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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MELISSA NIGH, on behalf of herself, all
others similarly situated and the general
public,

Plaintiff,

vs.

HUMPHREYS PHARMACAL,
INCORPORATED, a Delaware Corporation,
DICKINSON BRANDS, INC., a Delaware
Corporation,

Defendants.

Case No.: '12CV2714 MMADHB

Filed:

CLASS ACTION

COMPLAINT FOR:

- 1. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT [CIV. CODE §§ 1750, *et seq.*]**
- 2. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [BUS. & PROF. CODE §§ 17200, *et seq.*]**
- 3. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW [BUS & PROF. CODE §§ 17500, *et seq.*]**
- 4. BREACH OF EXPRESS WARRANTY**
- 5. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
- 6. VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT [15 U.S.C. §§ 2301, *et seq.*]**
- 7. UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Melissa Nigh, on behalf of herself, all others similarly situated, and the general
2 public (“Plaintiff”), allege against defendant Humphrey’s Pharmacal, Incorporated,
3 (“Humphreys”) and its parent company Dickinson Brands, Inc. (“Defendants”). Plaintiff alleges
4 the following upon her own knowledge, or where there is no personal knowledge, upon
5 information and belief and the investigation of her counsel:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
8 amended by the Class Action Fairness Act of 2005, because the matter in controversy, exclusive
9 of interest and costs, exceeds the sum or value of \$5,000,000.00 and is a class action where
10 Plaintiff, a member of the class, is from a different state than Defendants. On information and
11 belief, more than two-thirds of the members of the class are citizens of a state different from the
12 Defendants. This Court also has original jurisdiction over the federal claim under the
13 Magnuson-Moss Warranty Act pursuant to 28 U.S.C. § 1331. This Court has supplemental
14 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
15

16 2. Personal jurisdiction derived from the fact that the Defendants conduct business
17 within the State of California and within this judicial district.

18 3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2) because
19 many of the acts and transactions, including the purchases and sales giving rise to this action,
20 occurred in this district and because Defendants:

- 21 (i) are authorized to conduct business in this district and have intentionally
22 availed themselves of the laws and markets within this district through the
23 promotion, marketing, distribution and sale of its products in this district;
24 (ii) do substantial business in this district;
25 (iii) advertise to consumers residing in this district; and,
26 (iv) are subject to personal jurisdiction in this district.

27 ///

THE PARTIES

1
2 4. Plaintiff Melissa Nigh is a resident of Morgan Hill, California.

3 5. Defendant Humphrey's Pharmacal, Incorporated is a Delaware corporation that
4 maintains its principal place of business, corporate headquarters, and residence in Connecticut.

5 6. Defendant Dickinson Brands, Inc. is a Delaware corporation that maintains its
6 principal place of business in Connecticut.

7
8 7. Defendants are the manufacturer and seller of homeopathic products that are
9 nothing more than placebos, as set forth herein. This complaint concerns Defendants'
10 homeopathic products known as Original Teething Pellets #3, Cherry Teething Pellets #3, Berry
11 Teething Pellets #3, Simple Fever #1, Simple Diarrhea #4, Bedwetting Pellets #30, Cherry Colic
12 Pellets #36, Cough Control #7, Cold Relief #77, Symptoms of Delayed Menses, Arthritis Relief
13 Pellets #15, Insomnia Relief #40, and Simple Nervous Conditions #28, and all iterations/variations of
14 the aforementioned products (collectively, the "Products"). This complaint also encompasses all
15 known homeopathic products made by Defendants. Defendants produce, market, and sell
16 homeopathic products, throughout the United States.
17
18

19 **BACKGROUND**

20 8. Homeopathic medicine has been practiced in United States since the early 19th
21 century. Homeopathy seeks to stimulate the body's ability to heal itself by giving very small
22 doses of highly diluted substances. However, there is little evidence that homeopathy is
23 effective, much less that people understand homeopathic principles.¹
24

25 9. Homeopathy is premised on two main principles; the principle of similars and the
26 principle of dilutions. Under the "principle of similars" a disease can be cured by a substance
27

28 ¹ See <http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf>, last visited on July 6, 2012.

1 that produces similar symptoms in healthy people. Under the “principle of dilutions” the *lower*
2 the dose of the medication, the *greater* its effectiveness.²

3 10. However, it is paradoxical that through dilution an ingredient would reach higher
4 potency. Further, in highly diluted remedies, there is a very low probability that even a single
5 molecule of the original substance is present in the Product. For example, a level of 12C dilution
6 is the equivalent to a pinch of salt in both the North and South Atlantic Oceans.³ Allegedly, the
7 more diluted the ingredient, the more effective it becomes.
8

9 11. Homeopathic remedies are not marketed and sold in the United States in the same
10 manner as when they first originated, approximately 200 years ago. When homeopathic drugs
11 first originated, people would typically consult with a licensed homeopathic practitioner, who
12 would compound his or her own homeopathic remedy, or provide a prescription to the patient.
13 Food and Drug Administration Compliance Policy Guide (“CPG”) § 400.400.
14

15 12. Historically, homeopathic drugs were also not labeled and there was no direct-to-
16 consumer advertising. Instead, homeopathic remedies were primarily marketed to licensed
17 homeopathic practitioners. “CPG” § 400.400.
18

19 **FACTS**

20 13. Defendants manufacture, advertise, distribute and sell their homeopathic
21 Humphreys Products⁴ throughout the United States.
22

23 14. Defendants manufacture, advertise, distribute and sell three main categories of
24 homeopathic products: Children’s Remedies, Cold & Flu Remedies and Pain Relief Remedies.
25

26 ² See <http://nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf>, last visited on July 6, 2012.

27 ³ See <http://www.healthguidance.org/entry/12178/1/An-Introduction-to-Homeopathic-Remedies.html>, last visited on July 6, 2012.

28 ⁴ **Exhibit 1** to this Complaint has a more through description of the Products, including pictures.

1 15. During the class period defined herein, Plaintiff Nigh purchased Defendants
2 Product(s) from in Morgan Hill, California. Plaintiff Nigh is a consumer as described herein.

3 16. In purchasing Defendants Product(s), Plaintiff Nigh relied upon various
4 representations Defendants made on the Products' labels, such as the Products' name itself, that
5 it would relieve symptoms associated with its name, would be a "100% All Natural," "Fast
6 Acting" remedy, among other representations.
7

8 17. Defendants Product(s) did not work for Plaintiff Nigh as advertised.

9 **CHILDREN'S REMEDIES**

10 18. Defendants manufacture, advertise, distribute and sell a variety of Children's
11 Remedies, including, Teething Relief (Original Teething Pellets #3, Cherry Teething Pellets #3,
12 Berry Teething Pellets #3),⁵ Simple Fever #1, Simple Diarrhea #4, Bedwetting Pellets #30, and
13 Cherry Colic Pellets #36.
14

15 19. Defendants advertise their Children's Remedies as "100% All Natural," "Fast
16 Acting," and "Gentle" relief of various symptoms including teething, fevers, diarrhea,
17 bedwetting and colic.
18

19 A. Baby Teething Relief (Very Cherry and Original Flavors)

20 20. Defendants advertise that Baby Teething Relief "relieves pain & inflammation,"
21 "calms restlessness and irritability," "temporarily relieves minor irritation, pain and wakefulness
22 associated with teething in infants." It purports to provide "multi-symptom relief of irritation,
23 irritability, restlessness and inflammation of the gums." See Exs. 1-2.
24

25 ⁵ Defendants also produce and market or have produced and marketed other varieties of Teething
26 Relief, including, Teething Relief – Very Cherry and Original; Teething Relief Belladonna Free
27 – Very Cherry and Original; Baby Teething Relief Cherry Swift Strips, Teething Relief Cherry
28 Swift Strips, Teething Relief Pellets -Very Cherry & Original, Teething Pellets #3- Very Cherry
& Original. This complaint includes all varieties of Defendants Teething Relief Products.

1 21. In purchasing Baby Teething Relief, consumers rely upon various representations
2 Defendants make on the Products’ packaging label, such as the name itself, that it is “Fast
3 Acting,” “100% Natural,” and provides “Teething Relief,” among other representations. *See*
4 Misrepresentation Chart, attached hereto as Ex. 2 for the challenged statements regarding the
5 Product.

6 22. The purportedly active ingredients of Baby Teething Relief include *Chamomilla*
7 (*3X HPUS*), *Coffea Cruda* (*3X HPUS*), *Belladonna* (*3X HPUS*) and *Calcarea Phosphorica* (*12X*
8 *HPUS*). However, the active ingredients, even if they were otherwise effective, are so greatly
9 diluted as to be effectively non-existent in the Product such that the Product is ineffective for its
10 intended uses. Consumers, trusting the Defendants’ assertions that the Product relieves the
11 symptoms of teething are unwittingly spending hundreds of thousands of dollars each year on
12 worthless products. *See* Dilution Chart, attached hereto as Ex. 3.

13 23. The ingredients used in Baby Teething Relief provide no health benefits.
14 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
15 of any kind in humans because the odds are astronomically high that even a single molecule
16 derived from the original “extract” of the “active ingredients” could be present in the Product
17 sold to consumers.

18 24. Defendants know there are **no** or just **trace** amounts of active ingredients present
19 in Baby Teething Relief and therefore must be aware that Baby Teething Relief cannot relieve
20 any symptoms for which the Defendants advertise them.

21 25. Baby Teething Relief is nothing more than a placebo, with zero or a trace of the
22 claimed active ingredients. Baby Teething Relief is sold in 135 ct. boxes and the price is
23 approximately \$6.99 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
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1 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
2 Americans.

3 26. Absent the misstatements described herein, consumers would not have purchased
4 Baby Teething Relief.

5 27. Plaintiff seeks justice for herself and similarly-situated consumers of Baby
6 Teething Relief by means of this action to enjoin the ongoing deceptive practices described
7 herein.
8

9 B. Baby Teething Relief – Belladonna Free (Very Cherry and Original Flavors)

10 28. Defendants advertise that Baby Teething Relief – Belladonna Free “Relieves Pain
11 & Inflammation,” “Calms restlessness and irritability,” and “temporarily relieves minor
12 irritation, pain and wakefulness associated with teething in infants.” It purports to “Relieve[]
13 irritation pain of swollen gums,” “Calms restlessness and irritability, and “Supports dentition.”
14 See Exs. 1-2.
15

16 29. In purchasing Baby Teething Relief – Belladonna Free, consumers rely upon
17 various representations Defendants make on the Product’s packaging label, such as the Product’s
18 name itself, that it is “Fast Acting,” “100% Natural,” and provides “Teething Relief,” among
19 other representations. See Ex. 2, Misrepresentation Chart.
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21 30. The purportedly active ingredients of Baby Teething Relief - Belladonna Free
22 include *Chamomilla* (3X HPUS), *Coffea Cruda* (3X HPUS) and *Calcarea Phosphorica* (12X
23 HPUS). However, the active ingredients, even if they were otherwise effective, are so greatly
24 diluted as to be effectively non-existent in the Product such that the Product is ineffective for its
25 intended uses. Consumers, trusting the Defendants’ assertions that the Product relieves the
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1 symptoms of teething are unwittingly spending hundreds of thousands of dollars each year on
2 worthless products. *See* Ex. 3, Dilution Chart.

