CV 15-1215

BLOCK, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JANCKELL FERMIN, JOSEFINA VALDEZ, ADRIANA SOUSA, JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN), JOHN DOE (NEW JERSEY), and JOHN DOES 1-100, on behalf of themselves and others similarly situated,	
Plaintiffs,	CLASS ACTION COMPLAINT
- against -	Case No.
MCNEIL-PPC, INC. and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.	JURY TRIAL DEMANDED
Defendants,	

Plaintiffs JANCKELL FERMIN, JOSEFINA VALDEZ, ADRIANA SOUSA, JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN), JOHN DOE (NEW JERSEY), and JOHN DOES 1-100, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Complaint against the Defendants, allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

NATURE OF THE ACTION

1. This action seeks redress for deceptive and otherwise improper business practices that Defendants, MCNEIL-PPC, INC. (hereinafter "MCNEIL-PPC") and JOHNSON & JOHNSON CONSUMER COMPANIES, INC. (hereinafter "JOHNSON & JOHNSON")

(collectively, the "Defendants"), engage in with respect to the packaging of their Tylenol® pain-reliever and fever reducer products, which are produced in the form of tablets and caplets (capsule-shaped tablets) containing acetaminophen, an over-the-counter drug designed to alleviate pain and fever. The acetaminophen products are used to relieve several kinds of pain, including headache, muscle aches, minor arthritis and other joint pain, and backache.

2. Defendants, with the intent to induce consumers to purchase the acetaminophen products for a premium, manufacture, market and sell the products in misleading packaging in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 502 (21 U.S.C. 352(i)), as well as state laws prohibiting drug misbranding with requirements mirroring federal law.

3. Defendants made, or caused to be made, representations to the public that were false and misleading. These representations include advertising and packaging the Products in containers which had void space not visible by consumers, referred to as "non-functional slack-fill." This non-functional slack-fill, when displayed for sale to Plaintiffs and Class members, caused false representations by implying that Defendants' products filled the entire package.

4. Defendants sold Plaintiffs and Class members, and continue to sell consumers the following products with non-functional slack-fill and in containers made, formed or filled as to be misleading:

a. Tylenol® Extra Strength 10 Caplet Product
b. Tylenol® Extra Strength 24 Caplet Product
c. Tylenol® Extra Strength 100 Caplet Product
d. Tylenol® Extra Strength 225 Caplet Product
e. Tylenol® Regular Strength 100 Tablet Product
f. Tylenol® PM 24 Caplet Product
g. Tylenol® PM 100 Caplet Product

Such products are detailed under **EXHIBIT A**.

5. Upon information and belief, Defendants also sell the following products with non-functional slack-fill and in containers made, formed or filled as to be misleading:

a. Tylenol® Extra Strength 50 Caplet Product
b. Tylenol® Extra Strength 325 Caplet Product
c. Tylenol® Simply Sleep 100 Caplet Product

These products together with the products in **EXHIBIT A** are herein defined as the "Products."

6. Defendants sold and continue to sell the Products under the Tylenol® brand. Each of the Products (i) contains the same or similar product packaging, as described herein, (ii) contains non-functional slack-fill, (iii) violates 21 U.S.C. 352(i), and (iv) violates state laws against misleading packaging, as described herein.

7. The Products are sold in plastic dispensing bottles of various sizes and pill quantities. The size of the bottles in comparison to the volume of the Products contained therein make it appear as if the consumer is buying more than what is actually being sold.

8. By increasing the size of the Product packaging, Defendants maximize the shelf presence of their Products over competitor products. The extra space provides no benefit to the contents of the packaging and misleads consumers.

9. Plaintiffs and Class members viewed Defendants' misleading Product packaging, reasonably relied in substantial part on the representations and were thereby deceived in deciding to purchase the Products for a premium price.

10. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the "Class Period"), purchased for consumption and not resale of the Products.

11. During the Class Period, Defendants manufactured, marketed and sold the Products throughout the United States. Defendants purposefully sold the Products with non-functional slack-fill and in containers made, formed or filled as to be misleading.

12. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.;*
b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.;*
c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.;*
d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.;*
e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.,* and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.;*
f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.;*
g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.;*
h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.;*
i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.;*
j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.;*
k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.;*
l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.,* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.;*
m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.;*
n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.;*
o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.;*
p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.;*
q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.;*
r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.,* and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.;*
s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.;*
t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq,,* and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.,*
u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.;*
v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
w. Michigan Consumer Protection Act, § § 445.901, *et seq.;*
x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.;*
y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.;*
z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.;*
aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.;*

bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.;*
cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.;*
dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq. ;*
ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.;*
ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq. ;*
gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.;*
hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.;*
ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.;*
jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.;*
kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.;*
ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.;*
mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.;*
nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.;*
oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.;*
pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.;*
qq. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.;*
rr. Texas Stat. Ann. §§ 17.41, *et seq.,* Texas Deceptive Trade Practices Act, *et seq.;*
ss. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.;*
tt. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.;*
uu. Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.;*
vv. Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.;*
ww. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.;*
xx. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.;*
yy. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

13. Defendants have deceived Plaintiffs and other consumers nationwide by mischaracterizing the size and volume of their Products. Defendants have been unjustly enriched as a result of their conduct. Through these unfair and deceptive practices, Defendants have collected millions of dollars from the sale of their Products that they would not have otherwise earned. Plaintiffs bring this action to stop Defendants' misleading practice.

JURISDICTION AND VENUE

14. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), whereby: (i) the proposed class consists of over 100 class members, (ii) a member of the putative class is a citizen of a different

state than Defendants, and (iii) the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs.

15. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C § 1331 because it arises under the laws of the United States.

16. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

17. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

18. This court has personal jurisdiction over Defendants because their Products are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendants have caused harm to class members residing in this District, and the Defendants are residents of this District under 28 U.S.C. 1391(c)(2) because they are subject to personal jurisdiction in this district. Plaintiff FERMIN purchased and used the Defendants' Products in this District.

PARTIES

Plaintiffs

20. Plaintiff JANCKELL FERMIN is, and at all relevant times hereto has been, a citizen of the state of New York and resides in Bronx County. Plaintiff FERMIN has purchased the Products for personal consumption within the State of New York. Plaintiff FERMIN purchased the Products from convenience stores, supermarkets, and pharmacies located throughout Queens County, including but not limited to Duane Reade. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff FERMIN purchased the (i) Extra Strength 100 Caplet Product for $11.49 and (ii) Regular Strength 100 Caplet Product for $10.49 in Queens County. The Products purchased by Plaintiff FERMIN are substantially similar to, and similarly contain non-functional slack-fill as all the other Products; and he has standing to represent purchasers of all Products. Plaintiff FERMIN purchased the Products at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff FERMIN to believe that the containers would be filled to capacity with product and was financially injured as a result.

21. Plaintiff JOSEFINA VALDEZ is, and at all relevant times hereto has been, a citizen of the State of California and resides in San Bernardino, California. Plaintiff VALDEZ has purchased the Products for personal consumption within the State of California. Plaintiff VALDEZ purchased the Products from convenience stores, supermarkets, and pharmacies located in California. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff VALDEZ purchased the Tylenol® Extra Strength 100 Caplet Product. The Product purchased by Plaintiff VALDEZ is substantially similar to, and similarly contains non-functional slack-fill as all the other Products; and she has standing to represent purchasers of all

Products. Plaintiff VALDEZ purchased the Product at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff VALDEZ to believe that the containers would be filled to capacity with product and was financially injured as a result.

22. Plaintiff ADRIANA SOUSA is, and at all relevant times hereto has been, a citizen of the State of Florida and resides in Tallahassee, Florida. Plaintiff SOUSA has purchased the Products for personal consumption within the State of Florida. Plaintiff SOUSA purchased the Products from convenience stores, supermarkets, and pharmacies located in Florida, including but not limited to Publix. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff SOUSA purchased the Tylenol® Extra Strength 24 Caplet Product for $4.99 (or more) in Leon County. The Products purchased by Plaintiff SOUSA are substantially similar to, and similarly contain non-functional slack-fill as all the other Products; and she has standing to represent purchasers of all Products. Plaintiff SOUSA purchased the Products at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff SOUSA to believe that the containers would be filled to capacity with product and was financially injured as a result.

23. Plaintiff JOHN DOE (Illinois) is, and at all relevant times hereto has been, a citizen of the State of Illinois. Plaintiff JOHN DOE has purchased the Products for personal consumption within the State of Illinois. Plaintiff JOHN DOE purchased the Products from convenience stores, supermarkets, and pharmacies located in Illinois. Plaintiff JOHN DOE purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

24. Plaintiff JOHN DOE (Michigan) is, and at all relevant times hereto has been, a citizen of the State of Michigan. Plaintiff JOHN DOE has purchased the Products for personal

consumption within the State of Michigan. Plaintiff JOHN DOE purchased the Products from convenience stores, supermarkets, and pharmacies located in Michigan. Plaintiff JOHN DOE purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

25. Plaintiff JOHN DOE (New Jersey) is, and at all relevant times hereto has been, a citizen of the State of New Jersey. Plaintiff JOHN DOE has purchased the Products for personal consumption within the State of New Jersey. Plaintiff JOHN DOE purchased the Products from convenience stores, supermarkets, and pharmacies located in New Jersey. Plaintiff JOHN DOE purchased the Products at a premium price and was financially injured as a result of Defendants' deceptive conduct as alleged herein.

