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13 Attorneys for Defendant,
14 WALGREEN CO. INC.

15
16 IN UNITED STATES DISTRICT COURT FOR THE
17 SOUTHERN DISTRICT OF CALIFORNIA
18

19 DANIELLE DEMISON and TERI
20 SPANO,
on behalf of themselves, all others
21 similarly situated, and the general
public,

22 Plaintiffs,

23 vs.

24 WALGREEN CO. INC., an Illinois
25 corporation; DOES 1-20, inclusive,

26 Defendants.
27
28

Case No.: '14CV0306 LAB WVG

**DEFENDANT WALGREEN CO.
INC.'S NOTICE OF REMOVAL
OF ACTION TO FEDERAL
COURT PURSUANT TO 28
U.S.C. §§ 1332, 1441, 1446, AND
1453**

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA; TO THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO; TO PLAINTIFFS; AND TO PLAINTIFFS' COUNSEL OF RECORD:

Please take notice that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Walgreen Co. Inc. ("Walgreen") hereby removes the above-captioned action from the Superior Court for the State of California, San Diego County, to the United States District Court for the Southern District of California. Diversity jurisdiction exists pursuant to 28 U.S.C. § 1441 and the federal diversity statute as amended by the Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(a) and (d). Attached as Exhibit A to this Notice of Removal is a copy of all court filings provided to Walgreen in this action. As grounds for removal, Walgreen states as follows:

I. STATE COURT PROCEEDINGS

1. On December 31, 2013, plaintiffs Danielle Demison and Teri Spano ("Plaintiffs") initiated this action by filing a complaint (the "Complaint") purportedly on behalf of themselves, all others similarly situated, and the general public against Walgreen Co. Inc. ("Walgreen" or "Defendant") in the State of California Superior Court, San Diego County, under the caption *Demison, et al. v. Walgreen Co. Inc., et al.*, Case No. 37-2013-00082691-CU-BT-CTL (the "State Court Action").

2. The State Court Action sets forth claims against Walgreen and twenty unnamed defendants (together with Walgreen, the "Defendants") for alleged violations of the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750,

1 *et seq.*; the California Unfair Competition Law, Cal. Bus. & Profs. Code § 17200,
2 *et seq.*; and the California False Advertising Law, Cal. Bus. & Profs. Code §
3 17500, *et seq.*; and for alleged breaches of express and implied warranties under
4 California law. These alleged breaches and violations all arise out of Walgreen’s
5 advertising, marketing, and labeling of its Walgreens-brand products Walgreens
6 Brand Ear Pain Relief (“Ear Pain Relief”) and Well at Walgreens Homeopathic Ear
7 Ache Drops (“Ear Ache Drops” and, together with Ear Pain Relief, the
8 “Products”). Plaintiffs make unique allegations as to each Product marketed and
9 sold by Walgreen, and allege that Walgreen misrepresented the uses, benefits,
10 effectiveness, and other characteristics of both Products. The Complaint seeks
11 compensatory damages, punitive damages, “restitution and disgorgement,”
12 declaratory relief, injunctive relief, an award of attorneys’ fees and costs, an order
13 “compelling Defendants to engage in a corrective advertising campaign to inform
14 the public concerning the true nature of the Products, including a recall of the
15 falsely and deceptively labeled Products.” The Complaint also seeks to certify a
16 class consisting of “[a]ll purchasers of [the Products] in California and states in the
17 United States with consumer protection laws similar to California, for personal or
18 household use and not for resale, from December 30, 2009 to the present” (the
19 “Plaintiff Class”). Walgreen was effectively served with the Complaint on January
20 10, 2014 via service on its designated service agent, Corporation Service
21 Company.

22 3. On February 10, 2014, Walgreen timely filed its answer to the
23 Complaint in the State Court Action (the “Answer”). In addition to generally
24 denying the allegations in the Complaint, the Answer also asserts several
25 affirmative defenses, including the defense that Walgreen’s labeling of the
26 Products is consistent with federal requirements and that Plaintiffs’ claims are
27 therefore pre-empted. Walgreen further maintains that its labeling, marketing,
28

1 advertising, and promotion of the Products are not in any way misleading,
2 inaccurate, and/or deceptive. Walgreen also denies that Plaintiffs or anyone they
3 purport to represent have suffered any injuries or damages as the result of any of
4 the alleged conduct attributed to Walgreen.

5 4. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).
6 *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351-52 (1999).

7 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS**
8 **JURISDICTION OVER THE MATTER PURSUANT TO 28 U.S.C.**
9 **§§ 1332, 1441, AND 1453**

10 5. Removal of the State Court Action is proper under 28 U.S.C.
11 §§ 1332(d) and 1453 because this case is (1) a proposed “class action” as defined
12 in 28 U.S.C. §§ 1332(d)(1)(B) (2) wherein the named Plaintiffs are citizens of a
13 state different from Walgreen and (3) the amount in controversy exceeds
14 \$5,000,000. Alternatively, removal is proper pursuant to 28 U.S.C. §§ 1332(a) and
15 1441(a) because (1) there is complete diversity of citizenship between the Plaintiff
16 Class and Walgreen and (2) the amount in controversy exceeds \$75,000.

17 **A. There is Complete Diversity Between the Plaintiff Class and**
18 **Walgreen**

19 6. Complete diversity exists under 28 U.S.C. § 1332 between Plaintiffs
20 and Walgreen. In evaluating diversity for purposes of removal, courts assess an
21 entity’s citizenship by examining (1) the state under the laws of which it is
22 organized, and (2) the state of its “principal place of business.” 28 U.S.C.
23 § 1333(c)(1); *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1027, 1028 (9th Cir.
24 2009). Under either prong of this rule, Walgreen is not a citizen of the same state
25 as Plaintiffs.

26 7. As alleged in the Complaint, the named Plaintiffs resided in California
27 during the proposed class period, and both still reside in that state. Compl. ¶¶ 4-5.

1 The Complaint also specifies that the members of the putative Plaintiff Class are
2 purchasers of the Products “in California and states in the United States *with*
3 *consumer protection laws similar to California*,” without specifying more clearly
4 which states meet this broad, vague definition. Compl. ¶ 86.

5 8. By contrast, at the time the Complaint was filed and up to the filing of
6 this Notice of Removal, Walgreen was and still is organized and existing as a
7 public corporation under the laws of Delaware. *See* Compl. ¶ 6; *accord*
8 Declaration of Heather Hughes in Support of Walgreen Co. Inc.’s Notice of
9 Removal (“Decl.”) ¶ 3. Further, as explained below, its principal place of business
10 was, and still is, located in Illinois. Decl. ¶ 4; *accord* Compl. ¶ 6 (alleging that
11 Walgreen’s “principal place of business” is located in Deerfield, Illinois).

12 9. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010), the United States
13 Supreme Court held that the term “principal place of business,” for the purposes of
14 the federal diversity jurisdiction statute, refers to the corporation’s “nerve
15 center”—that is, “where the corporation’s high level officers direct, control, and
16 coordinate the corporation’s activities.” *Hertz Corp.*, 130 S. Ct. at 1186. The
17 Court noted that, “in practice[,]” this nerve center will “normally be the place
18 where the corporation maintains its headquarters.” *Id.* at 1192.

19 10. Under the *Hertz* analysis, Walgreen is a citizen of Illinois because
20 virtually all of its high level officers live, work, and manage the company from
21 Walgreen’s “nerve center” in Illinois. Walgreen’s headquarters are located in
22 Deerfield, Illinois, and all of the company’s management is operated through that
23 location. Decl. ¶ 4. Its key policies and procedures are all established and
24 administered from that same Deerfield office. *Id.* ¶ 5. Illinois is where the
25 company’s high level officers reside, where its corporate minute books and records
26 are maintained, and where substantially all of its critical operational and
27 administrative personnel are based. *Id.* ¶¶ 4-5. By contrast, Walgreen does not
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1 maintain any corporate office or principal place of business in California, nor do
2 any of its officers work or reside in California. *Id.* ¶ 4.

3 11. For purposes of diversity jurisdiction, therefore, Walgreen is a citizen
4 of either Delaware or Illinois, but not California. At the very least, Walgreen is
5 completely diverse from both named Plaintiffs, as there is no basis for deeming it a
6 citizen of California for diversity purposes. Further, until Plaintiffs specify more
7 clearly which states have “consumer protection laws similar to California” for
8 purposes of defining the class, Walgreen submits that it is completely diverse from
9 the putative members of the Plaintiff Class.

10 **B. Removal Is Proper Pursuant to the Class Action Fairness Act**

11 12. This Court has original subject matter jurisdiction over this action
12 pursuant to CAFA. *See* 28 U.S.C. § 1332(d). Under CAFA, a federal district court
13 has original jurisdiction over (1) any “class action” composed of 100 or more
14 putative class members, (2) where *any* member of the proposed class is a citizen of
15 a state different from *any* defendant, and (3) the amount in controversy exceeds
16 \$5,000,000 (exclusive of interest and costs). 28 U.S.C. § 1332(d); *see also*
17 *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 977-78 (9th Cir. 2013).

18 **1. The Putative Class Is Sufficiently Numerous**

19 13. As alleged, this case is a class action consisting of at least 100 or more
20 putative class members. The Complaint defines the Plaintiff Class broadly to
21 include “[a]ll purchasers of [the Products] in California and states in the United
22 States with consumer protection laws similar to California, for personal or
23 household use and not for resale, from December 30, 2009 to the present.” Compl.
24 ¶ 86. During the relevant class period, Walgreen sold over 450,000 units of the
25 Products throughout the United States. *See* Decl. ¶ 7. The putative class is thus
26 virtually certain to have more than 100 members, and the first CAFA requirement
27 is satisfied.

2. At Least Minimum Diversity Exists

14. In this case, the two named Plaintiffs are residents of California, whereas Walgreen is a citizen of either Delaware or Illinois. *See* Part II.A., *supra*. Accordingly, there is at least the minimum diversity of citizenship required under CAFA here. 28 U.S.C. § 1332(d)(2)(A); *Velasquez v. HMS Host USA, Inc.*, 2012 U.S. Dist. LEXIS 172801, at *16 (“CAFA allows for federal jurisdiction where only minimal, rather than complete, diversity exists”) (citing *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 680 (9th Cir. 2006)).

3. The Amount Placed in Controversy Exceeds \$5,000,000

15. Under CAFA, the amount in controversy requirement may be based on the aggregation of the claims of all the potential class members. 28 U.S.C. § 1332(d)(6). “[W]here it is unclear or ambiguous from the face of a state-court complaint whether the requisite amount in controversy is pled,” a defendant seeking CAFA removal need only show “by a preponderance of the evidence” that the amount at stake will exceed \$5,000,000. *Guglielmino v. McKee Goods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007) (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *accord Abrego Abrego*, 443 F.3d at 683 (applying preponderance of the evidence standard to amount in controversy in case removed under CAFA). “Under this burden, the defendant must provide evidence establishing that it is ‘more likely than not’ that the amount in controversy exceeds [the jurisdictional threshold].” *Sanchez*, 102 F.3d at 404. Further, where, as here, a complaint seeks injunctive or other equitable relief, the value of the result sought to be accomplished may be counted in calculating the amount in controversy. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977); *Guglielmino*, 506 F.3d at 701 (9th Cir. 2007). Accordingly, the amount in controversy includes not only the potential damages the putative class is seeking,

1 but also the defendant's costs of complying with any injunctive relief sought by the
2 class.