3 31. The ingredients used in Baby Teething Relief – Belladonna Free provide no
4 health benefits. Moreover, at the stupendously high dilutions used to prepare the product, they
5 can have no effect of any kind in humans because the odds are astronomically high that even a
6 single molecule derived from the original “extract” of the “active ingredients” could be present
7 in the Product sold to consumers.
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9 32. Defendants know there are **no** or just **trace** amounts of active ingredients present
10 in Baby Teething Relief – Belladonna Free and therefore must be aware that Baby Teething
11 Relief – Belladonna Free cannot relieve any symptoms for which the Defendants advertise them.
12

13 33. Baby Teething Relief – Belladonna Free is nothing more than a placebo, with zero
14 or a trace of the claimed active ingredients. Baby Teething Relief is sold in 135 ct. boxes and the
15 price is approximately \$6.99 per 135-pellet package. Hence, Defendants’ unfair and deceptive
16 practices have enriched them by hundreds of thousands of dollars, at the expense of thousands of
17 Americans.
18

19 34. Absent the misstatements described herein, consumers would not have purchased
20 Humphrey’s Baby Teething Relief – Belladonna Free.

21 35. Plaintiff seeks justice for herself and similarly-situated consumers of Baby
22 Teething Relief – Belladonna Free by means of this action to enjoin the ongoing deceptive
23 practices described herein.
24

25 C. Baby Teething Relief (Cherry Swift Strips)

26 36. Defendants advertise that Baby Teething Relief Cherry Swift Strips “Relieve[]
27 irritation of swollen gums,” “calm[] restlessness and irritability,” and “temporarily relieve[]
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1 minor irritation, pain and wakefulness associated with teething in infants.” It purports to be a
2 “Triple- Action Teething Remedy” which is “100% All Natural.” *See* Exs. 1-2.

3 37. In purchasing Baby Teething Relief Cherry Swift Strips, consumers rely upon
4 various representations Defendants make on the Product’s packaging label, such as the Product’s
5 name itself, that it is “Fast acting,” “100% All Natural,” and provides “Teething Relief,” among
6 other representations. *See* Ex. 2, Misrepresentation Chart.
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8 38. The purportedly active ingredients of Baby Teething Relief Cherry Swift Strips
9 include *Chamomilla* (3X HPUS), *Coffea Cruda* (3X HPUS), *Belladonna* (3X HPUS), and
10 *Calcarea Phosphorica* (12X HPUS). However, the active ingredients, even if they were
11 otherwise effective, are so greatly diluted as to be effectively non-existent in the Product such
12 that the Product is ineffective for its intended uses. Consumers, trusting the Defendants’
13 assertions that the Product relieves the symptoms of teething are unwittingly spending hundreds
14 of thousands of dollars each year on worthless products. *See* Ex. 3, Dilution Chart.
15

16 39. Moreover, the inactive ingredients in Baby Teething Relief Cherry Swift Strips
17 include Polysorbate 80, which is a product of the chemical reaction of Sorbitan and Oleic Acid.
18 Polysorbate 80 is **not** a natural ingredient, although Defendants advertise Baby Teething Relief
19 Cherry Swift Strips as “100% All Natural.”
20

21 40. The ingredients used in Baby Teething Relief Cherry Swift Strips provide no
22 health benefits. Moreover, at the stupendously high dilutions used to prepare the product, they
23 can have no effect of any kind in humans because the odds are astronomically high that even a
24 single molecule derived from the original “extract” of the “active ingredients” could be present
25 in the Product sold to consumers.
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1 41. Defendants know there are **no** or just **trace** amounts of active ingredients present
2 in Baby Teething Relief Cherry Swift Strips and therefore must be aware that Baby Teething
3 Relief Cherry Swift Strips cannot relieve any symptoms for which the Defendants advertises
4 them.

5 42. Baby Teething Relief Cherry Swift Strips are nothing more than a placebo, with
6 zero or a trace of the claimed active ingredients. Humphrey’s Baby Teething Relief Cherry
7 Swift Strips are sold in 18 ct. boxes and the price is approximately \$6.99 per 18-strip package.
8 Hence, Defendants’ unfair and deceptive practices have enriched them by hundreds of thousands
9 of dollars, at the expense of thousands of Americans.
10

11 43. Absent the misstatements described herein consumers would not have purchased
12 Baby Teething Relief Cherry Swift Strips.
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14 44. Plaintiff seeks justice for herself and similarly-situated consumers of Baby
15 Teething Relief by means of this action to enjoin the ongoing deceptive practices described
16 herein.
17

18 D. Baby Teething Relief (Cherry Swift Strips – Belladonna Free)

19 45. Defendants advertise that Baby Teething Relief Cherry Swift Strips – Belladonna
20 Free “Relieve[] pain of swollen gums,” “Calm[] restlessness and irritability,” and “temporarily
21 relieve[] minor irritation, pain and wakefulness associated with teething in infants.” It purports
22 to be a “Triple- Action Teething Remedy” which is “100% All Natural.” *See* Exs. 1-2.
23

24 46. In purchasing Baby Teething Relief Cherry Swift Strips – Belladonna Free,
25 consumers rely upon various representations Defendants make on the Product’s packaging label,
26 such as the Product’s name itself, that it is “Fast Acting,” “100% All Natural,” and provides
27 “Teething Relief,” among other representations. *See* Ex. 2, Misrepresentation Chart.
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1 47. The purportedly active ingredients of Baby Teething Relief Cherry Swift Strips –
2 Belladonna Free include *Chamomilla* (3X HPUS), *Coffea Cruda* (3X HPUS), and *Calcarea*
3 *Phosphorica* (12X HPUS). However, the active ingredients, even if they were otherwise
4 effective, are so greatly diluted as to be effectively non-existent in the Product such that the
5 Product is ineffective for its intended uses. Consumers, trusting the Defendants’ assertions that
6 the Product relieves the symptoms of teething are unwittingly spending hundreds of thousands of
7 dollars each year on worthless products. *See* Ex. 3, Dilution Chart.

9 48. Moreover, the inactive ingredients in Baby Teething Relief Cherry Swift Strips –
10 Belladonna Free include Polysorbate 80, which is a product of the chemical reaction of Sorbitan
11 and Oleic Acid. Polysorbate 80 is **not** a natural ingredient, although Defendants advertise Baby
12 Teething Relief Cherry Swift Strips – Belladonna Free as “100% All Natural.”

14 49. The ingredients used in Baby Teething Relief Cherry Swift Strips – Belladonna
15 Free provide no health benefits. Moreover, at the stupendously high dilutions used to prepare the
16 product, they can have no effect of any kind in humans because the odds are astronomically high
17 that even a single molecule derived from the original “extract” of the “active ingredients” could
18 be present in the Product sold to consumers.

20 50. Defendants know there are **no** or just **trace** amounts of active ingredients present
21 in Baby Teething Relief Cherry Swift Strips – Belladonna Free and therefore must be aware that
22 Baby Teething Relief Cherry Swift Strips – Belladonna Free cannot relieve any symptoms for
23 which the Defendants advertises them.

25 51. Baby Teething Relief Cherry Swift Strips – Belladonna Free are nothing more
26 than a placebo, with zero or a trace of the claimed active ingredients. Baby Teething Relief
27 Cherry Swift Strips – Belladonna Free are sold in 18 ct. boxes and the price is approximately
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1 \$6.99 per 18-strip package. Hence, Defendants’ unfair and deceptive practices have enriched
2 them by hundreds of thousands of dollars, at the expense of thousands of Americans.

3 52. Absent the misstatements described herein consumers would not have purchased
4 Baby Teething Relief Cherry Swift Strips – Belladonna Free.

5 53. Plaintiff seeks justice for herself and similarly-situated consumers of Baby
6 Teething Relief Cherry Swift Strips – Belladonna Free by means of this action to enjoin the
7 ongoing deceptive practices described herein.
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9 E. Teething Pellets #3 (Very Cherry and Original Flavors)

10 54. Defendants advertise that Teething Pellets #3 “gently soothe discomfort,” and
11 “temporarily relieve[] minor irritation, pain and wakefulness associated with teething in infants.”
12 It purports to provide “safe effective relief for children.” *See* Exs. 1-2.
13

14 55. In purchasing Teething Relief Pellets #3, consumers rely upon various
15 representations Defendants make on the Product’s label, such as the Product’s name itself, that it
16 is “Fast Acting,” “100% All Natural,” and provides “relie[f] for minor irritation” among other
17 representations. *See* Ex. 2, Misrepresentation Chart.
18

19 56. The purportedly active ingredients of Teething Pellets #3 include Chamomilla
20 (3X HPUS), Coffea Cruda (3X HPUS), Belladonna (3X HPUS) and Calcarea Phosphorica (12X
21 HPUS). However, the active ingredients, even if they were otherwise effective, are so greatly
22 diluted as to be effectively non-existent in the Product such that the Product is ineffective for its
23 intended uses. Consumers, trusting the Defendants’ assertions that the Product relieves the
24 symptoms of teething are unwittingly spending hundreds of thousands of dollars each year on
25 worthless products. *See* Ex. 3, Dilution Chart.
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1 57. The ingredients used in Teething Pellets #3 provide no health benefits. Moreover,
2 at the stupendously high dilutions used to prepare the product, they can have no effect of any
3 kind in humans because the odds are astronomically high that even a single molecule derived
4 from the original “extract” of the “active ingredients” could be present in the Product sold to
5 consumers.

6 58. Defendants know there are **no** or just **trace** amounts of active ingredients present
7 in Teething Pellets #3 and therefore must be aware that Teething Pellets #3 cannot relieve any
8 symptoms for which the Defendants advertise them.

9 59. Teething Pellets #3 are nothing more than a placebo, with zero or a trace of the
10 claimed active ingredients. Teething Pellets #3 are sold in 135 ct. boxes and the price is
11 approximately \$8.49 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
12 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
13 Americans.

14 60. Absent the misstatements described herein, consumers would not have purchased
15 Teething Pellets #3.

16 61. Plaintiff seeks justice for herself and similarly-situated consumers of Teething
17 Pellets #3 by means of this action to enjoin the ongoing deceptive practices described herein.

18 F. Simple Fever #1⁶

19 62. Defendants advertise that Simple Fever #1 “temporarily reduces fever.” It
20 purports to provide a “Gentle Formula” with “natural ingredients that work gently to help your
21 body return to a natural state of health.” *See* Exs. 1-2.

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⁶ Defendants also advertise Simple Fever #1 as a Cold & Flu Remedy.