Defendants

26. Defendant MCNEIL-PPC, INC. is a corporation organized under the laws of Pennsylvania with its headquarters at 7050 Camp Hill Road, Fort Washington, Pennsylvania, 19034 and an address for service of process at the Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801. The McNeil Consumer Healthcare Division of MCNEIL-PPC, INC. markets a broad range of well known and trusted over the counter products, most notably the complete line of Tylenol® acetaminophen products, the leading brand of pain reliever/fever reducer in the adult and pediatric categories.

27. Defendant MCNEIL-PPC, INC. is a subsidiary of Defendant JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

28. Defendant JOHNSON & JOHNSON CONSUMER COMPANIES, INC. is a corporation organized under the laws of New Jersey with its headquarters at 199 Grandview

Road, Skillman, NJ 08558 and an address for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801.

29. Defendants operate as a single integrated and common enterprise. Together, Defendants manufactured, distributed, advertised, marketed and sold the Products to hundreds of thousands of customers nationwide.

FACTUAL ALLEGATIONS

Identical State and Federal Laws Prohibit Drug Misbranding

30. The FDCA, 21 U.S.C. §§ 301 *et seq.*, governs the sale of foods, drugs and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic, affects the regulations by which the product must abide.

31. The FDCA defines drugs, in part, by their intended use, as "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease," or "articles (other than food) intended to affect the structure or function of the body of man or other animals," 21 U.S.C. § 321(g)(1).

32. Under 21 U.S.C. § 352(i)(1), a drug or device shall be deemed to be misbranded "[i]f it is a drug and its container is so made, formed, or filled as to be misleading…"

33. State drug labeling laws also impose requirements that mirror federal law. For example, New York Edn. Law § 6815 identically provides that "[a] drug or device shall be deemed to be misbranded:…h.(1)If it is a drug and its container is so made, formed or filled as to be misleading." Further, Title 24 of the Rules of the City of New York § 71.05 provides that "[a] drug shall be deemed misbranded as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §352) or the State Education Law (§6815)…" Similarly, under California Health & Safety Code, § 111390, "[a]ny drug or device is misbranded if its container is so made, formed,

or filled as to be misleading...." Florida's Drug and Cosmetic Act § 499.007 also provides that "[a] drug or device is misbranded...(9) If it is: (a) A drug and its container or finished dosage form is so made, formed, or filled as to be misleading...."

Defendants' Products Are Packaged in a Manner Likely to Mislead a Reasonable Consumer

34. Defendants develop, manufacture, market, distribute and sell over the counter pain relief products under well-known household brand names such as Tylenol®. The Products are sold at most supermarket chains, convenience stores and major retail outlets throughout the United States, including but not limited to Wal-Mart, Costco, CVS, Walgreens, Kroger, Target and Amazon.com.

35. The Products are sold in non-transparent containers, most of which are further concealed in sealed paper boxes. Due to Defendants' packaging, a consumer cannot fully view the contents of the Products, until after the Products are purchased.

36. Defendants have routinely employed slack-filled packaging containing non-functional slack-fill to mislead customers into believing that they were receiving more Products than they actually were. Defendants lacked any lawful justification for doing so.

37. Non-functional slack-fill is the difference between the actual capacity of a container and the *volume* of product contained within. Plaintiffs were (and a consumer would reasonably be) misled about the volume of the product contained within the containers in comparison to the size of the Products' packaging. The size of the bottles in relation to the actual volume of the tablets/caplets contained therein is intended to mislead the consumer into believing the consumer is getting more of the Products than what is actually in the containers.

38. Defendants sold and continue to sell the following Products with non-functional slack-fill during the class period:

a. Tylenol® Extra Strength 10 Caplet Product
b. Tylenol® Extra Strength 24 Caplet Product
c. Tylenol® Extra Strength 100 Caplet Product
d. Tylenol® Extra Strength 225 Caplet Product
e. Tylenol® Regular Strength 100 Tablet Product
f. Tylenol® PM 24 Caplet Product
g. Tylenol® PM 100 Caplet Product

39. Upon information and belief, Defendants also sell the following products with non-functional slack-fill:

a. Tylenol® Extra Strength 50 Caplet Product
b. Tylenol® Extra Strength 325 Caplet Product
c. Tylenol® Simply Sleep 100 Caplet Product

40. Defendants package the Products in containers that are made, formed or filled as to be misleading. Pictures of the Products and packaging are shown in **EXHIBIT A**, with horizontal lines indicating the approximate height of the pills in the respective bottles.

41. Visual estimates in **EXHIBIT A** show that the contents of the Products do not fill up the entirety of the dispensing bottles. In fact, each bottle contains significant non-functional slack-fill in violation of federal and state laws.

42. Plaintiffs and the members of the Class relied on the sizes of the dispensing bottles to believe that the entire volume of the packaging would be filled to capacity with acetaminophen pills.

43. While Plaintiffs were aware that a certain amount of functional slack-fill is necessary in the Products, the void space in Defendants' Products accounted for over 30% of the Product packaging in most of the Products.

44. There is no functional reason to package the Products with excessive slack-fill. Defendants and their competitors sell various products in smaller containers capable of being filled to capacity that also adequately comply with federal and state labeling requirements.

Plaintiffs Were Injured as a Result of Defendants' Misleading and Deceptive Conduct

45. Defendants' Product packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Products. By increasing the size of the bottles and boxes in which the pills are contained, Defendants maximize the shelf presence of their Products over competitor products. Defendants' misrepresentations are part of their systematic Product packaging practice.

46. There is no practical reason for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of the Products being purchased by consumers.

47. According to Brian Wansink, professor and director of a nonprofit research facility at Cornell University which studies purchasing habits, consumers tend to ignore size labels and base their buys largely on package dimensions. In a January 2010 Consumer Reports Magazine article, he reported that faced with a large box and a smaller box, both with the same amount of product inside, consumers are apt to choose the larger box because they think it's a better value.

48. As a result of Defendants' deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that contain non-functional slack-fill and are packaged in a misleading manner. Moreover, and Class members have paid a premium for the Products over other acetaminophen products sold on the market.

49. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to

analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

50. Defendants' misrepresentations regarding their Product packaging violated the FDCA, 21 U.S.C. § 352(i)(1), state drug packaging laws (which impose requirements which mirror federal law), as well as the consumer protection laws of the fifty states and the District of Columbia.

51. Defendants violated consumer protection laws of the fifty states and District of Columbia because they misled Plaintiffs (and continue to mislead Class members) about the volume of the tablets/caplets within the containers in comparison to the size of the Product packaging. The size of the containers in relation to the actual amount of the Products contained therein gives the false impression that the consumer is buying more than they are actually receiving.

52. The types of misrepresentations made above would be considered by a reasonable consumer when deciding to purchase the Products. A reasonable person would (and Plaintiffs did) attach importance to whether Defendants' Products are "misbranded," *i.e.,* not legally salable, not capable of legal possession, packaged with non-functional slack-fill, and/or packaged in misleading containers.

53. Plaintiffs and Class members were exposed to Defendants' deceptive Product packaging and Class members continue to be exposed to those false and misleading representations.

54. Plaintiffs and Class members did not know, and had no reason to know, that the Products contained non-functional slack-fill and were packaged in containers not filled to capacity, exclusive of the containers' functional elements.

55. Defendants' Product packaging was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Based on Defendants' Product packaging, Plaintiffs and Class members believed that they were getting more of the Products than was actually being sold. Had Plaintiffs and Class members known Defendants' Products contained non-functional slack-fill, they would not have bought the Products.

56. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products contained non-functional slack-fill as set forth herein, and would not have bought the Products had they known the truth about them.

57. Defendants have reaped enormous profits from their false, misleading and deceptive marketing and sale of the Products.

58. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers who have purchased the Products to correct the false and misleading perception Defendants have created in the minds of consumers, and obtain redress for those who have purchased the Products. Plaintiffs allege unjust enrichment and violations of consumer protection laws in all states and the District of Columbia.

59. Plaintiffs and Class members paid the full price of the Products and received less of what Defendants represented they would be getting due to the non-functional slack-fill and misleading packaging of the Products. Plaintiffs and the Class (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased Products and paid prices they would otherwise not have paid had Defendants not made false and misleading packaging representations.

60. In order for Plaintiffs and Class members to be made whole, Plaintiffs and Class members would have to receive enough of the tablets/caplets such that the containers are filled to

capacity or have paid less for the Products. In the alternative, Plaintiffs and members of the Class are damaged by the percentage of non-functional slack-fill relative to the purchase price they paid.

61. Plaintiffs have standing to sue in this case because Plaintiffs have a personal injury in fact, which is caused by Defendant's misleading packaging practices alleged herein, and which a favorable decision will likely redress. *See Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62 (2d Cir.2012). Courts have routinely held that economic injury is sufficient for the standing requirement. *See, e.g., In re Frito-Lay N. Am., Inc. All Natural Litig.*, No. 12-MD-2413 RRM RLM, 2013 WL 4647512, at *11 (E.D.N.Y. Aug. 29, 2013)

62. Through this action, Plaintiffs seek injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys' fees, costs and all other relief available to the Class as a result of Defendants' unlawful conduct.

