

1 **CUSTODIO & DUBEY, LLP**
Robert Abiri (SBN 238681)
2 445 S. Figueroa Street, Suite 2520
Los Angeles, CA 90071
3 Telephone: (213) 593-9095
Facsimile: (213) 785-2899
4 E-mail: abiri@cd-lawyers.com

5 *Attorneys for Plaintiff and the Putative*
6 *Classes*

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 MARIA MENDEZ WHITAKER, on
11 behalf of herself and all others similarly
12 situated,

13 Plaintiff,

14 v.

15 PHARMAVITE LLC,

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

CASE NO.: 2:22-cv-04732

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Maria Mendez Whitaker (“Plaintiff”), on behalf of herself and all
2 others similarly situated, brings this class action against Pharmavite LLC
3 (“Defendant”) based upon personal knowledge as to herself, and upon information,
4 investigation and belief of her counsel.

5 **SUMMARY OF THE ACTION**

6 1. This class action seeks to challenge Defendant’s false and deceptive
7 practices in the marketing and sale of its Nature Made® Extra Strength Chewable
8 Vitamin C products (the “Products”).

9 2. Specifically, Defendant has falsely and deceptively labeled the Products
10 as being “Extra Strength.” Based on this representation, reasonable consumers are led
11 to believe that each tablet contained in the Products has a higher dose of Vitamin C
12 than each tablet contained in Defendant’s Nature Made® ***regular strength*** chewable
13 Vitamin C products (the “Regular Strength Products”).

14 3. Unbeknownst to consumers, the Products do not have a higher dose of
15 Vitamin C per tablet than the Regular Strength Products. As such, the Products are not
16 “Extra Strength” and are therefore falsely and deceptively labeled.

17 4. Plaintiff and Class members have reasonably relied on Defendant’s
18 deceptive labeling of the Products, reasonably believing that each tablet in the
19 Products contains a higher dose of Vitamin C than each tablet of the Regular Strength
20 Products.

21 5. Plaintiff purchased the Products and paid a premium price based upon
22 her reliance on Defendant’s “Extra Strength” representation. Had Plaintiff and Class
23 members been aware that the Products were not in fact “Extra Strength,” Plaintiff
24 and Class members would not have purchased the Products or would have paid
25 significantly less for them. Accordingly, Plaintiff and Class members have been
26 injured by Defendant’s deceptive business practices.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

I. Plaintiff

6. Plaintiff Whitaker is a citizen of California and currently resides in North Hollywood, California. Throughout 2020 to early 2022, Plaintiff purchased the Products from a Sprouts and CVS in Burbank, California. Specifically, Plaintiff last purchased the Products in or around April 2022. In purchasing the Products, Plaintiff saw the “Extra Strength” representation on the front label of the Products and reasonably believed that each tablet in the Products had a higher dose of Vitamin C than each tablet of the Regular Strength Products. Had she known that the Products were not in fact extra strength, she would not have purchased the Products or would have paid substantially less for them.

7. Despite Defendant’s misrepresentations, Plaintiff would purchase the Product, as advertised, if they were in fact extra strength. Although Plaintiff regularly shop at stores which carry the Products, absent an injunction on Defendant’s deceptive advertising, she will be unable to rely with confidence on Defendant’s labeling of the Products in the future. Furthermore, while Plaintiff currently believe that the Products are falsely and deceptively labeled, she lacks personal knowledge as to Defendant’s specific business practices, as she will not be able determine whether the Products truly will be extra strength in the future. This leaves doubt in her mind as to the possibility that at some point in the future the Products could be made in accordance with the representation on the front labels. This uncertainty, coupled with her desire to purchase the Products, is an ongoing injury that can and would be rectified by an injunction enjoining Defendant from making the alleged misleading representations. In addition, other Class members will continue to purchase the Products, reasonably but incorrectly, believing that they are extra strength.

1 **II. Defendant**

2 8. Defendant Pharmavite LLC is a California corporation and maintains
3 its headquarters in West Hills, California. Defendant, on its own and through its
4 agents, is responsible for the formulation, ingredients, manufacturing, labeling,
5 marketing, and sale of the Products in the United States, including in California,
6 specifically in this District. On information and belief, the marketing of the
7 Products, including the decision of what to include on their labels, emanates from
8 Defendant's headquarters in California.

9 **JURISDICTION AND VENUE**

10 9. This Court has subject matter jurisdiction under the Class Action
11 Fairness Act, 28 U.S.C. §1332(d) in that: (1) this is a class action involving more
12 than 100 Class members; (2) the parties are minimally diverse, as members of the
13 proposed class are citizens of states different than Defendant's home state; and (3)
14 the amount in controversy is in excess of \$5,000,000, exclusive of interests and
15 costs.

16 10. This Court has personal jurisdiction over Defendant because Defendant
17 maintains its headquarters in California, conducts and transacts substantial business
18 in California, and intentionally and purposefully placed the Products into the stream
19 of commerce within California

20 11. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391
21 because a substantial part of the events or omissions giving rise to Plaintiff's claims
22 occurred in this judicial District. Namely, Plaintiff purchased the Products in this
23 judicial District.

24 **FACTUAL BACKGROUND**

25 12. Defendant is in the business of manufacturing and selling dietary
26 supplements, including its popular Nature Made® brand.

27 13. The "Products" at issue in this action are the following Nature Made
28 products:

- a. Nature Made® Extra Strength Chewable Vitamin C, 60 Tablets;
- and
- b. Nature Made® Extra Strength Chewable Vitamin C, 90 Tablets.

14. Defendant has engaged in false and deceptive labeling of the Products. Specifically, Pharmavite, directly and/or through its agents, has falsely and deceptively labeled the Products as being “Extra Strength.” *See below example.*



15. Based on the “Extra Strength” representation on the front label of the Products, reasonable consumers are led to believe that each chewable tablet contained in the Products has a higher dosage of Vitamin C than each chewable tablet in

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.