1 63. In purchasing Simple Fever #1, consumers rely upon various representations
2 Defendants make on the Product’s packaging label, such as the Product’s name itself, that it is a
3 “safe, all natural fever reducer,” among other representations. *See* Ex. 2, Misrepresentation
4 Chart.

5 64. The purportedly active ingredients of Simple Fever #1 include *Aconitum napellus*
6 (3X HPUS), *Veratrum viride* (2X HPUS), *Bryonia alba* (3X HPUS), and *Belladonna* (3X
7 HPUS). However, the active ingredients, even if they were otherwise effective, are so greatly
8 diluted as to be effectively non-existent in the Product such that the Product is ineffective for its
9 intended uses. Consumers, trusting the Defendants’ assertions that the Product relieves fevers
10 are unwittingly spending hundreds of thousands of dollars each year on worthless products. *See*
11 Ex. 3, Dilution Chart.

12 65. The ingredients used in Simple Fever #1 provide no health benefits. Moreover, at
13 the stupendously high dilutions used to prepare the product, they can have no effect of any kind
14 in humans because the odds are astronomically high that even a single molecule derived from the
15 original “extract” of the “active ingredients” could be present in the Product sold to consumers.

16 66. Defendants know there are **no** or just **trace** amounts of active ingredients present
17 in Simple Fever #1 and therefore must be aware that Simple Fever #1 cannot relieve any
18 symptoms for which the Defendants advertise them.

19 67. Simple Fever #1 is nothing more than a placebo, with zero or a trace of the
20 claimed active ingredients. Simple Fever #1 is sold in 135 ct. boxes and the price is
21 approximately \$6.99 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
22 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
23 Americans.

1 68. Absent the misstatements described herein, consumers would not have purchased
2 Simple Fever #1.

3 69. Plaintiff seeks justice for herself and similarly-situated consumers of Simple
4 Fever #1 by means of this action to enjoin the ongoing deceptive practices described herein.

5 G. Simple Diarrhea #4⁷

6 70. Defendants advertise that Simple Diarrhea #4 “temporarily controls and relieves
7 symptoms of diarrhea.” It purports to provide a “Gentle Formula” with “natural ingredients that
8 work with your body to provide gentle relief.” *See* Exs. 1-2.

9 71. In purchasing Simple Diarrhea #4, consumers rely upon various representations
10 Defendants make on the Product’s packaging label, such as the Product’s name itself, that it is
11 “Fast Acting” and an “All Natural Anti-Diarrheal Remedy,” among other representations. *See*
12 Ex. 2, Misrepresentation Chart.

13 72. The purportedly active ingredients of Simple Diarrhea #4 include *Cinchona*
14 *officinalis* (3X HPUS), *Ipecacuanha* (3X HPUS), *Calcarea carbonica* (12X HPUS), and
15 *Chamomilla* (3X HPUS). However, the active ingredients, even if they were otherwise effective,
16 are so greatly diluted as to be effectively non-existent in the Product such that the Product is
17 ineffective for its intended uses. Consumers, trusting the Defendants’ assertions that the Product
18 relieves fevers are unwittingly spending hundreds of thousands of dollars each year on worthless
19 products. *See* Ex. 3, Dilution Chart.

20 73. The ingredients used in Simple Diarrhea #4 provide no health benefits.
21 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
22 of any kind in humans because the odds are astronomically high that even a single molecule

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27 ⁷ Defendants also advertise Simple Diarrhea #1 as a Cold & Flu Remedy.
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1 derived from the original “extract” of the “active ingredients” could be present in the Product
2 sold to consumers.

3 74. Defendants know there are **no** or just **trace** amounts of active ingredients present
4 in Simple Diarrhea #4 and therefore must be aware that Simple Diarrhea #1 cannot relieve any
5 symptoms for which the Defendants advertise them.
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7 75. Simple Diarrhea #4 is nothing more than a placebo, with zero or a trace of the
8 claimed active ingredients. Simple Diarrhea #4 is sold in 135 ct. boxes and the price is
9 approximately \$6.49 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
10 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
11 Americans.
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13 76. Absent the misstatements described herein, consumers would not have purchased
14 Simple Diarrhea #4.

15 77. Plaintiff seeks justice for herself and similarly-situated consumers of Simple
16 Diarrhea #4 by means of this action to enjoin the ongoing deceptive practices described herein.
17

18 H. Bedwetting Pellets #30

19 78. Defendants advertise that Bedwetting Pellets #30 “temporarily relieves the
20 symptoms of bladder irritation and incontinence in children.” It purports to “100% All Natural”
21 and “the gentle, all natural remedy for bedwetting. *See* Exs. 1-2.
22

23 79. In purchasing Bedwetting Pellets #30, consumers rely upon various
24 representations Defendants make on the Product’s packaging label, such as the Product’s name
25 itself, that it is “Fast Acting,” “100% All Natural,” “contains no animal ingredients” and
26 provides “Relief for Children’s Incontinence,” among other representations. *See* Ex. 2,
27 Misrepresentation Chart.
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1 80. The purportedly active ingredients of Bedwetting Pellets #30 include *Cantharis*
2 (*6X HPUS*), *Mercurius Corrosivus* (*6X HPUS*), *Causticum* (*3X HPUS*), and *Equisetum hyemale*
3 (*3X HPUS*). However, the active ingredients, even if they were otherwise effective, are so
4 greatly diluted as to be effectively non-existent in the Product such that the Product is ineffective
5 for its intended uses. Consumers, trusting the Defendants’ assertions that the Product relieves
6 fevers are unwittingly spending hundreds of thousands of dollars each year on worthless
7 products. *See* Ex. 3, Dilution Chart.

9 81. The ingredients used in Bedwetting Pellets #30 provide no health benefits.
10 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
11 of any kind in humans because the odds are astronomically high that even a single molecule
12 derived from the original “extract” of the “active ingredients” could be present in the Product
13 sold to consumers. Further, even if the Product did contain more than trace amounts of active
14 ingredients, Bedwetting Pellets contain *Cantharis* (a beetle), which contradicts the “no animal
15 ingredients” claim. The “no animal ingredients” claim is therefore false and misleading to
16 consumers.
17

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19 82. Defendants know there are **no** or just **trace** amounts of active ingredients present
20 in Bedwetting Pellets #30 and therefore must be aware that Bedwetting Pellets #30 cannot
21 relieve any symptoms for which the Defendants advertise them.

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23 83. Bedwetting Pellets #30 is nothing more than a placebo, with zero or a trace of the
24 claimed active ingredients. Bedwetting Pellets #30 is sold in 135 ct. boxes and the price is
25 approximately \$6.29 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
26 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
27 Americans.
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1 84. Absent the misstatements described herein, consumers would not have purchased
2 Bedwetting Pellets #30.

3 85. Plaintiff seeks justice for herself and similarly-situated consumers of Bedwetting
4 Pellets #30 by means of this action to enjoin the ongoing deceptive practices described herein.

5 I. Cherry Colic Pellets #36

6 86. Defendants advertise that Cherry Colic Pellets #36 as using “natural ingredients to
7 gently relieve occasional discomfort and wakefulness.” It purports to “relieve the symptoms
8 referred to as gas, including bloating and pressure, and helps to reduce difficulty falling asleep.”
9 See Exs. 1-2.

10 87. In purchasing Cherry Colic Pellets #36, consumers rely upon various
11 representations Defendants make on the Product’s packaging label, such as the Product’s name
12 itself, that it is “Fast Acting,” “100% All Natural,” “Children’s Gas & Discomfort Relief,”
13 among other representations. See Ex. 2, Misrepresentation Chart.

14 88. The purportedly active ingredients of Cherry Colic Pellets #36 include *Carbo*
15 *vegetabilis* (12X HPUS), *Chamomilla* (1X HPUS), and *Avena Sativa* (1X HPUS). However, the
16 active ingredients, even if they were otherwise effective, are so greatly diluted as to be
17 effectively non-existent in the Product such that the Product is ineffective for its intended uses.
18 Consumers, trusting the Defendants’ assertions that the Product relieves fevers are unwittingly
19 spending hundreds of thousands of dollars each year on worthless products. See Ex. 3, Dilution
20 Chart.

21 89. The ingredients used in Cherry Colic Pellets #36 provide no health benefits.
22 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
23 of any kind in humans because the odds are astronomically high that even a single molecule
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1 derived from the original “extract” of the “active ingredients” could be present in the Product
2 sold to consumers.

3 90. Defendants know there are **no** or just **trace** amounts of active ingredients present
4 in Cherry Colic Pellets #36 and therefore must be aware that Cherry Colic Pellets #36 cannot
5 relieve any symptoms for which the Defendants advertise them.
6

7 91. Cherry Colic Pellets #36 is nothing more than a placebo, with zero or a trace of
8 the claimed active ingredients. Cherry Colic Pellets #36 is sold in 135 ct. boxes and the price is
9 approximately \$6.49 per 135-pellet package. Hence, Defendants’ unfair and deceptive practices
10 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
11 Americans.
12

13 92. Absent the misstatements described herein, consumers would not have purchased
14 Cherry Colic Pellets #36.

15 93. Plaintiff seeks justice for herself and similarly-situated consumers of Cherry Colic
16 Pellets #36 by means of this action to enjoin the ongoing deceptive practices described herein.
17

18 **COLD & FLU REMEDIES**

19 94. Defendants manufacture, advertise, distribute and sell a variety of Cold & Flu
20 Remedies, including Simple Fever #1, Simple Diarrhea #4, Cough Control #7, Cold Relief #77.
21

22 95. Defendants advertise their Cold & Flu Remedies as “100% All Natural,” “Non-
23 Drowsy Relief” for the “common cold.”

24 J. Simple Fever #1

25 96. Defendants advertise Simple Fever #1 as both a Children’s Remedy and a Cold &
26 Flu Remedy, as discussed *supra* Section F.
27

28 K. Simple Diarrhea #4

1 97. Defendants advertise Simple Diarrhea #1 as both a Children’s Remedy and a Cold
2 & Flu Remedy, as discussed *supra* Section G.

3 L. Cough Control # 7

4 98. Defendants advertise that Cough Control #7 as “specifically formulated to provide
5 effective, long lasting relief for the whole family” and “temporarily relieves cough due to minor
6 bronchial irritation associated with the common cold.” *See* Exs. 1-2.

7
8 99. In purchasing Cough Control #7, consumers rely upon various representations
9 Defendants make on the Product’s packaging label, such as the Product’s name itself, that it is a
10 “Fast Acting,” “All Natural Cough Suppressant” among other representations. *See* Ex. 2,
11 Misrepresentation Chart.

