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IN THE TWELFTH JUDICIAL CIRCUIT COURT IN AND FOR
SARASOTA COUNTY, FLORIDA

MELISSA M. GONGAWARE,	*
Plaintiff,	*
vs.	*
BENEFICIAL SOLUTIONS, LLC, and RUSSELL B. ALTMAN,	*
Defendants.	*

/

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, by and through undersigned counsel, alleges the following against Defendants:

NATURE OF THE CASE

1. This is a personal injury action arising out of serious injuries sustained by Plaintiff, as the result of her ingestion of a colloidal silver preparation known as "NutraSilver®" which is sold over-the-counter as a "dietary supplement." NutraSilver® was at all times herein mentioned designed, manufactured, labeled, marketed and distributed by the Defendants. Plaintiff alleges theories of strict product-liability for failure to warn and defective design, negligence and negligent misrepresentation based on the tortious conduct set forth below.

THE PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a citizen of, and lives and resides in, Sarasota County, Florida.

3. Upon information and belief, Defendant Beneficial Solutions, LLC is a Nevada Corporation with its principal place of business at 2120 Double Diamond Ranch Parkway, City of Reno, County of Washoe, State of Nevada. At all times mentioned herein, Defendant

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Beneficial Solutions, LLC designed, manufactured, labeled, marketed and distributed NutraSilver® including the product ingested by Plaintiff which gave rise to her injuries.

4. Upon information and belief, Defendant Russell B. Altman is a citizen and a resident of the City of Reno, County of Washoe, State of Nevada, and is the owner and/or sole officer of Beneficial Solutions, LLC who has, or had advance notice of the practices and conduct described in this Complaint, authorized, undertook, directed, controlled, actively participated in, approved and/or ratified the tortious conduct described in this Complaint, and/or had the ability to or opportunity to prohibit, forbid, prevent, modify or otherwise take action against such conduct. In addition, upon further information and belief, Russell B. Altman was intimately involved in all aspects of Beneficial Solutions, LLC's business and was responsible for the marketing, promoting, sales and distribution of NutraSilver,® including the product ingested by Plaintiff which gave rise to her injuries.

5. At all times relevant, the Defendants through interstate commerce conducted business in Sarasota County, Florida.

6. Defendants conduct and transact business in the State of Florida, have committed tortious and wrongful acts within the state, and have otherwise performed acts within and/or without of the state giving rise to injuries and losses within the state, which acts subject each Defendant to the jurisdiction of the courts of the state.

7. Defendants are otherwise subject to the jurisdiction of this Court under section 48.193, Florida Statutes, for the reasons set forth below:

a. Defendants, at all times relevant hereto, operated, conducted, engaged in and carried on a business venture in this state and in this county, or maintained an office or agency in this state which enabled Defendants to distribute over-the-counter products including the product that has injured Plaintiff.

b. Defendants have committed a tortious act within the state by breaching various duties owed to Plaintiff.

c. Defendants have caused damages to Plaintiff, which arose out of acts, and omissions that occurred inside and outside the State of Florida during the relevant time period, namely not promptly, and adequately informing Plaintiff about the dangers associated with the subject product.

d. Defendants have engaged in substantial business and not isolated business in the State of Florida by engaging in commerce and advertising the subject product throughout the state in grocery stores, pharmacies and on the Internet and/or maintaining offices and employees in Florida and providing services in Florida.

8. In addition, Plaintiff has suffered damages which exceed $75,000.00.

9. Further, venue is proper in this Court pursuant to section 47.051, Florida Statutes the causes of action herein have accrued in Sarasota County, Florida.

GENERAL FACTUAL ALLEGATIONS

10. NutraSilver® is and was at all times mentioned herein marketed by Defendants as a "dietary supplement" containing colloidal silver. Colloidal silver (a colloid consisting of silver particles suspended in liquid) and other formulations containing silver salts were used by physicians in the early 20th century to treat a variety of infections and other physical maladies. Their use was largely discontinued in the 1940's following the development of modern antibiotics. Since the 1990s, colloidal silver has again been marketed as an alternative medicine, often with extensive "cure-all" claims.

11. Defendants Beneficial Solutions, LLC and Russell B. Altman marketed, promoted and sold NutraSilver® as a safe and effective treatment for a multitude of diseases, including a controversial skin disorder known as Morgellon's disease. Defendants specifically targeted their marketing of the product on vulnerable individuals, including Plaintiff, who suffered from a variety of symptoms that they were unsuccessful in treating through conventional medicine.

12. In or around October 2009, Plaintiff sought treatments for a constellation of symptoms that she felt might represent Morgellon's disease. Plaintiff was drawn to Defendants' website, www.NutraSilver.com, which was and is the primary vehicle by which Defendants market and sell NutraSilver.®

13. Plaintiff read and relied upon the numerous representations made by Defendants on their website in making her decision to purchase NutraSilver.®

14. In reliance upon Defendants representations, Plaintiff made multiple purchases of NutraSilver® through Defendants website sales portal starting in October 2009.

15. Plaintiff ingested the NutraSilver® product as directed between October 2009 through the end of June 2010.

16. At the end of June 2010, Plaintiff developed severe anemia for which she was hospitalized. During her care and treatment for the anemia, Plaintiff provided her doctors with a complete list of all medications and dietary supplements she was using, including the NutraSilver.® Plaintiff inquired as to whether the NutraSilver® might have contributed to the anemia. She was told that there were no reports of colloidal silver supplementation causing blood disorders such as anemia and that her anemia was "idiopathic."

17. Plaintiff's primary treating doctor recommended in late June 2010 that she stop using NutraSilver® because of its lack of proven efficacy and known risks other than anemia. Based on her doctor's recommendation, Plaintiff voluntarily ceased ingesting the product as of the end of June 2010, although neither she nor her health care providers attributed any symptoms or medical conditions to the product at that time.

18. In or around July 2010, Plaintiff began to develop a number of peripheral neurological symptoms, including pain and sensory loss in various extremities. Plaintiff sought

care from numerous health care providers and was diagnosed by clinicians at the Mayo Clinic in Jacksonville, Florida in or around March 2011 with idiopathic Chronic Inflammatory Demyelinating Peripheral Neuropathy. Neither Plaintiff, nor her healthcare providers suspected that her neurological problems were in any way related to her ingestion of NutraSilver® until January of 2015, as is detailed below.

19. In the fall of 2011, Plaintiff became aware of subtle changes in the pallor of her skin on certain areas of her body, including her face, neck, arms and hands. Plaintiff's doctors at the time were aware of the nature or cause of the skin discoloration. Possible causes related to Plaintiff by her doctors included hypoxia, a reaction to treatments for her peripheral neuropathy, other medications she was using at that time, and psoriasis.

20. The changes to Plaintiff's skin coloration progressed over time during which the skin on her face, neck and hands started to take on an obvious grey-bluish tint.

21. In or around December 2013, Plaintiff was referred to a dermatologist who examined her skin and made a clinical diagnosis of argyria. Argyria is a non-curable staining of the skin and mucous membranes produced by silver deposition. The condition has been causally connected to the ingestion of colloidal silver preparations similar to NutraSilver.®

22. Plaintiff's dermatologist opined that her argyria was caused by Plaintiff's prior ingestion of silver salts contained in Defendant's NutraSilver® product in 2009-2010.

23. Plaintiff has no other history of internal silver exposure other than the NutraSilver.®

24. Plaintiff's clinical diagnosis of argyria was subsequently confirmed at the Mayo Clinic in Rochester, Minnesota by punch biopsy and microscopy in January 2015.

25. Independent of her argyria diagnosis, Plaintiff at all times since the summer of 2010 continued to suffer from a debilitating peripheral neuropathy. Despite numerous treatments and medications, Plaintiff's symptoms remained unresolved and their cause unknown through 2014.

26. In January 2015, Plaintiff was extensively worked-up by specialists at the Mayo Clinic in Minnesota for her peripheral neuropathies. At that time, her doctors determined that she was suffering from a sensory predominant peripheral neuropathy or polyradiculoneuropathy.

27. As part of the Mayo Clinic work-up in January 2015, Plaintiff had nerves biopsied and examined with electron microscopy. The biopsied nerves showed the presence of silver particles along with damage to the nerve tissues. Based on these studies, Mayo clinicians determined, for the first time, that Plaintiff's neurological symptoms were likely due to her ingestion of colloidal silver, namely, NutraSilver.®

28. Plaintiff's NutraSilver®-induced argyria has resulted in the permanent discoloration of her skin, especially around the face and neck. Plaintiff suffers from daily emotional distress on account of her condition and is embarrassed to be seen in public.

29. There are no FDA-approved treatments for argyria. Experimental and very expensive "triple laser" treatments for the condition have been reported in the literature with varying cosmetic results. It is likely that Plaintiff will continue to suffer from her profound skin discoloration for the rest of her life.

30. Plaintiff's NutraSilver®-induced peripheral neuropathy causes her extreme pain and other symptoms on a daily basis. Plaintiff must ingest a regimen of medications and undergo a variety of other treatments, which are not fully efficacious, in order to manage, but not cure, her condition. Due to the nature of the silver neurotoxicity caused by Defendants' product, and

the lack of any known cure, it is likely that Plaintiff's neurological injuries and resulting symptoms will continue for the rest of her life.

31. At all times mentioned herein, and prior to Plaintiff's purchase of NutraSilver,® Defendants knew, or should have known, that NutraSilver®, or one or more of its constituent ingredients, was inefficacious as a "treatment" for Morgellon's disease or any other human malady, and was highly toxic.

32. Defendants knew, or should have known, that NutraSilver® could cause silver toxicity, including, without limitation, argyria and neurological disorders. Specifically, Defendants were aware of numerous cases of colloidal silver toxicity related to NutraSilver® or other similar products prior to Plaintiff's purchase of the product.

33. Despite Defendants' aforementioned knowledge, Defendants marketed and sold NutraSilver® to the public, including Plaintiff, without disclosing the true nature of the product and its risks, including argyria and neurotoxicity. Defendants failed to warn consumers, including Plaintiff, of such risks in their product labeling and other modes of communication including, without limitation, their Internet and other advertising vehicles.

34. Defendants not only failed to warn consumers such as Plaintiff of the risks of NutraSilver®, they also made numerous misrepresentations as to the safety and efficacy of NutraSilver® on the their website pertaining to the product which were false or for which Defendants had no reasonable or valid scientific basis. Those claims, included, without limitation, the following:

- "MRSA, Morgellon's, eColi, Salmonella, Staph, yeast, fungal infections: all have no chance of survival against NutraSilver.® And because these tests proved there is zero toxicity in NutraSilver,® it's completely safe when used as directed."

- "We can not find even one case of anyone being harmed or dying using any colloidal silver."
- "Since all modern manufactures of colloidal silver now create colloidal silver with nano-sized particles or silver ions, there is no opportunity to get argyria from any store-bought colloidal silver product."
- "NutraSilver® contains no silver salts, silver nitrate, silver arsphenamine or silver chlorides."
- "NutraSilver® is 100% pure nano-sized silver particles and double-distilled clustered water manufactured under closely scrutinized federal guidelines."
- "There is no such thing as silver poisoning."
- "Colloidal Silver is safe and non-toxic to the human body."
- "Colloidal silver does not have any harmful medical side effects – and does not get stored up in your body's organs. This means you can use the supplement without fear of hurting your body from overexposure."

35. Each of the aforementioned claims was false or misleading and Defendants knew, or should have known, them to be so.

36. Plaintiff purchased and ingested NutraSilver® in reliance on the aforementioned and other claims made by Defendants.

37. On information and belief, Defendant Russell Altman was at all times mentioned herein, and prior to Plaintiff's purchase and ingestion of NutraSilver,® aware of the risks of colloidal silver exposure in humans in general, and was aware that the NutraSilver® formulation,

which he designed, approved and/or ratified, carried the same risks, including argyria and neurological dysfunction.

38. On information and belief, it was Defendant Altman who personally drafted all of the claims of safety and efficacy contained on the NutraSilver® website, which he controlled, including the false and misleading claims set forth herein and below.

39. On information and belief, at the times Plaintiff purchased NutraSilver®, Altman was running his business, Beneficial Solutions, LLC, out of his home in Reno, Nevada, and Altman personally fielded Internet and phone inquiries and purchase orders.

40. In that regard, Altman communicated personally (directly) with Plaintiff and other consumers who inquired into the possible side-effects of NutraSilver,® including argyria, and assured them that the product was completely safe and non-toxic, and incapable of causing argyria.

41. But for the communications with Altman, Plaintiff would not have purchased or otherwise ingested NutraSilver. In fact, had Plaintiff known the true nature of the benefits and risks of NutraSilver® she would not have purchased or ingested it.

42. Plaintiff has satisfied all conditions precedent prior to filing this cause of action.

COUNT I
STRICT LIABILITY – FOR FAILURE TO WARN
(Under Florida Common Law)

43. Plaintiff incorporates paragraphs 1 through 42 above as if set forth in full herein.

44. The Defendants placed a defective product (NutraSilver®) on the market.

45. NutraSilver® was unreasonably dangerous when used in a manner consistent with its label.

46. More particularly, the defective product (NutraSilver®) was sold in an unreasonably dangerous condition in that it lacked an adequate warning regarding the use of the product by consumers.

47. Thus, NutraSilver® was not fit for its intended use and could have been designed/manufactured and promoted differently (safely and with a proper and adequate warning) without exposing Plaintiff to unreasonable health risks.

48. The NutraSilver® reached Plaintiff without change in the condition in which the product was sold.

49. The defective product (NutraSilver®) is the proximate cause of Plaintiff's injuries and the physical limitations, collateral depression and anxiety associated therewith.

50. As a further direct and proximate result of Plaintiff's use of NutraSilver,® the Plaintiff, has suffered serious injuries and is entitled to recover all resulting damages.

WHEREFORE, Plaintiff demands judgment in her favor and an award of damages against the Defendants in amounts to be determined at trial, which includes compensatory damages, interest, costs, and any such other or further relief this Court may deem necessary, just and proper.

COUNT II
STRICT LIABILITY – FOR DESIGN DEFECT
(Under Florida Common Law)

51. Plaintiff incorporates paragraphs 1 through 42 above as if set forth in full herein.

52. The Defendants placed a defective product (NutraSilver®) on the market.

53. NutraSilver® was unreasonably dangerous when used in a manner consistent with its label and advertising.

54. More particularly, the defective product (NutraSilver®) was sold in an unreasonably dangerous condition in that the benefits of the design and manufacture of NutraSilver® are outweighed by the serious risk of said design, and the design violates the reasonable expectation of safety that consumers, including Plaintiff's expectation about NutraSilver® when used for its intended purpose.

55. Further, the defective product (NutraSilver®) was inadequately tested and should have undergone more testing prior to the Defendant's sale of NutraSilver® to Plaintiff.

56. NutraSilver® was not fit for its intended use and could have been designed/manufactured differently without exposing Plaintiff to unreasonable health risks.

57. The NutraSilver® reached Plaintiff without change in the condition in which the product was sold.

58. The defective product (NutraSilver®) is the proximate cause of Plaintiff's injuries, and the physical limitations, collateral depression and anxiety associated therewith.

59. As a further direct and proximate result of Plaintiff's use of NutraSilver,® the Plaintiff, has suffered serious injuries and are entitled to recover all resulting damages.

WHEREFORE, Plaintiff demands judgment in her favor and an award of damages against the Defendants in amounts to be determined at trial, which includes compensatory

damages, interest, costs, and any such other or further relief this Court may deem necessary, just and proper.

COUNT III - NEGLIGENCE
(Under Florida Common Law)

60. Plaintiff incorporates paragraphs 1 through 42 above as if set forth in full herein.

61. Defendants are liable to Plaintiff due to their negligent advertising, analyzing, assembling, compounding, designing, developing, distributing, formulating, inspecting, labeling, manufacturing, marketing, packing, producing, promoting, processing, researching, selling, and testing NutraSilver.®

62. At all relevant times, Defendants were under a duty to exercise reasonable care in advertising, analyzing, assembling, compounding, designing, developing, distributing, formulating, inspecting, labeling, manufacturing, marketing, packing, producing, promoting, processing, researching, selling, and testing NutraSilver® to ensure that use of NutraSilver® did not result in avoidable injuries.

63. At all relevant times, Defendants owed a duty to consumers to assess, manage, and communicate the risks, dangers, and adverse effects of NutraSilver® and to adequately warn consumers of those risks, dangers, and adverse effects.

64. Defendants' duties include, but are not limited to, carefully and properly advertising, analyzing, assembling, compounding, designing, developing, distributing, formulating, inspecting, labeling, manufacturing, marketing, packing, producing, promoting, processing, researching, selling, and testing NutraSilver,® which was placed in the stream of commerce, and providing adequate information regarding the appropriate use of NutraSilver.®

65. Defendants negligently and carelessly breached the above-described duties to Plaintiff by committing negligent acts and/or omissions.

66. Although Defendants knew or should have known that NutraSilver® causes unreasonably dangerous side effects, they continue to market NutraSilver,® despite the fact there are safer and more or equally effective alternative products.

67. Defendants knew or should have known that consumers, such as Plaintiff, would suffer injury as a result of their failure to exercise ordinary care, as described herein.

68. The conduct of Defendants were a direct and proximate cause of Plaintiff's injuries. Defendants knew or should have known that NutraSilver® is unreasonably dangerous and unsafe for consumers, including Plaintiff.

69. As a direct and proximate result of the negligent acts and/or omissions of Defendants as alleged herein, Plaintiff suffered, and will continue to suffer into the future, injuries and damages, as alleged herein.

WHEREFORE, Plaintiff demands judgment in her favor and an award of damages against the Defendants in amounts to be determined at trial, which includes compensatory damages, interest, costs, and any such other or further relief this Court may deem necessary, just and proper.

COUNT IV – NEGLIGENT MISREPRESENTATION
(Under Florida Common Law)

70. Plaintiff incorporates by reference paragraphs 1 through 42 as if set forth in full herein.

71. In connection with the marketing and advertising of NutraSilver® Defendants made misrepresentations of material facts about its safety to the Plaintiff and the public.

72. Just prior to October 2009, and until June 2010, Defendants stated to Plaintiff on the Internet on their website the following representations:

> "Colloidal silver does not have any harmful medical side effects – and does not get stored up in your body's organs. This means you can use the supplement without fear of hurting your body from overexposure."

73. Defendants either knew of the misrepresentations, or made the representations without the knowledge of their truth or falsity, or made the representations under circumstances in which the Defendants ought to have known of the falsities.

74. The Defendants intended the representations to induce Plaintiff to act on them, and Plaintiff did in fact act on them in deciding to purchase and consume NutraSilver.®

75. Injury resulted to the Plaintiff acting in justifiable reliance upon Defendants' misrepresentations.

WHEREFORE, Plaintiff demands judgment in her favor and an award of damages against the Defendants in amounts to be determined at trial, which includes compensatory damages, interest, costs, and any such other or further relief this Court may deem necessary, just and proper.