3 16. Although the Complaint does not set forth a specific *ad damnum*, it
4 seeks (1) compensatory and punitive damages; (2) "restitution and disgorgement of
5 Defendants' revenues from the Products to Plaintiffs and the proposed class
6 members"; (3) injunctive and equitable relief, including but not limited to an order
7 "compelling Defendants to engage in a corrective advertising campaign to inform
8 the public concerning the true nature of the Products, including a recall of the
9 falsely and deceptively labeled Products"; and (4) an award of attorneys' fees. It is
10 not only "more likely than not" but virtually certain that, aggregated across the
11 putative class, these damages and costs would easily exceed \$5,000,000.

12 17. To begin with, Plaintiffs seek both compensatory and restitutionary
13 damages for a sprawling class consisting of all purchasers of the Products in
14 California and in all other states with consumer protection laws "similar to
15 California." The Complaint also specifically seeks to force Walgreen to disgorge
16 all its revenues from sales of the Products during the class period. Given that
17 Walgreen's sales of the Products from 2010 to 2014 exceeded \$4,000,000, the
18 Complaint's request for restitution and disgorgement would, by itself, nearly
19 satisfy the jurisdictional threshold. *See* Decl. ¶ 7.

20 18. Walgreen would also face substantial costs in complying with
21 injunctive relief in this action, particularly a large-scale repackaging, relabeling,
22 and recall of the Products across all states "with consumer protection laws similar
23 to California." Walgreen sells the Products in stores bearing the Walgreens name
24 throughout the United States. Decl. ¶ 6. If an injunction was issued against
25 Walgreen targeting its sale and labeling of the Products in any state, Walgreen
26 would have to engage in a massive nationwide effort to relabel and/or recall its
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1 Products and to issue new advertisements in order to guarantee its compliance. *Id.*
2 ¶ 8.

3 19. Such an injunction would therefore inflict two major types of potential
4 losses on Walgreen. *Id.* ¶ 10. The first category consists of costs and losses
5 relating to effecting a complete relabeling and repackaging of the Products still
6 within Walgreen's control, such as the inventory currently on its stores' shelves.
7 *Id.* As the accompanying declaration makes clear, there is simply no practicable
8 way for Walgreen to change the labels and packages for its Products on a
9 piecemeal, state-by-state basis. *See id.* ¶ 9. Walgreen has one label for each of the
10 Products, and that label is uniform nationwide. *Id.* In order to relabel the
11 substantial numbers of Products within its control, therefore, Walgreen would have
12 to pull and repackage the products from all its stores nationwide—not just those in
13 California or a specific number of targeted states alone. *Id.* Taking into account
14 such expenses as printing/packaging costs and transportation for the affected units,
15 Walgreen estimates that it would incur costs and losses in excess of \$2 million just
16 in repackaging and relabeling its complete inventory of the Products. *Id.* ¶ 10.

17 20. The second category consists of the costs and losses from effecting a
18 nationwide recall and refund for Products already sold to consumers in California
19 and all states deemed to have similar consumer protection laws. *See Decl.* ¶ 11.
20 Pursuant to any recall, Walgreen would be required to pay refunds to consumers
21 approximating its total sales of the Products in those states. *Id.* Taking into
22 account the value of these refunds as well as the costs of implementing the recall,
23 Walgreen would likely lose more than \$4 million as a result of a recall and refund
24 of the Products already sold. *Id.* In addition, Walgreen would likely lose at least
25 \$1 million in sales due to the Products being off retail shelves, the likely loss of
26 consumer confidence caused by a recall, and the accompanying loss in sales of
27 other Walgreen products. *Id.*

1 21. In addition to these remedies, the Complaint seeks punitive damages,
2 which could ultimately be set as a multiple of compensatory and restitutionary
3 damages. Such damages count towards the amount in controversy requirement and
4 would likely exceed \$5 million standing alone. *See Gibson v. Chrysler Corp.*, 261
5 F.3d 927, 945 (9th Cir. 2001); *Molnar v. 1-800-Flowers.com*, No. CV 08-0542
6 CAS (JCx), 2009 U.S. Dist. LEXIS 131768, at *16 (C.D. Cal. Feb. 23, 2009) (“In
7 general, claims for punitive damages are considered in determining the amount in
8 controversy, as long as punitive damages are available under the applicable law.”);
9 *Yeroushalmi v. Blockbuster Inc.*, No. CV 05-2550 AHM (RCx), 2005 U.S. Dist.
10 LEXIS 39331, at *17 (C.D. Cal. July 11, 2005) (“Under CAFA, it is plaintiff’s
11 burden to show that punitive damages will be limited in such a way as to avoid
12 meeting the jurisdictional amount.”); *Richmond v. Allstate Ins. Co.*, 897 F. Supp.
13 447, 450 (S.D. Cal. 1995).

14 22. The Complaint also demands attorneys’ fees, which count towards the
15 jurisdictional minimum if authorized by statute. *See Guglielmino*, 506 F.3d at 700
16 (noting that the “amount-in-controversy requirement excludes only ‘interest and
17 costs’ and therefore includes attorneys’ fees”); *Free v. Abbott Lab (In re Abbott*
18 *Lab)*, 51 F.3d 524, 526 (5th Cir. 1995); *Yeroushalmi*, 2005 U.S. Dist. LEXIS
19 39331, at *17; *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010
20 (N.D. Cal. 2002). Here, if Plaintiffs and/or the putative class succeed on their
21 claims under the California Consumer Legal Remedies Act, recovery of attorneys’
22 fees is authorized by statute. *See* Cal. Civ. Code § 1780(e). “[T]he Ninth Circuit
23 recognizes two methods for calculating attorneys’ fees—the Lodestar/Multiplier
24 Method and the Percentage Method.” *Zucker v. Occidental Petroleum Corp.*, 968
25 F. Supp. 1396, 1400 (C.D. Cal. 1997). When using the Lodestar/Multiplier
26 Method, a court “calculates the ‘lodestar’ by multiplying the reasonable hours
27 expended by a reasonable hourly rate.” *Id.* (quoting *In re Washington Pub. Power*
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1 *Supply Sys. Sec. Litig.*, 19 F.3d 1291 n.2 (9th Cir. 1994)). “The court may then
2 enhance the lodestar with a ‘multiplier,’ if necessary, to arrive at a reasonable fee.”
3 *Id.* By contrast, under the Percentage Method, the court “simply awards the
4 attorneys a percentage of the fund sufficient to provide plaintiffs’ attorneys with a
5 reasonable fee.” *Id.* Courts in this Circuit have held in previous cases that a 25%
6 take is an appropriate amount for attorneys’ fees. *Station v. Boeing Co.*, 327 F.3d
7 938, 968 (9th Cir. 2003). In this case, assuming an amount of \$4,080,445 awarded
8 as restitution alone, an award of attorneys’ fees under either approach would more
9 likely than not increase the amount in controversy above the jurisdictional
10 threshold. *See* Decl. ¶ 7.

11 23. In short, Walgreen has shown more than a reasonable probability that
12 the amount placed in controversy in this action would exceed \$5,000,000, and
13 removal is therefore proper.

14 **C. This Court Also Has Diversity Jurisdiction Without Invoking**
15 **CAFA**

16 24. While removal is proper under CAFA, this Court also has original
17 jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) and 1441 because
18 there is complete diversity of jurisdiction and the amount in controversy exceeds
19 \$75,000. *See* Part II.A, B.

20 **IV. WALGREEN HAS SATISFIED ALL OTHER STATUTORY**
21 **REQUIREMENTS**

22 25. Venue is proper in this District under 28 U.S.C. §§ 1391(a),
23 1391(b)(1)-(2), and 1441(a) because Plaintiffs filed the Complaint in San Diego
24 County, and this District represents the “district and division embracing the place
25 where such action is pending.” 28 U.S.C. § 1441(a). Walgreen will promptly
26 serve Plaintiffs with this Notice of Removal and will promptly file a copy with the
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1 clerk of the Superior Court of the State of California, San Diego County, where the
2 State Court Action is pending. 28 U.S.C. § 1446(d).

3 **CONCLUSION**

4 WHEREFORE, Defendant Walgreen Co. Inc. respectfully removes this
5 action from the Superior Court of the State of California, San Diego County, to the
6 United States District Court for the Southern District of California.

7 Dated: February 10, 2014 MINTZ LEVIN COHN FERRIS GLOVSKY
8 AND POPEO PC

9 By: *Bridget Moorhead*
10 Daniel J. Herling
11 Bridget A. Moorhead

12 VENABLE LLP
13 Daniel S. Silverman

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15 Attorneys for Defendant,
16 WALGREEN CO. INC.
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

'14CV0306 LAB WVG

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
DANIELLE DEMISON and TERI SPANO

(b) County of Residence of First Listed Plaintiff KERN
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
WALGREEN CO. INC.

County of Residence of First Listed Defendant Cook/Lake Counties
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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):
 Cal. CLRA Civil Code Section 1750 et seq.; Cal. UCL Bus. & Prof. Code Section 17200.

Brief description of cause:
 False advertising of homeopathic products. 28:1332 - Diversity - Petition for

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS Removal (cxl) CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Barry Ted Moskowitz DOCKET NUMBER 12 CV 0376-BTM-WMC

DATE February 10, 2014 SIGNATURE OF ATTORNEY OF RECORD Budget Moorhead

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A-Tab 1

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
WALGREEN CO. INC.,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/31/2013 at 11:00:38 AM
Clerk of the Superior Court
By Calvin Beutler, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DANIELLE DEMISON and TERI SPANO, individually, on behalf of themselves, all others similarly situated, and the general public

NOTICE! You have been sued. The court may decide against you without your being heard, unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

330 West Broadway
San Diego, CA 92101

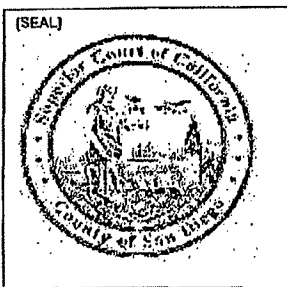
CASE NUMBER:
(Número) 37-2013-00082891-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of Ronald A. Marron, 651 Arroyo Drive, San Diego CA 92103, (619)696-9006

DATE: 01/09/2014
(Fecha)

Clerk, by C. Beutler, Deputy
(Secretario) C. Beutler (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): WALGREEN CO. INC.
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 **LAW OFFICES OF RONALD A. MARRON**
2 RONALD A. MARRON (SBN 175650)
3 *ron@consumersadvocates.com*
4 SKYE RESENDES (SBN 278511)
5 *skye@consumersadvocates.com*
6 651 Arroyo Drive
7 San Diego, CA 92103
8 Telephone: 619-696-9006
9 Facsimile: 619-564-6665

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/31/2013 at 11:00:36 AM
Clerk of the Superior Court
By Calvin Beutler, Deputy Clerk

7 (Additional counsel listed on signature page)

8 *Counsel for Plaintiffs and the Proposed Class*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 DANIELLE DEMISON and TERI SPANO,
12 on behalf of themselves, all others similarly
13 situated, and the general public,

14 Plaintiffs,

15 v.

16 WALGREEN CO. INC., an Illinois
17 corporation; DOES 1-20, Inclusive,

18 Defendants.

CASE NO. 37-2013-00082691-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

1. **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT [CIV. CODE § 1750, et seq.]; and**
2. **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [BUS. & PROF. CODE § 17200, et seq.]**
3. **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, et seq.]**
4. **BREACH OF EXPRESS WARRANTY**
5. **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

DEMAND FOR JURY TRIAL

1 5. At all times relevant to this matter, Plaintiff Spano resided, and continues to
2 reside in San Diego, California.

3 6. On information and belief, at all times relevant to this matter Defendant
4 WALGREENS CO., INC. is a Delaware Corporation with its principal place of business located
5 in Deerfield, Illinois. Defendant is licensed to do business in the State of California and
6 conducts a substantial amount of business in the State of California.