12
13 100. The purportedly active ingredients of Cough Control #7 include *Belladonna* (3X
14 HPUS), *Phosphorus* (6X HPUS), *Spongia tosta* (2X HPUS), and *Byonia alba* (3X HPUS).
15 However, the active ingredients, even if they were otherwise effective, are so greatly diluted as
16 to be effectively non-existent in the Product such that the Product is ineffective for its intended
17 uses. Consumers, trusting the Defendants’ assertions that the Product relieves fevers are
18 unwittingly spending hundreds of thousands of dollars each year on worthless products. *See* Ex.
19 3, Dilution Chart.

20
21 101. The ingredients used in Cough Control #7 provide no health benefits. Moreover,
22 at the stupendously high dilutions used to prepare the product, they can have no effect of any
23 kind in humans because the odds are astronomically high that even a single molecule derived
24 from the original “extract” of the “active ingredients” could be present in the Product sold to
25 consumers.
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1 102. Defendants know there are **no** or just **trace** amounts of active ingredients present
2 in Cough Control #7 and therefore must be aware that Cough Control #7 cannot relieve any
3 symptoms for which the Defendants advertise them.

4 103. Cough Control #7 is nothing more than a placebo, with zero or a trace of the
5 claimed active ingredients. Cough Control #7 is sold in 135 ct. boxes and the price is
6 approximately \$6.99 per 135-pellet package. Hence, Defendants' unfair and deceptive practices
7 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
8 Americans.

9
10 104. Absent the misstatements described herein, consumers would not have purchased
11 Cough Control #7.

12
13 105. Plaintiff seeks justice for herself and similarly-situated consumers of Cough
14 Control #7 by means of this action to enjoin the ongoing deceptive practices described herein.

15 M. Cold Relief #77

16 106. Defendants advertise that Cold Relief #77 as using "natural ingredients that work
17 with the body to alleviate symptoms of the common cold." It purports to provide "temporary
18 relief of symptoms of the common cold, such as fever, chills, sneezing, runny nose & coughing,
19 as well as red, itchy & watery eyes." See Exs. 1-2.

20
21 107. In purchasing Cold Relief #77, consumers rely upon various representations
22 Defendants make on the Product's packaging label, such as the Product's name itself, that it
23 "Treats Sneezing, Runny Nose, Coughing & Fever," and is an "All Natural Multi-Symptom
24 Relief," among other representations. See Ex. 2, Misrepresentation Chart.

25
26 108. The purportedly active ingredients of Cold Relief #77 include *Arsenicum album*
27 (6X HPUS), *Gelsemium sempervirens* (3X HPUS), *Alliu, cepa* (3X HPUS), and *Aconitum*
28

1 *napellus* (3C HPUS). However, the active ingredients, even if they were otherwise effective, are
2 so greatly diluted as to be effectively non-existent in the Product such that the Product is
3 ineffective for its intended uses. Consumers, trusting the Defendants' assertions that the Product
4 relieves fevers are unwittingly spending hundreds of thousands of dollars each year on worthless
5 products. *See* Ex. 3, Dilution Chart.

6
7 109. The ingredients used in Cold Relief #77 provide no health benefits. Moreover, at
8 the stupendously high dilutions used to prepare the product, they can have no effect of any kind
9 in humans because the odds are astronomically high that even a single molecule derived from the
10 original "extract" of the "active ingredients" could be present in the Product sold to consumers.

11
12 110. Defendants know there are **no** or just **trace** amounts of active ingredients present
13 in Cold Relief #77 and therefore must be aware that Cold Relief #77 cannot relieve any
14 symptoms for which the Defendants advertise them.

15
16 111. Cold Relief #77 is nothing more than a placebo, with zero or a trace of the
17 claimed active ingredients. Cold Relief #77 is sold in 32 ct. boxes and the price is approximately
18 \$8.99 per 32-pellet package. Hence, Defendants' unfair and deceptive practices have enriched
19 them by hundreds of thousands of dollars, at the expense of thousands of Americans.

20
21 112. Absent the misstatements described herein, consumers would not have purchased
22 Cold Relief #77.

23
24 113. Plaintiff seeks justice for herself and similarly-situated consumers of Cold Relief
25 #77 by means of this action to enjoin the ongoing deceptive practices described herein.
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1 **PAIN RELIEF REMEDIES**

2 114. Defendants manufacture, advertise, distribute and sell a variety of Pain Relief
3 Remedies, including Symptoms of Delayed Menses #11, Arthritis Relief #15 and Insomnia
4 Relief #40.⁸

5 115. Defendants advertise their Pain Relief Remedies as “100% All Natural” remedies
6 for “symptoms associated with delayed menses,” “minor joint pain,” and “occasional
7 sleeplessness.”

8
9 N. Symptoms of Delayed Menses #11

10 116. Defendants advertise that Symptoms of Delayed Menses #11 as using “natural
11 ingredients to gently stimulate your body to return to its natural state of health.” It purports to
12 “temporary relieve[] symptoms associated with delayed menses, such as cramps, backache,
13 anxiety, mood changes, nervous tension, irritability, headache & bloating.” See Exs. 1-2.

14 117. In purchasing Symptoms of Delayed Menses #11, consumers rely upon various
15 representations Defendants make on the Product’s packaging label, such as the Product’s name
16 itself, that it is a “Natural Menstrual Symptom Remedy,” “100% All Natural,” “No Animal
17 Ingredients,” among other representations. See Ex. 2, Misrepresentation Chart.

18
19 118. The purportedly active ingredients of Symptoms of Delayed Menses #11 include
20 *Cimicifuga racemosa* (3X HPUS), *Pulsatilla* (3X HPUS), and *Sepia* (3X HPUS). However, the
21 active ingredients, even if they were otherwise effective, are so greatly diluted as to be
22 effectively non-existent in the Product such that the Product is ineffective for its intended uses.
23
24 Consumers, trusting the Defendants’ assertions that the Product relieves fevers are unwittingly
25

26
27 ⁸ Defendants in the past have also manufactured, advertised, distributed and sold Simple Nervous
28 Conditions #28.

1 spending hundreds of thousands of dollars each year on worthless products. *See* Ex. 3, Dilution
2 Chart.

3 119. The ingredients used in Symptoms of Delayed Menses #11 provide no health
4 benefits. Moreover, at the stupendously high dilutions used to prepare the product, they can have
5 no effect of any kind in humans because the odds are astronomically high that even a single
6 molecule derived from the original “extract” of the “active ingredients” could be present in the
7 Product sold to consumers. Even if the Product did contain more than trace amounts of active
8 ingredients, Symptoms of Delayed Menses contains Sepia (from cuttlefish), an animal product,
9 which contradicts the “No Animal Ingredients” claim. The “No Animal Ingredients” claim is
10 therefore false and misleading to consumers.
11

12
13 120. Defendants know there are **no** or just **trace** amounts of active ingredients present
14 in Symptoms of Delayed Menses #11 and therefore must be aware that Symptoms of Delayed
15 Menses #11 cannot relieve any symptoms for which the Defendants advertise them.
16

17 121. Symptoms of Delayed Menses #11 is nothing more than a placebo, with zero or a
18 trace of the claimed active ingredients. Symptoms of Delayed Menses #11 is sold in 32 ct. boxes
19 and the price is approximately \$15.55 per 32-pellet package. Hence, Defendants’ unfair and
20 deceptive practices have enriched them by hundreds of thousands of dollars, at the expense of
21 thousands of Americans.
22

23 122. Absent the misstatements described herein, consumers would not have purchased
24 Symptoms of Delayed Menses #11.

25 123. Plaintiff seeks justice for herself and similarly-situated consumers of Symptoms
26 of Delayed Menses #11 by means of this action to enjoin the ongoing deceptive practices
27 described herein.
28

1 O. Arthritis Relief #15

2 124. Defendants advertise that Arthritis Relief #15 as a “natural formula to relieve
3 minor joint pain.” It purports to “temporarily relieve[] minor aches & pains associated with
4 arthritis and rheumatism.” *See* Exs. 1-2.

5 125. In purchasing Arthritis Relief #15, consumers rely upon various representations
6 Defendants make on the Product’s packaging label, such as the Product’s name itself, that it a
7 “Fast Acting,” “Natural Remedy for Minor Joint Pain” and is “100% All Natural,” among other
8 representations. *See* Ex. 2, Misrepresentation Chart.

9 126. The purportedly active ingredients of Arthritis Relief #15 include *Rhus*
10 *toxicodendron* (6X HPUS), *Colchicum autumnale* (3X HPUS), *Causticum* (3X HPUS), and
11 *Bryonia alba* (3X HPUS). However, the active ingredients, even if they were otherwise
12 effective, are so greatly diluted as to be effectively non-existent in the Product such that the
13 Product is ineffective for its intended uses. Consumers, trusting the Defendants’ assertions that
14 the Product relieves fevers are unwittingly spending hundreds of thousands of dollars each year
15 on worthless products. *See* Ex. 3, Dilution Chart.

16 127. The ingredients used in Arthritis Relief #15 provide no health benefits.
17 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
18 of any kind in humans because the odds are astronomically high that even a single molecule
19 derived from the original “extract” of the “active ingredients” could be present in the Product
20 sold to consumers.

21 128. Defendants know there are **no** or just **trace** amounts of active ingredients present
22 in Arthritis Relief #15 and therefore must be aware that Arthritis Relief #15 cannot relieve any
23 symptoms for which the Defendants advertise them.
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1 129. Arthritis Relief #15 is nothing more than a placebo, with zero or a trace of the
2 claimed active ingredients. Arthritis Relief #15 is sold in 32 ct. boxes and the price is
3 approximately \$6.99 per 32-pellet package. Hence, Defendants’ unfair and deceptive practices
4 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
5 Americans.

6 130. Absent the misstatements described herein, consumers would not have purchased
7 Arthritis Relief #15.
8

9 131. Plaintiff seeks justice for herself and similarly-situated consumers of Arthritis
10 Relief #15 by means of this action to enjoin the ongoing deceptive practices described herein.
11

12 P. Insomnia Relief #40

13 132. Defendants advertise that Insomnia Relief #40 as a “natural sleep-aid [that] uses
14 gentle, time-honored ingredient that work with your body to help relive occasional sleeplessness
15 & restlessness.” It purports to “temporarily reduce[] difficulty falling asleep.” *See* Exs. 1-2.

16 133. In purchasing Insomnia Relief #40, consumers rely upon various representations
17 Defendants make on the Product’s packaging label, such as the Product’s name itself, that it a
18 “Nighttime Relief,” and is “100% All Natural,” among other representations. *See* Ex. 2,
19 Misrepresentation Chart.
20

21 134. The purportedly active ingredients of Insomnia Relief #40 include *Chamomilla*
22 (*3X HPUS*), *Coffea cruda* (*3X HPUS*), and *Hyoscyamus niger* (*3X HPUS*). However, the active
23 ingredients, even if they were otherwise effective, are so greatly diluted as to be effectively non-
24 existent in the Product such that the Product is ineffective for its intended uses. Consumers,
25 trusting the Defendants’ assertions that the Product relieves fevers are unwittingly spending
26 hundreds of thousands of dollars each year on worthless products. *See* Ex. 3, Dilution Chart.
27
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1 135. The ingredients used in Insomnia Relief #40 provide no health benefits.
2 Moreover, at the stupendously high dilutions used to prepare the product, they can have no effect
3 of any kind in humans because the odds are astronomically high that even a single molecule
4 derived from the original “extract” of the “active ingredients” could be present in the Product
5 sold to consumers.

