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

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|---|---|
| FEDERAL TRADE COMMISSION,<br>Plaintiff,<br>v.<br><br>KEYVIEW LABS, INC.,<br>BRAIN RESEARCH LABS, LLC,<br>20/20 BRAIN POWER PARTNERS, LLC,<br>20/20 BRAIN POWER FOUNDERS, LLC,<br>MEDHEALTH DIRECT, INC.,<br>GEORGE REYNOLDS, a/k/a Josh Reynolds or Joshua Reynolds, and<br>JOHN ARNOLD,<br>Defendants. | Docket No. 8:15-cv-1047<br><br>**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF** |

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Procera AVH, a dietary supplement that purportedly improves memory, focus, mental clarity, and cognition.

## JURISDICTION AND VENUE

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

3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

## PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies.

## DEFENDANTS

6. Defendant Brain Research Labs, LLC ("BRL") is a Delaware limited liability company. BRL's principal place of business is or was 604 W. Raven La., Spokane, WA 99224. BRL was registered to do business and conducted business in California, with a registered address located at 1492 N. Coast Highway, Suite C, Laguna Beach, CA 92851. BRL transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, BRL has labeled, advertised, marketed, distributed, or sold Procera AVH to consumers throughout the United States.

7. Defendant KeyView Labs, Inc. ("KeyView") is a Delaware corporation. KeyView's principal place of business is 5737 Benjamin Center Dr., Tampa, FL 33634. Key View is or was registered to do business in California. KeyView transacts or has transacted business in this district and throughout the United States. On or around December 28, 2012, KeyView purchased the assets of Defendant BRL. KeyView is the owner of the intellectual property used in the labeling, advertising, marketing, distribution, and sale of Procera AVH. At least since January 2013, acting alone or in concert with others, KeyView has labeled, advertised, marketed, distributed, or sold Procera AVH to consumers throughout the United States.

8. Defendant 20/20 Brain Power Partners, LLC ("Partners") is a California limited liability company with its principal place of business at 1100 S. Coast Highway, Suite 221, Laguna Beach, CA 92651. Partners owns or owned fifty percent of Defendant BRL. Partners commissioned a clinical study of Procera AVH that is featured in advertisements and promotional materials for Procera AVH, and participated in the review of the results of that study. Partners transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Partners has formulated, directed, controlled, had the authority to control, or

participated in the acts and practices set forth in this Complaint.

9. Defendant 20/20 Brain Power Founders, LLC ("Founders") is a California limited liability company with its principal place of business at 1100 S. Coast Highway, Suite 221, Laguna Beach, CA 92651. Founders is or was the majority owner of Defendant Partners, with a fifty-three percent ownership interest. Founders transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, Founders has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

10. Defendant MedHealth Direct, Inc. ("MedHealth") is a California corporation with its principal place of business at 1100 S. Coast Highway, Suite 221, Laguna Beach, CA 92651. MedHealth provides or provided support services to Defendants BRL and KeyView, including the creation, review, and approval of advertising and marketing materials, and, at least with respect to BRL, assisting with call centers and customer support services. MedHealth transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others, MedHealth has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

11. Defendant George Reynolds, also known as Josh Reynolds or Joshua Reynolds ("Reynolds"), is a founder and the Chief Science Officer of Defendant BRL. He, together with Defendant Arnold, are directors and co-managing members of Defendant Partners. He and Defendant Arnold are directors, co-managing members, and the primary and majority owners of Defendant Founders. Reynolds is the co-developer of the formulation of Procera AVH and, on behalf of Defendant Partners, commissioned a clinical study of Procera AVH. Reynolds has or had primary responsibilities for evaluating what advertising and marketing

claims could be made for Procera AVH. Reynolds participates or participated in the development, review, and approval of advertising and promotional materials for Procera AVH. Reynolds has appeared in advertising and promotional materials for Procera AVH. At times material to this Complaint, acting alone or in concert with others, Reynolds has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Reynolds resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

12. Defendant John Arnold ("Arnold") is the President of Defendant MedHealth and its sole officer, director, principal, shareholder, and employee. Together with Defendant Reynolds, he is director and co-managing member of Defendant Partners. He and Defendant Reynolds are directors, co-managing members, and the primary and majority owners of Defendant Founders. Arnold manages or managed day-to-day operations for Defendant BRL and its advertising and marketing activities, including assisting with third-party call centers and advertising placement, and developing marketing campaigns and customer service support for Procera AVH. Arnold participates or participated in the development, review, and approval of advertising and promotional materials for Procera AVH. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Arnold resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

13. At least until January 2013, Defendants BRL, Partners, Founders, and MedHealth (collectively, "the Brain Research Defendants") operated as a common enterprise while engaging in the deceptive acts and practices alleged below. They have conducted the business practices described below through an interrelated

network of companies that have common ownership, managers, business functions, employees, and office locations. Because the Brain Research Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Reynolds and Arnold have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Brain Research Defendants that constitute the common enterprise.

