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19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 EPITRACKER, INC. and SERAPHINA  
22 THERAPEUTICS, INC.,

23 Plaintiffs,

24 vs.

25 AGOURA HEALTH PRODUCTS,  
26 LLC d/b/a GUNDRY MD and  
27 STEVEN R. GUNDRY,

28 Defendants.

Case No.: 2:23-cv-08772

**COMPLAINT FOR PATENT  
INFRINGEMENT, FALSE  
ADVERTISING AND UNFAIR  
COMPETITION**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Epitracker, Inc. (“Epitracker”) and Seraphina Therapeutics, Inc.  
2 (“Seraphina,” collectively “Plaintiffs”), by and through their undersigned counsel,  
3 file this Complaint against Agoura Health Products, LLC d/b/a Gundry MD  
4 (“Gundry”) and Steven R. Gundry (“Dr. Gundry,” and together with Gundry,  
5 “Defendants”), and allege with knowledge regarding their own acts and on  
6 information and belief as to other matters, as follows:

7 **PARTIES**

8 1. Plaintiff Epitracker is a life sciences company focused on discovering  
9 and optimizing natural small molecules to treat some of the world’s most  
10 devastating diseases. It is a Delaware corporation with its principal place of  
11 business located at 2907 Shelter Island Drive, Suite 105-411, San Diego,  
12 California 92106.

13 2. Plaintiff Seraphina is a life sciences company focused on advancing  
14 nature and food-based science into evidence-driven consumer products that  
15 support healthier lives. It is a Delaware corporation with its principal place of  
16 business located at 2907 Shelter Island Drive, Suite 105-411, San Diego,  
17 California 92106.

18 3. Defendant Gundry is a California limited liability company with its  
19 principal place of business at 9465 Wilshire Boulevard, Suite 300, Beverley Hills,  
20 California 90212.

21 4. Gundry’s sole member is Dr. Gundry.

22 5. Defendant Dr. Gundry is a resident of California and is and was doing  
23 business in Los Angeles County.

24 **NATURE OF THE ACTION**

25 6. Plaintiffs bring this action to address Defendants’ willful infringement  
26 of Plaintiffs’ rights to U.S. Patent No. 11,116,740 (“the ’740 patent”), and false  
27 and misleading statements made in connection with Defendants’ promotion and  
28 advertising of their infringing dietary supplement product.

1 7. A true and correct copy of the '740 patent is attached as Exhibit A.

2 8. At all times herein mentioned, Epitracker is and was the exclusive  
3 licensee under the '740 patent in all fields of use. At all times herein mentioned,  
4 Seraphina is and was the exclusive sublicensee under the '740 patent. Plaintiffs  
5 have the right to bring this suit for infringement of the '740 patent and to recover  
6 for all past, present and future damages.

7 **JURISDICTION AND VENUE**

8 9. This action arises, in part, under the patent laws of the United States,  
9 35 U.S.C. § 1 *et seq.*, and 17 U.S.C. § 101 *et seq.*

10 10. This Court has subject matter jurisdiction over this matter pursuant to  
11 28 U.S.C. §§ 1331 and 1338(a). This Court also has subject matter jurisdiction  
12 over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 because this  
13 matter involves violations of the Lanham Act §43(a), 15 U.S.C. §1125(a). This  
14 Court has supplemental jurisdiction over the state law claims alleged herein  
15 pursuant to 28 U.S.C. § 1367.

16 11. This Court has personal jurisdiction over Defendants consistent with  
17 the Due Process Clause of the U.S. Constitution and California's Long-Arm  
18 Statute, Cal. Code of Civ. P. § 410.10.

19 12. At all times herein mentioned, Defendant Gundry and was is a limited  
20 liability company organized under the laws of California with a principal place of  
21 business within this district. Defendant Dr. Gundry is and was a California  
22 resident. In addition, Defendants have committed acts of patent infringement in  
23 the State of California and have made false and misleading statements from  
24 California at issue in this action.

25 13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and  
26 1400(b) because Gundry is a California company with a principal place of business  
27 in this judicial district, Dr. Gundry is an individual domiciled in this judicial  
28

1 district, and a substantial part of the events or omissions giving rise to Plaintiffs’  
2 claims occurred in Los Angeles County.

3 **ACTS GIVING RISE TO THIS ACTION**

4 14. Plaintiffs’ Co-Founder and CEO, Dr. Stephanie Venn-Watson, made a  
5 groundbreaking discovery in the course of her work studying the health and  
6 longevity of dolphins participating in the United States Navy’s Marine Mammal  
7 Program right here in California. In the course of that work and follow-on  
8 scientific studies relating to the same, Dr. Venn-Watson discovered the first new  
9 essential fatty acid in nearly a century: a fatty acid known as C15:0 (pentadecanoic  
10 acid). Numerous studies have since confirmed the health-related benefits of C15:0,  
11 including, among other things, its ability to fight off certain age-related negative  
12 health conditions, increase the resilience of cell membranes, improve  
13 mitochondrial function, and improve cellular signaling.

14 15. Dr. Venn-Watson co-founded Plaintiffs Epitracker and Seraphina, in  
15 part, to bring the benefits of C15:0 to the public and worked to secure patent  
16 protection on certain innovations relating to C15:0. In October 2020, Seraphina  
17 began to sell a daily supplement product called Fatty15® that consists of >98.5%  
18 pure, free fatty acid C15:0 in bioavailable powder form.

19 16. One of Plaintiffs’ customers is Dr. Gundry, a California resident, who  
20 holds himself out as a health and wellness expert and who, through Gundry, sells  
21 and markets various dietary supplements.

22 17. Working with a Chinese-backed supplier, Defendants conceived a  
23 competing daily supplement product called C15 Advantage that infringes  
24 Plaintiffs’ patent rights, and then launched and began selling their infringing  
25 product in November 2022.

26 18. In addition to trampling on Plaintiffs’ patent rights, Defendants  
27 carried out an advertising and marketing blitz through targeted mass emails and the  
28 Gundry website to flood the market with false and misleading statements. In these

1 statements, Defendants disingenuously cloaked their own product in Dr. Venn-  
2 Watson's dolphin studies and created the false and misleading impression that (a)  
3 Dr. Gundry was involved in Dr. Venn-Watson's groundbreaking research, and (b)  
4 Dr. Venn-Watson and Plaintiffs had endorsed and/or were affiliated with  
5 Defendants' infringing C15:0 product.

6 19. None of the aforementioned was true. Dr. Gundry had no  
7 involvement whatsoever in, and contributed absolutely nothing to, Dr. Venn-  
8 Watson's groundbreaking work with the Navy. And neither Dr. Venn-Watson nor  
9 Plaintiffs ever endorsed or had any affiliation with Defendants' infringing C15  
10 Advantage product.

11 20. Defendants did not stop there. Defendants also flooded the market  
12 with false and misleading statements in marketing emails and the Gundry website  
13 making false, misleading, and unsubstantiated claims about the health-related  
14 benefits of the C15 Advantage product. Those claims are false and misleading  
15 because the studies they invoke demonstrate health benefits for Plaintiffs'  
16 Fatty15® product, which consists of a >98.5% pure, free fatty acid C15:0 in a daily  
17 dose of 100 mg to 200 mg in bioavailable powder form. By stark contrast,  
18 Gundry's infringing C15 Advantage product has only 50 mg of C15:0, provides  
19 C15:0 in less bioavailable triacylglyceride form, and includes other non-C15:0  
20 ingredients, some or all of which have been shown to counteract C15:0-related  
21 health benefits.