6
7 136. Defendants know there are **no** or just **trace** amounts of active ingredients present
8 in Insomnia Relief #40 and therefore must be aware that Insomnia Relief #40 cannot relieve any
9 symptoms for which the Defendants advertise them.

10 137. Insomnia Relief #40 is nothing more than a placebo, with zero or a trace of the
11 claimed active ingredients. Insomnia Relief #40 is sold in 32 ct. boxes and the price is
12 approximately \$6.99 per 32-pellet package. Hence, Defendants’ unfair and deceptive practices
13 have enriched them by hundreds of thousands of dollars, at the expense of thousands of
14 Americans.

15
16 138. Absent the misstatements described herein, consumers would not have purchased
17 Insomnia Relief #40.

18
19 139. Plaintiff seeks justice for herself and similarly-situated consumers of Insomnia
20 Relief #40 by means of this action to enjoin the ongoing deceptive practices described herein.

21 **OTHER PRODUCTS LABELED HOMEOPATHIC**

22 140. Defendants manufacture and advertise other products bearing a “homeopathic”
23 designation on their labels.

24
25 141. In purchasing those homeopathic products, consumers rely upon various
26 representations Defendants make on those products’ packaging label, including that the products
27 contain active ingredients.

1 142. The purportedly active ingredients in those products, however, even if they were
2 otherwise effective, are so greatly diluted as to be effectively non-existent, such that these
3 products are ineffective for their intended uses. Consumers, trusting the Defendants' assertions
4 that the products relieve various symptoms are unwittingly spending hundreds of thousands of
5 dollars each year on worthless products.

6 143. The ingredients used in these products provide no health benefits: At the
7 stupendously high dilutions used to prepare them, they can have no effect of any kind in humans
8 because the odds are astronomically high that even a single molecule derived from the original
9 "extract" of the "active ingredients" could be present in the homeopathic products sold to
10 consumers.
11

12 144. Defendants know there are **no** or just **trace** amounts of active ingredients present
13 in their products bearing a "homeopathic" designation on their labels and therefore must be
14 aware that the products cannot relieve any symptoms for which the Defendants advertise them.
15

16 145. Defendants' products bearing a "homeopathic" designation on their labels are
17 nothing more than placebos, with zero or trace amounts of the claimed active ingredients. These
18 products sell for the same approximate retail price as the other products manufactured by
19 Defendants alleged herein. Hence, Defendants' unfair and deceptive practices have enriched
20 them by hundreds of thousands of dollars, at the expense of thousands of Americans.
21

22 146. Absent the misrepresentations described herein, consumers would not have
23 purchased Defendants' products labeled "homeopathic."
24

25 147. Plaintiff seeks justice for herself and similarly-situated consumers by means of
26 this action to enjoin the ongoing deceptive practices described herein.
27
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SPECIFIC MISREPRESENTATIONS,
MATERIAL OMISSIONS, AND DECEPTIVE FACTS

(As to All Causes of Action Against All Defendants)

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148. Defendants' advertising of their Products is and has been the subject of an extensive and comprehensive, nationwide marketing campaign in various media including the internet.

149. Defendants primarily advertise and promote their Products through labeling claims on the front of the Products' package. Among other things, each Products' name clearly states what ailments and symptoms the particular product is designated for. For example, Baby Teething Relief provides a clear representation to consumers that it is designed to alleviate the symptoms identified in the name. *See* Exs. 1-2. Label descriptions on the Products' packaging, taken as a whole, further clarify what each of the Products is supposed to do. *See* Misrepresentation Chart, attached hereto as Ex. 2 for the challenged statements regarding all Products. Plaintiff and members of the Class relied on the Products' names and label statements in purchasing Defendants Products.

150. Defendants manufacture, distribute, advertise and sell their homeopathic Products as containing "active" ingredients. However, Defendants' Products are essentially placebos. Even if Defendants' Products contain the purportedly active ingredients, as listed on Defendants' Products' labels, those ingredients are ineffective and/or so greatly diluted as to be non-existence in the Products, such that the Products are ineffective for their intended uses. *See* Exs. 1-3.

151. Defendants also promote their Products' claims through their labels; that the products are "100% All Natural," among other representations. *See* Ex. 2, Misrepresentation Chart.

1 152. Defendants also use their websites, <http://humphreysusa.com/index.html> and
2 www.humphreysbaby.com to advertise and promote their homeopathic Products.

3 153. Defendants advertise their Products as effective in relieving various symptoms.
4 *See* Ex. 2, Misrepresentation Chart.

5 154. Defendants represent that “[Humphrey’s] products are based on traditional, time-
6 honored ingredients, updated to reflect the latest developments in health;” however, Defendants
7 do not explain to consumers the nature of homeopathic medicine or the method of measurement
8 used for its products. For example, Defendants fail to state what the dilution levels of X, C, K
9 and similar dilution levels mean, in a language understandable to an average consumer. *See* 21
10 C.F.R. § 201.10(d)(i). In fact, because of the dilutions of these purported “time-honored
11 ingredients,” Defendants’ Products are nothing more than a placebo.
12
13

14 155. Defendants’ labeling and advertising claims are false and deceptive because
15 Defendant’s Products are composed of nothing more than corn starch, natural flavoring, and
16 sucrose (sugar) onto which minute quantities of water have been absorbed. The Products thus
17 contain no active ingredients, and have no effect on ailments and symptoms they are advertised
18 for, and in fact did not alleviate the ailments or symptoms for which Plaintiff purchased them.
19

20 156. Defendants’ labeling and advertising claims are further false and deceptive
21 because there is no credible scientific evidence that Defendants’ Products have any effect on
22 various symptoms and ailments they purport to relieve and Defendants are free to indicate uses
23 without any regulatory oversight, a fact that is not disclosed to consumers.
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CLASS ACTION ALLEGATIONS

A. The Nationwide Consumer Class

157. Pursuant to Rules 23(a), (b)(3) and/or (b)(2) of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of herself and a nationwide consumer class (“Nationwide Class”) initially defined as follows:

- Nationwide Class for the Plaintiff and the Class’ breach of express warranty, breach of implied warranty of merchantability, violation of the Magnuson-Moss Warranty Act, Consumer Legal Remedies Act (CLRA, Cal. Civ. Code § 1750, *et seq.*), Unfair Competition Law (UCL, Cal. Bus. & Prof. Code § 17200, *et seq.*), False Advertising Law (FAL, Cal. Bus. & Prof. Code § 17500, *et seq.*), and unjust enrichment claims: All purchasers of Humphreys Pharmacal, Inc.’s and Dickinson Brands, Inc.’s products labeled “homeopathic”, including, but not limited to, Original Teething Pellets #3, Cherry Teething Pellets #3, Berry Teething Pellets #3, Simple Fever #1, Simple Diarrhea #4, Bedwetting Pellets #30, Cherry Colic Pellets #36, Cough Control #7, Cold Relief #77, Symptoms of Delayed Menses, Arthritis Relief #15, Insomnia Relief #40, and Simple Nervous Conditions #28, and all iterations/variations of the aforementioned products, for personal or household use and not for resale, in the United States from period June 20, 2008 to the present (the “Class Period”). Excluded from the nationwide consumer class are governmental entities, the Defendants, any entity in which the Defendants have a controlling interest, their employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies, class counsel and

1 their employees; and the judicial officers and their immediate family members
2 and associated court staff assigned to this case.

3 158. The proposed Class is so numerous that individual joinder of all its members is
4 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff
5 believes the total number of Class members is at least in the thousands and members of the Class
6 are numerous and geographically dispersed across the United States. While the exact number
7 and identities of the Class members are unknown at this time, such information can be
8 ascertained through appropriate investigation and discovery. The disposition of the claims of the
9 Class members in a single class action will provide substantial benefits to all parties and to the
10 Court.
11

12 159. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on grounds
13 generally applicable to the Class, thereby making final injunctive relief or corresponding
14 declaratory relief and damages as to their Products appropriate with respect to the Class as a
15 whole. In particular, Defendants have failed to disclose the true nature of the Products being
16 marketed and that the Products are nothing more than sugar pill.
17
18

19 160. There is a well-defined community of interest in the questions of law and fact
20 involved affecting the Plaintiff and the Class and these common questions of fact and law
21 include, but are not limited to, the following:
22

- 23 a. Whether the claims discussed above are true, misleading, or reasonably likely to
24 deceive;
25 b. Whether Defendants' alleged conduct violates public policy;
26 c. Whether the alleged conduct constitutes violations of the laws asserted herein;
27 d. Whether Defendants engaged in false or misleading advertising;
28

1 e. Whether the Plaintiff and Class members have sustained monetary loss and the
2 proper measure of that loss;

3 f. Whether the Plaintiff and Class members are entitled to declaratory and injunctive
4 relief.

5 161. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff
6 and all members of the Class have been similarly affected by the Defendant's common course of
7 conduct since they all relied on Defendants representations concerning their homeopathic
8 Products and purchased the Products based on those representations.

9 162. Plaintiff will fairly and adequately represent and protect the interests of the Class.
10 Plaintiff has retained counsel with substantial experience in handling complex class action
11 litigation in general and scientific claims, including for homeopathic drugs, in particular.
12 Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the
13 Class and have the financial resources to do so.

14 163. Plaintiff and the members of the Class suffered and will continue to suffer harm
15 as a result of the Defendants' unlawful and wrongful conduct. A class action is superior to other
16 available methods for the fair and efficient adjudication of the present controversy. Individual
17 joinder of all members of the Class is impracticable. Even if individual Class members had the
18 resources to pursue individual litigation, it would be unduly burdensome to the courts in which
19 the individual litigation would proceed. Individual litigation magnifies the delay and expense to
20 all parties in the court system of resolving the controversies engendered by Defendants' course
21 of conduct. The class action device allows a single court to provide the benefits of unitary
22 adjudication, judicial economy, and the fair and efficient handling of all Class members' claims
23 in a single forum. The conduct of this action as a class action conserves the resources of the
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1 parties and of the judicial system and protects the rights of the class members. Furthermore, for
2 many, if not most, a class action is the only feasible mechanism that allows an opportunity for
3 legal redress and justice.