## COMMERCE

14. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## DEFENDANTS' BUSINESS ACTIVITIES

15. Defendants have labeled, advertised, marketed, distributed, and sold Procera AVH, a dietary supplement product. According to the product label, Procera AVH contains acetyl-L-carnitine, vinpocetine, and huperzine A. Procera AVH is promoted as a solution to memory loss and cognitive decline, especially age-related memory and cognitive problems.

16. Consumers can purchase Procera AVH directly from Defendants, including through their Internet sites and toll-free call centers. Defendants sell Procera AVH directly to consumers for $39.00 to 79.00 per bottle, or $119.00 for three bottles, plus shipping and handling. A bottle contains 60 tablets and provides a 20- to 30-day supply if taken according to the product label (2 or 3 tablets per day). Sales of Procera AVH in the United States from 2006 through mid-2012, minus refunds and returns, totaled nearly $60 million. Sales of Procera AVH in the United States from 2013 through March 2014, minus refunds and returns, total around $36 million.

17. Defendants have advertised Procera AVH through long-form television commercials ("infomercials"), short-form television commercials, radio spots, newspaper ads, direct mail ads, online ads, and other advertising and promotional materials.

18. To induce consumers to purchase Procera AVH, the Defendants have disseminated, or caused to be disseminated, ads for Procera AVH, including, but not limited to, the attached Exhibits A through F. These ads contain the following statements and depictions, among others:

**A. Excerpts from Procera infomercial (Transcript attached as Exhibit A; DVD recording submitted as Exhibit A.1) [BRL003298]**

DENISE MARIE (Host): We have an incredible show planned for you today. We're talking about how you can significantly improve your memory, mental concentration, focus, mental clarity, and even moods.

DAVE RICHARDS (Host): And that's why it's my extreme pleasure to welcome to the broadcast Josh Reynolds, the founder of Brain Research Labs. Josh is a renowned clinical research scientist in brain health and fitness. He has many great achievements in the field, from creating state of the art brain tests and exercises, to conducting clinical trials on brain pills for large nutraceutical and pharmaceutical companies. But what we're most excited to hear about today is his latest and greatest creation, a breakthrough nutritional formula called Procera AVH that can help quickly restore focus, concentration, and even memory, to the levels they were as much as 10 to 15 years ago.

ON SCREEN: **Can Help Quickly Restore:**

- **Focus**
- **Concentration**
- **Memory**

. . .

DAVE RICHARDS: Now, Josh, you are an internationally recognized pioneer in the area of brain health and fitness with over 30 years of experience in researching the brain.

. . .

JOSH REYNOLDS: What we learned from looking at 1.5 million brains is that we're seeing something that I think may be an epidemic. What we saw was the brain was declining up to 50%, that's your memory, your brain power, up to 50% by the time you reach age 50.

ON SCREEN: **50% Memory Loss by Age 50!**

. . .

DAVE RICHARDS: Let's get right to the solution. . . . [I]t doesn't have to be this way, is that correct?

JOSH REYNOLDS: That's absolutely correct. So here's the solution. It's called Procera, Procera AVH. Procera is a safe, natural, clinically tested supplement for your brain, that provides the brain the nutrition it needs so that, and this was clinically proven, you have a better memory, you remember things faster, you have better focus and recall, sharper concentration, more mental clarity and it was shown to reverse mental decline by up to 15 years.

. . .

ON SCREEN: **Regain 10-15 Years of Mental Decline**

. . .

JOSH REYNOLDS: Now, in a landmark clinical study . . . they discovered that Procera restored the memory power and the recall speed that you had 10 to 15 years ago. . . .

. . .

ERIC (endorser): . . . Since I've been taking that product, I've noticed a huge difference in mental clarity and focus. . . . I started noticing results in the first week. . . . I noticed that my short term memory was better, my recall of facts came quicker to me.

. . .