22 21. When confronted by Plaintiffs about their unlawful conduct,  
23 Defendants refused to stop selling and offering for sale their patent infringing C15  
24 Advantage product, and refused to withdraw or correct their numerous false and  
25 misleading advertising statements.

1                                   **Plaintiffs’ Groundbreaking Work with C15:0 and**  
2                                   **Discovery of a New Essential Fatty Acid**

3           22. Seraphina’s and Epitracker’s Co-Founder and CEO is Dr. Stephanie  
4 Venn-Watson, a veterinary epidemiologist and public health scientist with over 60  
5 patents and pending applications, and over 80 peer-reviewed scientific publications  
6 to her name. In 2001, Dr. Venn-Watson was invited by the United States Navy to  
7 lead a population health program to improve the health and wellness of dolphins  
8 participating in the U.S. Navy’s Marine Mammal Program in San Diego,  
9 California.

10           23. For the next ten years, from 2001-2011, Dr. Venn-Watson researched  
11 dolphin health with the Navy. In the course of that work, which included the study  
12 of dolphin pods in California and Florida, she observed that certain dolphins were  
13 developing age-associated conditions such as metabolic syndrome, fatty liver  
14 disease, and chronic inflammation, while others were not. She also observed that  
15 certain dolphins were living well beyond their typical lifespans. She discerned that  
16 dolphins who ate specific types of fish with a higher level of a fatty acid called  
17 pentadecanoic acid, or C15:0, experienced fewer age-associated adverse health  
18 conditions as they aged.

19           24. From 2013-2015, as a continuation of her work with the Navy, Dr.  
20 Venn-Watson conducted a comprehensive study to analyze thousands of molecules  
21 in the subject dolphins’ blood samples. That study identified certain molecules as  
22 predictors of which dolphins were aging the healthiest with the least amount of  
23 age-associated adverse health conditions. Among the top of those health- and  
24 longevity-identifying molecules was C15:0.

25           25. Based on her years of work and the continuation of her 2013-2015  
26 study, Dr. Venn-Watson then led a program to put the C15:0 hypothesis to the test.  
27 As part of that program, unhealthy dolphins who were experiencing age-associated  
28 adverse health conditions were given a diet with more C15:0, by feeding them

1 different types of fish that contained higher levels of C15:0. As those dolphins  
2 consumed more C15:0, their age-associated adverse health conditions decreased or  
3 disappeared.

4 26. As the scientific literature would confirm, Dr. Venn-Watson's work  
5 with the Navy's dolphins was the beginning of a revolutionary development in  
6 nutritional science.

7 27. Over the next three years, Dr. Venn-Watson led and conducted  
8 numerous additional studies to assess C15:0's impact on improving health with  
9 aging, not only in dolphins but also in humans. This work targeted the three  
10 hallmarks of aging: increasing the resilience of cell membranes, improving  
11 mitochondrial function, and improving cellular signaling.

12 28. In 2020, Dr. Venn-Watson published a peer-reviewed paper in  
13 Nature's Scientific Reports confirming that she had made a groundbreaking  
14 discovery: C15:0 was not only an important molecule, but it met the rare criteria of  
15 being an essential fatty acid. Essential fatty acids are fatty acids critical to the  
16 improvement and maintenance of human health that are not naturally produced by  
17 the human body in adequate amounts. Thus, to improve and maintain health, it is  
18 essential for humans to consume them. C15:0 was the first essential fatty acid to  
19 be discovered in over 90 years.

20 29. By the end of 2021, two dozen peer-reviewed scientific papers from  
21 third parties across the world reinforced Dr. Venn-Watson's conclusion and  
22 reaffirmed the benefits of C15:0 for human health.

23 **Plaintiffs' Protect Their Intellectual Property Rights and**  
24 **Bring Fatty15® to Market**

25 30. Having made this remarkable discovery, Dr. Venn-Watson worked  
26 with the Navy to safeguard her intellectual property rights and take steps to bring  
27 her revolutionary findings to the marketplace to enable humans to reap the health  
28 benefits of C15:0.

1           31. One important step to safeguarding those intellectual property rights  
2 was working with the Navy to secure patent protection. Among the C15:0-related  
3 patents Dr. Venn-Watson secured with the Navy is the '740 patent.

4           32. The '740 patent is entitled "Methods for Use in Support of Planned  
5 Supplement and Food Ingredient Products for Diagnosis and Treatment of  
6 Metabolic Syndrome." The '740 patent issued on September 14, 2021. Dr. Venn-  
7 Watson is the sole named inventor on the '740 patent. The United States of  
8 America as represented by the Secretary of the Navy (the "Navy") is listed as the  
9 assignee on the face of the patent.

10           33. Through an exclusive license between the Navy and Epitracker,  
11 Epitracker obtained the exclusive right and license to practice the inventions  
12 covered by the '740 patent, and to enforce or defend the '740 patent.

13           34. The exclusive license between the Navy and Epitracker also granted  
14 Epitracker the right to extend the license to Seraphina. Epitracker exercised that  
15 right and, in March 2020, entered into a license agreement with Seraphina. The  
16 Epitracker-Seraphina license granted Seraphina the right to sue to enforce the '740  
17 patent. The Epitracker-Seraphina license also entitled Epitracker to receive  
18 royalties based on Seraphina's sales of any product covered by the '740 patent.

19           35. Defendants are not, and have never been, licensed to practice the '740  
20 patent.

21           36. Claim 3 of the '740 patent recites "[a] method comprising:  
22 administering, to a patient, pentadecanoic acid at a daily dose comprising an  
23 approximate minimum of 0.3 mg per kg of the patient's body weight, wherein the  
24 pentadecanoic acid is administered in a form selected from the group consisting of  
25 a supplement, a food, a food additive, a food fortifier, a beverage additive, a  
26 beverage fortifier, and a pharmaceutical."

27           37. In October 2020, Plaintiffs brought a commercialized C15:0 dietary  
28 supplement to market. The product, Fatty15®, is a single capsule containing one



1 ingredient: 100 mg of >98.5% pure, free fatty acid C15:0 in bioavailable powder  
2 form.

3 38. Studies have demonstrated that Fatty15® reverses aging at the cellular  
4 level by improving cellular strength, reducing inflammation, repairing  
5 mitochondrial dysfunction, and improving cellular signaling. Studies have also  
6 shown that Fatty15® provides additional health benefits, including improved  
7 components of metabolic, heart, immune, liver, and red blood cell health.

8 39. Plaintiffs have invested substantial time and resources into developing  
9 and launching Fatty15®, building a devoted customer base for the product, and  
10 fostering goodwill for the product and for Seraphina and Epitracker. In addition to  
11 working with the Navy to secure patent protection and obtain the above-referenced  
12 licenses, Plaintiffs invested substantial time and resources into funding numerous  
13 studies demonstrating the effectiveness of Fatty15® and applying for and obtaining  
14 Generally Recognized as Safe (“GRAS”) status for Fatty15®, which was obtained  
15 in January 2021.

16 40. In building the reputations and fostering goodwill for Plaintiffs and  
17 Fatty15®, Plaintiffs have invested substantially in advertising and marketing  
18 campaigns to educate existing and prospective customers about the benefits of  
19 Fatty15® and C15:0. Given the compelling nature of Dr. Venn-Watson’s work  
20 with the Navy’s dolphins that served as the impetus for her discovery, and given  
21 the remarkable and groundbreaking nature of her discovery, Plaintiffs’ advertising,  
22 marketing, and promotional materials extensively highlight Dr. Venn-Watson, her  
23 work with the Navy’s dolphins, and her studies regarding the benefits of C15:0.  
24 These advertising, marketing, and promotional materials have been and continue to  
25 be communicated to Fatty15® customers by email, through postings on  
26 Fatty15®’s website, and by being featured in third-party publications.

1 41. In just a few years' time, Fatty15® has developed a devoted customer  
2 base and received multiple awards from third-party publications, including  
3 Nutritional Outlook Magazine and Fast Company's World Changing Ideas.

4 **Defendants Sell and Distribute the Infringing C15 Advantage Product**

5 42. One of Seraphina's customers is Gundry's own founder, Dr. Gundry.  
6 Defendants sell, market and distribute several dietary supplements and vitamin  
7 products. Dr. Gundry serves as the public-facing spokesperson of Gundry. An  
8 image of Dr. Gundry's face appears on Gundry marketing emails sent to Gundry's  
9 current and prospective customers, which are written so as to indicate that the  
10 messaging comes directly from Dr. Gundry. Dr. Gundry also personally promotes  
11 several of Gundry's products in videos Gundry posts on the Internet. Numerous  
12 examples of Dr. Gundry speaking in the first person and falsely and/or  
13 misleadingly taking credit for studies conducted by and discoveries made by Dr.  
14 Venn-Watson are provided below.

15 43. Dr. Gundry has been a Fatty15® customer since at least April 2021.  
16 Dr. Gundry has purchased and received fifteen 90-day supplies of Fatty15®, a total  
17 of 1,350 Fatty15® capsules.

18 44. On November 9, 2022, almost a year and a half after Dr. Gundry  
19 became a Fatty15® customer, Gundry launched a competing daily supplement  
20 product called C15 Advantage.

21 45. Administration of C15 Advantage directly infringes claim 3 of the  
22 '740 patent, as it practices "[a] method" of "administering, to a patient,  
23 pentadecanoic acid at a daily dose comprising an approximate minimum of 0.3 mg  
24 per kg of the patient's body weight, wherein the pentadecanoic acid is administered  
25 in [the] form ... of a supplement . . . ." C15 Advantage is sold and marketed as a  
26 daily supplement and, as reflected in the below image of a C15 Advantage product  
27 label, a serving of C15 Advantage contains 50 mg of pentadecanoic acid, which the  
28 label refers to as "NutraAssure™ Pentadecanoic Acid[C15]."

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## Supplement Facts

Serving Size: 1 Vegetarian Softgel  
Servings Per Container: 30

Amount Per Serving	% DV
Calories	5
Total Fat	<0.5 g <0.5%‡
<b>PhytoSure™ PurePlantD<sub>3</sub>™</b> (Vegetarian Plant-Derived Natural Cholecalciferol)	20 mcg (800 IU) 100%
<b>PhytoSure™ Mediterranean Olive Fruit &amp; Leaf TriExtract Complex</b> [Providing: Organic Extra Virgin Olive Oil (EVOO), Oleuropein, Oleic Acid]	350 mg **
<b>NutraAssure™ Pentadecanoic Acid[C15]</b>	50 mg **
<b>NutraAssure™ • BioMax™‡ Complexed CoQ<sub>10</sub></b> [Fermented Vegetarian All-Trans CoQ <sub>10</sub> ]	50 mg **
<b>PhytoSure™ Organic Medium Chain Triglycerides (MCTs) Oil</b> [Providing: Purified C8/C10]	50 mg **

‡ Percent Daily Values are based on a 2,000 calorie diet.  
\*\* Daily Value not established.

OTHER INGREDIENTS:: PlantGel™ Vegetarian Softgel (With Natural Colorants), PhytoSure™ NutraAssure™, BioMax™ (Non-GMO Plant-Derived Modified Food Dextrin Complex), Sunflower (Lecithin), Candelilla (Wax), Vanilla Concentrated Essence. Contains: Tree Nuts (Coconut-Derived Medium Chain Triglycerides Oil)  
**DISTRIBUTED BY** Gundry MD, Beverly Hills, CA 90212 ©2023

46. Defendants have sold and distributed C15 Advantage since at least November 2022 and continue to market and offer the product for sale. Defendants have realized substantial revenues and profits from the sale and distribution of C15 Advantage. Discovery will reveal the extent of these revenues and profits.

47. A dose of 50 mg of pentadecanoic acid comprises an approximate minimum of 0.3 mg per kg of body weight for any individual weighing less than approximately 367 lbs. (166 kgs).

48. Dr. Gundry has taken the C15 Advantage product in at least the amount identified on the C15 Advantage label.

49. Defendants have had actual knowledge of the '740 patent since at least as early as November 11, 2022.

1           50. Defendants sold, and continue to sell, the C15 Advantage product in  
2 direct competition with Fatty15®.

3           51. Defendants have caused, and continue to cause, irreparable harm to  
4 Plaintiffs, their business and their reputation through Defendants' making, using,  
5 offering for sale, sale, importation, marketing, and/or distribution of their  
6 infringing C15 Advantage product.

7           52. Defendants have indirectly infringed, and continue to indirectly  
8 infringe, one or more claims of the '740 patent, including claim 3 of the '740  
9 patent. See ¶¶ 42-50 *supra*.

10           53. Dr. Gundry has directly and indirectly infringed, and continues to  
11 directly and indirectly infringe, one or more claims of the '740 patent, including  
12 but not limited to claim 3 of the '740 patent. See ¶¶ 42-50 *supra*.

13           54. Defendants' manufacture, use, offer to sell, sale, marketing, and/or  
14 distribution of the C15 Advantage product within the United States, and/or  
15 importation of the C15 Advantage product into the United States, during the term  
16 of the '740 patent infringes at least claim 3 of the '740 patent pursuant to 35 U.S.C.  
17 § 271.

18           55. Despite knowledge of the '740 patent, *supra* ¶ 49 and *infra* ¶¶ 80-82,  
19 Defendants acted objectively recklessly in choosing to infringe and continuing to  
20 infringe the '740 patent by making, using, offering for sale, and/or selling the C15  
21 Advantage product in the United States and/or importing the C15 Advantage  
22 product to the United States.

23           56. Defendants actively and intentionally encouraged, and continue to  
24 actively and intentionally encourage, their customers to use the C15 Advantage  
25 product according to certain methods taught by Defendants, for example, in their  
26 marketing materials, instructions for use, and through Gundry's employees, agents  
27 and/or representatives including Dr. Gundry. Defendants' customers employ the  
28 methods taught by Defendants when using the C15 Advantage product.

1 57. Defendants have induced and continue to induce, infringement of one  
2 or more claims of the '740 patent, including at least claim 3, in violation of 35  
3 U.S.C. § 271(b). Defendants intentionally have encouraged, and continue to  
4 encourage, direct infringement by their customers with knowledge of the '740  
5 patent and knowledge that their acts have encouraged and continue to encourage  
6 direct infringement, or while remaining willfully blind to the possibility that their  
7 inducing acts would cause infringement.