4 164. Adjudication of individual Class members' claims with respect to the Defendants
5 would, as a practical matter, be dispositive of the interests of other members not parties to the
6 adjudication, and could substantially impair or impede the ability of other class members to
7 protect their interests.
8

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT**

11 *California Civil Code §§ 1750, et seq.*

12 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

13 165. Plaintiff repeats, realleges and incorporates by reference each and every allegation
14 contained above as if fully set forth herein.
15

16 166. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
17 California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff and the members of the Class are
18 consumers as defined by California Civil Code § 1761(d). The Products are goods within the
19 meaning of the Act.
20

21 167. Defendants violated and continue to violate the Act by engaging in the following
22 practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the
23 Class which were intended to result in, and did result in, the sale of the Products:
24

25 • Representing that [the Products have]...characteristics, ingredients, uses, benefits
26 or quantities which [the Products] do not have. (Civ. Code, § 1770, subd. (a) (5).)
27
28

1 • Representing that [the Products] are of a particular standard, quality or grade... if
2 they are of another. (Civ. Code, § 1770, subd. (a) (7).)

3 • Advertising [Products] ...with intent not to sell them as advertised. (Civ. Code, §
4 1770, subd. (a) (9).)

5 • Representing that [the Products] have been supplied in accordance with a
6 previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

7
8 168. Defendants violated the Act by representing through advertising of the Products
9 as described above, when they knew, or should have known, that the representations and
10 advertisements were false or misleading.

11
12 169. Plaintiff and members of the Class reasonably relied upon the Defendants'
13 representations as to the quality and attributes of the Products.

14 170. Plaintiff and other members of the Class were deceived by Defendants'
15 representations about the quality and attributes of the Products, including but not limited to the
16 purported benefits of the Products, taken as a whole, that their Products provide, *inter alia*,
17 Defendants advertise their Products are effective in relieving various symptoms and ailments.
18 *See Exs. 1-2*, for other false claims. Plaintiff and other Class members would not have
19 purchased the Products had they known the Defendants' claims were untrue, and had they known
20 the true nature of the Products.

21
22 171. Pursuant to section 1782 *et seq.* of the Act, Plaintiff notified the Defendants in
23 writing by certified mail of the particular violations of § 1770 of the Act as to their Products and
24 demanded the Defendants rectify the problems associated with the actions detailed above and
25 give notice to all affected consumers of its intent to so act. Defendants' wrongful business
26 practices regarding the Products constituted, and constitute, a continuing course of conduct in
27
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1 violation of the California’s Consumers Legal Remedies Act since Defendants are still
2 representing that the Products have characteristics, uses, benefits, and abilities which are false
3 and misleading, and have injured Plaintiff and the Class. A copy of Plaintiff Nigh's letter is
4 attached as **Exhibit 4** hereto.

5
6 172. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an order
7 of this Court enjoining the Defendants from continuing to engage in unlawful, unfair, or
8 deceptive business practices and any other act prohibited by law.

9
10 173. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class seek a Court
11 order enjoining the above-described wrongful acts and practices of the Defendants with respect
12 to their Products.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

15 *California Business and Professions Code §§ 17200, et seq.*

16 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

17
18 174. Plaintiff repeats, realleges and incorporates by reference each and every allegation
19 contained above as if fully set forth herein.

20 175. California’s Unfair Competition Law, Business and Professions Code § 17200
21 (the “UCL”) prohibits any “unfair, deceptive, untrue or misleading advertising.” For the reasons
22 discussed above, Defendants have engaged in unfair, deceptive, untrue and misleading
23 advertising in violation of the UCL.

24
25 176. The UCL also prohibits any “unlawful... business act or practice.” Defendants
26 violated the UCL’s prohibition against engaging in unlawful acts and practices by, *inter alia*,
27 making the representations and omissions of material facts, as set forth more fully herein, and by
28

1 violating among others, California Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California
2 Health and Safety Code §§ 109875, *et seq.*, Cal. Bus. & Prof. Code §§ 12601, *et seq.* (“Fair
3 Packaging and Labeling Act”), California Commercial Code § 2313(1), and the common law.
4 Such conduct is ongoing and continues to this date. *See* Exs. 2-3.

5 177. Plaintiff and the Class reserve the right to allege other violations of law which
6 constitute other unlawful business acts or practices.

7 178. California Business and Professions Code § 17200 also prohibits any “unfair”...
8 business act or practice.”

9 179. Defendants’ acts, omissions, misrepresentations, practices and nondisclosures as
10 alleged herein also constitute “unfair” business acts and practices within the meaning of the UCL
11 in that its conduct is substantially injurious to consumers, offends public policy, and is immoral,
12 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
13 benefits attributable to such conduct. Such conduct is ongoing and continues to this date.

14 180. Plaintiff alleges violations of consumer protection, unfair competition and truth in
15 advertising laws in California and other states resulting in harm to consumers. Plaintiff asserts
16 violation of the public policy of engaging in false and misleading advertising, unfair competition
17 and deceptive conduct towards consumers. This conduct constitutes violations of the unfair
18 prong of the UCL. Such conduct is ongoing and continues to this date.

19 181. There were reasonably available alternatives to further Defendants’ legitimate
20 business interests, other than the conduct described herein.

21 182. The UCL also prohibits any “fraudulent business act or practice.”
22
23
24
25
26
27
28

1 183. Defendants' claims, nondisclosures (i.e., omissions), and misleading statements,
2 as more fully set forth above, were false, misleading and/or likely to deceive the consuming
3 public within the meaning of the UCL. Such conduct is ongoing and continues to this date.

4 184. Defendants' conduct caused and continues to cause substantial injury to Plaintiff
5 and the other members of the Class. Plaintiff has suffered injury in fact as a result of
6 Defendants' unfair conduct.
7

8 185. Defendants have thus engaged in unlawful, unfair and fraudulent business acts
9 and practices and false advertising, entitling Plaintiff to injunctive relief against Defendants, as
10 set forth in the Prayer for Relief.
11

12 186. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an order
13 requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent business
14 practices and requiring Defendants to engage in a corrective advertising campaign.
15

16 187. Plaintiff also seeks an order for the disgorgement and restitution of all monies
17 from the sale of Defendants' Products, which were unjustly acquired through acts of unlawful,
18 unfair, and/or fraudulent competition.
19

20 **THIRD CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

22 *California Business and Professions Code §§ 17500, et seq.*

23 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

24 188. Plaintiff repeats, realleges and incorporates by reference each and every allegation
25 contained above as if fully set forth herein.

26 189. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
27 a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action,
28

1 Plaintiff purchased the Products in reliance upon Defendants' marketing claims. Plaintiff used
2 the Products as directed, but the Products did not worked as advertised, nor provided any of the
3 promised benefits.

4 190. Defendants' business practices as alleged herein constitute unfair, deceptive,
5 untrue, and misleading advertising pursuant to California Business and Professions Code §§
6 17500, *et seq.* because Defendants have advertised their Products in a manner that is untrue or
7 misleading, or that is known to Defendants to be untrue or misleading.
8

9 191. Defendants' wrongful business practices have caused injury to Plaintiff Nigh and
10 the Class.

11 192. Pursuant to section 17535 of the California Business and Professions Code,
12 Plaintiff and the Class seek an order of this court enjoining the Defendants from continuing to
13 engage in deceptive business practices, false advertising, and any other act prohibited by law,
14 including those set forth in the complaint.
15

16 193. Plaintiff also seeks an order for the disgorgement and restitution of all monies
17 from the sale of Defendants' Products, which were unjustly acquired through acts of unlawful,
18 unfair, deceptive and/or fraudulent competition.
19

20 **FOURTH CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY**

22 **(On Behalf of Plaintiff and all Class Members, as Against Defendants)**

23 194. Plaintiff repeats, realleges and incorporates by reference each and every allegation
24 contained above as if fully set forth herein.
25
26
27
28

1 195. On the Products' labels and through their marketing campaign as described above,
2 Defendants made affirmations of fact or promises, or description of goods, which formed "part
3 of the basis of the bargain" at the time of purchase. See Ex. 2, Misrepresentation Chart.

4 196. The warranties were breached because the Products did not live up to their
5 warranties, and that breach caused injury in the form of the lost purchase price for the Products.
6 See Cal. Com. Code § 2313(1); see also *Zwart v. Hewlett-Packard Co.*, 2011 WL 3740805 (N.D.
7 Cal., Aug. 23, 2011) (holding that online assertions can create warranties).

9 197. As a result of Defendants' breach of their warranties, Plaintiff and the Class have
10 been damaged in the amount of the purchase price of the Products they purchased.

11
12 **FIFTH CAUSE OF ACTION**

13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

14 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

15 198. Plaintiff repeats, realleges and incorporates by reference each and every allegation
16 contained above as if fully set forth herein.

17
18 199. Defendants, through their acts and omissions as set forth herein, in their sale,
19 marketing and promotion of their Products, made representations to Plaintiff and the members of
20 the Class that their Products provide the claimed health benefits, among other representations.
21 See Ex. 2, Misrepresentation Chart.

22 200. Plaintiff and the Class bought the Products manufactured, advertised and sold by
23 Defendants.

24
25 201. Defendants are merchants with respect to the goods of this kind which were sold
26 to Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an
27 implied warranty that those goods were merchantable.

1 202. However, Defendants breached that warranty implied in the sale of goods in that
2 their Products do not provide the purported claimed health benefits, as set forth in detail herein.

3 203. As a result of Defendants' conduct, Plaintiff and the Class did not receive goods
4 as impliedly warranted by Defendants to be merchantable in that they did not conform to the
5 promises and affirmations made on the container or label of the goods.
6

7 204. Plaintiff Nigh and the Class have sustained damages as a proximate result of the
8 foregoing breach of implied warranty in an amount to be determined at trial.

9 **SIXTH CAUSE OF ACTION**

10 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,**

11 **15 U.S.C. §§ 2301, et. seq.;**

12 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

13
14 205. Plaintiff repeats, realleges and incorporates by reference each and every allegation
15 contained above as if fully set forth herein.

16 206. Plaintiff brings this claim individually and on behalf of the members of the Class.

17 207. Defendants' Products are consumer products as defined in 15 U.S.C. § 2301(1).

18 208. Plaintiff and the other Class members are consumers as defined in 15 U.S.C. §
19 20301(3).
20

21 209. Defendants are the suppliers and warrantors as defined in 15 U.S.C. §§ 2301(4)
22 and (5).
23

24 210. In connection with the sale of the Products, Defendants issued written warranties
25 as defined in 15 U.S.C. § 2301(6), which warranted that the Products offer relief from various
26 ailments and symptoms as listed in Ex. 2, when in fact, these Products do not provide relief for
27 any of these ailments or symptoms.
28

1 211. By breaching the express written warranties stating that the Products relieve
2 ailments and symptoms as listed in Ex. 2, Defendants violated the statutory rights of Plaintiff
3 Nigh and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et
4 seq., thereby damaging Plaintiff Nigh and other Class members.

5 212. Plaintiff notified the Defendants in writing of their claims and that the Plaintiff is
6 acting on behalf of the Classes. *See* Ex. 4.
7

8 **SEVENTH CAUSE OF ACTION**

9 **UNJUST ENRICHMENT**

10 **(On Behalf of Plaintiff and the Class, as Against Defendants)**

11 213. Plaintiff repeats, realleges and incorporates by reference each and every allegation
12 contained above as if fully set forth herein.
13

14 214. As a result of Defendants' false and deceptive advertising, unfair, deceptive,
15 untrue or misleading business practices and misrepresentations and in consideration thereof,
16 during the relevant time period set forth above, the Class members paid money to and conferred
17 a benefit upon Defendants in connection with Defendants' Products sold to Class members,
18 which monies were originally in the Class members' possession.
19

20 215. Defendants received, retained or appropriated these benefits under such
21 circumstances that it would be inequitable and unjust to permit Defendants to retain such monies
22 at the expense of the Class members. Defendants, as a result of such conduct, became indebted
23 to the Class members for the sums paid to Defendants by Class members as set forth in detail
24 above, with interest thereon. No such sums have been paid to the Class members.
25

26 216. In fairness, all such monies, including all interest Defendants have earned on such
27 monies while in wrongful possession thereof, should be disgorged by Defendants and paid to
28

1 members of the Class under principles of unjust enrichment. No violation of law or public policy
2 would be promoted by such relief.

3 217. As a direct and proximate result of Defendants' conduct resulting in their unjust
4 enrichment, Plaintiff and Class members suffered injury, and therefore seek an order directing
5 Defendants to return the amount each of them were improperly induced to pay to Defendants,
6 plus interest thereon, as well as impose a constructive trust over such monies.
7

8 **PRAYER FOR RELIEF**

9 218. Wherefore, Plaintiff Nigh, on behalf of herself, all others similarly situated and
10 the general public, pray for judgment against the Defendants as to each and every cause of
11 action, including:
12

- 13 A. An order declaring this action to be a proper Class Action and requiring
14 Defendants to bear the costs of Class notice;
- 15 B. An order awarding declaratory and injunctive relief as permitted by law or
16 equity, including enjoining Defendants from continuing the unlawful
17 practices as set forth herein;
- 18 C. An order awarding restitution and disgorgement of Defendants' revenues
19 from the Products to Plaintiff Nigh and the proposed Class members.
- 20 D. An order compelling Defendants to engage in a corrective advertising
21 campaign to inform the public concerning the true nature of their Products;
- 22 E. An order awarding attorneys' fees and costs to Plaintiff Nigh and the Class;
- 23 F. An order providing for all other such equitable relief as may be just and
24
25
26 proper.
27
28

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: November 7, 2012

/s/ Ronald A. Marron

Ronald A. Marron

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Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

Humphrey's Teething Relief Very Cherry Pellets



Drug Facts

Active Ingredients	Purpose
Calcarea Phosphorica 3X HPUS.....	supports dentition
Chamomilla 3X HPUS.....	irritability
Coffea Cruda 3X HPUS.....	wakefulness & diuresis
Belladonna 3X HPUS (0.0003% alkaloids).....	redness and inflammation

Uses temporarily relieves the symptoms of simple restlessness and wakeful irritability due to cutting teeth.

Warnings
Ask a doctor before use if pregnant or nursing.
Consult a physician if:

- symptoms persist for more than 7 days or if irritation persists
- inflammation, fever or infection develops

 Keep this and all medications out of the reach of children.
 Do not use if imprinted tamper band is broken or missing. In case of accidental overdose, contact a poison control center immediately.
 In case of emergency, the manufacturer may be contacted 24 hours a day, 7 days a week at 800/624-9659.

Directions
Dissolve 2 to 3 tablets under the tongue 4 times per day. If you prefer, tablets may be dissolved in a teaspoon of water and then given to the child. If the child is restless or wakeful, 2 tablets every hour for 6 doses or as recommended by a licensed health care professional. Teething Tablets are very soft and dissolve almost instantly under the tongue.
 Please note: if your baby has been crying or is very upset, your baby may fall asleep after using this product because the pain has been relieved and your child can rest.

Inactive Ingredient Lactose N.F.

A friend of your family since 1903.
 Hyland's, Inc. Los Angeles, CA 90044 800/624-9659

Humphrey's Teething Relief Original Pellets



Humphrey's Teething Pellets #3 Very Cherry



Humphrey's Teething Pellets #3



Humphrey's Teething Relief Belladonna Free Very Cherry Pellets



Humphrey's Teething Relief Belladonna Free Original Pellets



Humphrey's Teething Relief Very Cherry Swift Strips



Humphrey's Teething Relief Very Cherry Swift Strips Belladonna Free



Humphrey's Simple Fever #1



Humphrey's Simple Diarrhea #4



Humphrey's Very Cherry Colic Pellets #36



Humphrey's Bedwetting Pellets #30



Humphrey's Cold Relief #77



Humphrey's Cough Control #7



Humphrey's Symptoms of Delayed Menses #11



Humphrey's Arthritis Relief #15



Humphrey's Insomnia Relief #40



EXHIBIT 2

Humphrey's Challenged Advertising Claims Chart

Children's Products				
Humphreys Product	Challenged Statements	General Theories for Relief		
Baby Teething Relief (Very Cherry and Original)	<p>"Teething Relief"</p> <p>"100% All Natural"</p> <p>"Lactose Free"</p> <p>"Fast Acting"</p> <p>"Relieves Pain & Inflammation"</p> <p>"Temporarily relieves minor irritation, pain and wakefulness associated with teething in infants"</p> <p>"Relieves irritation of swollen gums"</p> <p>"reduces pain and inflammation"</p> <p>"calms restlessness and irritability"</p> <p>"Multi-symptom relief of irritation, irritability, restlessness and inflammation of the gums"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs.	Efficacy statements are entirely within the Defendant's discretion.
Baby Teething Relief – Belladonna Free (Very Cherry & Original)	<p>"100% All-Natural"</p> <p>"Lactose Free"</p> <p>"Relieves Pain & Irritability"</p> <p>"Aspirin, Ibuprofen, Benzocaine & Belladonna Free"</p> <p>"Fast Acting"</p> <p>"Relieves pain of swollen gums"</p> <p>"Calms restlessness and irritability"</p> <p>"Supports detention"</p> <p>"Temporarily relieves minor pain,</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved	Efficacy statements are entirely within the Defendant's discretion.

Humphrey's Challenged Advertising Claims Chart

Children's Products					
Humphreys Product	Challenged Statements	General Theories for Relief			
	irritability and wakefulness associated with teething in infants" "gently soothe discomfort" "Teething Remedy"			FDA monographs.	
Baby Teething Relief (Cherry Swift Strips) – Belladonna Free	"100% All-Natural" "Lactose Free" "Sugar Free" "Melts Instantly" "Relieves Pain & Irritability" "Aspirin, Ibuprofen, Benzocaine & Belladonna Free" "Triple- Action Teething Remedy" "Relieves pain of swollen gums" "Calms restlessness and irritability" "Supports dentition" "temporarily relieves minor irritation, pain and wakefulness associated with teething in infants" "Medicated Strips"	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Contains Polysorbate 80, a chemical that is not natural, formed from oleic acid and sorbitan.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.
Teething Relief Cherry Swift Strips	"100% All Natural" "Lactose Free" "Sugar Free" "Relieves pain & Inflammation"	X, and similar homeopathic dilution designations,	Contains Polysorbate 80, a chemical	Sold OTC with other non-homeopathic OTC products	Efficacy statements are entirely within the Defendant's

Humphrey’s Challenged Advertising Claims Chart

Children’s Products					
Humphreys Product	Challenged Statements	General Theories for Relief			
	“Aspirin & Ibuprofen Free” “Melts Instantly” “Triple-Action Teething Remedy” “Relieves irritation of swollen gums” “Reduces Pain and inflammation” “Calms restlessness and irritability” “effective relief of pain & discomfort” “temporarily relieves minor irritation, pain and wakefulness associated with teething in infants” “medicated strips”	are not understandable to the average consumer.	that is not natural, formed from oleic acid and sorbitan.	that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	discretion.
Teething Relief – Pellets (Very Cherry & Original)	“100% All Natural” “Lactose Free” “Fast Acting” “Aspirin and Ibuprofen Free” “Relieves Pain & Inflammation” “Relieves irritation of swollen gums” “Reduces pain and inflammation” “Calms restlessness and irritability” “temporarily relieves minor irritation, pain and wakefulness associated with teething in infants”	X, and similar homeopathic dilution designations, are not understandable to the average consumer.		Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.

Humphrey's Challenged Advertising Claims Chart

Children's Products				
Humphreys Product	Challenged Statements	General Theories for Relief		
Teething Pellets #3 (Very Cherry & Original)	<p>"Fast Acting"</p> <p>"Lactose Free"</p> <p>"100% Natural"</p> <p>"Safe Effective Relief for Children"</p> <p>"gently soothe discomfort"</p> <p>"temporarily relieves minor irritation, pain and wakefulness associated with teething in infants."</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.
Simple Fever #1	<p>"Aspirin Free"</p> <p>"Gentle Formula"</p> <p>"Safe & Effective"</p> <p>"100% Natural"</p> <p>"Safe, All Natural Fever Reducer"</p> <p>"Contains no animal ingredients"</p> <p>"natural ingredients that work gently to help your body return to a natural state of health"</p> <p>"temporarily reduces fever"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA	Efficacy statements are entirely within the Defendant's discretion.

Humphrey's Challenged Advertising Claims Chart

Children's Products				
Humphreys Product	Challenged Statements	General Theories for Relief		
			monographs	
Simple Diarrhea #4	<p>"natural ingredients that work with your body to provide gentle relief"</p> <p>"temporarily controls and relieves symptoms of diarrhea"</p> <p>"All Natural Anti-Diarrheal Remedy"</p> <p>"100% Natural"</p> <p>"Fast Acting"</p> <p>"Gentle Formula"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.
Colic Pellets #36 (Very Cherry)	<p>"natural ingredients to gently relieve occasional discomfort and wakefulness"</p> <p>"relieves the symptoms referred to as gas, including bloating and pressure, and helps to reduce difficulty falling asleep."</p> <p>"Children's Gas & Discomfort Relief"</p> <p>"100% Natural"</p> <p>"100% All Natural"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved	Efficacy statements are entirely within the Defendant's discretion.

Humphrey’s Challenged Advertising Claims Chart

Children’s Products					
Humphreys Product	Challenged Statements	General Theories for Relief			
	“Fast Acting” “Lactose Free” “Natural Flavor”			FDA monographs	
Bedwetting Pellets #30	“The gentle, all natural remedy for bedwetting” “temporarily relieves the symptoms of bladder irritation and incontinence in children” “contains no animal ingredients” “Relief For Children’s Incontinence” “100% Natural” “100% All Natural” “Fast Acting” “Pleasant Tasting” “Safe & Effective”	X, and similar homeopathic dilution designations, are not understandable to the average consumer	Contains Cantharis (a beetle) which contradicts the “no animal ingredients” claim. These statements are confusing for consumers.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.

