

1 ROBERT JOSEPH BROWN ESQ. California State Bar No. 63323
2 LAW OFFICES OF DENNIS P. ISAAC
3 TWO RINCON CENTER
4 121 SPEAR STREET, SUITE 410
5 SAN FRANCISCO, CA, 94105
6 Telephone: (415) 836-2626
7 Facsimile: (415) 836-3104
8 e-mail: bob.brown@aig.com

9 Attorneys for Defendant,
10 KOLMAR LABORATORIES, INC.

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 ALEXANDER REDFOOT, a Minor, by and)
15 Through his Guardian ad Litem, MICHELL)
16 REDFOOT; MICHELL REDFOOT,)

17 Plaintiffs,

18 vs.

19 B.F. ASCHER & COMPANY, INC. AND)
20 KOLMAR LABORATORIES, INC.; and)
21 DOES 1 through 10, inclusive,)

22 Defendants.

23 Case No.: C 05-02045 PJH

24 ANSWER TO FIRST AMENDED
25 COMPLAINT

26 DEMAND FOR JURY TRIAL

27 Defendant, KOLMAR LABORATORIES, INC., answers the Plaintiffs' First Amended
28 Complaint as follows:

GENERAL ALLEGATIONS

1. This answering Defendant is without knowledge or information sufficient to form
a belief as to the truth of the allegations of Paragraphs 1, 2, 3, 4, 5, 6 and 7.

FIRST CAUSE OF ACTION

2. This answering Defendant incorporates it's responses to paragraphs 1 through 7
as though fully set forth herein in response to paragraph 8.

1 3. This answering Defendant is without knowledge or information sufficient to form
2 a belief as to the truth of the allegations of the first sentence of Paragraph 10, all
3 of Paragraph 12 and all of Paragraph 9 except that this answering Defendant
4 admits that it has manufactured Ayr Saline Nasal Mist for B.F. Ascher &
5 Company for many years.

6
7 4. This answering Defendant denies the allegations of Paragraphs 11, 13, 14, 15, 16.

8 **SECOND CAUSE OF ACTION**

9 5. This answering Defendant incorporates it's responses to paragraphs 1 through 15
10 as though fully set forth herein in response to paragraph 16.

11 6. This answering Defendant denies the allegations of Paragraphs 17, 18, 19, 20, 21,
12 22 and 23.

13 **THIRD CAUSE OF ACTION**

14 7. This answering Defendant incorporates it's responses to paragraphs 1 through 23
15 as though fully set forth herein in response to paragraph 24.

16 8. This answering Defendant denies the allegations of Paragraphs 25, 26 and 27.

17 **FOURTH CAUSE OF ACTION**

18 9. This answering Defendant incorporates it's responses to paragraphs 1 through 27
19 as though fully set forth herein in response to paragraph 28.

20 10. This answering Defendant denies the allegations of Paragraphs 29, 30, 31, 32, 33.

21 **FIFTH CAUSE OF ACTION**

22 11. This answering Defendant incorporates it's responses to paragraphs 1 through 33
23 as though fully set forth herein in response to paragraph 34.

24 12. This answering Defendant denies the allegations of Paragraphs 35, 36, 37, 38, 39,
25 40 and 41.
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PUNITIVE DAMAGES ALLEGATIONS

13. This answering Defendant incorporates it's responses to paragraphs 1 through 41 as though fully set forth herein in response to paragraph 42.

14. This answering Defendant denies the allegations of Paragraphs 43, 44, 45, 46, 47.

AFFIRMATIVE DEFENSES

15. As a First Affirmative Defense, Defendant alleges that the complaint fails to state a claim upon which relief can be granted.

16. As a Second Affirmative Defense, Defendant alleges that Plaintiffs are guilty of unclean hands and are therefore barred from the relief sought or any relief at all.

17. As a Third Affirmative Defense, Defendant alleges that Plaintiffs are guilty of laches and are therefore barred from the relief sought or any relief at all.

18. As a Fourth Affirmative Defense, Defendant alleges that Plaintiffs' damages were caused in whole or in part by their failure to use reasonable diligence to mitigate said damages.

19. As a Fifth Affirmative Defense, Defendant alleges that Plaintiffs were themselves negligent and careless in and about the matters complained of and such negligence and carelessness was the sole cause of the claimed injuries and damages, if any.

20. As a Sixth Affirmative Defense, Defendant alleges that Plaintiffs were themselves negligent and careless in and about the matters complained of and such negligence and carelessness caused and/or contributed to Plaintiffs' claimed injuries and damages, if any. Plaintiffs' recovery, if any, should be reduced by the percentage of fault attributable to Plaintiffs.

1 21. As a Seventh Affirmative Defense, Defendant alleges that Plaintiffs' injuries, if
2 any, were caused by misuse and/or abuse of the product thereby barring and/or
3 reducing Plaintiffs' entitlement to the relief sought or any relief at all.

4 22. As an Eighth Affirmative Defense, Defendant alleges that the product was altered
5 or modified by some other person, entity or party after it left this answering
6 Defendant's hands.

7 23. As a Ninth Affirmative Defense, Defendant alleges that at the time of Plaintiffs'
8 alleged injuries, the product was being used in a manner that was not reasonably
9 foreseeable to this answering Defendant.

10 24. As a Tenth Affirmative Defense, Defendant alleges that Plaintiffs are barred from
11 recovery against Defendant because Defendant was, at all times, acting in good
12 faith and pursuant to applicable law.

13 25. As a Eleventh Affirmative Defense, Defendant alleges that other persons or
14 parties were negligent and careless in and about the matters complained of and
15 such negligence and carelessness caused and/or contributed to Plaintiffs' claimed
16 injuries and damages, if any. Defendant is entitled to contribution from all other
17 defendants in proportion to their respective percentages of fault.

18 26. As a Twelfth Affirmative Defense, Defendant alleges that other persons or parties
19 were acting illegally and/or unlawfully. Those actions constitute a supervening
20 /intervening event which severs the chain of causation between Plaintiffs and
21 Defendant.

22 27. As a Thirteenth Affirmative Defense, Defendant alleges that the complaint is
23 barred by the applicable statute of limitations.
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1 28. As a Fourteenth Affirmative Defense, Defendant alleges that the First Amended
2 Complaint fails to state a claim upon which an award of punitive damages can be
3 based.

4 29. As a Fifteenth Affirmative Defense, Defendant alleges that the benefits of the
5 product in question outweighed the risks, if there were any.
6

7 30. As a Sixteenth Affirmative Defense, Defendant alleges that the product in
8 question met the expectations of a reasonable consumer.

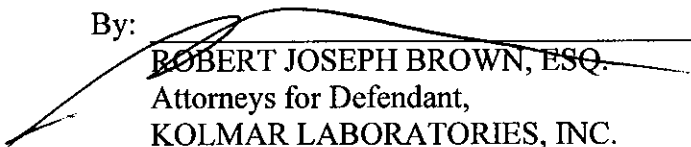
9 31. As a Seventeenth Affirmative Defense, Defendant alleges that the product in
10 question was safe when used in a reasonably foreseeable manner.

11 Wherefore, Defendant KOLMAR LABORATORIES, INC. prays that Plaintiffs take
12 nothing by reason of their complaint herein and that Defendant be awarded its costs of suit
13 incurred herein and such other further relief as the Court deems just and appropriate.
14

15 DATED: August 4, 2006

LAW OFFICES OF DENNIS P. ISAAC

16 By:

17 
18 ~~ROBERT JOSEPH BROWN, ESQ.~~
Attorneys for Defendant,
19 KOLMAR LABORATORIES, INC.

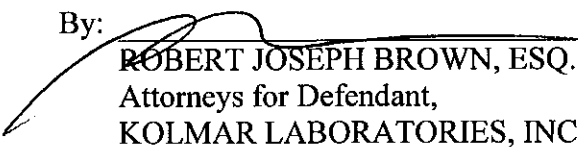
20 **DEMAND FOR JURY TRIAL**

21 Defendant, KOLMAR LABORATORIES, INC. hereby demands a trial by jury.
22

23 DATED: August 4, 2006

LAW OFFICES OF DENNIS P. ISAAC

24 By:

25 
26 ~~ROBERT JOSEPH BROWN, ESQ.~~
Attorneys for Defendant,
27 KOLMAR LABORATORIES, INC.
28

Redfoot v. B.F. Ascher, et. al.

United States District Court Case No. C 05-02045 PJH

PROOF OF SERVICE BY MAIL (1013A(3) C.C.P.

State of California, County of San Francisco

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within entitled action. I am an employee of The Law Offices of Dennis P. Isaac, and my business address is Two Rincon Center, 121 Spear Street, Suite 410, in San Francisco, CA 94105, telephone (415) 836-2626 and Facsimile (415) 836-3104.

On August 4, 2006, I served:

ANSWER TO FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

On all interested parties in said action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

BY MAIL AS FOLLOWS - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct was executed on August 4, 2006 at San Francisco, California.


Delores Mayorga

Redfoot v. B.F. Ascher, et. al.

United States District Court Case No. C 05-02045 PJH

SERVICE LIST

C. Andrew Waters, Esq.
WATERS & KRAUS, LLP
Continental Grand Plaza I
300 North Continental Blvd., Suite 500
El Segundo, CA 90245
T: (310) 414-8146
F: (310) 414-8156
ATTORNEY FOR PLAINTIFFS

Laurel L. Simes, Esq.
LEVIN SIMES & KAISER LLP
One Bush Street, 14th Floor
San Francisco, CA 94104
T: (415) 646-7160
F: (415) 981-1270
ATTORNEY FOR PLAINTIFFS

Robert B. Leck, Esq.
LECK & ASSOCIATES
100 Wilshire, Suite 200
Los Angeles, CA 90401
T: (310) 899-2041
F: (310) 451-7737
**ATTORNEY FOR DEFENDANT
B.F. ASCHER & COMPANY**