CLASS ACTION ALLEGATIONS

The Nationwide Class

63. Plaintiffs brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons or entities in the United States who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

64. Plaintiff FERMIN seeks to represent a class consisting of the following subclass (the "New York Class"):

> All New York residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The California Class

65. Plaintiff VALDEZ seeks to represent a class consisting of the following subclass (the "California Class"):

> All California residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The Florida Class

66. Plaintiff SOUSA seeks to represent a class consisting of the following subclass (the "Florida Class"):

> All Florida residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

67. The proposed Classes exclude current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

68. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

69. Numerosity: This action has been brought and may properly be maintained as a class action against Defendants under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are hundreds of thousands of members in the Nationwide Class, New York Class, California Class, and Florida Class. Based on sales of the Products, it is estimated that each Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each

subclass would have thousands of members. The persons in each of the Classes are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

70. Common Questions Predominate: Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Classes because each Class member's claim derives from the same false, misleading and deceptive misconduct. The common questions of law and fact involved predominate over any questions affecting only Plaintiffs or individual Class members. Thus, proof of a common or single set of facts will establish the right of each member of the Classes to recover. Among the questions of law and fact common to the Classes are:

i. Whether Defendants packaged, marketed, advertised and/or sold Products to Plaintiffs and Class members, using false, misleading and/or deceptive packaging;

ii. Whether Defendants' actions constitute violations of 21 U.S.C. § 352(i)(1);

iii. Whether Defendants' actions constitute violations of the consumer protection laws of the fifty states and District of Columbia;

iv. Whether Defendants omitted and/or misrepresented material facts in connection with the packaging, marketing, advertising and/or sale of Products;

v. Whether Defendants' packaging, marketing, advertising and/or selling of Products constituted an unfair, unlawful or fraudulent practice;

vi. The extent that the packaging of the Products during the relevant statutory period constituted unlawful non-functional slack-fill;

vii. Whether, and to what extent, injunctive relief should be imposed on Defendants to prevent such conduct in the future;

viii. Whether the members of the Class have sustained damages as a result of Defendants' wrongful conduct;

ix. The appropriate measure of damages and/or other relief;

x. Whether Defendants have been unjustly enriched by their scheme of using false, misleading and/or deceptive packaging;

xi. Whether Defendants should be enjoined from continuing their unlawful practices.

71. Typicality: Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased the Products during the Class Period and sustained similar injuries arising out of Defendants' conduct in violation of the consumer protection laws of each of the fifty states and the District of Columbia. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

72. Adequacy: Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class

actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class

73. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendants would likely unfairly receive millions of dollars or more in improper charges.

74. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

75. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

76. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

77. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

78. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

79. Plaintiff FERMIN repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

80. Plaintiff FERMIN brings this claim individually and on behalf of the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, General Business Law ("NY GBL") § 349.

81. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

82. Under the New York Gen. Bus. Code § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

83. The practices employed by Defendants, whereby Defendants advertised, promoted, marketed and sold their Products in packaging made, formed or filled as to be misleading are unfair, deceptive and misleading and are in violation of the NY GBL § 349. Moreover, New York State law broadly prohibits the misbranding of drugs in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352 *et seq.* Under New York Edn. Law § 6815, "[a] drug or device shall be deemed to be misbranded: h.(1)If it is a drug and its container is so made, formed or filled as to be misleading."

84. The foregoing deceptive acts and practices were directed at consumers.

85. Defendants should be enjoined from packaging their Products with slack-fill as described above pursuant to NY GBL § 349, New York Edn. Law § 6815, and 21 U.S.C. § 352(i).

86. Plaintiff FERMIN, on behalf of himself and all others similarly situated, respectfully demands a judgment enjoining Defendants' conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

87. Plaintiff FERMIN repeats and realleges each and every allegation contained above as if fully set forth herein.

88. Plaintiff FERMIN brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

89. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in his own name to enjoin such unlawful act or practice, an action to recover her actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

90. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Products as seeming to contain more in the packaging than is actually included.

91. The practices employed by Defendants, whereby Defendants advertised, promoted, marketed and sold their Products in packages made, formed or filled as to be misleading unfair, deceptive and misleading and are in violation of the NY GBL § 349, New York Edn. Law § 6815 and the FDCA, 21 U.S.C. 352(i) in that said Products are misbranded.

92. The foregoing deceptive acts and practices were directed at consumers.

93. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the quantities of the Products in that they misled

Plaintiff and the other Class members into believing that they were buying more than what they actually received.

94. Plaintiff FERMIN and the other Class members suffered a loss as a result of Defendants' deceptive and unfair trade acts. Specifically, as a result of Defendants' deceptive and unfair acts and practices, Plaintiff FERMIN and the other Class members suffered monetary losses associated with the purchase of Products, i.e., receiving less than the capacity of the packaging due to non-functional slack-fill in the Products. In order for Plaintiff FERMIN and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

COUNT III

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750, *et seq.*

95. Plaintiff VALDEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further alleges as follows:

96. Plaintiff VALDEZ brings this claim individually and on behalf of the other members of the California Class for Defendants' violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

97. Plaintiff VALDEZ and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff VALDEZ and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff VALDEZ and the California Class members are not sophisticated experts with independent knowledge of corporate branding, labeling, and packaging practices.

98. Products that Plaintiff VALDEZ and other California Class members purchased from Defendants were "goods" within the meaning of Cal. Civ. Code § 1761(a).

99. Defendants' actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

100. Defendants' packaging violates section 12606(b) of the California Business and Professions Code, in that Defendants packaged the Products in containers made, formed or filled as to be misleading as to the actual size and filling of the containers with Defendants' Products.

101. Defendants' packaging with non-functional slack-fill violates federal and California law because the Products are intentionally packaged to prevent the consumer from being able to fully see their contents.

102. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendants' conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have quantities which they do not have.

103. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendants' conduct

constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

104. Plaintiff VALDEZ and the California Class members are not sophisticated experts about the corporate branding, labeling, and packaging practices related to the Products. Plaintiff VALDEZ and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

105. Plaintiff VALDEZ and the California Class suffered injuries caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations and deceptive marketing; and (c) the Products did not have quantities as promised.

106. On January 16, 2015, prior to filing this action, a CLRA notice letter was served on Defendants which complies in all respects with California Civil Code § 1782(a). A California consumer sent JOHNSON & JOHNSON CONSUMER COMPANIES, INC. and MCNEIL-PPC, INC., respectively, on behalf of herself and the proposed Class, a letter via certified mail, return receipt requested, advising Defendants that they are in violation of the CLRA and demanding that they cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of the letter sent to Defendants is attached hereto as **EXHIBIT B**.

107. Wherefore, Plaintiff VALDEZ seeks damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT IV

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, California Business & Professions Code §§ 17200, *et seq.*

108. Plaintiff VALDEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further allege as follows:

109. Plaintiff VALDEZ brings this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*.

110. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising...."

111. Defendants' packaging practices violate federal and California law because their packaging contains misleading and deceptive non-functional slack-fill.

112. Defendants' business practices, described herein, violated the "unlawful" prong of the UCL by violating the California Business and Professional Code, § 12606 (b), which specifically prohibits non-functional slack-fill in any commodities. Defendants' packaging practices as described herein are unlawful also because they violated the California Business and Professional Code, § 12606 (b), which specifically prohibits nonfunctional slack-fill in any commodities.

113. Defendants' business practices, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendants' advertising is of no benefit to consumers.

114. Defendants violated the "fraudulent" prong of the UCL by misleading Plaintiff VALDEZ and the California Class to believe that their Products do not contain unnecessary, excessive non-functional slack-fill and not intended to deceive or mislead the consumers.

115. Plaintiff VALDEZ and the California Class members are not sophisticated experts about corporate branding, labeling, and packaging practices. Plaintiff VALDEZ and the California Class acted reasonably when they purchased the Products based on their belief that Defendants' representations were true and lawful.

116. Plaintiff VALDEZ and the California Class lost money or property as a result of Defendants' UCL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

COUNT V

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, California Business & Professions Code §§ 17500, *et seq.*

117. Plaintiff VALDEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further allege as follows:

118. Plaintiff VALDEZ brings this claim individually and on behalf of the members of the proposed California Class for Defendants' violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq*.

119. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any

statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

120. Defendants engaged in a scheme of offering misbranded Tylenol® Products for sale to Plaintiff VALDEZ and the California Class members by way of product packaging and other promotional materials including the Internet. These materials misrepresented the true content and nature of the misbranded Tylenol® Products. Defendants' advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that the product packaging and advertising were intended as inducements to purchase Defendants' Products, and are statements disseminated by Defendants to Plaintiff VALDEZ and the California Class members. Defendants knew that these statements were unauthorized, inaccurate, and misleading.

121. Defendants' packaging with non-functional slack-fill violates federal and California law because the consumers are deceived or misled into believing that the bottles contain more acetaminophen pills than they actually do.

122. Defendants violated § 17500, *et seq.* by misleading Plaintiffs VALDEZ and the California Class to believe that their Products do not contain non-functional slack-fill.

123. Defendants knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that their representations about the amount of non-functional slack-fill contained were untrue and misleading.

124. Plaintiff VALDEZ and the California Class lost money or property as a result of Defendants' FAL violations because (a) they would not have purchased the Products on the same terms absent Defendants' illegal conduct as set forth herein, or if the true facts were known

concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

COUNT VI

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES, Fla. Stat. Ann. § 501.201, *et seq.*

125. Plaintiff SOUSA realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

126. Plaintiff SOUSA brings this claim individually and on behalf of the Florida Class for Defendants' violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq*.

127. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") makes "unfair or deceptive acts or practices in the conduct or any trade or commerce" in Florida unlawful.

128. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with non-functional slack-fill, to Plaintiff SOUSA and other Florida Class members, Defendants violated the FDUTPA by engaging in false advertising concerning the Products.

129. Defendants have made and continue to make deceptive, false and misleading statements concerning the Products, namely manufacturing, selling, marketing, packaging and advertising the Products as alleged herein. Defendants falsely represented that the Products contain many more acetaminophen pills than they actually do because they are packaged in containers made, formed or filled as to be misleading.

130. Plaintiff SOUSA and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendants are enjoined in that they will continue to be unable to rely on the Defendants' misleading packaging and advertising.

131. Had Plaintiff SOUSA and the Florida Class members known the misleading and/or deceptive nature of Defendants' claims, they would not have purchased the Products.

132. Plaintiff SOUSA and the Florida Class members were injured in fact and lost money as a result of Defendants' conduct of improperly packaging the Products to contain non-functional slack-fill. Plaintiff SOUSA and the Florida Class members paid for Defendants' premium priced Products, but received Products that were worth less than the Products for which they paid.

133. Plaintiff SOUSA and the Florida Class seek declaratory relief, enjoining Defendants from continuing to disseminate their false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT VII

VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505, *et seq.*

134. Plaintiff JOHN DOE (Illinois) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further alleges as follows:

135. Plaintiff JOHN DOE (Illinois) brings this claim individually and on behalf of the other members of the Illinois Class for violations of Illinois's Consumer Fraud and Deceptive Business Practice Act, ("ICFA"), 815 ILC § 505, *et seq.*

136. Plaintiff JOHN DOE (Illinois) and Illinois Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE

(Illinois) and the Illinois Class members are "consumers" as that term is defined by the ICFA, 815 ILC § 505/1(e) as they purchased the Products for personal consumption or for a member of their household and not for resale.

137. Products that Plaintiff JOHN DOE (Illinois) and other Illinois Class members purchased from Defendants were "merchandise" within the meaning of the ICFA, 815 ILC § 505/1(b).

138. Under Illinois law, 815 ILC § 505/2, "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact … in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." By engaging in the conduct set forth herein, Defendants violated and continues to violate § 505/2 of the ICFA, because Defendants' conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that it misrepresents that the Products contain more acetaminophen pills than they actually do.

139. Defendants' packaging with non-functional slack-fill and in containers made, formed or filled as to be misleading constitute a deceptive act or practice under the ICFA because the consumers are deceived or misled into believing that the bottles contain more acetaminophen pills than they actually do.

140. Defendants intended that Plaintiff JOHN DOE (Illinois) and other members of the Illinois Class rely on their deceptive act or practice. As described herein, the only purpose of packaging the Products as Defendants have is to deceive or mislead consumers into relying on

the misinformation and believing that Products contain more acetaminophen pills than competitors' acetaminophen products.

141. Defendants' deceptive act or practice occurred in the course of trade or commerce. "The terms "trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property...." 815 ILC § 505/1(f). Defendants' deceptive act or practice occurred in the advertising, offering for sale, sale, or distribution of the Products.

142. Plaintiff JOHN DOE (Illinois) and the Illinois Class suffered actual damage proximately caused by Defendants because (a) they would not have purchased the Products on the same terms absent Defendants' illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendants' representations; (b) they paid a price premium for the Products due to Defendants' misrepresentations and deceptive marketing; and (c) the Products did not have the quantities as promised.

143. Wherefore, Plaintiff JOHN DOE (Illinois) and the Illinois Class seek damages, restitution, and injunctive relief for these violations of the ICFA.

COUNT VIII

MICHIGAN CONSUMER PROTECTION ACT, MCL §§ 445.901. *et seq.*

144. Plaintiff JOHN DOE (Michigan) realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

145. Plaintiff JOHN DOE (Michigan) brings this claim individually and on behalf of the Michigan Class for Defendants' violations under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "MCPA").

146. Defendants' actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the MCPA, MCL §445.901, *et seq.*, as they occurred in the course of trade or commerce.

147. As part of their fraudulent marketing practices, Defendants engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff JOHN DOE (Michigan) and the members of the Michigan Class. These false representations and omissions were uniform and identical in nature as they all failed to disclose that the Products have non-functional slack-fill.

148. Defendants have made and continue to make deceptive, false and misleading statements concerning the packaging of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements, as alleged herein. Defendants falsely represented that the Products contain many more acetaminophen pills than they actually do because they are packaged in containers made, formed or filled as to be misleading.

149. Had Plaintiff JOHN DOE (Michigan) and the Michigan Class known the misleading and/or deceptive nature of Defendants' claims, they would not have purchased the Products. Defendants' acts, practices and omissions, therefore, were material to Plaintiffs' decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

150. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff JOHN DOE (Michigan) and other members of the Michigan Class.

151. The Defendants' practices, in addition, are unfair and deceptive because they have caused Plaintiff JOHN DOE (Michigan) and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

152. The Defendants' acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among other things, causing them to purchase Products with false and misleading statements concerning their content at a premium price.

153. Plaintiff JOHN DOE (Michigan) and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendants to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff JOHN DOE (Michigan) and the Michigan Class of all revenue associated with their unfair practices, or such revenues as the Court may find equitable and just.

COUNT IX

NEW JERSEY CONSUMER FRAUD ACT, N.J.S.A.56:8-1, *et seq.*

154. Plaintiff JOHN DOE (NEW JERSEY) realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

155. Plaintiff JOHN DOE (New Jersey) brings this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

156. At all relevant times, Defendants were and are "persons," as defined by N.J.S.A. 56:8-1(d).

157. At all relevant times, Defendants' Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

158. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

159. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

160. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, …is declared to be an unlawful practice…"

161. Defendants have made and continue to make deceptive, false and misleading statements concerning the packaging of their Products, namely manufacturing, selling, marketing, packaging and advertising the Products, as alleged herein. Defendants falsely represented that the Products contain many more acetaminophen pills than they actually do.

162. As described in detail above, Defendants uniformly misrepresented to Plaintiff JOHN DOE (New Jersey) and each member of the New Jersey Class, by means of their packaging, advertising, marketing and other promotional materials, the Products' volume.

163. Defendants have therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their

manufacturing, advertising, marketing, selling and distribution of the Products. Defendants have therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

164. As a direct and proximate result of Defendants' improper conduct, Plaintiff JOHN DOE (New Jersey) and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the benefits of taking such Products had not been misrepresented, in amounts to be determined at trial.

COUNT X

NEGLIGENT MISREPRESENTATION
(All States)

165. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

166. Defendants, directly or through their agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendants, through their deceptive packaging of the Products, make uniform representations regarding the Products.

167. Defendants, as the manufacturers, packagers, labelers and initial sellers of the Products purchased by the Plaintiffs, had a duty to disclose the true nature of the Products and not sell the Products with non-functional slack-fill. Defendants had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendants actively concealed material facts from the Plaintiffs and Defendants made partial representations that are misleading because some other material fact has not been disclosed. Defendants' failure to disclose the information it had a duty to disclose constitutes material misrepresentations and misleading omissions. Such material misrepresentations and misleading omissions misled the

Plaintiffs who relied on Defendants in this regard to disclose all material facts accurately and truthfully and fully.

168. Plaintiffs and members of the Class reasonably relied on Defendants' representation that their Product contains more product than actually packaged.

169. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

170. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

171. Plaintiffs and members of the Class would have acted differently had they not been misled – i.e. they would not have paid money for the Products in the first place.

172. Defendants have a duty to correct the misinformation they disseminated through the deceptive packaging of the Products. By not informing Plaintiffs and members of the Class, Defendants breached their duty. Defendants also profited financially as a result of this breach.

173. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

174. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest

that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

175. Defendants acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

176. Plaintiffs and members of the Class are entitled to damages, including punitive damages.

COUNT XI

UNJUST ENRICHMENT
(All States and the District of Columbia)

177. Plaintiffs reallege and incorporate by reference the above paragraph as if set forth herein and further allege the following:

178. Plaintiffs bring this claim individually and on behalf of the nationwide Class.

179. Plaintiffs are entitled, under Rule 8(d), to plead unjust enrichment as an alternative theory of liability. *See St. John's Univ., New York*, 757 F. Supp. 2d. at 183-84 (E.D.N.Y. 2010).

180. Defendants misled consumers about the volume of the Products contained within the containers in comparison to the size of the Products' packaging. The reasonable consumer is given the false impression that he/she is buying more product than they are actually receiving.

181. As a result of Defendants' deceptive, fraudulent and misleading packaging, advertising, marketing and sales of Products, Defendants were enriched, at the expense of and members of the Class, through the payment of the purchase price for Defendants' Products.

182. Plaintiffs and members of the Class conferred a tangible benefit on Defendants, without knowledge that the Products contained false net weight statements and non-functional slack-fill. Defendants accepted and retained the non-gratuitous benefits conferred by Plaintiffs

and members of the Class with full knowledge and awareness of that, as a result of Defendants' unconscionable wrongdoing, Plaintiff and members of the Class were not receiving the Products as they had been represented by Defendants, and which reasonable consumers would have expected.

183. Defendants will be unjustly enriched if they are allowed to retain the non-gratuitous benefits conferred by Plaintiffs and members of the Class, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

184. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the volume of the Products purchased by Plaintiffs and the Class, was not what Defendants purported it to be by their packaging. Thus, it would be unjust or inequitable for Defendants to retain the benefit without restitution to Plaintiffs, and all others similarly situated, for selling their Products in packaging resulting in slack-fill. In order for Plaintiffs and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

A. For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;

B. For an order certifying the New York Class, appointing Plaintiff FERMIN representative of the New York Class, and designating his counsel as counsel for the New York Class;

C. For an order certifying the California Class, appointing Plaintiff VALDEZ representative of the California Class, and designating her counsel as counsel for the California Class;

D. For an order certifying the Florida Class, appointing Plaintiff SOUSA representative of the Florida Class, and designating her counsel as counsel for the Florida Class;

E. For an Order declaring the Defendants' conduct violates the statutes referenced herein;

F. For an Order finding in favor of Plaintiffs and the nationwide Class;

G. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

H. For prejudgment interest on all amounts awarded;

I. For an Order of restitution and all other forms of equitable monetary relief;

J. For injunctive relief as pleaded or as the Court may deem proper;

K. For an Order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and

L. For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: March 9, 2015

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

BY: C.K. Lee

CV 15-1215

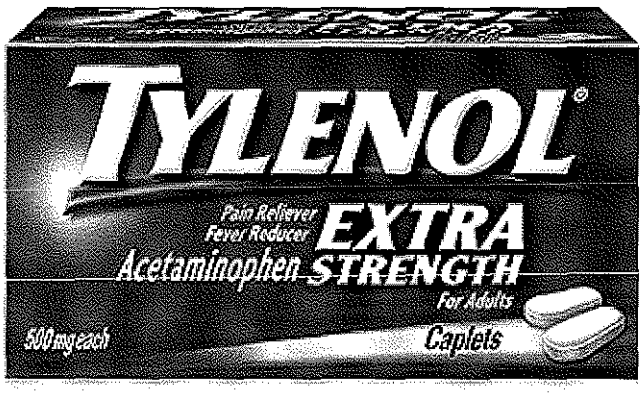
EXHIBIT A

BLOCK, J.

MANN, M.J.

TABLE OF CONTENTS

Extra Strength TYLENOL® Caplet Products

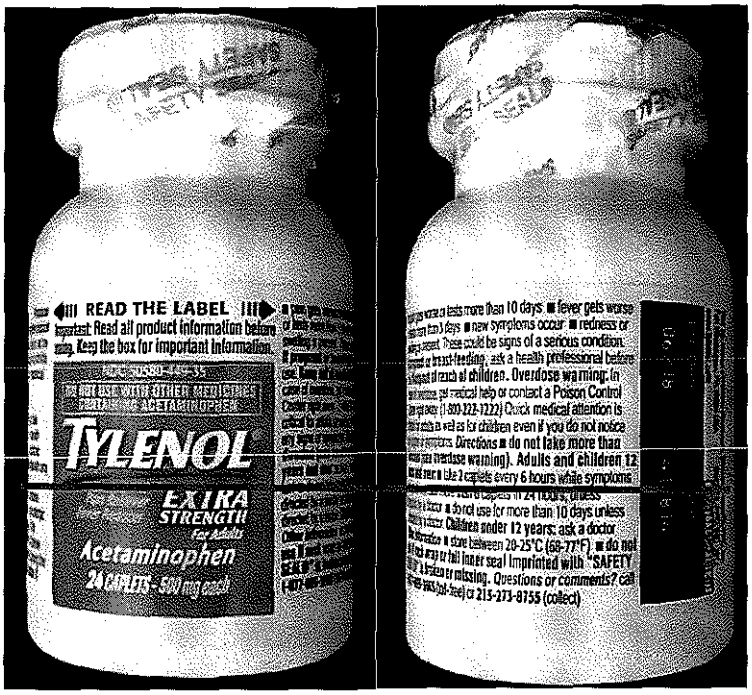


Tylenol® Extra Strength 10 Caplet Product

The 10 Caplet Product is packaged in a dispensing bottle which is approximately 2.625 inches in height and 0.75 inches in diameter. The bottle cap is about 0.5 inches in height and the caplets inside the bottle of the 10 Caplet Product only measure up to approximately 2 inches from the bottom of the bottle. Thus, each bottle of the 10 Caplet Product has roughly 0.125 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 10 Caplet Product is sold for approximately $5.34 (or more).

The volume capacity of the cylindrical portion of the 10 Caplet Tablet Product bottle is approximately 0.94 cubic inches. The actual volume of the caplets contained within the bottle is approximately 0.88 cubic inches, leaving a difference of 0.06 cubic inches or approximately 6% non-functional slack-fill.

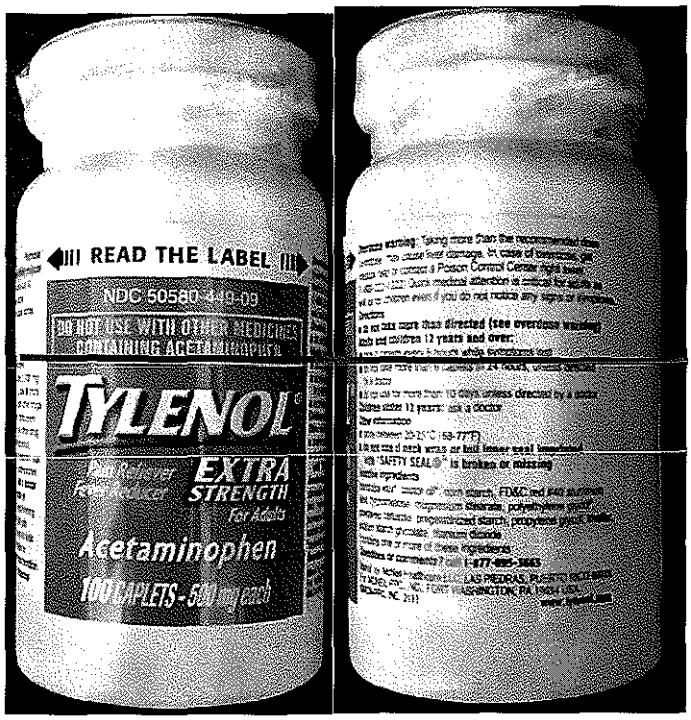
Tylenol® Extra Strength 24 Caplet Product



The 24 Caplet Product is packaged in a box that is approximately 2.675 inches in height, 1.5 inches in length, and 1.375 inches in width. Inside the box a dispensing bottle which is approximately 2.5 inches in height and 1.375 inches in diameter. The bottle cap is about 0.3125 inches in height and the caplets inside the bottle of the 24 Caplet Product only measure up to approximately 0.875 inches from the bottom of the bottle. Thus, each bottle of the 24 Caplet Product has roughly 1.3125 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 24 Caplet Product is sold for approximately $4.99 (or more).

The volume capacity of the cylindrical portion of the 24 Caplet Product bottle is approximately 3.23 cubic inches. The actual volume of the caplets contained within the bottle is approximately 1.3 cubic inches, leaving a difference of 1.93 cubic inches or approximately 60% non-functional slack-fill.

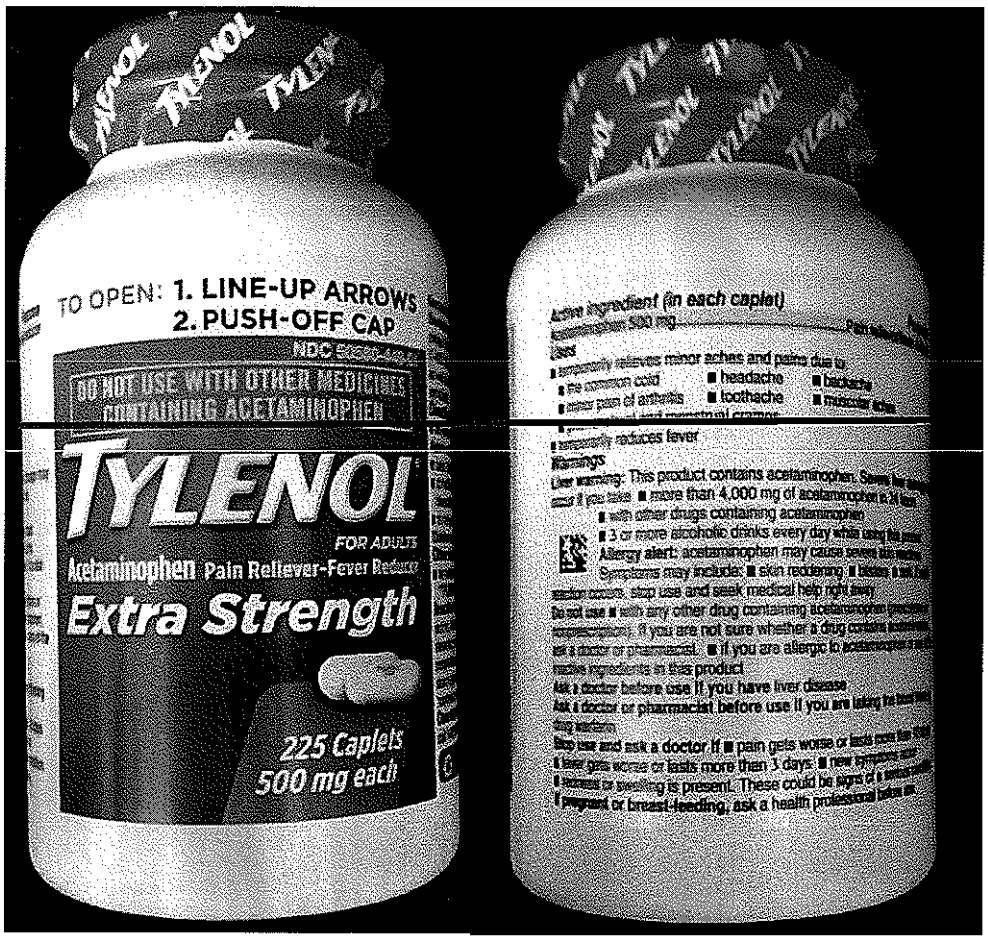
Tylenol® Extra Strength 100 Caplet Product



The 100 Caplet Product is packaged in a box that is approximately 3.75 inches in height, 2 inches in length, and 2 inches in width. Inside the box a dispensing bottle which is approximately 3.625 inches in height and 1.25 inches in diameter. The bottle cap is about 0.3125 inches in height and the caplets inside the bottle of the 100 Caplet Product only measure up to approximately 2.125 inches from the bottom of the bottle. Thus, each bottle of the 100 Caplet Product has roughly 1.1875 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 100 Caplet Product is sold for approximately $9.99 (or more).

The volume capacity of the cylindrical portion of the 100 Caplet Product bottle is approximately 9.15 cubic inches. The actual volume of the caplets contained within the bottle is approximately 5.87 cubic inches, leaving a difference of 3.28 cubic inches or approximately 36% non-functional slack-fill.

Tylenol® Extra Strength 225 Caplet Product

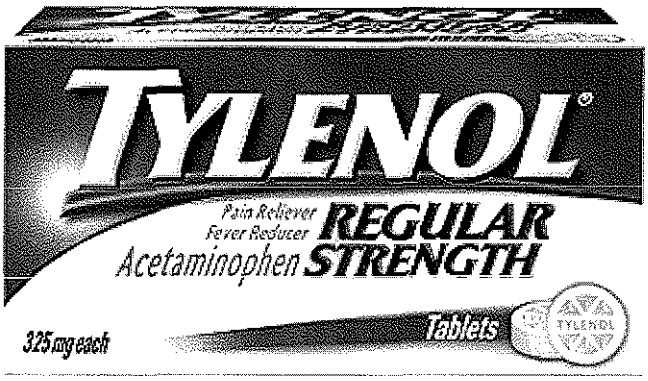


The 225 Caplet Product is packaged in a box that is approximately 4.5 inches in height, 2.375 inches in length, and 2.375 inches in width. Inside the box a dispensing bottle which is approximately 4.375 inches in height and 2.25 inches in diameter. The bottle cap is about 0.3125 inches in height and the caplets inside the bottle of the 225 Caplet Product only measure up to approximately 2.875 inches from the bottom of the bottle. Thus, each bottle of the 225 Caplet Product has roughly 1.1875 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 225 Caplet Product is sold for approximately $18.99 (or more).

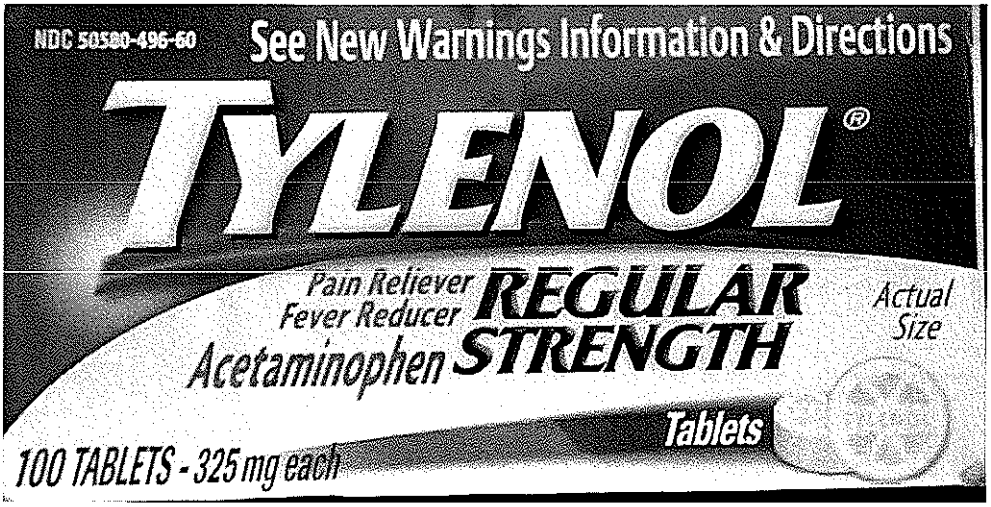
The volume capacity of the cylindrical portion of the 225 Caplet Product bottle is approximately 16.15 cubic inches. The actual volume of the caplets contained within the bottle is

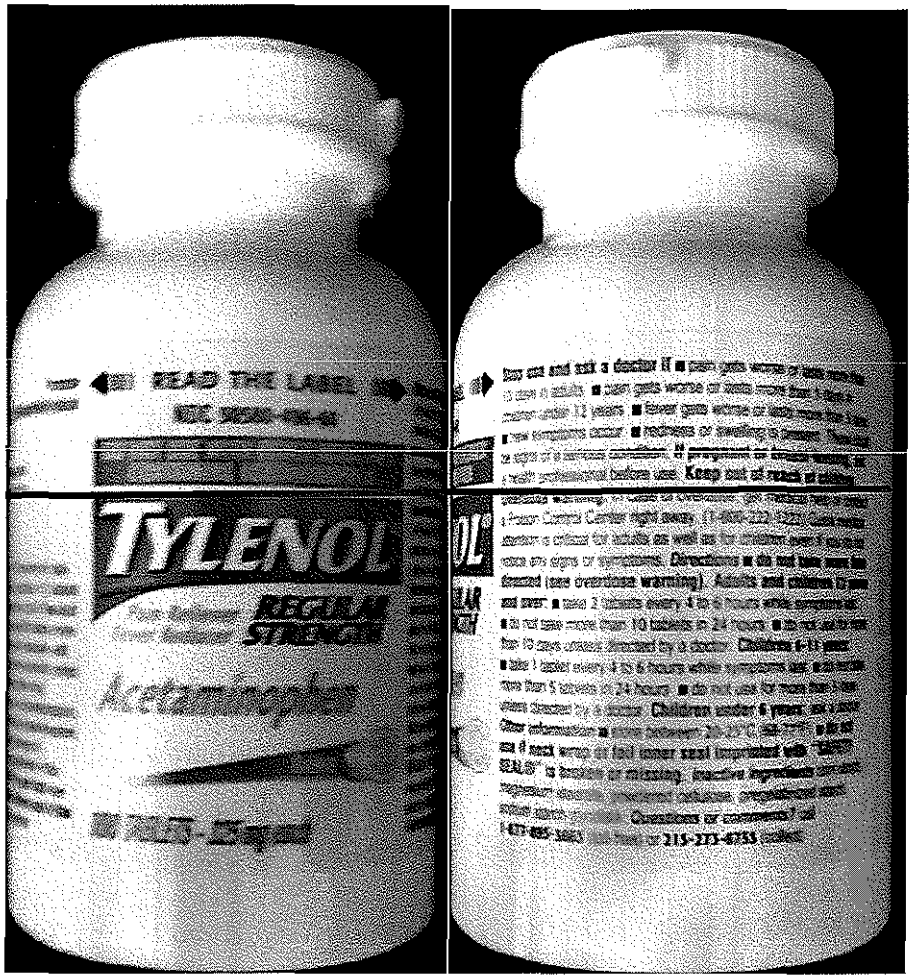
approximately 11.43 cubic inches, leaving a difference of 4.72 cubic inches or approximately 29% non-functional slack-fill.