Humphrey's Challenged Advertising Claims Chart

Cold & Flu Remedies				
Humphrey's Product	Challenged Statements	General Theories for Relief		
Cold Relief #77	<p>"100% All Natural"</p> <p>"Non-Drowsy Relief"</p> <p>"All Natural Multi Symptom Relief"</p> <p>"Treats Sneezing, Runny Nose, Coughing & Fever"</p> <p>"100% Natural"</p> <p>"alleviate symptoms of the common cold"</p> <p>"temporary relief of symptoms of the common cold, such as fever, chills, sneezing, runny nose & coughing as well as red, itchy & watery eyes"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.
Cough Control #7	<p>"specially formulated to provide effective, long lasting relief"</p> <p>"This all-natural formula is non-habit forming and won't cause drowsiness"</p> <p>"temporarily relieves cough due to minor bronchial irritation associated with the common cold."</p> <p>"All Natural Cough Supressant"</p> <p>"100% Natural"</p> <p>"Fast Acting"</p> <p>"Non-habitual"</p> <p>"Lactose Free"</p> <p>"100% All Natural"</p>	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.

Humphrey’s Challenged Advertising Claims Chart

Cold & Flu Remedies				
Humphrey’s Product	Challenged Statements	General Theories for Relief		
	“Non-Drowsy Relief”			

Pain Relief Remedies					
Humphrey’s Product	Challenged Statements	General Theories for Relief			
Symptoms of Delayed Menses #11	“100% All Natural” “Gentle Formula” “Aspirin Free” “100% Natural” “Contains no animal ingredients” “natural ingredients to gently stimulate your body to return to it’s natural state of health” “temporarily relieves symptoms associated with delayed menses, such as cramps, backache, anxiety, mood changes, nervous tension, irritability, headache and bloating”	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Contains Sepia (from cuttlefish)- an animal product. Contradiction between the ingredient and “no animal ingredients” claim is confusing to consumers.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.

Humphrey’s Challenged Advertising Claims Chart

Pain Relief Remedies				
Humphrey’s Product	Challenged Statements	General Theories for Relief		
Arthritis Relief #15	“relieve minor joint pain.” “This effective remedy works to encourage your body to return to a natural state of health.” “temporarily relieves minor aches & pains associated with arthritis and rheumatism.” “Natural Remedy For Minor Joint Pain” “Gentle Natural Relief” “100% Natural” “100% All Natural” “Fast Acting” “Lactose Free” “Safe & Effective”	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA monographs	Efficacy statements are entirely within the Defendant's discretion.
Insomnia Relief #40	“Natural sleep-aid” “help relieve occasional sleeplessness & restlessness” “temporarily relieves difficulty falling asleep” “Gentle, Effective Nighttime Relief” “100% Natural” “Sleep Naturally!” “100% All Natural” “Gentle Formula”	X, and similar homeopathic dilution designations, are not understandable to the average consumer.	Sold OTC with other non-homeopathic OTC products that are subject to other regulations (i.e. FDA regulations) and carry approved FDA	Efficacy statements are entirely within the Defendant's discretion.

Humphrey’s Challenged Advertising Claims Chart

Pain Relief Remedies			
Humphrey’s Product	Challenged Statements	General Theories for Relief	
	“Non-Habitual”		monographs
Other Products Labeled Homeopathic	“Active Ingredients”	Labeled as containing “active” ingredients	

EXHIBIT 3

Humphreys Product	“Active” Ingredient	Dilution	Purpose
Baby Teething Tablets (Very Cherry Pellets, Original Pellets, Cherry Swift Strips, Very Cherry Teething Pellets #3, Teething Pellets #3)	Chamomilla	3X (= 1/1,000 dilution)	Irritation reliever
	Coffea Cruda	3X (= 1/1,000 dilution)	Calming aid
	Belladonna	3X (= 1/1,000 dilution)	Anti-inflammatory
	Calcarea Phosphorica	12X (= 1/1,000,000,000,000 dilution)	Supports dentition
Baby Teething Tablets – Belladonna Free (Very Cherry, Original, Cherry Swift Strips)	Chamomilla	3X (= 1/1,000 dilution)	Irritation reliever
	Coffea Cruda	3X (= 1/1,000 dilution)	Calming aid
	Calcarea Phosphorica	12X (= 1/1,000,000,000,000 dilution)	Supports dentition
Simple Fever #1	Aconitum napellus	3X (= 1/1,000 dilution)	Fever reducer
	Veratrum viride	2X (= 1/100 dilution)	Fever reducer
	Bryonia alba	3X (= 1/1,000 dilution)	Fever reducer
	Belladonna	3X (= 1/1,000 dilution)	Fever reducer
Simple Diarrhea #4	Cinchona officinalis	3X (= 1/1,000 dilution)	Anti-diarrheal
	Ipecacuanha	3X (= 1/1,000 dilution)	Anti-diarrheal
	Calcarea carbonica	12X (= 1/1,000,000,000,000 dilution)	Anti-diarrheal
	Chamomilla	3X (= 1/1,000 dilution)	Anti-diarrheal
Bedwetting Pellets #30	Cantharis	6X (= 1/1,000,000 dilution)	Pain Reliever
	Mercurius corrosivus	6X (= 1/1,000,000 dilution)	Pain & irritation reliever

Humphreys Product	“Active” Ingredient	Dilution	Purpose
Bedwetting Pellets #30 (cont’d)	Causticum	3X (= 1/1,000 dilution)	Bladder control
	Equisetum hyemale	3X (= 1/1,000 dilution)	Bladder control
Very Cherry Colic Pellets #36	Carbo vegetabilis	12X (= 1/1,000,000,000,000 dilution)	Anti-gas
	Chamomilla	1X (= 1/10 dilution)	Calming-aid
	Avena Sativa	1X (= 1/10 dilution)	Sleep-aid
Cough Control #7	Belladonna	3X (= 1/1,000 dilution)	Cough suppressant
	Phosphorus	6X (= 1/1,000,000 dilution)	Cough suppressant
	Spongia tosta	2X (= 1/100 dilution)	Cough suppressant
	Byonia alba	3X (= 1/1,000 dilution)	Cough suppressant
Cold Relief #77	Arsenicum album	6X (= 1/1,000,000 dilution)	Antihistaminic
	Gelsemium sempervirens	3X (= 1/1,000 dilution)	Fever reducer
	Allium cepa	3X (= 1/1,000 dilution)	Antihistaminic
	Aconitum napellus	3X (= 1/1,000 dilution)	Cough suppressant
Symptoms of Delayed Menses #11	Cimicifuga racemosa	3X (= 1/1,000 dilution)	Pain reliever
	Pulsatilla	3X (= 1/1,000 dilution)	Pain reliever
	Sepia	3X (= 1/1,000 dilution)	Nervous tension reliever
Arthritis Relief #15	Rhus toxicodendron	6X (= 1/1,000,000 dilution)	Analgesic
	Colchicum autumnale	3X (= 1/1,000 dilution)	Analgesic

Humphreys Product	“Active” Ingredient	Dilution	Purpose
Arthritis Relief #15 (cont’d)	Causticum	3X (= 1/1,000 dilution)	Analgesic
	Byonia alba	3X (= 1/1,000 dilution)	Analgesic
Insomnia Relief #40	Chamomilla	3X (= 1/1,000 dilution)	Restlessness
	Coffea Cruda	3X (= 1/1,000 dilution)	Nighttime sleep-aid
	Hyoscyamus niger	3X (= 1/1,000 dilution)	Nighttime sleep-aid
Other Products Labeled Homeopathic	Labeled as containing “active” ingredients		

EXHIBIT 4

Law Offices of

Ronald A. Marron

A Professional Law Corporation

3636 Fourth Avenue, Ste 202
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

June 20, 2012

Via: Certified Mail, (receipt acknowledgment with signature requested)

Humphreys Pharmacal, Inc.
31 East High Street
East Hampton, CT 06424-1021

RE: NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **HUMPHREYS PHARMACAL, INC.** ("YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Melissa Nigh, who purchased Humphreys teething pellets at a Target or Rite Aid stores in Morgan Hill, California in 2009. Ms. Nigh was exposed to and saw YOUR claims about the product, purchased the product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely market YOUR products by putting false and misleading claims on the labels. For example, YOU claim that the Humphreys teething pellets provide "Teething Relief." The product's label also includes the following statements: "Relieves Pain & Inflammation," "100% Natural," "Aspirin & Ibuprofen Free," "Fast Acting." The purported active ingredients in this product are *Chamomilla* (3X HPUS), *Coffea cruda* (3X HPUS), *Belladonna* (3X HPUS) and *Calcarea Phosphorica* (12X HPUS).

In fact, all of YOUR products, not only the teething pellets, are essentially placebos. In addition to the teething pellets, the Products which bear the name Humphrey's Baby Teething Relief "Cherry Swift Strips", Humphrey's Simple Fever #1, Humphrey's Simple Diarrhea #4, Humphrey's Simple Bedwetting Pellets #30, Humphrey's Very Cherry Colic Pellets #36, Humphrey's Cough Control #7, Humphrey's Cold Relief #77, Humphrey's Symptoms of Delayed Menses #11, Humphrey's Arthritis Relief #15, and Humphrey's

Insomnia Relief #40 provide a clear representation to consumers that the Product is designed to alleviate the symptoms identified in the name. Label descriptions on the Product packaging, taken as a whole, further clarify what each Product is supposed to do.

These Products are advertised as remedies for "irritation, irritability, restlessness," "inflammation of the gums," "incontinence," "bladder pain and irritation," "fever, chills, sneezing, runny nose and coughing," "cramps, backache, anxiety, mood changes, nervous tension, irritability, headaches, and bloating," and "minor joint pain."

However, even if YOUR products contain the purportedly active ingredients, those ingredients are ineffective and/or so greatly diluted as to be non-existent in the product, such that the product is ineffective for its intended uses. The trace amounts of ingredients allegedly contained in YOUR products do not aid in the suggested remedial efficacy.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR products under the representation that they provide significant health benefits, when in fact they do not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Ms. Melissa Nigh, and all other similarly-situated California and U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

In addition, California Civil Code Section 1780 (b) provides in part that: “Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars (\$5,000)**... [emphasis added]”.

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Melissa Nigh,

and all others similarly situated

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Melissa Nigh, on behalf of herself, all others similarly situated and the general public

(b) County of Residence of First Listed Plaintiff Morgan Hill, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Ronald A. Marron 3636 Fourth Ave, Suite 202, San Diego, CA 92103 (619) 696-9006

DEFENDANTS

Humphreys Pharmacal, Incorporated, a Delaware Corporation, Dickinson Brands, Inc., a Delaware Corporation

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

'12CV2714 MMADHB

Attorneys (If Known) Robinson & Cole 280 Trumbull Street, Hartford, CT 06103-3597 (860) 275-8297

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332(d)(2)(A) - Magnuson-Moss Warranty Act

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/07/2012 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE