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16 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

17  
18 FEDERAL TRADE COMMISSION, )

19 Plaintiff )

20 v. )

21 )  
22 WESTERN BOTANICALS, INC., )  
a corporation, and )

23 RANDY C. GIBONEY and KYLE D. )  
24 CHRISTENSEN, )  
individually and as officers of the )  
25 corporation, )

26 Defendants. )  
27 )

Civil Action No.

Complaint for Permanent  
Injunction and Other Equitable  
Relief

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned  
2 attorneys, alleges:

3 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission  
4 Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief  
5 against defendants for their deceptive acts or practices and false advertisements for foods, drugs,  
6 devices, services or cosmetics in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.  
7 §§ 45(a) and 52.

8 **JURISDICTION AND VENUE**

9 2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C.  
10 §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

11 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b)  
12 and (c).

13 **PLAINTIFF**

14 4. Plaintiff, the FTC, is an independent agency of the United States government  
15 created by statute, 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act,  
16 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts and practices, and false  
17 advertisements for food, drugs, devices, cosmetics, or services, in or affecting commerce. The  
18 FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to  
19 secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

20 **DEFENDANTS**

21 5. Defendant Western Botanicals, Inc. is a California corporation with its principal  
22 place of business at 7341 Winding Way, Fair Oaks, CA 95628. Western Botanicals, Inc.,  
23 transacts or has transacted business in the Eastern District of California.

24 6. Defendant Randy C. Giboney is president of Western Botanicals, Inc.  
25 Individually, or in concert with others, he directs, controls, formulates, or participates in the acts  
26 and practices of Western Botanicals, Inc., including the acts and practices complained of below.  
27 He transacts or has transacted business in the Eastern District of California.

1 7. Defendant Kyle D. Christensen is the vice-president of Western Botanicals, Inc.  
2 Individually, or in concert with others, he directs, controls, formulates, or participates in the acts  
3 and practices of Western Botanicals, Inc., including the acts and practices complained of below.  
4 He transacts or has transacted business in the Eastern District of California.

5 **COMMERCE**

6 8. At all times material to this complaint, defendants' course of business, including  
7 the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is  
8 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9 **DEFENDANTS' COURSE OF CONDUCT**

10 9. Since at least 1998, and continuing thereafter, defendants have marketed herbal  
11 products that purportedly treat and alleviate the symptoms of various diseases and health  
12 conditions.

13 10. Defendants market an herb commonly known as comfrey and products containing  
14 comfrey leaves and/or comfrey roots (referred to collectively herein as "comfrey products").  
15 Among defendants' comfrey products are bulk comfrey leaf, bulk comfrey root, "Arthritis Tonic"  
16 (containing devils claw root, cats claw bark, celery seed, meadowsweet, licorice root, and  
17 comfrey leaf), "Complete Tissue Repair Syrup," and "Complete Tissue Repair Ointment" (each  
18 containing comfrey root, white oak bark, marshmallow root, mullein leaf, black walnut bark,  
19 gravel root, wormwood, lobelia herb and seed, skullcap herb, white willow bark, horsetail herb,  
20 and St. John's wort).

21 11. Defendants advertise, promote, offer for sale, sell, and distribute comfrey products  
22 to consumers throughout the United States via the Internet, and by mail and newsletters, among  
23 other means.

24 12. Defendants' advertisements and promotional materials include, among others, the  
25 following statements:

26 a) Herbs have been discovered to be the safest, most natural, and effective way to  
27 restore and build a healthy body. *[Exhibit A]*

28 b) As the widespread use of herbal and natural therapies prove themselves to be  
safer and more effective than orthodox medicines, the pharmaceutical giants are

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becoming increasingly anxious to tap into the financial growth of the emerging herbal market. . . Within each herb are the cofactors, synergists, buffers and supporting chemicals that render the utilization of the active ingredients safe, nontoxic and balancing to the body. *[Exhibit B]*

c) Comfrey root . . . has expectorant, astringent [sic], soothing, and healing effects. It reduces inflammation and controls bleeding. Use internally for chronic bronchial diseases, gastric and duodenal ulcers, and colitis. Use externally for psoriasis, eczema, sores, varicose veins, and ulcers, arthritis, sprains, strains, bruises, bunions, hemorrhoids, sore breasts during lactation, injuries and fractures. *[Exhibit C]*

d) Comfrey leaf . . . Use internally for chronic bronchial diseases, gastritis and duodenal ulcers, colitis, and rheumatism. Externally for psoriasis, eczema, sores, varicose veins and ulcers, arthritis, sprains, bunions, hemorrhoids, sore breasts during lactation, and injuries including fractures. *[Exhibit D]*

1 distribution of their comfrey products.

2 15. Defendants' comfrey products, offered and sold for internal use, are either  
3 "foods" or "drugs" for purposes of Sections 12 and 15 of the FTC Act, 15 U.S.C. §§ 52 and 55.

#### 4 **Safety Representations**

5 16. Through their advertising and promotional materials, including but not limited to  
6 the representations set forth in Paragraph 12 above, defendants have represented, expressly or by  
7 implication, that their comfrey products are safe for consumers, including nursing women, when  
8 taken internally, as oral preparations, and when applied externally to burns, sores, and other open  
9 wounds.

10 17. In truth and fact, comfrey and products containing comfrey are not safe when  
11 taken internally, whether as oral preparations or applied to open wounds. Comfrey contains  
12 pyrrolizidine alkaloids which have been linked to serious illness, occasionally leading to death.  
13 Internal consumption of comfrey can cause serious liver damage. Therefore, the making of the  
14 representation set forth in Paragraph 16 was, and is, a deceptive practice and constitutes false  
15 advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

16 18. Defendants did not possess and rely upon a reasonable basis that substantiated the  
17 representation set forth in Paragraph 16, at the time the representation was made. Therefore, the  
18 making of the representation set forth in Paragraph 16 is a deceptive practice and constitutes false  
19 advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

#### 20 **Efficacy Representations**

21 19. Through their advertising and promotional materials, including but not limited to  
22 the representations set forth in Paragraph 12(c) above, defendants have represented, expressly or  
23 by implication, that comfrey root, taken internally, is effective in the treatment of chronic  
24 bronchial diseases, gastric and duodenal ulcers, and colitis.

25 20. Through their advertising and promotional materials, including but not limited to  
26 the representations set forth in Paragraph 12(d), above, defendants have represented, expressly or  
27 by implication, that comfrey leaf, taken internally, is effective in the treatment of chronic  
28 bronchial diseases, gastritis and duodenal ulcers, colitis, and rheumatism.

1 21. Through their advertising and promotional materials, including but not limited to  
2 the representations set forth in Paragraph 12(e), above, defendants have represented, expressly or  
3 by implication, that Arthritis Tonic, taken internally, is effective to reduce pain, relieve  
4 inflammation, and repair tissues damaged by arthritis.

5 22. Through their advertising and promotional materials, including but not limited to  
6 the representations set forth in Paragraph 12(f), above, defendants have represented, expressly or  
7 by implication, that Complete Tissue Repair Syrup, taken internally, is effective in the treatment  
8 of all injuries and degenerative bone, muscle and nerve conditions, including osteoporosis,  
9 arthritis, multiple sclerosis, and amyotrophic lateral sclerosis.

10 23. Defendants did not possess and rely upon a reasonable basis that substantiated the  
11 representations set forth in Paragraphs 19 through 22, at the time the representations were made.  
12 Therefore, the making of the representations set forth in Paragraphs 19 through 22 is a deceptive  
13 practice and constitutes false advertising for a food or drug, in violation of the FTC Act, 15  
14 U.S.C. §§ 45(a) and 52.

#### 15 **CONSUMER INJURY**

16 24. As a result of defendants' unlawful acts or practices, consumers throughout the  
17 United States have suffered and continue to suffer monetary loss and possible injuries to their  
18 health. Defendants also have been unjustly enriched as a result of their unlawful practices.  
19 Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers,  
20 reap unjust enrichment, and harm the public interest.

#### 21 **THIS COURT'S POWER TO GRANT RELIEF**

22 25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant  
23 injunctive and other equitable relief, including consumer redress, disgorgement and restitution, to  
24 prevent and remedy any violations of any provision of law enforced by the Commission.

#### 25 **PRAYER FOR RELIEF**

26 WHEREFORE plaintiff Federal Trade Commission pursuant to Section 13(b) of the FTC  
27 Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

- 28 1. Permanently enjoin defendants from violating the FTC Act as alleged herein;

1           2.       Award such relief as the Court finds necessary to redress injury to consumers  
2 resulting from defendants' violations of the FTC Act including the refund of monies paid and the  
3 disgorgement of ill-gotten monies; and

4           3.       Award plaintiff the costs of bringing this action, as well as such other and  
5 additional relief as the Court may determine to be just and proper.

6                                   Respectfully submitted,

7                                   WILLIAM E. KOVACIC  
8                                   General Counsel

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11                                   JAMES R. GOLDER

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16                                   \_\_\_\_\_  
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19                                   FEDERAL TRADE COMMISSION

20                                   JOHN K. VINCENT  
21                                   United States Attorney

22                                   Edmund F. Brennan  
23                                   Assistant United States Attorney

24 Dated: \_\_\_\_\_