

1 JONATHAN E. NUECHTERLEIN

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DEFENDANTS

6. Defendant Brain Research Labs, LLC (“BRL”) is a Delaware limited liability company





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

#### 8 COMMERCE

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

#### 12 DEFENDANTS’ BUSINESS ACTIVITIES

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

18 16. Consumers can purchase Procera AVH directly from Defendants,  
19 including through their Internet sites and toll-free call centers. Defendants sell  
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1 17. Defendants have advertised Procera AVH through long-form  
2 television commercials (“infomercials”), short-form television commercials, radio  
3 spots, newspaper ads, direct mail ads, online ads, and other advertising and  
4 promotional materials.

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

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

11  
12 DENISE MARIE (Host): We have an incredible show planned for you  
13 today. We’re talking about how you can significantly improve your  
14 memory, mental concentration, focus, mental clarity, and even moods.  
15

16  
17 DAVE RICHARDS (Host): And that’s why it’s my extreme pleasure to  
18 welcome to the broadcast Josh Reynolds, the founder of Brain  
19 Research Labs. Josh is a renowned clinical research scientist in brain  
20 health and fitness. He has many great achievements in the field, from  
21 creating state of the art brain tests and exercises, to conducting clinical  
22 trials on brain pills for large nutraceutical and pharmaceutical  
23 companies. But what we’re most excited to hear about today is his  
24 latest and greatest creation, a breakthrough nutritional formula called  
25 Procera AVH that can help quickly restore focus, concentration, and  
26 even memory, to the level they were as much as 10 to 15 years ago.  
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JOSH REYNOLDS Procera helps to nourish the brain, to bring back the  
memory,

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DR. CON STOUGH: Absolutely. There's really nothing until now that has been able to help us stop that decline. We 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, 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?



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

5  
6 PATRICE KING BROWN: 50 percent by age 50! . . . We often joke  
7 about forgetting names and dates, or how you're having trouble  
8 concentrating. Apparently, we really shouldn't be laughing about that.

9  
10 DR. PAUL NEMIROFF: Well, premature mental decline is very real. And  
11 may be affecting your brain right now. It's not a laughing matter.

12  
13 ON SCREEN: Slight Memory Problems Could Lead to Severe Cognitive  
14 Decline.

15 . . .

16 DR. PAUL NEMIROFF: . . . Then I read about how this cognitive  
17 researcher had figured out how to combine these three natural  
18 ingredients into a precise formula.

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

PATRICE KING BROWN: Pocera 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.

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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







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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.



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

11  
12 D. Excerpts from print advertisement (attached as Exhibit D)  
13 [BRL001849]

14  
15 Seniors Fear Loss of Independence More Than Death  
16 *Staying mentally sharp key to independent lifestyle; new drug-free*  
17 *compound helps promote memory and mental confidence of a group 10-*  
18 *15 years younger, claims US Surgeon General candidate*

19  
20 . . . A recent Met Life/Harris survey revealed that seniors fear memory loss  
21 more than heart disease or cancer. And for good reason.

22  
23 . . . More than 5.4 million people over the age of 70 experience mild  
24 forgetfulness that can frequently disrupt their daily routines.

25 Seniors fret about losing their driving privileges..

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



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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, doctors recommended Procera AVH

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

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

#### 8 Time Travel for Your Brain?

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

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

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

#### 18 Younger-Functioning Brain in 30 Days?

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

...

Boomers now fear ~~men~~ 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 ~~aged~~ mind and memory loss is a permanent and untreatable condition. For many, nothing can be further from the truth!



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

2 . . .

3 WAKE UP YOUR TIRED, SLUGGISH BRAIN

4  
5 . . . The thought of being a prisoner in one's own home, or being unable to  
6 recall who you are, where you live, or to whom you are related is sending  
7 forgetful baby boomers and retirees scrambling for a solution.

8  
9 What if I told you that your ability to concentrate and focus, and to recall  
10 names, places, faces, and even the smallest detail was 'lost'?

11  
12 Would you believe that it may be just lying dormant waiting to be  
13 awakened?

14  
15 Procera AVH is the memory pill preferred by many doctors, shown in  
16 clinical research to improve memory, focus, concentration, mental vigor  
17 and clarity, and even mood in just 30 days or less!

18  
19 . . . Just like a good pair of glasses can make blurry vision sharp and crystal  
20 clear— Procera AVH may do the same thing for your brain—sharpening  
21 memory, improving focus and concentration, imparting crisp, alert mental  
22 response, even restoring your memory and brain power to a level enjoyed  
23 by those as much as 15 years younger!

24 . . .

25 . . . Reverses Up to 15 Years of Mental Decline in 30 Days!

26 Reclaim Up to 15 Years of Lost Brainpower in 30 Days with Procera AVH!

27  
28 In a university clinical study Procera AVH was shown to help reverse up to



COUNT I

FALSE OR UNSUBSTANTIATED EFFICACY CLAIMS

1  
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3 23. Through the means described in Paragraph 18, Defendants have  
4 represented, directly or indirectly, expressly or by implication, that:

- 5 A. Procera AVH significantly improves memory, concentration,  
6 focus, mental clarity and mood;
- 7 B. Procera AVH reverses 10 to 15 years of mental decline and  
8 restores the memory and brain power the user had 10 to 15  
9 years earlier;
- 10 C. Procera AVH stops and reverses age-related mental decline  
11 and memory loss; and
- 12 D. Procera AVH reverses and prevents memory loss and cognitive  
13 impairment severe enough to interfere with activities of daily  
14 living, including impairments of one's ability to drive a car,  
15 make financial decisions, and live independently

16 24. The representations set forth in Paragraph 18 are false or misleading,  
17 or were not substantiated at the time the representations were made.

18 25. Therefore, the making of the representations as set forth in Paragraph  
19 23 constitutes a deceptive act or practice and the making of false advertisements,  
20 in or affecting commerce, in violation of the Federal Trade Commission Act, 15 U.S.C. § 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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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.



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C. Award Plaintiff the costs of bringing this action, as well as

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such as filing and ad-