7 7. Plaintiffs are unaware of the true names or capacities of the persons or entities
8 sued herein as DOEs 1 through 20, and therefore sue such Defendants by such fictitious names.
9 Plaintiffs are informed and believe that each of the DOE Defendants is in some manner legally
10 responsible for the damages suffered by Plaintiffs and the members of the class as alleged herein.
11 Plaintiffs will amend this Complaint to set forth the true names and capacities of these
12 Defendants when they have been ascertained, along with appropriate charging allegations, as
13 may be necessary.

14 8. Members of the putative class reside in California and states in the United States
15 with laws substantially similar to the laws of California asserted herein.

16 9. At all times relevant herein, Defendants advertised, marketed, distributed, and
17 sold Walgreens Brand Ear Pain Relief ("Ear Pain Relief") and Well at Walgreens Homeopathic
18 Ear Ache Drops ("Ear Ache Drops") (collectively, the "Products") to consumers in California
19 and the United States, transacting business in San Diego and throughout California and the
20 United States, including, but not limited to, through extensive on-the-shelf presence of the
21 Products in California, online marketing means intended to reach consumers in California.

22 10. Defendants manufacture, label and sell Ear Pain Relief and Ear Ache Drops under
23 the Walgreens brand.

24 11. Defendants produce, market, and sell the Products throughout the United States,
25 including California.

26 12. Defendants' packaging and labeling of the Products are uniform throughout
27 California and the United States.

28 13. Plaintiffs are informed and believe and thereon allege that at all times herein
mentioned each of the Defendants' employees were the agent, servant and employee of

1 Defendant, acting within the purpose and scope of said agency and employment.

2 **BACKGROUND**

3 14. Homeopathic medicine purports to stimulate the body's ability to heal itself by
4 giving very small doses of highly diluted substances.

5 15. There is little evidence, however, that homeopathy is effective, much less that
6 people understand homeopathic principles.¹

7 16. Homeopathy is premised on two main principles; the principle of similars and the
8 principle of dilutions.

9 17. Under the "principle of similars" a disease can be cured by a substance that
10 produces similar symptoms in healthy people. Under the "principle of dilutions" the *lower* the
11 dose of the medication, the *greater* its effectiveness.²

12 18. But, in highly diluted remedies, there is a very low probability that even a single
13 molecule of the original substance is present in the Products. For example, a level of 12C
14 dilution is the equivalent to a pinch of salt in both the North and South Atlantic Oceans.³

15 19. Homeopathic remedies are not marketed and sold in the United States in the same
16 manner as when they first originated, approximately 200 years ago: When homeopathic drugs
17 first originated, people would typically consult with a licensed homeopathic practitioner, who
18 would compound his or her own homeopathic remedy, or provide a prescription to the patient.
19 Food and Drug Administration Compliance Policy Guide ("CPG") § 400.400.

20 20. Historically, homeopathic drugs were also not labeled and there was no direct-to-
21 consumer advertising. Instead, homeopathic remedies were primarily marketed to licensed
22 homeopathic practitioners. CPG § 400.400.

23 21. There was good reason for this historical practice: Homeopathic drugs are
24 intended to be "'individualized' or tailored to each person - it is not uncommon for different
25 people with the same condition to receive different treatments."

26 ¹See nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf (last visited on July 6, 2012).

27 ²See nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf (last visited on July 6, 2012).

28 ³See www.healthguidance.org/entry/12178/1/An-Introduction-to-Homeopathic-Remedies.html
(last visited on July 6, 2012).

1 nccam.nih.gov/sites/nccam.nih.gov/files/homeopathy.pdf.

2 22. Now, however, one-size-fits-all, combination homeopathic remedies are marketed
3 directly to consumers in the over-the-counter ("OTC") aisles of major retail stores. CPG §
4 400.400.

5 23. "Today the homeopathic drug market has grown to become a multimillion dollar
6 industry in the United States, with a significant increase shown in the importation and domestic
7 marketing of homeopathic drug Products." *Id.*

8 24. Health care costs in the United States reached almost \$2.6 trillion in 2010, with
9 10% of that amount spent on retail and prescription drugs. [www.kaiseredu.org/issue-modules/us-](http://www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx)
10 [health-care-costs/background-brief.aspx](http://www.kaiseredu.org/issue-modules/us-health-care-costs/background-brief.aspx). But unless drug manufacturers disclose the complete
11 truth to consumers, consumers are unable to make informed decisions about where to spend their
12 limited healthcare dollars. *See id.*

13 25. Most consumers who purchase homeopathic drugs in the OTC aisles of retail
14 stores are unaware of homeopathic dilution principles, and are merely seeking a natural
15 alternative to prescription or other OTC non-homeopathic (i.e., allopathic) drugs.

16 26. Accordingly, the homeopathic drug industry strives to market its wares as natural,
17 safe, and effective alternatives to prescription and non-homeopathic OTC drugs. But this latter
18 category of drugs, which are all allopathic, have undergone rigorous scrutiny by the FDA and its
19 appointed scientific committees.

20 27. In contrast, homeopathic drugs undergo no FDA approval of efficacy or labeling
21 claims. *See labels.fda.gov/.*

22 28. Indeed, the FDA, itself, has publicly stated it is aware of no scientific evidence
23 that homeopathy is effective. *See id.*

24 29. Homeopathic drugs must comply with the minimal requirements set forth in the
25 CPG. But, the FDA has cautioned that compliance with the CPG, "the HPUS, USP, or NF does
26 not establish that [a homeopathic drug] has been shown by appropriate means to be safe,
27 effective, and not misbranded for its intended use." CPG § 400.400.

28 30. On August 26, 2011, the non-profit group, Center for Public Inquiry, petitioned
the FDA to require homeopathic drug manufacturers to undergo the same efficacy requirements

1 as other OTC Products, and to label their drugs with a disclaimer that states: "The FDA has not
2 determined that this Products is safe, effective, and not misbranded for its intended use." *See*
3 *Gallucci v. Boiron, Inc.*, Case No. 3:11-CV-2039 JAH (S.D. Cal.), Dkt. No. 93-1 at p. 18.

4 31. As a result of other class action litigation, such as the *Gallucci* case, *supra*, other
5 homeopathic drug manufacturers have voluntarily agreed to implement a FDA disclaimer similar
6 to the one noted above, along with additional injunctive relief, such as a dilution disclaimer and
7 explanation of homeopathic dilution for consumers. *See, e.g., Gallucci*, Dkt. No. 105 at pp. 13-
8 15; Dkt. No. 125 at pp. 9-10. Thus, even those in the industry recognize a need to more
9 truthfully label homeopathic drugs for the average consumer. *See id.*

10 FACTS

11 32. This is a consumer protection class action lawsuit on behalf of purchasers of
12 Defendants' Ear Pain Relief and Ear Ache Drops.

13 33. Defendants manufacture, label, advertise, distribute and sell the Products in OTC
14 aisles in major retail chain drug stores throughout California and nationwide. Defendants also
15 sell the Products directly to consumers in California and the United States via online mediums,
16 such as www.walgreens.com.

17 34. Defendants primarily advertise and promote the Products through uniform
18 labeling claims on the front of the Products' package. Label descriptions on the Products'
19 packaging, taken as a whole, represent there are various benefits and characteristics to the
20 Products.

21 35. During the class period, Plaintiffs and the Class were exposed to and saw
22 Defendants' claims about Ear Pain Relief and Ear Ache Drops on the Products' labeling.

23 36. During the class period, in 2013, Plaintiff Demison purchased Defendants' Ear
24 Pain Relief at a Walgreens located near her home in Bakersfield, California for approximately
25 \$7-8. Plaintiff is a consumer as described herein.

26 37. In purchasing Defendants' Ear Pain Relief, Plaintiff Demison relied upon various
27 representations Defendants made on the Products' label, including but not limited to: the
28 Products' name - "Ear Pain Relief," and labeling claims such as "homeopathic," "Relieves Pain,"
"quickly stimulates the body's natural ability to relieve earache pain," and statements that this

1 Product contains "Chamomilla 10X. . .calmative, pain reliever," "Mercurius solubilis 15x. . .anti-
2 inflammatory" and "Sulphur 12x. . .pain reliever, anti-itch."

3 38. During the class period in 2013, Plaintiff Demison purchased Defendants' Ear
4 Ache Drops at a Walgreens, located near her home in Bakersfield, California, for approximately
5 \$7-8.

6 39. In purchasing Defendants' Ear Ache Drops, Plaintiff Demison relied upon various
7 representations Defendants made on the Products' label, including but not limited to: the
8 Products' name - "Ear Ache Drops," and labeling claims such as "homeopathic," "Relieves pain,
9 calms irritability & soothes itching due to cold & flu, swimmer's ear & allergy," and statements
10 that this Product contains "Belladonna - 30C, Calcarea - 30C, Chamomilla - 30C, Lycopodium -
11 30C, Pulsatilla - 30C, Sulphur - 30C" as active ingredients.

12 40. During and prior to the class period, starting in or around September to December
13 2008 and continuing through September to December 2013, Plaintiff Spano purchased
14 Defendants' Ear Pain Relief, as needed, at Walgreens located near her home in Lakeside,
15 California, for approximately \$7-8 per purchase. Plaintiff is a consumer as described herein.

16 41. In purchasing Defendants' Ear Pain Relief, Plaintiff Spano relied upon various
17 representations Defendants made on the Products' label, including but not limited to: the
18 Products' name - "Ear Pain Relief," labeling claims such as "homeopathic," "Relieves Pain,"
19 "Ear Pain Relief quickly stimulates the body's natural ability to relieve earache pain" and
20 statements that this Product contains "Chamomilla 10X. . .calmative, pain reliever," "Mercurius
21 solubilis 15x. . .anti-inflammatory," and "Sulphur 12x. . .pain reliever, anti-itch."

22 42. Plaintiff Spano first became aware that Defendants' Product violated applicable
23 law in October 2013, when her counsel of record obtained a warning letter issued from the
24 United States Food and Drug Administration ("FDA") to a manufacturer of a homeopathic otic
25 product with identical ingredients to Ear Pain Relief, that stated the product was a misbranded
26 new drug under Sections 502, 503 and 301 of the United States Food, Drug and Cosmetic Act
27 ("FDCA") [21 U.S.C. §§ 352, 353, 331] (and the California Sherman Law, Cal. Health & Safety
28 Code §§ 110105, 110110, 110111, 110115, which mirrors the FDCA), and was thus unlawful,
for the reasons discussed *infra*.

not
SIMILAR
product

Oct 2010 -
late 2011

1 43. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
2 Defendants' unlawful acts described herein because the violations were known to Defendant, not
3 Plaintiff, throughout the class period defined herein. Plaintiff is also not a nutritionist, drug
4 expert, or scientist, but rather a lay consumer who did not have the specialized knowledge that
5 Defendants had during this timeframe.

6 44. During and prior to the class period, starting in or around September to December
7 2008 and continuing through September to December 2013, Plaintiff Spano purchased
8 Defendants' Ear Ache Drops as needed at Walgreens, located near her home in Lakeside,
9 California, for approximately \$7-8.

10 45. In purchasing Defendants' Ear Ache Drops, Plaintiff Spano relied upon various
11 representations Defendants made on the Products' label, including but not limited to: the
12 Products' name - "Ear Ache Drops," labeling claims such as "homeopathic," "Relieves pain,
13 calms irritability & soothes itching due to cold & flu, swimmer's ear & allergy," and statements
14 that this Product contains "Belladonna - 30C, Calcarea - 30C, Chamomilla - 30C, Lycopodium -
15 30C, Pulsatilla - 30C, Sulphur - 30C" as active ingredients.

16 46. Plaintiff Spano first became aware that Defendants' Product violated applicable
17 law in October 2013, when her counsel of record obtained a warning letter issued from the
18 United States Food and Drug Administration ("FDA") to a manufacturer of a homeopathic otic
19 product with virtually identical ingredients to Ear Ache Drops, that stated the product was a
20 misbranded new drug under Sections 502, 503 and 301 of the United States Food, Drug and
21 Cosmetic Act ("FDCA") [21 U.S.C. §§ 352, 353, 331] (and the California Sherman Law, Cal.
22 Health & Safety Code §§ 110105, 110110, 110111, 110115, which mirrors the FDCA), and was
23 thus unlawful for the reasons discussed *infra*.

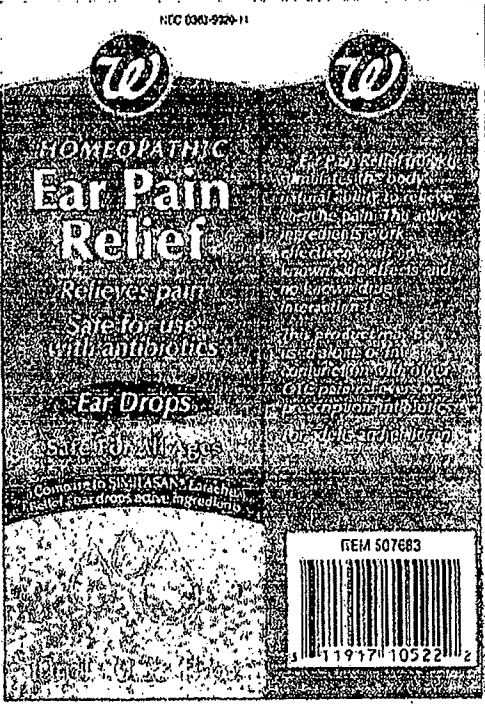
24 47. Plaintiff, in the exercise of reasonable diligence, could not have discovered earlier
25 Defendants' unlawful acts described herein because the violations were known to Defendant, not
26 Plaintiff, throughout the class period defined herein. Plaintiff is also not a nutritionist, drug
27 expert, or scientist, but rather a lay consumer who did not have the specialized knowledge
28 Defendants had during this timeframe.

 48. Defendants' Products were not as advertised.

**ALLEGATIONS, MISREPRESENTATIONS AND OMISSIONS REGARDING
EAR PAIN RELIEF**

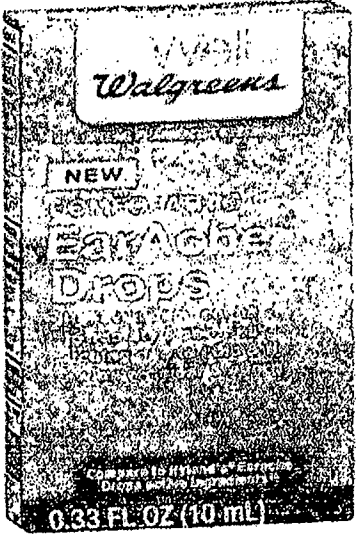
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Drug Facts (continued):
Directions:
FOR USE IN THE EAR ONLY.
 For adults and children, including toddlers and infants:
 • Remove cap from bottle.
 • Turn cap upside down.
 • Push cap against ear.
 • Release 2-3 drops into ear.
 • Repeat as needed. Use when pain occurs.
Other Information:
 Active ingredients are antiseptics and analgesics. Active ingredients are antiseptics and analgesics. Active ingredients are antiseptics and analgesics.
Inactive ingredient:
 Vegetable glycerin



Drug Facts
Active ingredients: Chlorpheniramine maleate, Diphenhydramine HCl, Menthyl salicylate, Menthol, Salicylic acid, Thymol, and Xylometazoline HCl. **Purpose:** Temporary relief from earache (or pain) in children and adults due to:
 • Urals
 • Colds
 • Flu
 • Swimmer's ear
Warnings:
 • For external use only.
 • A physician should be consulted about persistent ear pain.
 • Initial exacerbation of symptoms may occur.
 • Keep this and all medicines out of the reach of children.
 • If swallowed, get medical help or contact Poison Control Center right away.
Do not use:
 • If you have ear drainage, discharge, infection, or rash in the ear, or eye irritation, consult a doctor.
 • With ear tubes, after ear surgery or with damaged ear drums.
Stop use and ask a doctor if:
 • symptoms persist for more than 48 hours.
 • there is discharge from the ear.
 • there is a fever of 102°F or greater.

Manufactured by Walgreen Co., 200 Walnut St., Des Moines, IA 50319-1630, U.S.A.
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 100% Satisfaction Guarantee with all Walgreen Products or Your Money Back. 877-427-2248 188
 Made in the USA



1 49. Defendants' advertising claims about the Products are and have been the subject
2 of an extensive and comprehensive, nationwide marketing campaign in various media,
3 including the internet.

4 50. Defendants primarily advertise and promote the Products through the labeling
5 claims and images on the front of the Products' packaging. Among other things, the Products'
6 names clearly state what the ailments and symptoms the Product is designated for, i.e., "ear
7 pain relief" or "earache." Label descriptions on the Products' packaging, taken as a whole,
8 further clarify what the Products are supposed to do. As would any reasonable consumer,
9 Plaintiffs and the Class relied on the Products' packaging claims in purchasing the Products.

10 51. The purportedly active ingredients of Ear Pain Relief include: "Chamomilla 10X
11 ... calmative, pain reliever; Mercurius solubilis 15x ... anti-inflammatory; and Sulphur 12x ...
12 pain reliever, anti-itch." The purportedly active ingredients of Earache Drops include:
13 "Belladonna - 30C, Calcarea - 30C, Chamomilla - 30C, Lycopodium - 30C, Pulsatilla - 30C,
14 Sulphur - 30C" as active ingredients."

15 52. But the active ingredients, even if they were otherwise effective, are so greatly
16 diluted as to be effectively non-existent in the Product, such that the Product is ineffective for
17 its intended uses. Consumers, trusting the Defendants' assertions that the Product relieves the
18 symptoms of ear pain, are unwittingly spending hundreds of thousands of dollars each year on
19 worthless Products.

20 53. Defendants know there are no or just trace amounts of "active" ingredients
21 present in the Product and therefore must be aware that Ear Pain Relief cannot relieve the
22 symptoms for which the Defendants advertise it.

23 54. Defendants' marketing and promotion of the Products was and is supported by
24 false and misleading claims that contain material omissions and misrepresentations, as detailed
25 herein.

26 55. For example, Defendants' misleading and deceptive business activity includes
27 selling the Products in the OTC aisle of its retail chain drug stores next to allopathic, FDA
28 monograph-approved OTC drugs, thus enhancing consumer confusion as to the true nature of
Defendants' Products.

1 56. Further, Defendants do not explain to consumers the nature of “homeopathic”
2 medicine, or the method of measurement used for the ingredients in the Products. For
3 example, Defendants fails to state what the “X” and “C” dilution levels mean, in a language
4 understandable to an average consumer.

5 57. Defendants are also free to label Indications of Use without any regulatory
6 oversight, a fact that is not disclosed to consumers.

7 58. In September 2013, the FDA issued a warning letter to a manufacturer of a
8 homeopathic otic product with virtually identical ingredients and labeling claims to the
9 Products, which stated that the similar product was mislabeled, *inter alia*, because of the
10 Products’ name (Earache Relief), and statements including: “Earache Relief Ear Drops”;
11 “Chamomilla HPUS 10x.....calmative, pain reliever”; “Mercurius solubilis HPUS 15x.....This
12 ingredient address inflammation and pain in the inner ear”; “Relieves pain”; “[T]emporary
13 relief from symptoms of earache . . .” and “[S]timulate the body’s ability to ease ear pain”. *See*
14 Ex. 1 (September 19, 2013 FDA Warning Letter).

15 59. The FDA concluded that “[a]lthough marketed to consumers as an over-the-
16 counter (OTC) drug, [this product] is a prescription drug under Section 503(b)(1) of the
17 [FDCA] [21 U.S.C. § 353(b)(1)] . . . because it is intended to treat diseases that require
18 diagnosis and treatment by a physician or is intended to provide treatment for symptoms
19 usually caused by an underlying disease process that requires diagnosis and treatment by a
20 physician.” *See id.*

21 60. The FDA further stated the product was misbranded “under Section 503(b)(4) of
22 the [FDCA] [21 U.S.C. § 353(b)(4)] in that the label fails to bear the symbol Rx only”,
23 “Section 502(f)(1) of the [FDCA] [21 U.S.C. § 352(f)(1)] in that its labeling fails to bear
24 adequate directions for use as . . . defined in 21 C.F.R. § 201.5” and Section 502(a) of the
25 FDCA [21 U.S.C. 352(a)] “because it represents the product is suitable for use by consumers to
26 treat a condition which the Agency has found not appropriate for OTC drug treatment. . . .”
27 *See id.*

28 61. Accordingly, based on the above, the Products at issue here are misbranded and
unlawful new drugs under federal law because earaches and ear pain are caused by underlying

1 diseases and require diagnosis by a doctor. As such, Defendants' advertising of the Products,
2 as described herein, is false, deceptive and unlawful.

3 62. In addition, all OTC allergy drugs must comply with the California Sherman Law,
4 Cal. Health & Safety Code §§ 110105, 110110, 110111, 110115, which incorporates all drug
5 laws under the federal FDCA.

6 63. For the foregoing reasons, Defendants' Products are "misbranded" and bear a
7 "false or misleading label" under 21 U.S.C. § 343, and as such, also violate the Sherman Law,
8 including but not limited to California Health and Safety Code §§ 110390-110398, 110403(m)
9 (making it "unlawful for any person to advertise any drug or device represented to have any
10 effect in any of the following conditions, disorders, or diseases: . . . Diseases or disorders of the
11 ear or auditory apparatus . . ."). *See also id.* §§ 110110, 110111, 110115.

12 64. Additionally, under the FDCA, only two types of otic, or ear, products are
13 permitted for OTC sale: ear wax removal aids and ear drying aids. *See* 21 C.F.R. § 344.3.

14 65. In order for a product to comply with the FDCA, it must contain specific active
15 ingredients, which "for "Earwax removal . . . [includes] [t]he active ingredient of the product
16 consists of carbamide peroxide 6.5 percent formulated in an anhydrous glycerin vehicle." *Id.*
17 344.10. The Products do not contain any carbamide peroxide 6.5 percent, formulated as
18 required. *See supra*. Thus, the Products cannot be considered ear wax removal aids because
19 they lacks the requisite ingredients to bear such nomenclature.

20 66. Similarly, in order for a product to comply with the FDCA, it must contain
21 specific active ingredients, which "for Ear drying aids. . . [includes] "[t]he active ingredient of
22 the products consists of isopropyl alcohol 95 percent in an anhydrous glycerin 5 percent base."
23 The Products do not contain any isopropyl alcohol 95 percent in an anhydrous glycerin 5
24 percent base formulated as required. *See* 8:13-28, *supra*. Thus, the Products cannot be
25 considered ear drying aids because they lack the requisite ingredients to bear such
26 nomenclature.

27 67. Moreover, any otic product must meet "the general conditions established in [21
28 C.F.R.] § 330.1. 21 C.F.R. 344.1. The Products do not meet the general conditions established

1 in § 330.1 because they do not contain an approved monograph for an OTC otic product for ear
2 wax removal, or an ear drying aid. As such, because the Products' sale is unlawful under state
3 and federal law (*See id.*; Cal. Health & Safety Code §§ 110110, 110111, 110115), Defendants'
4 advertising of this Product, as described herein, is false, deceptive and unlawful.

5 68. Plaintiffs, as would any reasonable consumer, consider the lawfulness of an OTC
6 drug as a material factor in their purchasing decision, and they would not have purchased the
7 Products if they knew they were misbranded and unlawful under state and federal law. Indeed,
8 the FDCA also makes misbranding a criminal misdemeanor. 21 U.S.C. § 352.

9 69. Nevertheless, Defendants continued to market the Products on store shelves
10 throughout the nation.

11 70. This unlawful, unfair and deceptive practice has enriched Defendants by hundreds
12 of thousands of dollars, at the expense of tens of thousands of Americans.

13 71. Defendants do not explain to consumers how diluted the active ingredients in the
14 Products are, which is material information a consumer would want to know before purchasing
15 the Products.

16 72. When purchasing the Products, Plaintiffs and the class were seeking Products that
17 would provide the benefits, and possessed the efficacy and characteristics, as Defendants
18 marketed, promised, represented and warranted.

19 73. Plaintiffs and the class purchased the Products believing they had the qualities
20 they sought, based on the Products' deceptive labeling and marketing, but the Products were
21 actually unacceptable to them as they did not possess the benefits, efficacy, and characteristics
22 advertised.

23 74. In purchasing the Products, Plaintiffs and members of the putative class
24 reasonably relied upon the various representations Defendants made on the Products'
25 packaging and its prevalent advertising campaign, as described herein.

26 75. At all times relevant herein, Defendants had a duty to disclose additional and/or
27 complete, accurate information to purchasing consumers, to correct all misunderstandings its
28 omissions and misrepresentations created in the minds of those consumers.

1 76. Defendants knew or should have known of the unlawful nature of their Products'
2 advertising claims.

3 77. Absent the misrepresentations and omissions described herein, which were and
4 are material to the average consumer, Plaintiffs and class members would not have purchased
5 the Products.

6 78. Moreover, like all reasonable consumers and members of the class, Plaintiffs
7 considered a label's compliance with federal law a material factor in their purchasing
8 decisions. Plaintiffs are generally aware that the federal government carefully regulates OTC
9 products and therefore has come to trust that information conveyed on packaged OTC products
10 labels is truthful, accurate, complete, and fully in accordance and compliance with federal law.
11 As a result, Plaintiffs trusts they can compare competing products to Defendants' Ear Pain
12 Relief and Ear Ache Drops on the basis of their labeling claims, to make a purchasing decision.

13 79. Like all reasonable consumers and members of the classes, Plaintiffs would not
14 purchase OTC products they knew were misbranded under federal law, *see* 21 U.S.C. § 343,
15 which the federal government prohibits selling, *id.* § 331, and which carries with its sale
16 criminal penalties, *id.* § 333. Plaintiffs could not trust that the labels of Products misbranded
17 under federal law are truthful, accurate and complete.

18 80. Similarly, like all reasonable consumers and members of the class, Plaintiffs
19 would not purchase OTC products they knew were illegally marketed new drugs for which the
20 FDA has not determined its safety and efficacy.

21 81. The fact of Defendants' misrepresentations, omissions, and whether the Products'
22 advertising was material to the average consumer and likely to deceive a reasonable consumer
23 is a matter subject to expert proof. *See, e.g., Hitt v. Arizona Beverage Co., LLC*, 2009 WL
24 449190, at *6 (S.D. Cal. Feb. 4, 2009); *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1117,
1129 (C.D. Cal. 2010).

25 82. In light of the foregoing, reasonable consumers, including Plaintiffs and other
26 members of the class, were and are likely to be deceived by Defendants' advertising and
27 marketing practices as detailed herein.

28 83. Further, Plaintiffs and other members of the class purchased the Products instead

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of competing products based on the false statements, misrepresentations and omissions described herein.

84. Instead of receiving products that had the benefits, advantages, endorsements, proof, and characteristics as advertised, Plaintiffs and other members of the class received Products worth much less, or which were worthless because the Products did not possess the characteristics, benefits, and efficacy, as advertised by Defendant.

85. Plaintiffs and the class lost money as a result of Defendants' deception in that Plaintiffs and the class did not receive what they had paid for.

CLASS ACTION ALLEGATIONS

86. Plaintiffs bring this class action for monetary and injunctive relief on behalf of the following putative class (subject to class certification briefing and modification as necessary after discovery), which is ascertainable based on the following definition:

All purchasers of Walgreens Brand Ear Pain Relief and Well at Walgreens Homeopathic Ear Ache Drops in California and states in the United States with consumer protection laws similar to California, for personal or household use and not for resale, from December 30, 2009 to the present ("Class Period"). Excluded from the Class are governmental entities, Defendant, any entity in which Defendants has a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, assigns, shareholders, marketing consultants, licensees, distributors, and agents. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff, or, alternatively,

87. Pursuant to California Code of Civil Procedure § 382 and Civil Code § 1781(b)(2), there is a well-defined community of interest in the questions of law and fact involved in this matter that are common to Plaintiffs and the Class, and which predominate

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over questions affecting individual Plaintiffs and class members which include, but are not limited to, the following:

- a. Whether the claims discussed above are true, misleading, or reasonably likely to deceive;
- b. Whether Defendants' alleged conduct violates public policy;
- c. Whether Defendants' alleged conduct constitutes violations of the laws asserted herein;
- d. Whether Defendants engaged in false or misleading advertising;
- e. Whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss;
- f. Whether Plaintiffs and Class members are entitled to an award of punitive damages; and
- g. Whether Plaintiffs and Class members are entitled to declaratory and injunctive relief.

88. Pursuant to California Civil Code § 1781(b)(3), Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have been similarly affected by Defendants' common course of conduct because they all relied on Defendants' representations concerning the homeopathic Products and purchased the Products based on those representations.

89. Pursuant to California Civil Code § 1781(b)(4), Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in handling complex class action litigation in general and scientific claims, including for homeopathic drugs, in particular. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

90. Plaintiffs and the members of the Class suffered, and will continue to suffer harm as a result of the Defendants' unlawful and wrongful conduct. There are substantial benefits

1 from class treatment that renders proceeding with this matter as class action superior to other
2 available methods for the fair and efficient adjudication of the present controversy.

3 91. This Class is sufficiently numerous as individual joinder of all members of the
4 Class would be impracticable pursuant to Code of Civil Procedure § 382 and Civil Code §
5 1781(b)(1). Even if individual Class members had the resources to pursue individual litigation,
6 it would be unduly burdensome to the courts in which the individual litigation would proceed.
7 Individual litigation magnifies the delay and expense to all parties in the court system of
8 resolving the controversies engendered by Defendants' common course of conduct. The class
9 action device allows a single court to provide the benefits of unitary adjudication, judicial
10 economy, and the fair and efficient handling of all Class members' claims in a single forum.
11 The conduct of this action as a class action conserves the resources of the parties and of the
12 judicial system and protects the rights of the class members. Furthermore, for many, if not
13 most, a class action is the only feasible mechanism that allows an opportunity for legal redress
14 and justice.

15 92. Adjudication of individual Class members' claims with respect to Defendants
16 would, as a practical matter, be dispositive of the interests of other members not parties to the
17 adjudication, and could substantially impair or impede the ability of other class members to
18 protect their interests.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**

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

22 **[On Behalf of Plaintiffs and the Class and Against Defendants]**

23 93. Plaintiffs repeat, re-allege and incorporate by reference each and every allegation
24 contained above as if fully set forth herein.

25 94. At all times relevant herein, there was in full force and effect the Consumers
26 Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "Act") and similar consumer
27 protection and unfair business practice acts in other states. Plaintiffs are consumers as defined
28 by Civil Code § 1761(d). The Products are goods within the meaning of Civil Code § 1761(a).

1 95. Defendants violated and continues to violate the Act by engaging in the following
2 practices proscribed by § 1770(a), in transactions with Plaintiffs and the Class, which were
3 intended to result in, and did result in, the sale of the Products:

- 4 (a) Advertising that the Products relieved earache and ear pain;
5 (b) Representing that the Products had characteristics, uses or benefits which they do
6 not have;
7 (c) Representing the Products are of a particular standard, quality or grade if they are
8 of another;
9 (d) Advertising the Products with intent not to sell them as advertised;
10 (e) Unlawfully selling earache and ear pain reliever;
11 (f) Representing that the Products have been supplied in accordance with a previous
12 representation when they have not;
13 (g) Engaging in conduct that creates a likelihood of confusion or misunderstanding.

14 96. The Defendants' representations are unlawful and amount to unfair and/or
15 deceptive acts or practices in violation of the Act.

16 97. Defendants' actions described herein similarly violated the consumer protection
17 statutes in effect in every state in which Defendants or its affiliates do business.

18 98. Defendants violated the Act by making the representations and claims for the
19 Products, as described above, when they knew, or should have known, the representations and
20 advertisements were unsubstantiated, false and misleading.

21 99. Plaintiffs and other members of the Class reasonably relied upon the Defendants'
22 representations as to the quality and attributes of the Products.

23 100. Plaintiffs and other members of the Class were deceived by Defendants'
24 representations about the quality and attributes of the Products, including but not limited to the
25 purported ability of the Products to relieve ear pain and earaches.

26 101. Plaintiffs and other Class members would not have purchased the Products had
27 they known Defendants' claims were either unfounded or untrue, and the true nature of the
28 Products.

1 102. Pursuant to § 1782 *et seq.* of the CLRA, Plaintiffs notified Defendants in writing
 2 by certified mail of the particular violations of § 1770 of the Act as to Defendants' Products,
 3 and demanded that Defendants rectify the problems associated with the actions detailed above
 4 and give notice to all affected consumers of its intent to so act. Defendants' wrongful business
 5 practices regarding the Products constituted, and constitute, a continuing course of conduct in
 6 violation of the California's Consumers Legal Remedies Act because Defendants are still
 7 representing the Products have characteristics, uses, benefits, and abilities which are false and
 8 misleading, and have injured Plaintiffs and the Class. A copy of Plaintiffs Demison's and
 9 Spano's notification letters to Defendants are attached hereto as Exhibit 2. Despite receipt of
 10 such notice letters, Defendants are continuing in the unlawful, unfair and deceptive business
 11 conduct complained of herein.

12 103. Pursuant to California Civil Code Section 1780(a), Plaintiffs and the Class seek
 13 an order of this court enjoining Defendants from continuing to engage in unlawful, unfair, or
 14 deceptive business practices and any other act prohibited by law; an order requiring Defendants
 15 to conduct a corrective advertising campaign and to recall all of the Products; for actual
 16 damages; punitive damages; attorney's fees and costs; and any other equitable relief deemed
 17 just and necessary by the Court.

SECOND CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

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

[On Behalf of Plaintiffs and the proposed Class and Against Defendants]

18 104. Plaintiffs repeat, re-allege and reincorporate the allegations contained in the
 19 paragraphs above, as is fully set forth herein.

20 105. California's Unfair Competition Law, Business and Professions Code §17200 (the
 21 "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, and continues to engage in such business conduct, in violation of the UCL.

24 106. The UCL's three prongs are read in the disjunctive, and the UCL separately
 25 prohibits any "unlawful ... business act or practice." Defendants violated the UCL's
 26

1 prohibition against engaging in unlawful acts and practices by, *inter alia*, making the
2 representations and omissions of material facts, as set forth more fully herein, and by violating,
3 among others, Cal. Civ. Code §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and
4 Safety Code §§ 109875, *et seq.* (Sherman Law), specifically provisions against misbranding,
5 Cal. Bus. & Prof. Code §§ 12601, *et seq.* (“Fair Packaging and Labeling Act”), California
6 Commercial Code § 2313(1), and the common law. Such conduct is ongoing and continues to
7 this date.

8 107. Plaintiffs and the Class reserve the right to allege other violations of law, which
9 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
10 this date.

11 108. The UCL also prohibits any “unfair”... business act or practice.”

12 109. Defendants’ acts, omissions, misrepresentations, practices and nondisclosures as
13 alleged herein also constitute “unfair” business acts and practices within the meaning of the
14 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
15 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
16 alleged benefits attributable to such conduct. In the alternative, Defendants’ business conduct
17 as described herein violates relevant laws designed to protect consumers and business from
18 unfair competition in the marketplace. Such conduct is ongoing and continues to date.

19 110. Plaintiffs also allege violations of consumer protection, unfair competition and
20 truth in advertising laws in California and other states resulting in harm to consumers.
21 Plaintiffs assert violation of the public policy of engaging in false and misleading advertising,
22 unfair competition and deceptive conduct towards consumers. This conduct constitutes
23 violations of the unfair prong of the UCL. Such conduct is ongoing and continues to this date.

24 111. There were reasonably available alternatives to further Defendants’ legitimate
25 business interests, other than the conduct described herein.

26 112. The UCL also prohibits any “fraudulent business act or practice.”

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

4 114. Defendants' conduct caused and continues to cause substantial injury to Plaintiffs
 5 and the other Class members. Plaintiffs have suffered injury in fact as a result of Defendants'
 6 unfair conduct.

7 115. Defendants thus engaged in unlawful, unfair and fraudulent business acts and
 8 practices and false advertising, entitling Plaintiffs to injunctive relief against Defendant, as set
 9 forth in the Prayer for Relief.

10 116. Pursuant to Business and Professions Code §17203, Plaintiffs and the Class seek
 11 an order requiring Defendants to immediately cease such acts of unlawful, unfair and
 12 fraudulent business practices and requiring Defendants to engage in a corrective advertising
 13 campaign.

14 117. Plaintiffs, on behalf of the Class, also seek an order for the disgorgement and
 15 restitution of all monies from the sale of the Products they purchased, which was unjustly
 16 acquired through acts of unlawful, unfair, and/or fraudulent competition. Plaintiffs, on behalf
 17 of themselves and the proposed Class, further seek an order for prospective and retrospective
 18 injunctive relief.

19 **THIRD CAUSE OF ACTION**

20 **VIOLATION OF THE FALSE ADVERTISING LAW**

21 **California Business and Professions Code Section 17500 *et seq.***

22 **[On Behalf of Plaintiffs and the Class and Against Defendant]**

23 118. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
 24 contained above as if fully set forth herein.

25 119. Plaintiffs have standing to pursue this claim, as Plaintiffs have suffered injury in
 26 fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this
 27 action, Plaintiffs purchased the Products in reliance upon Defendants' marketing claims and
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1 would not have purchased the Products but for those advertising claims. Plaintiffs used the
2 Products as directed, but the Products have not provided the advertised benefits.

3 120. Defendants' business practices as alleged herein constitute unfair, deceptive,
4 untrue, and misleading advertising pursuant to California Business and Professions Code
5 section 17500, *et seq.* because Defendants advertised the Products Plaintiffs purchased in a
6 manner that is untrue and misleading, and that is known or reasonably should have been known
7 to Defendants to be untrue or misleading.

8 121. Defendants' wrongful business practices have caused injury to Plaintiffs and the
9 Class.

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

14 123. Plaintiffs also seek an order for the disgorgement and restitution of all monies
15 from the sale of the Products, which were unjustly acquired through acts of unlawful, unfair,
16 and/or fraudulent competition.

17 **FOURTH CAUSE OF ACTION**

18 **Breach of Express Warranty**

19 **[On Behalf of Plaintiffs and the Class and Against each Defendants]**

20 124. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
21 contained above as if fully set forth herein.

22 125. On the Products' labels and through their marketing campaign as described above,
23 Defendants made affirmations of fact or promises, or description of goods, which formed "part
24 of the basis of the bargain" at the time of purchase. All representations from the Products'
25 labels cited in quotations in this Complaint constituted affirmations of fact or promises that
26 became part of the basis of the bargain for Plaintiffs and the Class' purchases, including
27 representations that the Products are "homeopathic" drugs.

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1 126. The warranties were breached because the Products did not live up to its
2 warranties, such as representing the Products are “homeopathic” drug when they are, in fact,
3 misbranded new drugs under applicable State and Federal law, and that breach caused injury in
4 the form of the lost purchase price for the Products. *See* Cal. Com. Code §2313(1); *see also*
5 *Zwart v. Hewlett-Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that
6 online assertions can create warranties).

7 127. As a result of Defendants’ breach of its warranties, Plaintiffs and the Class have
8 been damaged in the amount of the purchase price of the Products they purchased.

9 **FIFTH CAUSE OF ACTION**

10 **Breach of Implied Warranty of Merchantability**

11 **[On Behalf of Plaintiffs and the Class and Against each Defendants]**

12 128. Plaintiffs repeat, reallege and incorporate by reference each and every allegation
13 contained above as if fully set forth herein.

14 129. Defendants, through their acts and omissions set forth herein, in their sale,
15 marketing and promotion of the Products, made representations to Plaintiffs and the Class that
16 the Products are “homeopathic” drugs, among other representations. All representations from
17 the Products’ labels cited in quotations in this Complaint constituted affirmations of fact or
18 promises that became part of the basis of the bargain for Plaintiffs’ and the Class’ purchases,
19 including representations that the Products are “homeopathic”.

20 130. Plaintiffs and the Class bought the Products manufactured, advertised and sold by
21 Defendant.

22 131. Defendants are merchants with respect to the goods of this kind which were sold
23 to Plaintiffs and the Class, and there was in the sale to Plaintiffs and other consumers an
24 implied warranty that those goods were merchantable.

25 132. However, Defendants breached their warranties implied in the contract for the
26 sale of goods in that the Products are not “homeopathic” drugs, but are, in fact, misbranded
27 new drugs under applicable State and Federal law, as set forth in detail herein.
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133. As a result of Defendants' conduct, Plaintiffs and the Class did not receive goods as impliedly warranted by Defendants to be merchantable, in that they did not conform to the promises and affirmations made on the packaging or label of the goods.

134. Plaintiffs and Class have sustained damages as a proximate result of the foregoing breach of implied warranty in an amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, pray for a judgment against Defendants on each cause of action for:

- A. An order declaring this action to be a proper Class Action and requiring Defendants to bear the costs of class notice;
- B. An order awarding Plaintiffs and the proposed Class members damages and punitive damages in the amount to be determined at trial;
- C. An order awarding restitution and disgorgement of Defendants' revenues from the Products to Plaintiffs and the proposed Class members;
- D. An order awarding attorneys' fees and costs to Plaintiffs;
- E. An order awarding declaratory relief, retrospective and prospective injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and injunctive relief to remedy Defendants' past conduct;
- F. An order compelling Defendants to engage in a corrective advertising campaign to inform the public concerning the true nature of the Products, including a recall of the falsely and deceptively labeled Products.
- G. An order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: December 30, 2013 **THE LAW OFFICES OF RONALD A. MARRON**

/s/ Ronald A. Marron

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Counsel for Plaintiffs and the Putative Class

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I, Danielle Demison, declare as follows:

1. I am the Plaintiff in this action. I make this affidavit as required by California Civil Code Section 1780(d).

2. The Complaint in this action is filed in a proper place for the trial of this action because Defendant is doing business in this county.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: 12/17, 2013



Danielle Demison

1 I, Teri Spano, declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by
3 California Civil Code Section 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of
5 this action because Defendant is doing business in this county.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

8
9 Dated: , 2013

10 Teri Spano

11 Teri Spano

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AFFIDAVIT OF VENUE

EXHIBIT 1

LAW OFFICES OF
RONALD A. MARRON
A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

October 23, 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Walgreen Co.
300 Wilmot Road, MS 3301
Deerfield, IL 60015

Corporation Service Company, which will
do business in California as CSC –
Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

*Registered Agent in State of California for
Walgreen Co.*

**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 **WALGREEN CO.** (“YOU”) of violations of the Act and of our demand that YOU remedy such violations within 30 (thirty) days from your receipt of this letter.

This firm represents Danielle Demison, who within the last three years, purchased **Walgreens Brand Ear Pain Relief and Well at Walgreens Homeopathic EarAche Drops**, (“WEAD” or the “Product”) an over-the-counter (OTC) Product YOU distribute in California and elsewhere throughout the United States. Ms. Demison was exposed to and saw YOUR claims about the Product on its packaging, purchased WEAD in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising, in the form of the lost purchase price.

YOU manufacture, advertise, distribute, and sell WEAD by claiming it relieves earaches. Specifically, YOU market YOUR product by making the following claims:

YOU claim that WEAD "Relieves pain" and the product "Ear Pain Relief quickly stimulates the body's natural ability to relieve earache pain." thes and calms," YOU also claim that "Relieves pain, calms irritability & soothes itching due to cold & flu, swimmer's ear & allergy." Each of these products contain.

- Chamomilla 10x.....calmative, pain reliever
- Mercurius solubilis 15x....anti-inflammatory
- Sulfur 12x.....pain reliever, anti-itch

Nonetheless, YOUR representations about these ingredients are, false, deceptive and misleading because, among other reasons, it is unlawful to sell OTC medicines for earache relief because earache is a disease that require diagnosis and treatment by a physician, or YOUR Product is intended to provide treatment for symptoms usually caused by an underlying disease process that requires diagnosis and treatment by a physician, or intended to affect the structure or function of the body.

As the FDA recently indicated in September 19, 2013 warning letters to a number of homeopathic ear drop companies that "[e]ar pain (earache) is not a currently recognized OTC indication in the final monograph for topical otc drug products (21 C.F.R. § 344) or in any approved OTC new drug application." Further, the FDA determined that where ear drops are labeled to relieve ear pain, the product's "labeling is false or misleading because it represents the product as suitable for use by consumers to treat a condition which the Agency has found not appropriate for OTC drug treatment, and because it encourages OTC treatment for ear pain, but fails to distinguish among conditions that manifest with ear pain and that can lead to serious injury if not accurately diagnosed and treated by a licensed physician."

Therefore, YOUR Product is misbranded, and unlawful to sell in the State of California under the California Sherman Food, Drug and Cosmetic Law, as Murine is misbranded and its packaging is false and misleading. *See, e.g.*, Cal. Health & Safety Code, Div. 104, Part 5, *id.* §§ 111330, 111440-111450, 111470-111475, 111490.

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 WEAD under the representation that it helps them relieve earaches and it a lawful OTC product, when it fact it does not and is not.

Please be advised that the alleged unfair, unlawful or fraudulent methods of competition or unfair, unlawful or deceptive business 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 could be requested in a class action complaint on behalf of our client, Ms. Danielle Demison, and all other similarly-situated residents in the State of California and states with laws similar to the consumer protection laws of this State:

- (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 Murine 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

Attorneys for Danielle Demison,
and all others similarly situated

LAW OFFICES OF
RONALD A. MARRON
A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

October 23, 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Walgreen Co.
300 Wilmot Road, MS 3301
Deerfield, IL 60015

Corporation Service Company, which will
do business in California as CSC –
Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

*Registered Agent in State of California for
Walgreen Co.*

**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 **WALGREEN CO.** (“YOU”) of violations of the Act and of our demand that YOU remedy such violations within 30 (thirty) days from your receipt of this letter.

This firm represents Teri Spano, who within the last three years, purchased **Walgreens Brand Ear Pain Relief and Well at Walgreens Homeopathic EarAche Drops**, (“WEAD” or the “Product”) an over-the-counter (OTC) Product YOU distribute in California and elsewhere throughout the United States. Ms. Spano was exposed to and saw YOUR claims about the Product on its packaging, purchased WEAD in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising, in the form of the lost purchase price.

YOU manufacture, advertise, distribute, and sell WEAD by claiming it relieves earaches. Specifically, YOU market YOUR product by making the following claims:

YOU claim that WEAD “Relieves pain” and the product “Ear Pain Relief quickly stimulates the body’s natural ability to relieve earache pain.” YOU also claim that “Relieves pain, calms irritability & soothes itching due to cold & flu, swimmer’s ear & allergy.” Each of these products contain.

- Chamomilla 10x.....calmative, pain reliever
- Mercurius solubilis 15x....anti-inflammatory
- Sulfur 12x.....pain reliever, anti-itch

Nonetheless, YOUR representations about these ingredients are, false, deceptive and misleading because, among other reasons, it is unlawful to sell OTC medicines for earache relief because earache is a disease that require diagnosis and treatment by a physician, or YOUR Product is intended to provide treatment for symptoms usually caused by an underlying disease process that requires diagnosis and treatment by a physician, or intended to affect the structure or function of the body.

As the FDA recently indicated in September 19, 2013 warning letters to a number of homeopathic ear drop companies that “[e]ar pain (earache) is not a currently recognized OTC indication in the final monograph for topical OTC drug products (21 C.F.R. § 344) or in any approved OTC new drug application.” Further, the FDA determined that where ear drops are labeled to relieve ear pain, the product’s “labeling is false or misleading because it represents the product as suitable for use by consumers to treat a condition which the Agency has found not appropriate for OTC drug treatment, and because it encourages OTC treatment for ear pain, but fails to distinguish among conditions that manifest with ear pain and that can lead to serious injury if not accurately diagnosed and treated by a licensed physician.”

Therefore, YOUR Product is misbranded, and unlawful to sell in the State of California under the California Sherman Food, Drug and Cosmetic Law, as Murine is misbranded and its packaging is false and misleading. *See, e.g.*, Cal. Health & Safety Code, Div. 104, Part 5; *id.* §§ 111330, 111440-111450, 111470-111475, 111490.

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 WEAD under the representation that it helps them relieve earaches and it a lawful OTC product, when it fact it does not and is not.

Please be advised that the alleged unfair, unlawful or fraudulent methods of competition or unfair, unlawful or deceptive business 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 could be requested in a class action complaint on behalf of our client, Ms. Teri Spano, and all other similarly-situated residents in the State of California and states with laws similar to the consumer protection laws of this State:

- (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 Murine 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

Attorneys for Teri Spano,
and all others similarly situated

EXHIBIT 2

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Home Inspections, Compliance, Enforcement, and Criminal Investigations Enforcement Actions Warning Letters
Inspections, Compliance, Enforcement, and Criminal Investigations

Medtech Products, Inc. 9/19/13



Department of Health and Human Services

Public Health Service
Food and Drug Administration
Silver Spring, MD 20993-0002

WARNING LETTER

September 19, 2013

VIA UNITED PARCEL SERVICE

Matthew M. Mannelly, CEO
Medtech Products, Inc.
90 N. Broadway
Irvington, NY 10533

Dear Mr. Mannelly:

This letter is to advise you that the United States Food and Drug Administration (FDA) has recently reviewed your firm's labeling and marketing information for the drug product, "Murine Ear Drops for Earache Relief." Based on our review, the product is in violation of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). As described in more detail below, this product is misbranded under sections 502 and 503 [21 U.S.C. § 352 and 353] and in violation of section 301 of the FD&C Act [21 U.S.C. § 331].

The label, website, and other labeling demonstrate the intended uses of your product including, but not limited, to the following:

- The product name, "Murine Ear Drops for Earache Relief"
- "Chamomilla HPUS 10x.....calmative, pain reliever"
- "Mercurius solubilis HPUS 15x.....anti-inflammatory"
- "Relieves pain, soothes, and calms"
- "Provides temporary relief from earache (ear pain) in adults and children . . ."

Based on these claims, your product is a drug as defined by section 201(g)(1)(B) and (C) of the FD&C Act [21 U.S.C. § 321(g)(1)(B) and (C)], because it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man, and/or intended to affect the structure or any function of the body.

Although marketed to consumers as an over-the-counter (OTC) drug, Murine Ear Drops for Earache

Exhibit 2

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Relief is a prescription drug under section 503(b)(1) of the FD&C Act [21 U.S.C. § 353(b)(1)]. Section 503(b)(1) of the FD&C Act [21 U.S.C. 353 (b)(1)] identifies criteria for determining the prescription status of a product. The product listed above is a prescription drug within the meaning of section 503(b)(1) of the FD&C Act because it is intended to treat diseases that require diagnosis and treatment by a physician or is intended to provide treatment for symptoms usually caused by an underlying disease process that requires diagnosis and treatment by a physician. Ear pain (earache) is not a currently recognized OTC indication in the final monograph for topical otic products (21 C.F.R. § 344) or in any approved OTC new drug application.[1] OTC treatment is inappropriate for ear pain because consumers cannot distinguish its symptoms from those of more serious disorders of the ear or adjacent tissues which are not amenable to OTC treatment and which can lead to serious injury if not accurately diagnosed and treated by a licensed healthcare professional.

Because this product is subject to 503(b)(1) of the FD&C Act, the product is misbranded under section 503(b)(4) of the FD&C Act [21 U.S.C. § 353(b)(4)] in that the label fails to bear the symbol, "Rx only." [2]

Murine Ear Drops for Earache Relief is also misbranded within the meaning of section 502(f)(1) of the FD&C Act [21 U.S.C. § 352 (f)(1)] in that its labeling fails to bear adequate directions for use as that term is defined in 21 C.F.R. § 201.5. The indication for which the product listed above is labeled and marketed, i.e., treatment of ear pain or inflammation, is not appropriate for OTC use. If an indication requires the supervision of a practitioner licensed to prescribe drugs, adequate directions for use cannot be written for an OTC drug product for that indication.

Furthermore, the drug is misbranded within the meaning of section 502(a) of the FD&C Act [21 U.S.C. 352 (a)] in that its labeling is false or misleading because it represents the product as suitable for use by consumers to treat a condition which the Agency has found not appropriate for OTC drug treatment, and because it encourages OTC treatment for ear pain, but fails to distinguish among conditions that manifest with ear pain and that can lead to serious injury if not accurately diagnosed and treated by a licensed physician.

Your marketing of this misbranded product violates sections 301(a) of the FD&C Act [21 U.S.C. § 331(a)].

We recognize that your product is labeled as a homeopathic drug with active ingredients measured in homeopathic strengths. The definition of "drug" in section 201(g)(1) of the FD&C Act [21 U.S.C. § 321(g)(1)] includes articles recognized in the official Homeopathic Pharmacopeia of the United States (HPUS), or any supplement to it. Homeopathic drugs are subject to the same regulatory requirements as other drugs; nothing in the FD&C Act exempts homeopathic drugs from any of the requirements related to adulteration, labeling, misbranding, or approval. We acknowledge that many homeopathic drugs are manufactured and distributed without FDA approval under enforcement policies set out in the Agency's Compliance Policy Guide entitled "Conditions Under Which Homeopathic Drugs May be Marketed (CPG 7132.15)" (the CPG). As its title suggests, the CPG identifies specific conditions under which homeopathic drugs may ordinarily be marketed. Thus, in order to fall under the enforcement policies set forth in the CPG, a homeopathic product must meet the conditions set forth in the CPG. One of those conditions is compliance with section 503(b) of the FD&C Act. Under the CPG, only homeopathic products intended solely for self-limiting disease conditions amenable to self-diagnosis (of symptoms) and treatment may be marketed over-the-counter (OTC). Homeopathic products offered for conditions not amenable to OTC use must be marketed as prescription products.

* * *

The violations cited in this letter are not intended to be an all-inclusive statement of violations that exist in connection with your product. You are responsible for investigating and determining the causes of the violations identified above and for preventing their recurrence or the occurrence of

Exhibit 2

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other violations. It is your responsibility to assure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction. Other federal agencies may take this Warning Letter into account when considering the award of contracts.

Within fifteen working days of receipt of this letter, please notify this office in writing of the specific steps that you have taken to correct violations. Include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the time within which you will complete the correction.

Address your reply to the U.S. Food and Drug Administration; Attn: LCDR Frank Verni, RPh; 158-15 Liberty Avenue; Jamaica, NY 11433. You may reach LCDR Verni at (718) 662-5702 if you have any questions about this matter.

Sincerely,
/S/
Ronald M. Pace
District Director
New York District

[1] The question of whether a product intended to treat ear pain should be available by prescription only or OTC is governed by § 503(b) of the FD&C Act, to which all homeopathic drug products are subject. Accordingly, the Agency's conclusion that treatment or relief of ear pain is not an appropriate OTC indication is applicable to both homeopathic and non-homeopathic drugs marketed for that indication.

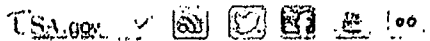
[2] The Agency's guidance, "Conditions Under Which Homeopathic Drugs May be Marketed (CPG 7132.15)," states that, in accordance with § 503(b)(1) of the FD&C Act, homeopathic drug products offered for conditions that require diagnosis or treatment by a licensed practitioner must bear the prescription legend, "Caution: Federal law prohibits dispensing without prescription." This guidance was issued by the Agency in 1988. In 1997, Congress enacted the Food and Drug Administration Modernization Act (FDAMA); section 126 of FDAMA amended § 503(b)(4) of the FD&C Act to require that the label of a prescription drug must bear, at a minimum, the symbol "Rx only."

Page Last Updated: 09/23/2013

Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

Accessibility Contact FDA Careers FDA Basics FOIA No Fear Act Site Map Transparency Website Policies

U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
Email FDA



For Government For Press

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Combination Products Advisory Committees Science & Research Regulatory Information Safety
Emergency Preparedness International Programs News & Events Training and Continuing
Education Inspections/Compliance State & Local Officials Consumers Industry Health
Professionals Search FDA



U.S. Department of Health & Human Services

Links on this page:

Exhibit 2

4

EXHIBIT A-Tab 2

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): LAW OFFICES OF RONALD A. MARRON, APLC Ronald A. Marron (SBN 175650) 651 Arroyo Drive San Diego, CA 92103 TELEPHONE NO.: (619)696-9006 FAX NO.: (619)564-6665 ATTORNEY FOR (Name): Plaintiffs DANIELLE DEMISON and TERI SPANO	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/31/2013 at 11:00:36 AM Clerk of the Superior Court By Calvin Beutler, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central Division	CASE NUMBER: 37-2013-00082691-CU-BT-CTL JUDGE: _____ DEPT: Judge Joan M. Lewis
CASE NAME: Demison et al v. Walgreen Co. Inc.,	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): _____
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 30, 2013
 Ronald A. Marron

/s/ Ronald A. Marron

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT A-Tab 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7065	
PLAINTIFF(S) / PETITIONER(S): Danielle Demison et.al.	
DEFENDANT(S) / RESPONDENT(S): Walgreen Co Inc	
DANIELLE DEMISON VS. WALGREEN CO INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2013-00082691-CU-BT-CTL

CASE ASSIGNMENT

Judge: Joan M. Lewis

Department: C-65

COMPLAINT/PETITION FILED: 12/31/2013

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	06/27/2014	11:00 am	C-65	Joan M. Lewis

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 010313 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

EXHIBIT A-Tab 4

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Ronald A. Marron (SBN 175650) LAW OFFICES OF RONALD A. MARRON 651 Arroyo Drive San Diego, CA 92103 TELEPHONE NO. (Optional): (619) 696-9006 FAX NO. (Optional): (619) 564-6665 E-MAIL ADDRESS (Optional): ron@consumersadvocates.com ATTORNEY FOR (Name): Danielle Demison and Teri Spano	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/23/2014 at 02:50:00 PM Clerk of the Superior Court By E- Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., SUITE, 1000, VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	JUDGE Hon. Joan M. Lewis
PLAINTIFF(S) Danielle Demison and Teri Spano	DEPARTMENT C-65
DEFENDANT(S) Walgreen Co. Inc., et al.	CASE NUMBER 37-2013-00082691-CU-BT-CTL
CERTIFICATE OF SERVICE	

I certify under penalty of perjury under the laws of the State of California that all defendants named in the complaint of the above-entitled case have either made a general appearance or have been properly and timely served in compliance with SDSC Local Rule 2.1.5.

Date: January 23, 2013

Ronald A. Marron
 Type or print name

Ronald A. Marron (RC)
 Signature

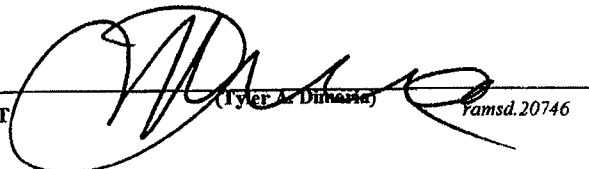
EXHIBIT A

Attorney or Party without Attorney: RONALD A. MARRON, Bar #175650 LAW OFFICES OF RONALD A. MARRON, APLC 651 ARROYO DRIVE SAN DIEGO, CA 92103 Telephone No: 619.696.9006 FAX No: 619.564.6665			For Court Use Only		
Attorney for: Plaintiff			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: SAN DIEGO COUNTY SUPERIOR COURT OF CALIFORNIA					
Plaintiff: Danielle Demison And Teri Spano, On Behalf Of Themselves, All Others Similarly Situ Defendant: WALGREEN CO. INC., AN ILLINOIS CORPORATION; ET AL					
PROOF OF SERVICE SUMMONS; COMPLAINT		Hearing Date:	Time:	Dept/Div:	Case Number: 37201300082691

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET; ADR INFORMATION; NOTICE OF CASE ASSIGNMENT; NOTICE OF CONFIRMATION OF ELECTRONIC FILING OF COMPLAINT AND ACCOMPANYING DOCUMENTS; NOTICE TO LITIGANTS
3. a. Party served: WALGREEN CO. INC., C/O CSC - LAWYERS INCORPORATING SERVICE, AS REGISTERED AGENT
 b. Person served: BECKY DEGEORGE, PERSON AUTHORIZED TO ACCEPT SERVICE OF PROCESS., WHITE, FEMALE, 49 Years Old, BLONDE Hair, BLUE Eyes, 5 Feet 7 Inches, 160 Pounds
4. Address where the party was served: 2710 GATEWAY OAKS DRIVE, SUITE 150N SACRAMENTO, CA 95833
5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Fri., Jan. 10, 2014 (2) at: 2:08PM
6. The "Notice to the Person Served" (on the Summons) was completed as follows:
 on behalf of: WALGREEN CO. INC.
 Under CCP 416.10 (corporation)
7. Person Who Served Papers:

a. Tyler A. Dimaria b. ORION LITIGATION SUPPORT SERVICES 5119 GRIFFIN OAKS LANE, Registration # 2012-26 SACRAMENTO, CA 95841 c. 916.446.4890, FAX 888.614.2498	Recoverable Cost Per CCP 1033.5(a)(4)(B) d. The Fee for Service was: \$61.75 e. I am: (3) registered California process server (i) Independent Contractor (ii) Registration No.: 2006-06 (iii) County: SACRAMENTO (iv) Expiration Date: Thu, Feb. 13, 2014
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8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Wed, Jan. 15, 2014


 (Tyler A. Dimaria) Yamsd.20746

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WALGREEN CO. INC.,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DANIELLE DEMISON and TERI SPANO, individually, on behalf of themselves, all others similarly situated, and the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/31/2013 at 11:00:36 AM
Clerk of the Superior Court
By Calvin Beutler, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

330 West Broadway
San Diego, CA 92101

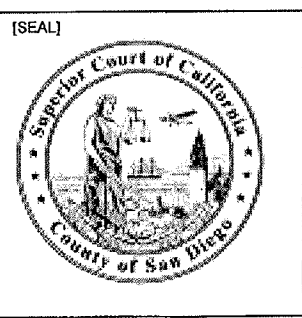
CASE NUMBER:
(Núm) 37-2013-00082691-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of Ronald A. Marron, 651 Arroyo Drive, San Diego CA 92103, (619)696-9006

DATE: 01/09/2014
(Fecha)

Clerk, by C. Beutler, Deputy
(Secretario) C. Beutler (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

1 Daniel J. Herling (California State Bar No. 103711)
(djherling@mintz.com)
2 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
3 44 Montgomery St., 36th Floor
San Francisco, California 94104
4 Telephone: (415) 432-6000
Facsimile: (415) 432-6001

5 Daniel S. Silverman (California State Bar No. 137864)
(dssilverman@Venable.com)
6 VENABLE LLP
7 2049 Century Park East, Suite 2100
8 Los Angeles, CA 90067
Telephone: (310) 229-9900
9 Facsimile: (310) 229-9901

10 Attorneys for Defendant,
11 WALGREEN CO. INC.

12 IN UNITED STATES DISTRICT COURT FOR THE
13 SOUTHERN DISTRICT OF CALIFORNIA

14 DANIELLE DEMISON and TERI SPANO,
15 on behalf of themselves, all others similarly
16 situated, and the general public,

17 Plaintiffs,

18 vs.

19 WALGREEN CO. INC., an Illinois
20 corporation; DOES 1-20, inclusive,

21 Defendants.

Case No.: **'14CV0306 LAB WVG**

**DECLARATION OF HEATHER
HUGHES IN SUPPORT OF
DEFENDANT WALGREEN CO.
INC.'S NOTICE OF REMOVAL**

22
23 I, Heather Hughes, hereby declare and state as follows:

24 1. I am a resident of the State of Illinois. I am employed at Walgreen Co. Inc.
25 (“Walgreen” or the “Company”) as a Divisional Merchandise Manager for health and wellness
26 products. In that capacity, I have acquired extensive institutional knowledge of the Company, its
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1 products, and its operations, and if called upon as a witness I could and would so testify as to the
2 facts stated in this declaration.

3 2. I am informed and believe, and on that basis declare, that on January 10, 2014,
4 Walgreen was served with a summons and complaint (the "Complaint") filed by Plaintiffs
5 Danielle Demison and Teri Spano, purportedly on behalf of themselves, all others similarly
6 situated, and the general public, in the Superior Court of the State of California, County of San
7 Diego, under the caption *Demison, et al. v. Walgreen Co. Inc., et al.*, Case No. 37-2013-
8 00082691-CU-BT-CTL (the "State Court Action"). The State Court Action alleges that it
9 involves the Walgreens-brand products Walgreens Brand Ear Pain Relief ("Ear Pain Relief") and
10 Well at Walgreens Homeopathic Ear Ache Drops ("Ear Ache Drops" and, together with Ear Pain
11 Relief, the "Products"). In their Complaint, Plaintiffs seek to certify a class consisting of all
12 purchasers of the Products in California and in all "states in the United States with consumer
13 protection laws similar to California."

14 3. At the time of service and up to the filing of the Company's Notice of Removal,
15 Walgreen Co. was and still is a corporation organized and existing under the laws of the State of
16 Illinois. Walgreen was not, and is not, incorporated under the laws of the State of California.

17 4. Walgreen's headquarters and principal place of business are located in Deerfield,
18 Illinois. Walgreen's Illinois headquarters are home to substantially all of the company's
19 corporate functions, and all management of Walgreen is operated through the Illinois
20 headquarters. The Company's high level officers all reside and work in Illinois. Walgreen does
21 not maintain a corporate office or principal place of business in California, nor do any of
22 Walgreen's corporate officers work or reside in California.

23 5. Walgreen's corporate minute books and records are located and maintained in
24 Illinois. Its key policies and procedures are all established, issued, administered, and/or
25 implemented out of the Company's headquarters in Illinois. Substantially all critical operational
26 and administrative personnel involved with Walgreen's corporate policies and procedures
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1 regarding its employees, including its payroll, are located and work in Illinois. The personnel
2 files for all employees are also maintained at the Company's Illinois headquarters.

3 6. Walgreen sells the Products in retail stores bearing the Walgreens name located
4 throughout the United States.

5 7. From January 3, 2010 to January 11, 2014, Walgreen sold approximately 455,464
6 units of the Products in the United States, with total sales approximating \$4,080,445.

7 8. If an injunction was issued in this case against Walgreen targeting its sale and
8 labeling of the Products, Walgreen would have to engage in a nationwide relabeling and recall of
9 the Products in order to guarantee its compliance.

10 9. Walgreen has substantial numbers of units of the Products within its control,
11 including units currently on shelves at Walgreens retail stores. Walgreen has one label for each
12 of the Products, and that label is uniform nationwide. In order to modify the labels for units of
13 the Products that remain within the Company's control, Walgreen would have to pull the
14 Products from stores nationwide, not just California stores alone. The Company has no feasible
15 or practicable method available to it of relabeling only the units of Products for sale in California
16 stores. Further, requiring Walgreen to give the Products different labels state-by-state would be
17 extremely difficult and cost-prohibitive for the Company.

18 10. If an injunction requiring relabeling and recall of the Products was issued against
19 Walgreen, the Company would face two main types of potential loss. First, Walgreen would
20 incur the costs and lost sales attributable to relabeling and repackaging the units of the Products
21 that remain under its control or on its store shelves. Taking into account printing costs,
22 packaging costs, transportation of the units, lost sales, and other expenses, I am informed and
23 believe, and on that basis declare, that Walgreen would incur costs and losses in excess of \$2
24 million to repackage and relabel its inventory of the Products.

25 11. Second, Walgreen would incur the costs and lost sales attributable to conducting a
26 recall of its Products sold in California and all states deemed to have consumer protection laws
27 similar to California. Pursuant to any recall, Walgreen would be required to pay out refunds to
28

1 consumers approximating its total sales of the Products in these states. Taking into account the
2 amounts of money lost due to implementing the recall, refunding customers, and related
3 expenses, I am informed and believe, and on that basis declare, that Walgreen would incur costs
4 and losses in excess of \$4 million in order to implement a recall and refund of sold units of the
5 Products.

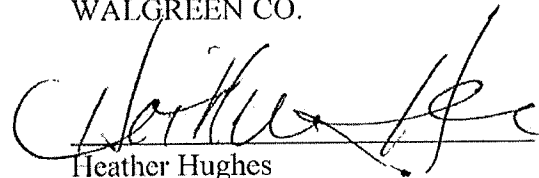
6 12. In addition, the Company would likely lose \$1 million in sales as a result of a
7 recall, including (a) losses due to the Products being off retail shelves to implement a recall and
8 relabeling, (b) a likely loss of consumer confidence in the Products resulting from a recall, and
9 (c) likely lost sales in other Walgreen products triggered by such a recall.

10 13. I declare that the foregoing is true based on my own personal knowledge and that
11 I could so testify if called upon as a witness.

12 I declare under penalty of perjury under the laws of the State of Illinois that the foregoing
13 is true and correct.

14 Executed this 10 th day of February, 2014, in Deerfield, Illinois.

15 WALGREEN CO.

16 
17 Heather Hughes
18 Divisional Merchandise Manager