Regular Strength TYLENOL® Tablet Products



Tylenol® Regular Strength 100 Tablet Product





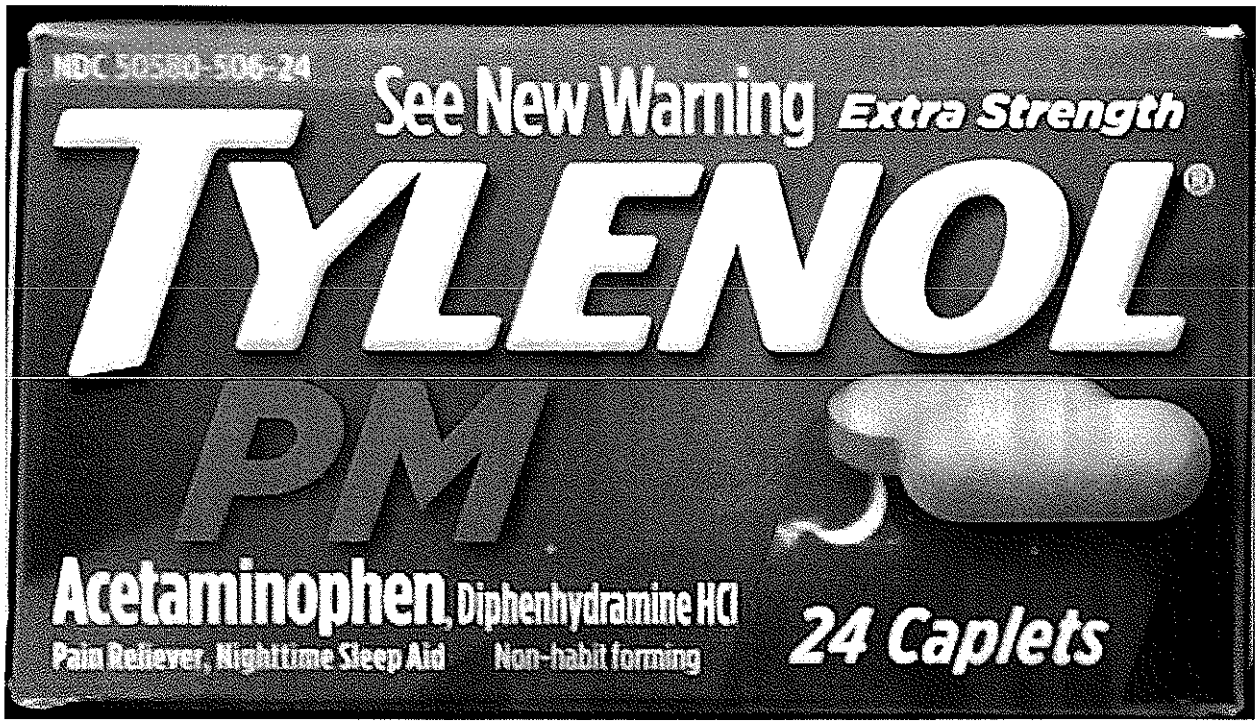
The 100 Tablet Product is packaged in a box that is approximately 3.25 inches in height, 1.625 inches in length, and 1.625 inches in width. Inside the box a dispensing bottle which is approximately 3.125 inches in height and 1.625 inches in diameter. The bottle cap is about 0.3125 inches in height and the tablets inside the bottle of the 100 Tablet Product only measure up to approximately 1.875 inches from the bottom of the bottle. Thus, each bottle of the 100 Tablet Product has roughly 0.9375 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 100 Tablet Product is sold for approximately $6.99 (or more).

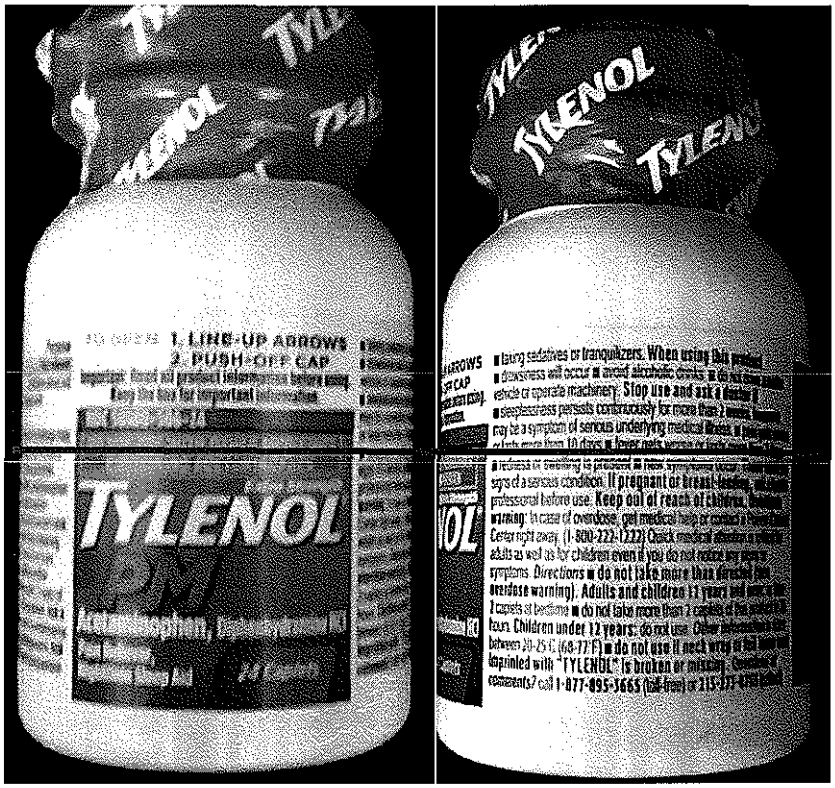
The volume capacity of the cylindrical portion of the 100 Tablet Product bottle is approximately 6.01 cubic inches. The actual volume of the tablets contained within the bottle is

approximately 4.01 cubic inches, leaving a difference of 2 cubic inches or approximately 32% non-functional slack-fill.

TYLENOL® PM Caplet Products

Tylenol® PM 24 Caplet Product

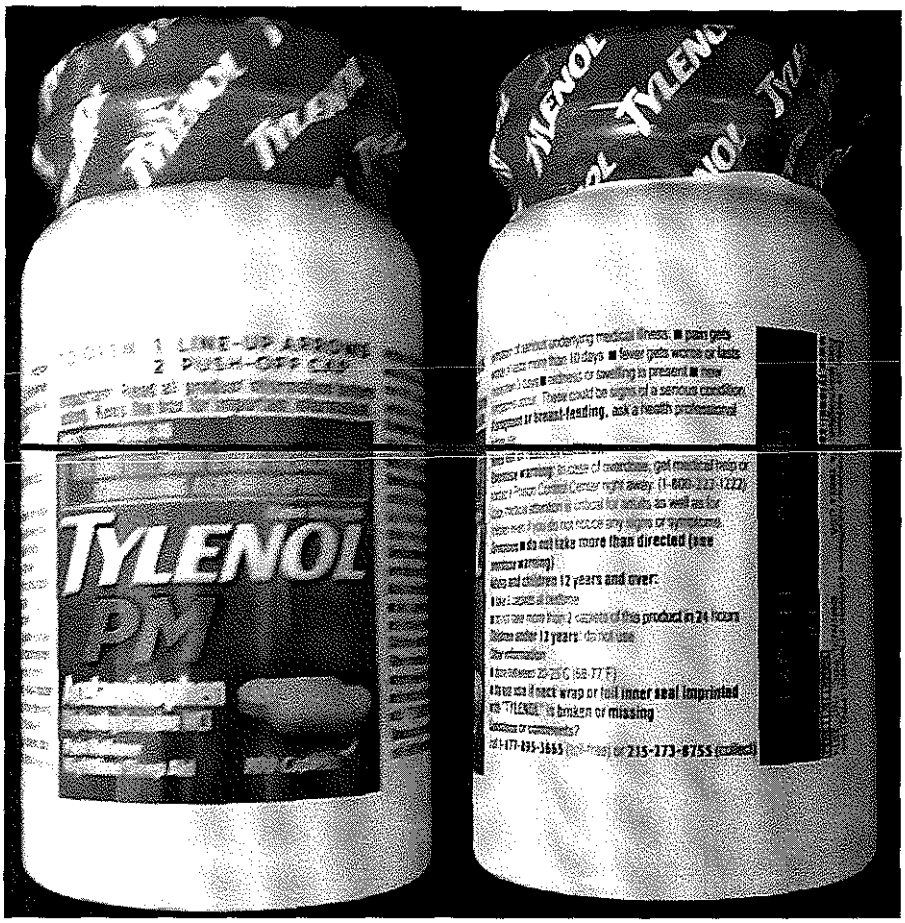




The 24 Caplet Product is packaged in a box that is approximately 2.625 inches in height, 1.5 inches in length, and 1.375 inches in width. Inside the box a dispensing bottle which is approximately 2.5 inches in height and 1.375 inches in diameter. The bottle cap is about 0.3125 inches in height and the caplets inside the bottle of the 24 Caplet Product only measure up to approximately 1.25 inches from the bottom of the bottle. Thus, each bottle of the 24 Caplet Product has roughly 0.9375 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 24 Caplet Product is sold for approximately $5.99 (or more).