8 58. Defendants specifically intended, and continue to specifically intend,  
9 for their customers to infringe the '740 patent. Defendants encouraged, and  
10 continue to encourage, infringement by customers at least by providing product  
11 support and instructions on how to use the C15 Advantage product.

12 59. Defendants have contributed to, and continue to contribute to,  
13 infringement of one or more claims of the '740 patent, including at least claim 3, in  
14 violation of 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing the  
15 C15 Advantage product in the United States for use in practicing the processes  
16 claimed in the '740 patent. The use of the C15 Advantage product constitutes a  
17 material part of the processes claimed in the '740 patent, and Defendants have  
18 knowledge that this use is especially made or adapted for use in the infringement  
19 of the '740 patent. The C15 Advantage product is not a staple article or commodity  
20 of commerce suitable for substantial noninfringing use.

21 **Defendants Engage in a Brazen Campaign of False Advertising**

22 60. Since the initial launch of the infringing C15 Advantage product in  
23 November 2022, Defendants have been engaged in a brazen and systemic  
24 campaign of false and misleading advertising.

25 61. Over that time, Defendants have sent numerous marketing email  
26 blasts to current and prospective customers of Fatty15® and/or C15 Advantage and  
27 made numerous posts on Gundry's website that have been riddled with false and  
28 misleading claims about the efficacy of C15 Advantage and false and misleading

1 claims stating or implying that Plaintiffs and Dr. Venn-Watson specifically have  
2 endorsed and/or are affiliated with the infringing C15 Advantage product. False  
3 and misleading marketing emails were sent by Defendants on at least four  
4 occasions, on November 3, 2022, November 4, 2022, May 4, 2023, and July 15,  
5 2023. Defendants have made false and misleading statements on their website  
6 since at least November 2022.

7 62. For example, on November 3, 2022, Defendants sent a marketing  
8 email blast to actual and prospective customers purporting to be a message from  
9 Dr. Gundry promising a “FIRST LOOK at my new formula” for Defendants’ then-  
10 soon-to-be released C15 Advantage product. The marketing email blast  
11 highlighted “The Feel-Younger Secret Identified in Florida Dolphins,” and the  
12 research and findings of Dr. Venn-Watson, noting that “scientists have found one  
13 crucial nutrient we can take to age smarter, feel healthier, and live more youthfully.  
14 . . .” The email also included the below image under the caption “**The Feel-  
15 Younger Secret Identified in Florida Dolphins**”:



22 63. After describing Dr. Venn-Watson’s dolphin-related work in  
23 additional detail, Dr. Gundry wrote: “**Naturally, researchers like myself began to  
24 ask this question... Could this essential nutrient have a similar health-  
25 boosting, age defying effect on humans? . . . And the answer was YES.**”

26 64. These statements with the accompanying imagery are false and  
27 misleading. The use of the first person directly inserts Dr. Gundry into Dr. Venn-  
28 Watson’s discovery, falsely suggesting that Dr. Gundry himself was involved with

1 and participated in Dr. Venn-Watson's research discovering C15:0 and subsequent  
2 research that demonstrated C15:0's health benefits in humans. However, Dr.  
3 Gundry had no involvement whatsoever in Dr. Venn-Watson's research or her  
4 studies emanating from that research. Further, the use of the dolphin imagery  
5 misleadingly implies the same—that Defendants were involved in Dr. Venn-  
6 Watson's research of the Navy's dolphins and initial discovery of C15:0.

7 65. These statements are false and misleading for the additional reason  
8 that they state and/or imply that Dr. Venn-Watson, Epitracker, and/or Seraphina  
9 are affiliated with or have endorsed Defendants' infringing product. Plaintiffs  
10 have used Dr. Venn-Watson's discovery of C15:0 in dolphins extensively in their  
11 marketing and promotion of Fatty15®. Defendants' appropriation of Dr. Venn-  
12 Watson's discovery story coupled with Dr. Gundry's false and misleading  
13 statements that he was involved in Dr. Venn-Watson and Seraphina's research  
14 falsely suggests that there is an association between Dr. Venn-Watson, Plaintiffs,  
15 and Defendants. However, neither Dr. Venn-Watson nor either of the Plaintiffs  
16 has any affiliation with Defendants or any of their products. Neither Dr. Venn-  
17 Watson nor either of the Plaintiffs has endorsed any of Defendants' products.

18 66. Defendants' statements are material as they are likely to influence  
19 consumers' purchasing decisions. By falsely associating themselves with Dr.  
20 Venn-Watson's discoveries and research, Defendants seek to capitalize on  
21 Plaintiffs' studies, discoveries, published findings, and resultant goodwill to  
22 persuade consumers to purchase Defendants' inferior product.

23 67. Defendants sent out another marketing email blast the following day,  
24 on November 4, 2022, again describing in detail Dr. Venn-Watson's research with  
25 dolphins and creating the false and misleading impression that Dr. Gundry had  
26 participated in that research and/or that Dr. Venn-Watson, Epitracker, and/or  
27 Seraphina had endorsed Gundry's products. These statements were accompanied  
28 by the below image:

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68. The recitation of Dr. Venn-Watson’s discovery story with the accompanying imagery is false and misleading. Plaintiffs have used Dr. Venn-Watson’s discovery of C15:0 in dolphins extensively in their marketing and promotion of Fatty15®. Defendants’ appropriation of Dr. Venn-Watson’s discovery story coupled with Dr. Gundry’s misleading statements that he was involved in Dr. Venn-Watson and Seraphina’s research falsely suggests that there is an association between Dr. Venn-Watson, Plaintiffs, and Defendants.

69. Defendants’ November 4, 2022, marketing blast contained additional false and misleading statements stating and/or implying that their forthcoming C15 Advantage product would be the first supplement on the market featuring C15:0 and that Dr. Gundry was the first person to “[d]iscover” a “pure, potent source of C15” for use in such supplements. The marketing email contained a section titled **“Searching for C15: How I Discovered The IDEAL Source Of This Essential Superfat,”** in which Dr. Gundry wrote, in relevant part, “I knew it wouldn’t be easy, but I was determined to find a pure, potent source of C15 that I could recommend to anyone. . . . **It was turning out to be VERY hard to find a good source of C15.** But after seeing what it can do, I was still determined to find a



1 clean, healthy, and sustainable source of that incredible superfat. So I kept  
2 searching. . . I struck gold with the richest source of C15 in the pristine coastal  
3 waters of Cadiz, Spain. I found a farm that was growing high-quality  
4 *Nannochloropsis* for those fancy Spanish restaurants. . . And threw my network  
5 of medical connections linked them with a laboratory I trusted to handle the  
6 extraction process. It had been quite a journey, but after all those months of  
7 searching, **I'd secured my own supply of fresh, high-quality C15."**

8 70. The above-mentioned statements are blatantly false and misleading  
9 because, among other reasons, they imply that there was no pure, potent source of  
10 C15:0 on the market or available for consumption until Dr. Gundry "discovered"  
11 one. As Defendants were well-aware, this is false. In October 2020, Seraphina  
12 began selling the daily supplement, Fatty15®, which comprises >98.5% pure, free  
13 fatty acid C15:0 in a bioavailable powder form. By the time Defendants'  
14 statements were made, Dr. Gundry had been a Fatty15® customer for nearly a year  
15 and knew that Fatty15® was a pure, potent source of C15:0.

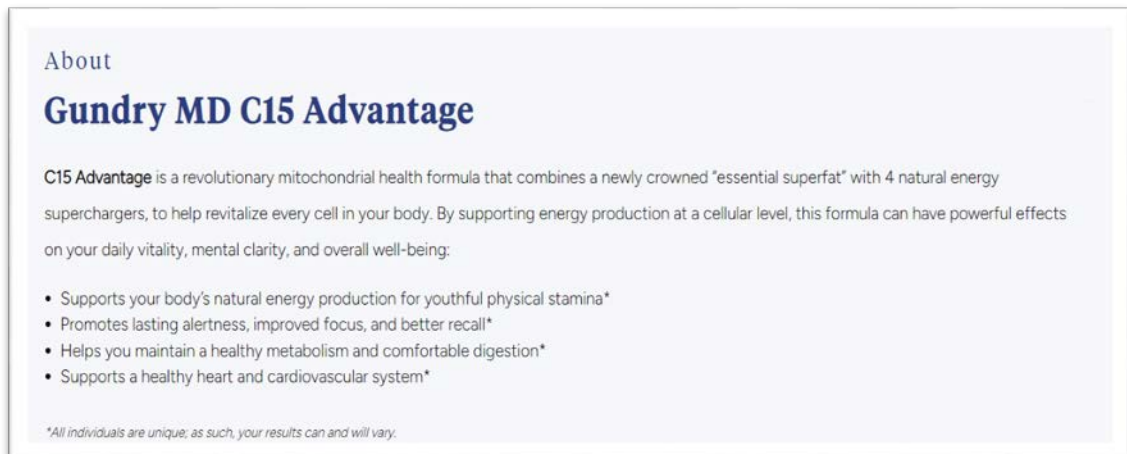
16 71. Defendants' statements are also false and misleading because they  
17 falsely state and/or imply that the C15:0 found in Defendants' infringing C15  
18 Advantage product is pure and that it is richer than the C15:0 found in Fatty15®.  
19 It is neither. Whereas the C15:0 in Fatty15® consists of pure free fatty acid in  
20 stable powder form that is bioavailable (i.e., readily absorbed by the human body),  
21 the C15:0 in the infringing C15 Advantage product is in mixed triglyceride form in  
22 a less stable oil that is less bioavailable than free fatty acid powder (i.e., less  
23 readily absorbed by the human body). The C15 Advantage product also has  
24 measurable lipid peroxidation, which can result in reduced efficacy, and a rancid  
25 smell and taste that Defendants' attempt to mask through the use of scent tabs.  
26 Indeed, the very name C15 Advantage falsely and/or misleadingly implies that  
27 there is some advantage with Defendants' product.

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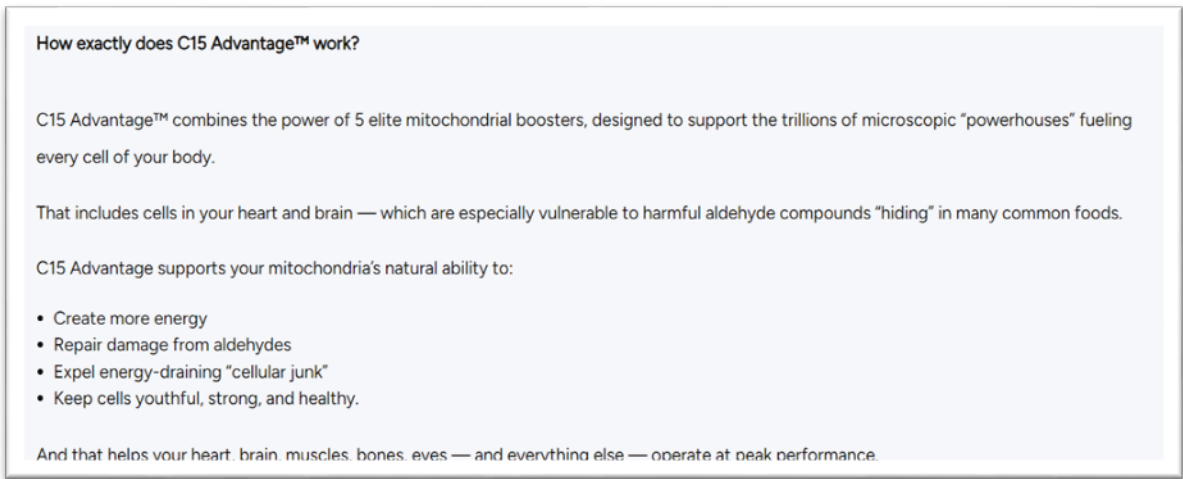
1           72. The identified statements are also misleading because they state  
2 and/or imply that the C15:0 found in the infringing C15 Advantage is sourced from  
3 Spain. However, Defendants source the C15:0 ingredient for the infringing C15  
4 Advantage product from a Chinese-backed entity known as CAS BioSciences,  
5 LLC (“CAS” stands for Chinese Academy of Sciences, the national academy of the  
6 People’s Republic of China).

7           73. Further, these statements are material because consumers purchase  
8 C15:0 supplements for their health benefits. By falsely claiming that C15  
9 Advantage provides the same health benefits as the pure, bioavailable, and science-  
10 backed C15:0 found in Fatty15®, Defendants misrepresent the inherent nature and  
11 characteristics of C15 Advantage.

12           74. From November 9, 2022, through the present, Defendants have made  
13 additional false and misleading statements about C15 Advantage on Gundry’s  
14 website. On the Gundry website product page, which includes a link to click to  
15 purchase the infringing C15 Advantage product, Defendants make the following  
16 claims about the product’s health-related benefits:



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75. These statements are false and misleading because the claimed C15:0 benefits are based on studies associated with the pure, free fatty acid C15:0 ingredient found in Seraphina's Fatty15® product in a daily dose of 100 mg to 200 mg, not the less bioavailable, triacylglyceride-based C15:0 in a daily dose of just 50 mg found in the infringing C15 Advantage product. Defendants cite to no studies to substantiate their claims that the less bioavailable, triacylglyceride-based, C15:0 formulation found in the infringing C15 Advantage delivers the same benefits as the pure, free fatty acid C15:0 ingredient at higher doses found in Fatty15®, particularly considering that the C15:0 in the infringing C15 Advantage product is mixed with several other ingredients, some or all of which have been shown to directly counteract C15:0-related health benefits. For example, based on an independent third-party analysis, the C15 Advantage formulation contains only 13% C15:0 and higher amounts (24%) of pro-inflammatory fatty acids (*i.e.*, C16:0, C18:0, and omega-6), which can directly counter C15:0's anti-inflammatory and mitochondrial repair benefits; and 68% oily fatty acids that can directly counter C15:0's cell-stabilizing benefits. The presence of cell-destabilizing oily fatty acids in C15 Advantage is evidenced by measurable lipid peroxidation (a measurement

1 used to detect rancidity) in this product. In contrast, Fatty15®, containing >98.5%  
2 pure and stable C15:0 powder, has no measurable lipid peroxidation.



15 76. These statements are material because, as described, consumers  
16 purchase C15:0 supplements for the science-backed health benefits that have been  
17 demonstrated by pure, free fatty acid, and non-oil based C15:0. By falsely  
18 claiming that C15 Advantage provides the same health benefits as the pure,  
19 bioavailable C15:0 found in Fatty15®, Defendants misrepresent the inherent nature  
20 and characteristics of C15 Advantage.

21 **Defendants Plagiarize Plaintiffs' Materials**

22 77. Defendants went to such extremes to cloak themselves and their  
23 product in Plaintiffs' goodwill and freeride off Plaintiffs' innovations that they  
24 took the remarkable step of overtly plagiarizing Plaintiffs' blog posts and written  
25 content featured on the Fatty15® website.

26 78. As a Fatty15® customer since at least April 2021, in addition to  
27 receiving Plaintiffs' product, Dr. Gundry has received and opened Plaintiffs'  
28 marketing emails regarding Fatty15® since at least that time. Defendants stole

1 Plaintiffs’ marketing copy to write their own marketing email blasts for their  
 2 competing C15 Advantage product.

3 79. The below side-by-side table includes a sampling of Defendants’  
 4 plagiarism of Plaintiffs’ content. On the left side is original content from the  
 5 Fatty15® website. On the right side is Defendants’ plagiarized version of that  
 6 content which they included in their November 3, 2022, marketing email blast:  
 7

Plaintiffs’ Copyrighted Content	Defendants’ Plagiarized Version
<p>9 “In order to be considered 'essential', a                  10 nutrient needs to meet the following                  11 three criteria:</p> <ul style="list-style-type: none"> <li>12 • Low body levels of the</li> <li>13 nutrient results in poorer health</li> <li>14 • Your body doesn't make enough</li> <li>15 of the nutrient on its own</li> <li>16 • Your primary source of the</li> <li>17 nutrient is through diet or</li> <li>18 supplements”</li> </ul>	<p>“See, just like omegas, this superfat                  compound is ‘essential’ – meaning its a                  nutrient that meets the following 3                  criteria:</p> <ul style="list-style-type: none"> <li>✓ Low levels of this nutrient result                      in poorer health</li> <li>✓ Your body doesn’t make enough                      of this nutrient on its own</li> <li>✓ Your primary source of this                      nutrient must be through diet or                      supplements”</li> </ul>

21 **Plaintiffs Demand that Defendants**  
 22 **Cease and Desist Their Unlawful Conduct**

23 80. On November 11, 2022, just days after Defendants launched their  
 24 infringing C15 Advantage product, Plaintiffs (through counsel) sent Defendants a  
 25 cease-and-desist letter. In that letter, Plaintiffs noted that the Gundry C15  
 26 Advantage product falls within the claims of the '740 patent. Plaintiffs’ also called  
 27 attention to Defendants’ false and misleading marketing, advertising, and  
 28 promotional materials about C15 Advantage and explained that those

1 communications made false statements about the claimed benefits of C15  
2 Advantage and falsely stated and/or implied that Gundry's C15 Advantage product  
3 was endorsed by and/or affiliated with Dr. Venn-Watson. Plaintiffs also called to  
4 Defendants' attention Defendants' blatant copying of Seraphina's blog posts and  
5 marketing materials.

6 81. Plaintiffs' November 11 letter demanded that Defendants, among  
7 other things, cease and desist from all manufacture, distribution, sales, offers for  
8 sale, marketing and use of C15 Advantage, cease and desist promoting C15  
9 Advantage, and provide a true and correct accounting of all revenues received from  
10 Gundry's sale and distribution of C15 Advantage.

11 82. Defendants failed to respond to Plaintiffs' November 11 letter.  
12 Thereafter, on November 22, 2022, Plaintiffs sent Defendants a follow-up letter  
13 reiterating their prior demands that Defendants cease and desist their unlawful  
14 conduct.

15 83. Sometime after receiving Plaintiffs' November 22, 2022, letter,  
16 Defendants appeared to temporarily stop marketing the infringing C15 Advantage  
17 product.

### 18 **Defendants Refuse to Stop Their Unlawful Conduct**

19 84. Unfortunately, Defendants were not done violating Plaintiffs' legal  
20 rights. On May 4, 2023, Defendants sent out another mass-marketing email blast  
21 to actual and prospective customers regarding Gundry's C15 Advantage product  
22 that contained numerous false and misleading statements.

23 85. Like their prior marketing statements, Defendants' May 4, 2023 email  
24 again made extensive reference to Dr. Venn-Watson's research with the Navy's  
25 dolphins creating the false and misleading impression that Dr. Venn-Watson and  
26 Plaintiffs were affiliated with and/or had endorsed Gundry and/or C15 Advantage.  
27 The May 4 email again falsely and misleadingly stated and/or implied that Dr.  
28 Gundry had been personally involved in Dr. Venn-Watson's research, following

1 her discovery in dolphins, which focused on how C15:0 may be relevant to human  
2 health. The email recounted “the story behind” the “discovery” of C15:0, noted  
3 that “this once-in-a-century finding came from studying **dolphins** – who have  
4 more in common with humans than you might think,” and included the below  
5 image:



14  
15 86. In the May 4, 2023 email, Dr. Gundry stated, “So naturally,  
16 researchers like myself began to ask the question.... Could this essential nutrient  
17 have a similar age-defying effect on *humans*?.... And the answer was a resounding  
18 YES.” And in the same email recounting Dr. Venn-Watson’s groundbreaking  
19 discoveries and cutting-edge science, in which he had no involvement whatsoever,  
20 Dr. Gundry sang the praises of what he called “the trailblazing science behind this  
21 groundbreaking C15-powered formula.”

22 87. The recitation of Dr. Venn-Watson’s discovery story with  
23 accompanying imagery is false and misleading. As previously described, Plaintiffs  
24 have used Dr. Venn-Watson’s discovery of C15:0 in dolphins extensively in their  
25 marketing and promotion of Fatty15®. Defendants’ appropriation of Dr. Venn-  
26 Watson’s story and use of the images of dolphins combined with Dr. Gundry’s  
27 misleading statements falsely suggests that there is an association between Dr.  
28 Venn-Watson, Plaintiffs, and Defendants.

1 88. The May 4, 2023, email also contained numerous false and misleading  
2 statements claiming unsubstantiated health benefits associated with Gundry’s  
3 infringing C15 Advantage product. For example, the email states “C15 Advantage  
4 is one of the most powerful ways to feel *dramatically* younger, healthier, leaner,  
5 focused, and more energetic as you age. . . . Every last part of this formula was  
6 carefully designed to help your body maintain.... MORE mitochondria....  
7 HEALTHY mitochondria.... And PRODUCTIVE mitochondria.”

8 89. The May 4 email includes several other statements claiming that  
9 Gundry’s C15 Advantage product “helps support your cellular membranes –  
10 ultimately helping your body fight age-related cellular breakdown,” helps your  
11 cells maintain their energy by recharging their ‘battery packs’ (also known as  
12 mitochondria),” and “support[s] your body’s on repair processes, helping you keep  
13 your cells ‘tuned up’ and running at peak performance.”

14 90. These statements are false and misleading because they recite  
15 demonstrated benefits associated with the pure, free fatty acid C15:0 ingredient in  
16 Fatty15® in a daily dose of 100 mg to 200 mg, not the less bioavailable,  
17 triacylglyceride-based C15:0 in a daily dose of just 50 mg found in the infringing  
18 C15 Advantage. Gundry cites to no studies to substantiate their claims that the less  
19 bioavailable, triacylglyceride-based C15:0 found in the infringing C15 Advantage  
20 delivers these same benefits as the pure, free fatty acid C15:0 ingredient in  
21 Fatty15®, particularly considering that the C15:0 in the infringing C15 Advantage  
22 produce is mixed with several other ingredients, some or all of which have been  
23 shown to directly counteract C15:0-related health benefits. *See supra* ¶¶ 75-76.

24 91. These statements are material as they are likely to influence  
25 consumers’ purchasing decisions. By falsely associating themselves with Dr.  
26 Venn-Watson’s research, Defendants seek to capitalize on Plaintiffs’ goodwill to  
27 persuade consumers to purchase Defendants’ inferior product. Further, consumers  
28 purchase C15:0 supplements for the science-backed health benefits demonstrated



1 by pure, non-oil C15:0 at appropriate daily doses. By falsely claiming that C15  
2 Advantage provides the same health benefits as the pure, bioavailable C15:0 found  
3 in Fatty15®, Defendants misrepresent the inherent nature and characteristics of  
4 C15 Advantage.

5 92. Defendants repeated their false and misleading statements in yet  
6 another marketing mass email on July 15, 2023.

7 **Plaintiffs Are Forced to File This Lawsuit**

8 93. Plaintiffs sent Defendants an additional cease and desist letter on July  
9 20, 2023, and followed up on that letter with a “meet and confer” telephone  
10 conference through counsel reiterating the demands that Defendants cease and  
11 desist their unlawful conduct. Defendants have refused to comply with those  
12 requests.

13 94. The above-referenced statements in Defendants’ November 2022,  
14 May 2023, and July 2023 marketing email blasts, as well as the above-referenced  
15 statements on Gundry’s website have harmed Plaintiffs and, absent injunctive  
16 relief, will continue to harm Plaintiffs.

17 95. These statements are likely to deceive consumers and, in fact, have  
18 deceived consumers, over whether Plaintiffs are affiliated with or have endorsed  
19 the infringing C15 Advantage product. Plaintiffs have been contacted by Fatty15®  
20 customers who received Defendants’ marketing communications and who, as a  
21 result of receiving those communications and reading Defendants’ false  
22 appropriation of Dr. Venn-Watson’s discovery and research, developed the  
23 mistaken belief that Plaintiffs had endorsed Gundry’s C15 Advantage product or  
24 were affiliated with Gundry’s C15 Advantage product.

25 96. Defendants’ C15 Advantage product directly competes with  
26 Plaintiffs’ Fatty15® product. In an effort to expand their own customer base and  
27 shrink Plaintiffs’, Defendants have directed their false advertising at Plaintiffs’  
28 customers through email messages and on Gundry’s website. Upon information

1 and belief, customers who would have purchased Fatty15® instead purchased C15  
2 Advantage as a result of Defendants' false and misleading statements referenced  
3 herein, resulting in Plaintiffs' loss of revenues and profits associated with such  
4 sales.

5 97. Plaintiffs have also been harmed by Defendants' false and misleading  
6 statements, and will continue to be so harmed, because Defendants are sowing  
7 confusion in the relevant marketplace as to the benefits and efficacy of C15:0. Not  
8 only is there only half as much C15:0 in Gundry's infringing C15 Advantage  
9 product than there is in Fatty15®, but the C15:0 in Gundry's infringing C15  
10 Advantage product is less bioavailable, in an oil form rather than a pure powder,  
11 and accompanied by other ingredients, including ingredients that counteract any  
12 benefits afforded by C15:0. Consequently, Defendants are putting an inferior  
13 product into the marketplace that is unlikely to be effective and unlikely to achieve  
14 anything approaching the benefits of Fatty15®.

15 98. By making false and misleading claims about the efficacy of its C15  
16 Advantage product and tying those claims to the efficacy of C15:0 generally, and  
17 by making false and misleading statements tying their product to Plaintiffs,  
18 Defendants are harming and will continue to harm Plaintiffs by souring the  
19 marketplace on C15:0, leaving customers with the mistaken belief that C15:0 is  
20 ineffective, causing customers who otherwise would purchase Fatty15® not to do  
21 so, and harming Plaintiffs' goodwill and ability to generate business.

22 99. Because Defendants have refused to stop selling their infringing  
23 product and refused to cease and desist from making false and misleading  
24 statements, Plaintiffs have been forced to file this lawsuit.

## 25 **COUNT I**

### 26 **(Infringement of the '740 patent Against All Defendants)**

27 100. Plaintiffs re-allege and incorporate by reference the allegations set  
28 forth in paragraphs 1-99 of this Complaint.

1           101. The '740 patent is valid and enforceable.

2           102. The administration of Defendants' C15 Advantage product meets each  
3 and every limitation of at least claim 3 of the '740 patent. *See* ¶¶ 36, 45-47 above.

4           103. Defendants have infringed, and continue to infringe, at least claim 3  
5 of the '740 patent, pursuant to 35 U.S.C. § 271(a), (b) and/or (c) by the  
6 manufacture, use, offer to sell, sale, or importation of products, including the C15  
7 Advantage product.

8           104. Defendants have taken active steps to encourage the use of their C15  
9 Advantage product by customers with the knowledge and intent that their C15  
10 Advantage product will be used by customers in a manner that infringes claim 3 of  
11 the '740 patent.

12           105. Dr. Gundry himself has taken the C15 Advantage product in an  
13 amount that infringes claim 3 of the '740 patent.

14           106. Plaintiffs have been, and continue to be damaged, by Defendants'  
15 infringement of the '740 patent. The amount of damages to be determined at trial.

16           107. Plaintiffs have suffered irreparable harm for which there is no  
17 adequate remedy at law and will continue to suffer such irreparable injury unless  
18 Defendants' infringement of the '740 patent is enjoined by this Court.

19           108. Defendants' infringement of the '740 patent has been, and continues  
20 to be, willful and deliberate entitling Plaintiffs to enhanced damages under 35  
21 U.S.C. § 284.

22           109. This case is exceptional, and Plaintiffs should be awarded attorneys'  
23 fees under 35 U.S.C. § 285.

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**COUNT II**

**Violation of the Lanham Act**

**(15 U.S.C. § 1125(a)(1)(A)) – False Association**

**(Against All Defendants)**

110. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 109 of this Complaint.

111. Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)(1)(A)) makes it unlawful “in connection with any goods or services, [to] use[] in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which . . . is likely to cause confusion or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.”

112. In their marketing email promotions, including but not limited to its November 3, 2022, November 4, 2022, May 4, 2023, and July 15, 2023 marketing emails, and on the Gundry website, Defendants made false and misleading statements in connection with their goods or services, including their C15 Advantage product, that have caused and/or are likely to cause confusion, mistake, and deception as to the affiliation, connection or association of Plaintiffs with Defendants and Defendants’ C15 Advantage product and to the origin, sponsorship or approval of Defendants’ goods and services and commercial activities by Plaintiffs in violation of Section 43(a)(1)(A) of the Lanham Act. 15 U.S.C. § 1125(a)(1)(A).

113. These statements actually deceived or had a tendency to deceive a substantial segment of Defendants’ audience, as well as Defendants’ and Plaintiffs’ customers and potential customers.

1 114. Customers have been confused or deceived by the false and  
2 misleading statements in Defendants’ advertising and promotions, damaging  
3 Plaintiffs’ goodwill, and causing Plaintiffs to lose sales and jeopardizing additional  
4 potential future revenue.

5 115. The deception caused by these statements is likely to influence  
6 consumer purchasing decisions and has caused or is likely to cause damage to  
7 Plaintiffs.

8 116. Pursuant to 15 USC § 1117(a), Plaintiffs are entitled to recover from  
9 Defendants the profits that Gundry obtained through their violations of the Lanham  
10 Act, and/or up to three times Plaintiffs’ damages from those violations, plus costs  
11 of suit.

12 117. Defendants’ Lanham Act violations have caused, and, unless  
13 restrained by this Court, will continue to cause, irreparable injury to Plaintiffs not  
14 fully compensable by money damages. Plaintiffs are therefore entitled to  
15 permanent injunctions prohibiting Defendants from committing further Lanham  
16 Act violations.

17 **COUNT III**

18 **Violation of the Lanham Act**

19 **(15 U.S.C. § 1125(a)(1)(B)) – False Advertising**

20 **(Against All Defendants)**

21 118. Plaintiffs re-allege and incorporate by reference paragraphs 1 through  
22 117 of this Complaint.

23 119. Section 43 of the Lanham Act prohibits the use of any communication  
24 “in commercial advertising or promotion [that] misrepresents the nature,  
25 characteristics, qualities, or geographic origin of ... goods, services, or commercial  
26 activities. 15 U.S.C. § 1125(a)(1)(B).

27 120. In publishing, promoting, and distributing false and misleading  
28 statements and misrepresentations to customers and prospective customers,

1 including by way of their November 3, 2022, November 4, 2022, May 4, 2023, and  
2 July 15, 2023 marketing emails, and on the Gundry website, Defendants made  
3 false and misleading representations of fact in commercial promotions or  
4 advertising, which misrepresent the nature, characteristics, and qualities of  
5 Defendants' goods and services, i.e., their C15 Advantage product, in violation of  
6 Section 43(a)(1)(B) of the Lanham Act. 15 U.S.C. § 1125(a)(1)(B).

7 121. These statements actually deceived or had a tendency to deceive a  
8 substantial segment of Defendants' audience, as well as Defendants' and Plaintiffs'  
9 customers and potential customers.

10 122. Customers have been confused or deceived by the false and  
11 misleading statements in Defendants' advertising and promotions.

12 123. The deception caused by these statements is likely to influence  
13 consumer purchasing decisions and has caused or is likely to cause damage to  
14 Plaintiffs.

15 124. Pursuant to 15 USC § 1117(a), Plaintiffs are entitled to recover from  
16 Defendants the profits that Defendants obtained through their violations of the  
17 Lanham Act, and/or up to three times Plaintiffs' damages from those violations,  
18 plus costs of suit.

19 125. Defendants' Lanham Act violations have caused, and, unless  
20 restrained by this Court, will continue to cause, irreparable injury to Plaintiffs not  
21 fully compensable by money damages. Plaintiffs are therefore entitled to a  
22 permanent injunction prohibiting Defendants from committing further Lanham Act  
23 violations.

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**COUNT IV**  
**False Advertising in Violation of**  
**Cal. Bus. & Prof. Code § 17500**  
**(Against All Defendants)**

126. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 125 of this Complaint.

127. The California False Advertising Law, Cal. Bus. & Prof. Code § 17500 (the “FAL”) makes it “unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to . . . perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

128. In their advertising and promotional materials for their C15 Advantage product, including by way of their November 3, 2022, November 4, 2022, May 4, 2023, and July 15, 2023 marketing emails, and on the Gundry website, Defendants made and disseminated from this State untrue and misleading

1 statements concerning their C15 Advantage product, including statements falsely  
2 stating or implying that Plaintiffs had endorsed or are affiliated with that product  
3 and statements falsely stating or implying that the C15 Advantage product has the  
4 above-referenced health benefits.

5 129. Defendants' false and misleading statements are material and likely to  
6 influence customers' purchasing decisions.

7 130. Defendants made and disseminated these false and misleading  
8 statements from California and have disseminated these false and misleading  
9 statements to the public in California and in other states.

10 131. Plaintiffs have been and continue to be injured as a result of  
11 Defendants' false statements in advertising.

12 132. Plaintiffs have suffered injury and, unless Defendants are enjoined,  
13 will likely continue to suffer harm as a result of Defendants' deceptive conduct.

14 **COUNT V**

15 **Unfair Competition in Violation of**  
16 **Cal. Bus. & Prof. Code § 17200**  
17 **(Against All Defendants)**

18 133. Plaintiffs re-allege and incorporate by reference paragraphs 1 through  
19 132 of this Complaint.

20 134. California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200  
21 (the "UCL") prohibits "unfair competition," including "any unlawful, unfair or  
22 fraudulent business act or practice and unfair, deception, untrue or misleading  
23 advertising and any act prohibits by [the FAL]."

24 135. A business act is "unlawful" if it violates any established state or  
25 federal law. A business act is "unfair" if a defendant's conduct is substantially  
26 injurious to customers, offends public policy, and is immoral unethical, oppressive,  
27 and unscrupulous.

28



1 136. As detailed herein, Defendants' false and misleading advertisements  
2 violate the FAL and the Lanham Act. Defendants have made false and misleading  
3 representations of fact, including statements falsely stating or implying that  
4 Plaintiffs had endorsed or are affiliated with that product and statements falsely  
5 stating or implying that the C15 Advantage product has the above-referenced  
6 health benefits.

7 137. Defendants' false and misleading statements are material and likely to  
8 influence customers' purchasing decisions.

9 138. Defendants have conducted the aforementioned unlawful and unfair  
10 business acts in California.

11 139. Plaintiffs have been and continue to be injured as a result of  
12 Defendants' unlawful and unfair business acts.

13 140. Plaintiffs have suffered injury and, unless Defendants are enjoined,  
14 will likely continue to suffer harm as a result of Defendants unfair business acts.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court enter judgment in  
17 their favor and against Defendants, granting the following relief:

18 141. Enter a judgment in favor of Plaintiffs on all counts;

19 142. Enter a permanent injunction, including an order restraining  
20 Defendants and their officers, directors, employees, agents, affiliates, successors,  
21 assigns, and all those in privity or acting in concert with Defendants from (a)  
22 infringing the '740 patent, and (b) making any false or misleading statements to  
23 third parties regarding C15 Advantage or Plaintiffs;

24 143. Enter an order directing the destruction of all advertising materials  
25 containing false and/or misleading statements relating to C15 Advantage or  
26 Plaintiffs in Defendants' possession, custody or control, including on the Internet,  
27 pursuant to at least 15 U.S.C. § 1118;

28

1 144. Enter a judgment awarding Plaintiffs all available damages including  
2 the following: Defendants' profits, compensatory damages, treble damages, costs,  
3 prejudgment and post-judgment interest, and reasonable attorneys' fees;

4 145. Award Plaintiffs monetary damages, according to proof, needed to  
5 employ corrective advertising to counter the false or misleading statements  
6 regarding Defendants' C15 Advantage product and/or Plaintiffs, in the amount  
7 equivalent to Defendants' prior advertising spend relating to same;

8 146. Grant such other and further relief as is just and proper.

9 **DEMAND FOR JURY TRIAL**

10 In accordance with Rule 38 of the Federal Rules of Civil Procedure and  
11 Local Rule CV-38-1, Plaintiffs respectfully demand trial by jury of all issues so  
12 triable.

13  
14 Dated: October 18, 2023

Respectfully submitted,

15 By: /s/ Mark A. Neubauer

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