ANNOUNCER: Do you struggle to find the right words, answers, or things to say? Ever feel like you've lost your mental edge? Is your life overburdened with reminders? Do you get frustrated when you just can't stay focused on a task? Has remembering names, dates and details become an embarrassing problem that seems to be getting worse? It's a fact, as we age, our memory power declines as much as 50% by the time we reach age 50. . . . But it doesn't have to be that way anymore. There's a natural brain oxygen boosting formula that's clinically shown to reverse up to 15 years of brain decline. It's called Procera AVH. And now, you can regain the memory and brain power you had 15 years ago. . . . Why suffer from brain fog or poor memory anymore? Do something about it today and enjoy razor-sharp focus and concentration. . . . Imagine regaining the mental sharpness you had 10 to 15 years ago. Now you can with Procera AVH . . . the natural remedy for your memory.

. . .

JOSH REYNOLDS: Procera helps to nourish the brain, to bring back the memory, the brain power you had 10 to15 years ago, restoring those neurotransmitters, improving your mental clarity, improving your concentration, and elevating your mood. Now, one of the things about memory that Procera had such a pronounced impact on was recall speed. . . . The two types of memory . . . that Procera had a profound effect on . . . long term memory and short term memory. . . .

ON SCREEN: **Procera Can Help Help Improve Two Types of Memory**

**Long Term Memory**

**Short Term Memory**

. . .

JOSH REYNOLDS: Procera improved the ability to multi-task, to recall information faster, back to what it would have been 10 to 15 years earlier. . . .

. . .

DAVE RICHARDS: What was different about the clinical trial that you conducted with Procera AVH? . . .

DR. CON STOUGH (clinical researcher, on the phone): . . . this one was unique . . . in the types of things that it improved including things like memory, speeding up the brain, some aspects of intelligence, and mood . . . in our clinical trials. . . .

. . .

DAVE RICHARDS: People can improve their brain function to levels that they had perhaps 10 to 15 years prior, is that something you concur with?

DR. CON STOUGH: Absolutely. There's really nothing until now that has been able to help us stop that decline. We don't normally see those effects so quickly.

. . .

JOSH REYNOLDS: . . . it's never too late to reverse mental decline, to perk up your brain. . . . Now there is something you can do about it and Procera is your answer.

. . .

DAVE RICHARDS: Welcome back everybody. How's your memory these days? Are you forgetting where you left things like, oh, maybe your cell phone or your car keys? Are you forgetting important dates or details? Are you struggling to recall names, facts, and ideas as quickly as you used to? Is getting work done more difficult because you just simply can't concentrate, or multitask like you used to? Well, thanks to over 30 years of research by Josh Reynolds and his study of over 1.5 million brains, you may finally now have a safe, natural solution to those problems.

. . .

ON SCREEN: Clinically Tested – Safe and Effective!

JOSH REYNOLDS: We found the magic three, put them together, clinically tested them. . . . My passion has been to find a solution for memory decline. . . . It's never too late to reverse mental decline. . . . Now there is something you can do about it and Procera is your answer.

**B. Excerpts from Procera infomercial (Transcript attached as Exhibit B; DVD recording submitted as Exhibit B.1) [BRL003304]**

PATRICE KING BROWN: Hello I'm Patrice King Brown, bringing you the latest breaking news on an emerging health crisis possibly facing all Americans age 40 and older. . . . The problem is characterized by the embarrassing, frustrating, sometimes dangerous effects of losing our mental edge, our focus and concentration, and even our memory. And if you're suffering from mental fatigue, brain fog, fuzzy thinking, slow reactions, memory issues, or you just can't seem to focus and concentrate like you used to, you may be one of the potential millions experiencing premature mental decline. Today we'll tell you what that is . . . and what you can do to regain your mental edge and re-energize your mind, mood and memory. . . . But first, let me introduce you to . . . Dr. Paul Nemiroff. . . .

[Dr. Nemiroff,] you have said a large portion of Americans may be experiencing some form of premature mental decline. Can you explain this?

DR. PAUL NEMIROFF: . . . It's not feeling as mentally sharp or crisp like you used to feel. It can also show up as a noticeable increase in mental lapses, forgetfulness, increased mental fatigue, or even mood swings, . . . [T]hat's what we're talking about with premature mental decline. . . .

Maybe you increasingly find yourself missing appointments or forgetting important dates or names, or walking into a room and forgetting why you are there, or staring at your computer and saying

what did I just type, or reading something and then forgetting what you just read. . . . Here's the frightening truth. One-third of your brain power may be lost by age 40 and 50 percent of one's brain power may be lost by age 50.

PATRICE KING BROWN: 50 percent by age 50! . . . We often joke about forgetting names and dates, or how you're having trouble concentrating. Apparently, we really shouldn't be laughing about that.

DR. PAUL NEMIROFF: Well, premature mental decline is very real. And may be affecting your brain right now. It's not a laughing matter.

ON SCREEN: Slight Memory Problems Could Lead to Severe Cognitive Decline.

. . .

DR. PAUL NEMIROFF: . . . Then I read about how this cognitive researcher had figured out how to combine these three natural ingredients into a precise formula, into one pill, that actually had been through a clinical study at a major university, a very rigorous study, and the study showed these natural nutrients could effectively address our brain's energy crisis. They actually helped reverse memory loss by up to 10 to 15 years.

ON SCREEN: A double-blind, placebo controlled Study revealed that Procera AVH:

1. Improved Memory
2. Improved Mood

3. Improved Mental Focus, Concentration
4. Improved Mental Energy

PATRICE KING BROWN: Procera AVH, and that's what I've been reading about just about everywhere, from the peer reviewed medical journal, JANA, to national magazines, to newspapers, and I've also seen it's been heralded as a brain oxygen boosting secret.

. . .

DR. PAUL NEMIROFF: . . . I was amazed at how my brain reacted to taking the first tablet of Procera AVH. It was incredible. Let me give you an example. If you had a vision problem and you tried to read the eye chart and the letters are all fuzzy but then suddenly you put on some prescription glasses and you looked at the same eye chart, things come into focus. That's what it was like for me with Procera.

PATRICE KING BROWN: That dramatic?

DR. PAUL NEMIROFF: It was very dramatic that very first night. And I noticed that my mental clarity was better. My focus was better. I felt like I did when I was younger. I could start to remember names and faces I'd forgotten. My memory was sharp. I felt I had my mental edge back.

. . .

ANNOUNCER: Procera AVH is America's number one clinically tested brain supplement for mind, memory, and mood, helping people regain their memory and mental quickness, keeping them sharp and focused throughout the day. Seniors report Procera improves their memory and concentration, giving them back their confidence and independence. Busy professionals report Procera gives them back their mental edge,

helping them be more productive, focused, and energized.

. . .

DR. GENE STEINER: I'm Dr. Gene Steiner. As a pharmacist, I've always felt helpless in recommending a solution for memory loss.

ANNOUNCER: Research reveals that the average person can lose up to 50% of their brain power by age 50.

DR. GENE STEINER: Now there's a safe and natural solution. It's called Procera AVH.

ANNOUNCER: Procera was clinically shown to help improve memory, mood, and mental clarity.

DR. GENE STEINER: Procera is safe, effective, and taken daily as directed, Procera can restore the brainpower you had 10 to 15 years ago.

. . .

ANNOUNCER: . . . Regain the mental sharpness you had 10 to 15 years ago with Procera. . . . Boost your brain power, memory, and focus today.

. . .

DR. GENE STEINER: Get started with Procera AVH today, the new, natural remedy for your memory.

. . .

PATRICE KING BROWN: . . . Let me welcome Josh Reynolds to the broadcast. Josh is the mastermind behind the Procera AVH formula,

which has become America's number one brain health and performance supplement. He is also co-founder of Brain Research Labs.

ON SCREEN: Reynolds standing in front of a room wearing a white coat.

SUPER: Co-Founder and Chief Scientist.

. . .

PATRICE KING BROWN: Josh, tell us, what is the story behind Procera AVH?

JOSH REYNOLDS: Well, first a little background. I've spent over 30 years studying the brain, as you know. And in this time, I invented brain tests that were used by medical schools around the country, validated by medical schools such as Stanford, and with these tests, we measured over 1.5 million brains.

. . .

JOSH REYNOLDS: Well actually, 1.5 million people, we measured their brain power, we measured their concentration, their ability to focus, remember, their moods. And from all this data, we saw first of all, something very shocking. That the brain was declining faster than the body and perhaps by up to 50 percent by age 50, 55. This shocked all the researchers

. . .

PATRICE KING BROWN: So, tell us, how does this all work in the brain?

JOSH REYNOLDS: This represents a brain. . . .

ON SCREEN: Reynolds points to a sphere that lights up brightly.

JOSH REYNOLDS: . . . and it represents a young, vibrant, oxygenated brain that is full of energy, great memory, sharp mental acuity. As we age, . . . [the brain] . . . starts to lose its energy. It gets dull. It loses its brightness.

ON SCREEN: Sphere dims as Reynolds speaks, until the light is off.

JOSH REYNOLDS: So, let's watch what happens when we feed the brain the energy nutrients that it needs, such as those found in . . . Procera AVH. We want to give the brain back the oxygen, give it back the neurotransmitters, take away those free radicals, perk up the brain and get that edge back that you felt when you were much younger.

ON SCREEN: Depiction of the side of a dully-colored head that lights up with bright colors as Reynolds speaks.

PATRICE KING BROWN: So, you got it to work in the laboratory. Tell us now what happened when you took it outside the lab and gave it to real people.

JOSH REYNOLDS: . . . My mom, when she was 90, she told me she was playing bridge, which I knew, once a week and she was starting to lose her edge and could I help her. I said, "Mom, I invented this brain pill." So she started taking it and two signs she noticed. One, she could do her crossword puzzles faster and better. And number two, she was playing better bridge.

. . .

CELESTE B. (endorser): I believe Procera really keeps you sharp. I think it keeps you focused. It just gives you an ability to think more clearly, and have more memorization to just remember what you've done, and what you're trying to think about.

SYLVIA N. (endorser): I felt like I almost reversed the aging process when I started taking Procera because all of a sudden I was back to my same sharp memory I'd always had. . . .

. . .

ANNOUNCER: Boost your brain power, memory, and focus today.

. . .

DR. GENE STEINER: Get started with Procera AVH today, the new, natural remedy for your memory.

. . .

PATRICE KING BROWN: What can one expect the first time they take it?

DR. PAUL NEMIROFF: . . . Your brain is more crisp. It's more focused, clearer, sharper. It's like reading an eye chart with the right pair of glasses. . . . Everything comes into focus. . . . Once Procera kicks in you become more focused, mentally energized. You start to recall names, dates, and details more readily, almost as if you've turned back the clock 10 to 15 years on your brain power and memory.

**C. Excerpts from Procera infomercial (Transcript attached as Exhibit C; DVD recording submitted as Exhibit C.1) [FTC-000001]**

PATRICE KING BROWN: Hello I'm Patrice King Brown and you are watching HTV. Has it become more and more difficult to recall names as quickly as you used to? Do you struggle to find the right word? Or maybe you find yourself walking into a room or a store and forgetting why you went there in the first place? Well, today's broadcast is all about memory loss, about brain fog, mental fatigue, and the other symptoms of mental decline. Many people live in fear that their mental decline may result in losing their identity, losing their independence. That family members will no longer allow them to make their own decisions, or even drive. It's terribly frightening. My guest today is Dr. Arnold Bresky. He's an internationally recognized brain health physician. . . . We'll also learn about an amazing technological breakthrough that Dr. Bresky claims may help the brain like prescription glasses help the eyes. It's a brain-boosting memory pill that may help make tired old brains feel younger again.

. . .

DR. ARNOLD BRESKY: I teach people how to age gracefully and successfully, which means being mentally sharp at any age, and yes, that can be achieved today, because science now knows that we can grow new brain cells and re-wire our brain at any age. . . .

. . .

DR. ARNOLD BRESKY: [O]ne study showed that when you hit age 60, your risk of mental decline and memory-loss can double in just four years. So, it's never too early to start protecting your brain. The first

> thing I tell seniors is this: If you don't take the steps to address your mental decline now, your future may be quite bleak. Sorry, but that's the reality. Seniors miss out enjoying their retirement years when they're not mentally sharp. . . . Well, they miss out on the joys of life as they grow older, like teaching and playing with their grandchildren, or playing bingo, Scrabble, or simply being able to retain new information. . . . I'm here today because I feel I have a real solution. . . . As part of my research I contacted the well-known clinical pharmacist, Dr. Gene Steiner. . . . He explained how his research led him to what's now become the #1 brain health supplement in the country, Procera AVH.

PATRICE KING BROWN: So, what was it about the Procera AVH brain health formula?

DR. ARNOLD BRESKY: For me, it was the science. It had solid science behind the ingredients, and a landmark clinical trial on the Procera Brain Health Formula itself. Again, I'm here to tell you that we don't have to accept mental decline. It may even be reversible.

. . .

PATRICE KING BROWN: So, are you telling me that Procera AVH can help make those senior moments a thing of the past, or at least a little less of a problem . . . ?

DR. ARNOLD BRESKY: For many, the answer may be yes, Patrice.

. . .

DR. ARNOLD BRESKY: In the case of Procera AVH, the formula was really put through the grinder – a double blind placebo controlled clinical study – which is the gold standard. Then it was peer reviewed and published in the Journal of American Nutraceutical Association. It worked so well that the study group that used Procera AVH saw an improvement in memory, focus, concentration, and even mood in just 30 days.

. . .

PATRICE KING BROWN: . . . Let's go to our satellite studio and welcome your colleague, Josh Reynolds, to the broadcast. Josh is the mastermind behind the Procera AVH Formula, which has become America's #1 brain health and performance supplement. . . .

JOSH REYNOLDS: . . . We measured over one million people's brains. We measured their IQ, their brain power, memory, their powers of concentration. And from all this data, we found something very shocking. It really shocked all the researchers. Brain power declined by up to 50 percent by age 50 to 55. . . . We set out to find whether there might be a simple, natural solution to slow down, if not stop, this decline. . . . So, we evaluated hundreds of brain nutrients. Then we conducted studies on the top half dozen or more on thousands of people. We discovered what I believed to be the top three brain nutrients in all of nature. . . . These three brain nutrients eventually became the Procera AVH formula. And, I might add, the U.S. government thought this formula to be so unique that they granted us a U.S. patent on Procera.

. . .

PATRICE KING BROWN: So, Josh, how long does Procera actually take to start working?

JOSH REYNOLDS: Well, it's actually going to vary. But, remember the clinical trial results for Procera were achieved in just 30 days. So, with Procera, you may feel more alert, more mentally energized, and more productive with a better memory, in just a few weeks. Imagine experiencing the memory recall you might have had 10-15 years ago in just 30 days. Procera has even been shown to improve mood and help you feel better, Patrice.

. . .

PATRICE KING BROWN: Now, if . . . you are interested in how America's #1 brain health supplement, Procera AVH, can help improve your memory, your focus, your concentration, and even your mood, then please pick up the phone and call the number on your screen. . . . I know that seniors fear losing their independence to handle their own finances, or becoming a burden to their children, or even ending up in a nursing home. These are all really very real fears associated with mental decline, and people really do feel helpless and sometimes hopeless.

DR. ARNOLD BRESKY: I hear this every day from patients in my medical office. They don't realize there are simple things that can be done, like taking Procera AVH daily, to help slow and even stop their mental decline and stay mentally sharp, even into their later years.

. . .

DR. ARNOLD BRESKY: If you're embarrassed when you forget a person's name that you've known for years, or draw a complete blank on what you were about to say or forget where you were going next and can't remember if you locked the doors at night, remember it's not your fault. As we grow older, these things can happen to all of us. But an increase in these senior moments is something that you should not take lightly. So, here's the bottom line. Just as a great pair of glasses can sharpen your vision and bring even the smallest detail into crystal clear focus, a daily serving of Procera AVH may help do the same thing for your brain.

**D. Excerpts from print advertisement (attached as Exhibit D) [BRL001849]**

**Seniors Fear Loss of Independence More Than Death**

***Staying mentally sharp key to independent lifestyle; new drug-free compound helps promote memory and mental confidence of a group 10-15 years younger, claims US Surgeon General candidate***

. . . A recent Met Life/Harris survey revealed that seniors fear memory loss more than heart disease or cancer. And for good reason.

. . . More than 5.4 million people over the age of 70 experience mild forgetfulness that can frequently disrupt their daily routines.

Seniors fret about losing their driving privileges. . . .

The thought of being a prisoner in one's own home, or being unable to recall who you are, where you live, or to whom you are related has sent forgetful seniors scrambling for a solution.

Many have discovered a unique, drug-free compound that, according to Robert Heller, MD, can help the brain in a similar way that prescription glasses help the eyes. . . .

In controlled research studies, the prescription-free formula, known as ProceraAVH® has been shown to increase memory, mood, and mental clarity.

During randomized, double-blind, placebo-controlled research conducted at the prestigious Brain Sciences Institute, clinicians witnessed a startling transformation in study participants' brains. Over a period of a few weeks, scientists observed the formula helping aging brains to function more youthfully, helping match the speed, memory abilities and mental powers enjoyed by a group up to 15 birthdays younger.

. . .

Doreen C., Tustin, Calif., was faced with a crushing decision. Her husband's memory was going downhill, fast.

"He had diminished to a point where he was confused during the day," Doreen says quietly, confessing he didn't seem to remember even basic tasks.

"I was fearful of leaving him at home," confides Doreen. So, she began to weigh her options, including day care. She paused for a long while, before adding, "That was a very difficult decision for us."

Several days later, Doreen was driving in her car when she heard an announcement about Procera AVH on the radio. "I thought, this has to be a sign. I pulled off the road, and ordered Procera right away!"

Doreen began giving her husband Procera AVH on Monday. Soon she wondered if a miracle was in the making.

"I was witnessing a tremendous change," smiles Doreen. "My husband was joking, and carrying on. We were having conversations, which

was something we had not done for months! I clearly saw a tremendous change."

. . .

Elizabeth K. of Rochester, New York discovered Procera AVH just in time. At the age of 54, her memory was declining at an "alarming rate."

She searched high and low for a solution, before she heard about Procera AVH. She decided to give it a try.

**Better Memory, Better Mood**

"It took about a month for the memory benefit to kick in," smiles Elizabeth. "Six months later, even my husband was impressed with my improved memory. And I am very happy with my renewed mental clarity and focus!"

If you're having trouble managing your money or if you're worried about losing your driving privileges, doctor-recommended Procera AVH may provide the confidence and security you need to maintain your independent lifestyle.

**E. Excerpts from print advertisement (attached as Exhibit E) [BRL001848] Memory Pill Helps the Brain Like Prescription Glasses Help the Eyes, Claims US Surgeon General Candidate**

***Remarkable changes observed, helps users match the memory power of others 15 years younger in as little as 30 days***!

Help is on the way for those who routinely lose their car keys, get lost while driving, forget to call people back, or misplace their TV remote control.

Just like a good pair of glasses can make blurry vision, sharp and crystal-clear, there's a new, doctor-recommended memory pill that may help your brain, sharpening your memory and mental powers, and making that slow-thinking, sluggish brain as sharp as a tack.

In a controlled research study, the prescription-free formula, known as Procera AVH® has been shown to increase memory, mood, and mental clarity, but it does much more than that.

**Time Travel for Your Brain?**

If you have ever dreamed of traveling back in time, this drug-free compound may be the next best thing.

During research trials at the prestigious Brain Sciences Institute, clinical researchers witnessed a remarkable transformation in study participants' brains.

Over a period of a few weeks, scientists observed the formula "biochemically coaxing" aging brains to function more youthfully, helping match the speed, memory abilities and mental powers enjoyed by others who were up to 15 birthdays younger.

**Younger-Functioning Brain in 30 Days?**

If the results of this randomized, double-blind, placebo controlled study, published in JANA, a leading peer-reviewed scientific journal, are to be believed, it may be entirely possible that you can get your new, younger-functioning brain in as little as 30 days.

**F. Excerpts from Procera direct mail advertisement (attached as Exhibit F) [FTC-000002 – FTC-000014]**

Special Edition: Brain Decline Crisis

PHYSICIANS' MIND AND MEMORY ALERT

. . .

Failing Memory

Potential Sign Of More Serious Things to Come!

. . .

Patented Memory Pill Helps the Brain Like Prescription Glasses Help the Eyes, Claims US Surgeon General Candidate

. . .

Dear Reader,

Do you See What I See?

As a medical doctor, I've spent a lifetime diagnosing and treating afflictions. I have become quite proficient at making accurate, first-glance observations.

. . .

Boomers now fear mental decline more than cancer or even death!

. . . A recent Aging in Place in America study found that senior citizens fear losing their mental powers and independence, and being moved into a nursing home more than they do – death itself!

Inevitable? Yes. Correctable? Read On!

Much of this fear is rooted in the misconception that age-related mind and memory loss is a permanent and untreatable condition. For many, nothing can be further from the truth!

Want Some Good News!

Now there's a prescription-free, memory pill available that may do for the brain what prescription glasses do for the eyes. It's a natural compound that helps make a fuzzy thinking brain, crisp, clear, and focused.

. . .

MENTAL DECLINE CAN BE LIFE-CHANGING

While many of the physical infirmities of growing old can be addressed with prescription eyeglasses, hearing aids, ramps, railings, or walkers, it's the loss of memory and mental abilities that most worry seniors. Losing the ability to mentally process everyday activities and events poses a risk to an independent lifestyle, starting with your financial independence.

Imagine being told that

You are no longer allowed to handle your financial matters!

You must stop using and surrender your credit cards!

You are no longer trusted to purchase anything . . . for you or anyone else!

Imagine being told that

You are moving to a nursing home to live with strangers!

Your lifelong possessions are to be sold or given away!

Imagine being told that

You can no longer drive your automobile

You must sell your car, or give it to a family member

You are a prisoner in your own home.

Call 1-800-919-2240 for your FREE 30-day supply of Procera AVH!

. . .

WAKE UP YOUR TIRED, SLUGGISH BRAIN

. . . The thought of being a prisoner in one's own home, or being unable to recall who you are, where you live, or to whom you are related is sending forgetful baby boomers and retirees scrambling for a solution.

What if I told you that your ability to concentrate and focus, and to recall names, places, faces, and even the smallest detail was not . . . 'lost?'

Would you believe that it may be just lying dormant . . . waiting to be awakened?

Procera AVH is the memory pill preferred by many doctors, shown in clinical research to improve memory, focus, concentration, mental vigor and clarity, and even mood in just 30 days or less!

. . . Just like a good pair of glasses can make blurry vision sharp and crystal clear – Procera AVH may do the same thing for your brain – sharpening memory, improving focus and concentration, imparting crisp, alert mental response, even restoring your memory and brain power to a level enjoyed by those as much as 15 years younger!

. . .

. . . Reverses Up to 15 Years of Mental Decline in 30 Days!
Reclaim Up to 15 Years of Lost Brainpower in 30 Days with Procera AVH!

In a university clinical study Procera AVH was shown to help reverse up to

15 years of mental decline, effectively restoring a 50-year-old's brainpower to that of a 35-year-old.

Psst . . . Do Something! Your memory problems will only get worse with time. Unless you do something about it!

Symptoms of premature mental decline like poor memory, the inability to stay focused and on-task, mental confusion, and all-around 'slow thinking' may just be an indication that your brain is running low on fuel.

You could begin to fix this in as little as 30 days! Procera AVH re-fuels an aging, tired brain with clinically-tested brain nutrients that help revitalize mind and memory.

## VIOLATIONS OF THE FTC ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

20. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

21. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics.

22. For the purposes of Section 12 of the FTC Act, Procera AVH is either a "food" or "drug" as defined in Section 15(b) and (c) of the FTC Act, 15 U.S.C. § 55(b), (c).

## COUNT I

## FALSE OR UNSUBSTANTIATED EFFICACY CLAIMS

23. Through the means described in Paragraph 18, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Procera AVH significantly improves memory, concentration, focus, mental clarity, and mood;

B. Procera AVH reverses 10 to 15 years of mental decline and restores the memory and brain power the user had 10 to 15 years earlier;

C. Procera AVH stops and reverses age-related mental decline and memory loss; and

D. Procera AVH reverses and prevents memory loss and cognitive impairment severe enough to interfere with activities of daily living, including impairments of one's ability to drive a car, make financial decisions, and live independently.

24. The representations set forth in Paragraph 23 are false or misleading, or were not substantiated at the time the representations were made.

25. Therefore, the making of the representations as set forth in Paragraph 23 constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

## COUNT II

## FALSE PROOF CLAIMS

26. Through the means described in Paragraph 18, Defendants have represented, directly or indirectly, expressly or by implication, that:

A. Procera AVH is clinically proven to significantly improve memory, concentration, focus, mental clarity, and mood; and

B. Procera AVH is clinically proven to reverse 10 to 15 years of mental decline and to restore the memory and brain power the user had 10 to 15 years earlier.

27. The representations set forth in Paragraph 26 are false.

28. Therefore, the making of the representations as set forth in Paragraph 26 constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

## COUNT III

## UNSUBSTANTIATED EXPERT ENDORSEMENT CLAIMS BY DEFENDANT REYNOLDS

29. Through the means described in Paragraph 18, Defendant Reynolds, appearing as an expert endorser, has represented, expressly or by implication, that:

A. Procera AVH improves memory, including both long term memory and short term memory, mental clarity, focus, concentration, and mood;

B. Procera AVH reverses 10 to 15 years of mental decline and restores the memory and brain power the user had 10 to 15 years earlier;

30. Defendant Reynolds did not possess and rely upon a reasonable basis for the representations set forth in Paragraph 29 at the time the representations were made. Moreover, Defendant Reynolds did not exercise his purported expertise in the fields of brain science and clinical research in the form of an examination or testing of Procera AVH and its purported scientific proof that was at least as extensive as an examination or testing that an expert in those fields would normally conduct, in order to support the conclusions presented in his endorsements.

31. Therefore, the making of the representations as set forth in Paragraph 29 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

## CONSUMER INJURY

32. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

## THIS COURT'S POWER TO GRANT RELIEF

33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

## PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 07-01-15

Respectfully submitted,

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