by CHERELSTEIN, DEITSCH, STONE & FLOWERS’ false misrepresentations; and Plaintiffs (and other similarly situated consumers) have suffered damages in justifiable reliance on these false statements made by CHERELSTEIN, DEITSCH, STONE & FLOWERS.

WHEREFORE, having fully set forth their allegations against the Defendants, CHERELSTEIN, DEITSCH, STONE & FLOWERS, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award Plaintiffs and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all

similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT II
FRAUD
(Waiora entities and NDA)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

69. Waiora and NDA represented to the general public, including Plaintiffs (and other similarly situated consumers), that NCD contained 2400 mg of Zeolite per bottle.

70. Waiora and NDA knew or should have known that their representations were false and that NCD did not contain anywhere near the amount of Zeolite as represented on the NCD bottle label.

71. Waiora and NDA, upon information and belief, intended their false representations, made to the general public, would induce Plaintiffs (and other similarly situated consumers) to purchase NCD at \$58 per bottle.

72. Plaintiffs (and other similarly situated consumers) were, in fact, induced by Waiora's and NDA's false representations; Plaintiffs (and other similarly situated consumers) have suffered damages in justifiable reliance on said false statements made by Waiora and NDA.

WHEREFORE, having fully set forth their allegations against the Defendants, Waiora and NDA, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award Plaintiffs and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT III
NEGLIGENT MISREPRESENTATION
(Waiora entities, CHERELSTEIN & STONE)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

73. Waiora, CHERELSTEIN & STONE represented to Plaintiffs (and other similarly situated consumers) that they were selling to the general public NCD which contained 2400 mg of Zeolite per bottle as reflected by the bottle's label.

74. Had Waiora, CHERELSTEIN & STONE exercised reasonable care under the circumstances—in particular, with respect to their creation, marketing, selling, and distribution of NCD—Waiora, CHERELSTEIN & STONE would have known that their representations were false and that NCD contained little or no Zeolite, in contrast to the bottle's label which claimed it contained 2400 mg of Zeolite per bottle.

75. As a result of the failure of Waiora, CHERELSTEIN & STONE to exercise ordinary care millions of bottles of NCD containing almost nothing but water were sold to the general public, under false pretenses.

76. Plaintiffs (and others similarly situated consumers) have suffered damages in justifiable reliance on the negligently false information provided by Waiora and CHERELSTEIN.

WHEREFORE, having fully set forth their allegations against the Defendants, Waiora, CHERELSTEIN & STONE, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT IV
NEGLIGENT MISREPRESENTATION
(NDA, DEITSCH & FLOWERS)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

77. NDA, DEITSCH & FLOWERS represented to Plaintiffs (and other similarly situated consumers) that NCD contained 2400 mg of Zeolite per bottle as reflected by the bottle's label.

78. Had NDA, DEITSCH & FLOWERS exercised reasonable care under the circumstances—in particular, with respect to their research, and marketing of NCD—NDA, DEITSCH & FLOWERS would have known or should have known that their representations were false and that NCD contained little or no Zeolite in contrast to the bottle's label which claimed it contained 2400 mg of Zeolite per bottle.

79. As a result of the failure of NDA, DEITSCH & FLOWERS to exercise ordinary care millions of bottles of NCD containing almost nothing but water were sold to the general public, under false pretenses.

80. Plaintiffs (and others similarly situated consumers) have suffered damages in justifiable reliance on the false assertions made by NDA, DEITSCH & FLOWERS.

WHEREFORE, having fully set forth their allegations against the Defendants, NDA and DEITSCH, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT V
NEGLIGENCE
(Waiora entities, CHERELSTEIN & STONE)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

81. Waiora, CHERELSTEIN & STONE had an obligation to ensure that NCD—which they created, marketed, sold, and distributed—contained at least 2400 mg of Zeolite per bottle.

82. Waiora, CHERELSTEIN & STONE breached this duty by failing to include at least 2400 mg of Zeolite within each bottle of NCD.

83. As a direct and proximate result of Waiora, CHERELSTEIN & STONE's negligence, in the aggregate, Plaintiffs and all similarly situated individuals, have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendants, Waiora, CHERELSTEIN & STONE, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT VI
NEGLIGENCE
(NDA and DEITSCH)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

84. NDA and DEITSCH had an obligation to ensure that NCD—which they researched and marketed—contained at least 2400 mg of Zeolite per bottle.

85. NDA and DEITSCH breached this duty by failing to ensure that the bottles included at least 2400 mg of Zeolite within each bottle of NCD.

86. As a direct and proximate result of NDA's and DEITSCH's negligence, in the aggregate, Plaintiffs and all similarly situated individuals, have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendants, NDA and DEITSCH, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT VII
NEGLIGENCE
(ENO)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

87. ENO, as manufacturer of NCD, had an obligation to ensure that every 15 ml bottle of NCD contained 2400 mg of Zeolite.

88. ENO breached this duty by failing to ensure that every 15ml of DCD contained at least 2400 mg of Zeolite.

89. As a direct and proximate result of ENO's negligence, in the aggregate, Plaintiffs and all similarly situated individuals, have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendant, ENO, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT VIII
UNJUST ENRICHMENT
(Waiora entities, CHERELSTEIN & STONE)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

90. Plaintiffs (and other similarly situated consumers) conferred a benefit upon Waiora, CHERELSTEIN & STONE when Plaintiffs (and others similarly situated consumers) paid for bottles of NCD which—in contrast to the bottle's label stating 2400 mg of Zeolite per bottle—in fact contained little or no Zeolite.

91. Waiora, CHERELSTEIN & STONE—as creators, marketers, sellers, and distributors of NCD—have knowledge of the benefit conferred by the Plaintiffs (and other similarly situated consumers).

92. As a result of Waiora, CHERELSTEIN & STONE's failure to provide the general public with a product that meets its label standards—i.e. NCD which contained little or no Zeolite—Waiora, CHERELSTEIN & STONE have been unjustly enriched.

93. Waiora, CHERELSTEIN & STONE will continue to be unjustly enriched to the detriment of the Plaintiffs (and other similarly situated consumers), who expended funds on a

product represented to contain 2400 mg of Zeolite, but which, in reality, consisted only little more than water.

WHEREFORE, having fully set forth their allegations against the Defendants, Waiora, CHERELSTEIN & STONE, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT IX
UNJUST ENRICHMENT
(NDA and DEITSCH)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

94. Plaintiffs (and other similarly situated consumers) conferred a benefit upon NDA and DEITSCH when Plaintiffs (and others similarly situated consumers) paid for bottles of NCD which—in contrast to the bottle's label which stated 2400 mg of Zeolite per bottle—in fact contained little or no Zeolite.

95. NDA and DEITSCH —as researchers and marketers of NCD (with a financial interest in the success of Waiora)—have knowledge of the benefit conferred by the Plaintiffs (and other similarly situated consumers).

96. As a result of NDA's and DEITSCH's failure to inform the general public of NCD's true Zeolite content, NDA and DEITSCH have been unjustly enriched.

97. NDA and DEITSCH will continue to be unjustly enriched to the detriment of the Plaintiffs (and other similarly situated consumers), who have unknowingly expended funds on a

product represented to contain 2400 mg of Zeolite, but, in reality, consisted almost nothing but water.

WHEREFORE, having fully set forth their allegations against the Defendants, NDA and DEITSCH, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT X
UNJUST ENRICHMENT
(ENO and FLOWERS)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

98. Plaintiffs (and other similarly situated consumers) conferred a benefit upon ENO and FLOWERS when Plaintiffs (and others similarly situated consumers) paid over \$50 per bottle of NCD which—in contrast to the bottle's label which stated 2400 mg of Zeolite per bottle—in fact contained little or no Zeolite.

99. ENO and FLOWERS—as manufacturers of NCD—have knowledge of the benefit conferred by the Plaintiffs (and other similarly situated consumers).

100. As a result of ENO's failure to manufacture and provide the general public with a product that meets its label standards—i.e. NCD which contained little or no Zeolite—ENO and FLOWERS have been unjustly enriched.

101. ENO and FLOWERS will continue to be unjustly enriched to the detriment of the Plaintiffs (and other similarly situated consumers), who have unknowingly expended funds on a

product represented to contain 2400 mg of Zeolite, but which, in reality, consisted of almost nothing but water.

WHEREFORE, having fully set forth their allegations against the Defendants, ENO and FLOWERS, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT XI
VIOLATION OF FLORIDA'S UNFAIR
AND DECEPTIVE TRADE PRACTICES ACT
(Waiora, CHERELSTEIN & STONE)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

102. This is an action based on Waiora, CHERELSTEIN & STONE's intentional and unfair deception of consumers in Florida and throughout the world.

103. By their unfair and deceptive conduct (as more fully alleged hereinabove), Waiora, CHERELSTEIN & STONE have grossed many millions of dollars (as per Waiora's own website), often at the expense of the gravely ill, by creating, marketing, selling, and distributing nothing other than 15mL bottles of little more than water, at well over \$50 per bottle. This is an unparalleled fraud, if for no other reason because it targeted the sickest and weakest members of society.

104. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade

practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

105. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting “unfair methods of competition” and “unconscionable, unfair or deceptive acts,” FUDTPA specifically gives “great weight” to the interpretations of the Federal Trade Commission Act by Federal Courts and the Federal Trade Commission.

106. Labels on products for consumption must be strictly accurate, reflecting exactly the nature and quantities of ingredients within labeled bottles. This goes beyond prohibitions against false advertising; labeling is required to have a far higher degree of truth and accuracy than any advertisement.

107. Federal law strictly prohibits any inconsistency between the label on a product and the actual contents of the product. Any such inconsistency is an unfair trade practice *per se*, is a violation of 15 U.S.C. § 45, the Federal Trade Commission Act, and in violation of FDUTPA.

108. In this case, Waiora, CHERELSTEIN & STONE originated, marketed, and sold to the general public bottles of NCD with labels clearly representing 2400 mg of Zeolite per bottle; in fact, however, each bottle contained significantly less than the represented amount, and at least in some cases as little as .001% of the amount on the label.

109. This is an unfair trade practice *per se*, in violation of Florida and Federal consumer protection laws.

110. Waiora, CHERELSTEIN & STONE’s unfair and deceptive trade practices are the direct cause of damage to the Plaintiffs, and to all persons who purchased one or more bottles of NCD at any time prior to October 2011.

111. In the aggregate, such individuals have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendants, Waiora, CHERELSTEIN & STONE, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT XII
VIOLATION OF FLORIDA'S UNFAIR
AND DECEPTIVE TRADE PRACTICES ACT
(NDA and DEITSCH)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

112. This is an action based on NDA's and DEITSCH's intentional and unfair deception of consumers in Florida and throughout the world.

113. By their unfair and deceptive conduct (as more fully alleged hereinabove), NDA and DEITSCH have earned significant profits, often at the expense of the gravely ill, by researching, and marketing nothing other than 15 ml bottles of water, at an average of more than \$50 per bottle. This is an unparalleled fraud, if for no other reason because it targeted the sickest and weakest members of society.

114. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade

practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

115. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting “unfair methods of competition” and “unconscionable, unfair or deceptive acts,” FUDTPA specifically gives “great weight” to the interpretations of the Federal Trade Commission Act by Federal Courts and the Federal Trade Commission.

116. Labels on products for consumption must be strictly accurate, reflecting exactly the nature and quantities of a product in each labeled bottle. This goes beyond prohibitions against false advertising, and labeling is required to have a higher degree of truth and accuracy any advertisement.

117. Federal law strictly prohibits any inconsistency between the label on a product and the actual contents of the product. Any such inconsistency is an unfair trade per se, and a violation of 15 U.S.C. § 45, the Federal Trade Commission Act.

118. In this case, NDA and DEITSCH researched, marketed, and shared in the profits of NCD sold to the general public with labels clearly representing 2400 mg of Zeolite per bottle; in fact, however, each bottle contained significantly less than the represented amount, and at least in some cases, as little as .001% of the amount on the label.

119. This is an unfair trade practice per se, in violation of Federal consumer protection laws, and FDUTPA.

120. NDA’s and DEITSCH’s unfair and deceptive trade practices are the direct cause of damage to the Plaintiffs, and to all persons who purchased one or more bottles of NCD at any time prior to October, 2011.

121. In the aggregate, such individuals have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendants, NDA and DEITSCH, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

COUNT XIII
VIOLATION OF FLORIDA'S UNFAIR
AND DECEPTIVE TRADE PRACTICES ACT
(ENO and FLOWERS)

Plaintiffs re-allege and re-aver Paragraphs 1 through 64 above, as though fully set forth herein.

122. This is an action based on ENO and FLOWERS' intentional and unfair deception of consumers in Florida and throughout the world.

123. By its unfair and deceptive conduct (as more fully alleged hereinabove), ENO and FLOWERS have earned significant profits, often at the expense of the gravely ill, by manufacturing nothing other than 15 ml bottles of municipal water, to then be mislabeled and sold at an average of more than \$50 per bottle. This is an unparalleled fraud, if for no other reason because it targeted the sickest and weakest members of society.

124. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade

practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

125. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting “unfair methods of competition” and “unconscionable, unfair or deceptive acts,” FUDTPA specifically gives “great weight” to the interpretations of the Federal Trade Commission Act by Federal Courts and the Federal Trade Commission.

126. Labels on products for consumption must be strictly accurate, reflecting exactly the nature and quantities of a product in each labeled bottle. This goes beyond prohibitions against false advertising, and labeling is required to have a higher degree of truth and accuracy any advertisement.

127. Federal law strictly prohibits any inconsistency between the label on a product and the actual contents of the product. Any such inconsistency is an unfair trade per se, and a violation of 15 U.S.C. § 45, the Federal Trade Commission Act.

128. In this case, ENO and FLOWERS manufactured and shared in the profits of NCD sold to the general public with labels clearly representing 2400 mg of Zeolite per bottle; in fact, however, each bottle contained significantly less than the represented amount, and at least in some cases, as little as .001% of the amount on the label.

129. This is an unfair trade practice per se, in violation of Federal consumer protection laws, and FDUTPA.

130. ENO and FLOWERS’ unfair and deceptive trade practices are the direct cause of damage to the Plaintiffs, and to all persons who purchased one or more bottles of NCD at any time prior to October, 2011.

131. In the aggregate, such individuals have been injured in an amount significantly exceeding the Five Million Dollar (\$5,000,000.00) jurisdictional limit set by the Class Action Fairness Act.

WHEREFORE, having fully set forth their allegations against the Defendants, ENO and FLOWERS, Plaintiffs respectfully request that this Court (a) certify a class of all similarly situated persons; (b) award themselves and all similarly situated persons compensatory and all other applicable damages; (c) award Plaintiffs and all similarly situated persons all reasonable attorney's fees and costs; and (d) enter such other relief as is deemed just and equitable under the circumstances.

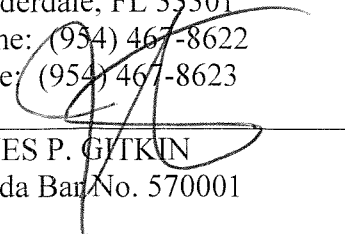
DEMAND FOR JURY TRIAL

Plaintiffs, SHELLEY PENNEY, GLADYS MURPHY, ADRIANAH SEELY, and STEVEN MARKS, individually and on behalf of all other similarly situated, demand a trial by jury as to all issues triable as of right by jury.

Dated this 25th day of January, 2012.

Respectfully Submitted,
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