The volume capacity of the cylindrical portion of the 24 Caplet Product bottle is approximately 3.25 cubic inches. The actual volume of the caplets contained within the bottle is approximately 1.86 cubic inches, leaving a difference of 1.39 cubic inches or approximately 43% non-functional slack-fill.

Tylenol® PM 100 Caplet Product



The 100 Caplet Product is packaged in a box that is approximately 3.75 inches in height, 2 inches in length, and 1.875 inches in width. Inside the box a dispensing bottle which is approximately 3.625 inches in height and 1.875 inches in diameter. The bottle cap is about 0.3125 inches in height and the caplets inside the bottle of the 100 Caplet Product only measure up to approximately 2.125 inches from the bottom of the bottle. Thus, each bottle of the 100 Caplet Product has roughly 1.1875 inches of non-functional slack-fill in height and is designed to give the impression that there is more product than actually packaged. The 100 Caplet Product is sold for approximately $13.64 (or more).

The volume capacity of the cylindrical portion of the 100 Caplet Product bottle is approximately 9.15 cubic inches. The actual volume of the caplets contained within the bottle is

approximately 5.87 cubic inches, leaving a difference of 3.28 cubic inches or approximately 36% non-functional slack-fill.

EXHIBIT B

LEE LITIGATION GROUP, PLLC
30 EAST 39TH STREET, SECOND FLOOR
NEW YORK, NEW YORK 10016
TEL: 212-465-1180
FAX: 212-465-1181
INFO@LEELITIGATION.COM

WRITER'S DIRECT: 212-465-1188
cklee@leelitigation.com

January 16, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Legal Department
Johnson & Johnson Consumer Companies, Inc.
199 Grandview Road
Skillman, NJ 08558

Legal Department
MCNEIL-PPC, INC.
7050 Camp Hill Road
Fort Washington, Pennsylvania, 19034

Re: Demand Letter re: Tylenol® 6 Caplet; Tylenol® 10 Caplet; Tylenol® 24 Caplet; Tylenol® 50 Caplet; Tylenol® 100 Caplet; Tylenol® 225 Caplet; Tylenol® 325 Caplet; Tylenol® 100 Tablet; Tylenol® Sinus 24 Caplet; Tylenol® Sinus 72 Caplet; Tylenol® Sinus Severe 24 Caplet; Tylenol® PM 24 Caplet; Tylenol® PM 100 Caplet; Tylenol® Multi-symptom 24 Caplet; Tylenol® Cold 24 Caplet; Tylenol® Cold Severe 24 Caplet; Tylenol® Simply Sleep 100 Caplet; (together, the "Tylenol® Products").

To Whom It May Concern:

This demand letter serves as a notice and demand for corrective action on behalf of my client, Lichun Huo and all other persons similarly situated, arising violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5) and (a)(9) and violations of consumer protection laws of each of the fifty states and the District of Columbia. This demand letter serves as notice pursuant to state laws concerning your deceptive and misleading Product packaging.

You have participated in the manufacture, marketing and sale of the Tylenol® Products. The Tylenol® Products contain non-functional slack-fill in violation of consumer protection laws of each of the fifty states and the District of Columbia as well as Sections 502 and 602 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352, 21 U.S.C. § 362, respectively. Each of the Tylenol® Products is packaged in a container that is filled to substantially less than its capacity for reasons other than the safe harbors specified in the law. As a result, consumers are misled as to the volume of the Products.

Lichun Huo, a resident of California, purchased the Tylenol® Products, relied on the Product packaging, and was misled. Mrs. Huo is acting on behalf of a class defined as all persons in each of the fifty states and the District of Columbia who purchased the Tylenol® Products (hereafter, the "Class").

To cure the defects described above, we demand that you (i) cease and desist from continuing to package the Tylenol® Products with non-functional slack-fill; (ii) issue an immediate recall on any Tylenol® Products with non-functional slack-fill; and (iii) make full restitution to all purchasers throughout the United States of all purchase money obtained from sales thereof.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to the following:

(i) All documents concerning the manufacture and packaging process for the Products;

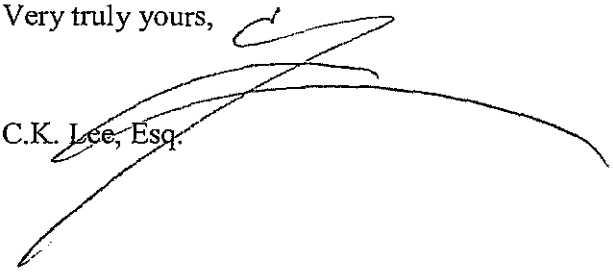
(ii) All communications with the U.S. Food and Drug Administration concerning the product development, packaging, marketing and sales of the Products;

(iii) All documents concerning the advertisement, marketing, or sale of the Products; and

(iv) All communications with customers concerning complaints or comments concerning the Products.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,



C.K. Lee, Esq.

CV 15-1215

EXHIBIT B

BLOCK, J.

LEE LITIGATION GROUP, PLLC
30 EAST 39TH STREET, SECOND FLOOR
NEW YORK, NEW YORK 10016
TEL: 212-465-1180
FAX: 212-465-1181
INFO@LEELITIGATION.COM

WRITER'S DIRECT: 212-465-1188
cklee@leelitigation.com

January 16, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Legal Department
Johnson & Johnson Consumer Companies, Inc.
199 Grandview Road
Skillman, NJ 08558

Legal Department
MCNEIL-PPC, INC.
7050 Camp Hill Road
Fort Washington, Pennsylvania, 19034

Re: Demand Letter re: Tylenol® 6 Caplet; Tylenol® 10 Caplet; Tylenol® 24 Caplet; Tylenol® 50 Caplet; Tylenol® 100 Caplet; Tylenol® 225 Caplet; Tylenol® 325 Caplet; Tylenol® 100 Tablet; Tylenol® Sinus 24 Caplet; Tylenol® Sinus 72 Caplet; Tylenol® Sinus Severe 24 Caplet; Tylenol® PM 24 Caplet; Tylenol® PM 100 Caplet; Tylenol® Multi-symptom 24 Caplet; Tylenol® Cold 24 Caplet; Tylenol® Cold Severe 24 Caplet; Tylenol® Simply Sleep 100 Caplet; (together, the "Tylenol® Products").

To Whom It May Concern:

This demand letter serves as a notice and demand for corrective action on behalf of my client, Lichun Huo and all other persons similarly situated, arising violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5) and (a)(9) and violations of consumer protection laws of each of the fifty states and the District of Columbia. This demand letter serves as notice pursuant to state laws concerning your deceptive and misleading Product packaging.

You have participated in the manufacture, marketing and sale of the Tylenol® Products. The Tylenol® Products contain non-functional slack-fill in violation of consumer protection laws of each of the fifty states and the District of Columbia as well as Sections 502 and 602 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 352, 21 U.S.C. § 362, respectively. Each of the Tylenol® Products is packaged in a container that is filled to substantially less than its capacity for reasons other than the safe harbors specified in the law. As a result, consumers are misled as to the volume of the Products.

Lichun Huo, a resident of California, purchased the Tylenol® Products, relied on the Product packaging, and was misled. Mrs. Huo is acting on behalf of a class defined as all persons in each of the fifty states and the District of Columbia who purchased the Tylenol® Products (hereafter, the "Class").

To cure the defects described above, we demand that you (i) cease and desist from continuing to package the Tylenol® Products with non-functional slack-fill; (ii) issue an immediate recall on any Tylenol® Products with non-functional slack-fill; and (iii) make full restitution to all purchasers throughout the United States of all purchase money obtained from sales thereof.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to the following:

(i) All documents concerning the manufacture and packaging process for the Products;

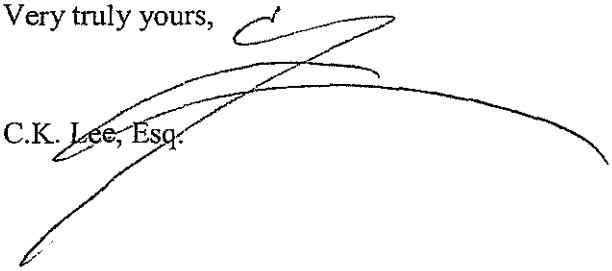
(ii) All communications with the U.S. Food and Drug Administration concerning the product development, packaging, marketing and sales of the Products;

(iii) All documents concerning the advertisement, marketing, or sale of the Products; and

(iv) All communications with customers concerning complaints or comments concerning the Products.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,



C.K. Lee, Esq.

CV 15-1215

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JANCKELL FERMIN, et al.

BLOCK, M.J.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

GARAUFIS, J.

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

C.K. Lee, Esq., Lee Litigation Group, PLLC
30 East 39th Street, Second Floor
New York, NY 10016 Tel: 212-465-1188 Fax: 212-465-1181

DEFENDANTS

MCNEIL-PPC, INC. and JOHNSON AND JOHNSON CONSUMER COMPANIES, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 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)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

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

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. MAR -9 PM 2:41

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

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332(d); NY GBL 349

Brief description of cause:
Violations of consumer protection laws against deceptive and unfair trade practices

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ◉ Yes ○ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
3-9-15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

465308547

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, C.K. Lee, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☒ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No

2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: