LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
Anne Seelig (AS 3976)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIEL MARTE, JOSEFINA VALDEZ, LAUREN FELDMAN and JOHN DOES 1-100, *on behalf of themselves and others similarly situated,*	
Plaintiffs,	CLASS ACTION COMPLAINT
- against -	Case No.
CVS HEALTH CORPORATION (formerly CVS Caremark Corporation) and CVS PHARMACY, INC.,	JURY TRIAL DEMANDED
Defendants,	

Plaintiffs MARIEL MARTE, JOSEFINA VALDEZ, LAUREN FELDMAN 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, CVS PHARMACY, INC. and CVS HEALTH CORPORATION (collectively, the "Defendants"), engage in with respect to the packaging of their CVS® acetaminophen products, which are produced in the form of caplets (capsule-shaped tablets), gelcaps (gel capsules), and geltabs (gel tablets) and CVS® ibuprofen products, which are produced in the form of coated tablets, caplets, coated caplets (capsule-shaped tablets), and liquid capsules, and softgel capsules. The acetaminophen and ibuprofen products are packaged in bottles of various sizes and pill quantities. *See* **EXHIBIT A** for the full list of products at issue.

2. Defendants, with intent to induce consumers to purchase the acetaminophen and ibuprofen products, manufacture, market and sells the products (i) in containers made, formed or filled as to be misleading and (ii) with non-functional slack-fill, in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 502 (21 U.S.C. 352(i)), as well as state laws prohibiting misbranded drugs with requirements mirroring federal law.

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

a. CVS® Extra Strength 24 Caplet Acetaminophen Product
b. CVS® Extra Strength 100 Caplet Acetaminophen Product
c. CVS® Extra Strength 500 Caplet Acetaminophen Product
d. CVS® Extra Strength 1000 Caplet Acetaminophen Product
e. CVS® Extra Strength 24 Gelcap Acetaminophen Product
f. CVS® Extra Strength PM 20 Gelcap Acetaminophen Product
g. CVS® Extra Strength PM 80 Gelcap Acetaminophen Product
h. CVS® Extra Strength PM 100 Caplet Acetaminophen Product
i. CVS® Extra Strength PM 500 Caplet Acetaminophen Product
j. CVS® Extra Strength PM 100 Geltab Acetaminophen Product
k. CVS® 10 Coated Tablet Ibuprofen Product
l. CVS® 20 Coated Tablet Ibuprofen Product
m. CVS® 24 Coated Tablet Ibuprofen Product

n. CVS® 50 Coated Tablet Ibuprofen Product (I)
o. CVS® 50 Coated Tablet Ibuprofen Product (II)
p. CVS® 100 Coated Tablet Ibuprofen Product
q. CVS® 150 Coated Tablet Ibuprofen Product
r. CVS® 200 Coated Tablet Ibuprofen Product
s. CVS® 250 Coated Tablet Ibuprofen Product
t. CVS® 500 Coated Tablet Ibuprofen Product (I)
u. CVS® 500 Coated Tablet Ibuprofen Product (II)
v. CVS® 750 Coated Tablet Ibuprofen Product
w. CVS® 1000 Coated Tablet Ibuprofen Product
x. CVS® 20 Liquid-filled Capsule Ibuprofen Product
y. CVS® 80 Liquid-filled Capsule Ibuprofen Product
z. CVS® 300 Liquid-filled Capsule Ibuprofen Product
aa. CVS® PM 20 Coated Caplet Ibuprofen Product (I)
bb. CVS® PM 20 Coated Caplet Ibuprofen Product (II)
cc. CVS® PM 30 Coated Caplet Ibuprofen Product
dd. CVS® PM 80 Coated Caplet Ibuprofen Product
ee. CVS® PM 180 Coated Caplet Ibuprofen Product
ff. CVS® 24 Coated Caplet Ibuprofen Product
gg. CVS® 250 Coated Caplet Ibuprofen Product
hh. CVS® 500 Coated Caplet Ibuprofen Product
ii. CVS® IB 50 Coated Caplet Ibuprofen Product
jj. CVS® IB 100 Coated Caplet Ibuprofen Product
kk. CVS® IB 225 Coated Caplet Ibuprofen Product
ll. CVS® IB 60 Softgel Ibuprofen Product
mm. CVS® IB 120 Softgel Ibuprofen Product
nn. Any other CVS® acetaminophen or ibuprofen products that are packaged misleadingly and contain non-functional slack-fill (collectively, the "Products").

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

4. Defendants sold and continue to sell the Products under the CVS® brand. Each of the Products (i) contains the same or similar misleading product packaging, as described herein, (ii) contains non-functional slack-fill and (iii) violates 21 U.S.C. 352(i), as well as consumer fraud laws of the fifty states and the District of Columbia, as described herein.

5. The Products are packaged in plastic dispensing bottles and are used to relieve several kinds of pain, including headache, muscle aches, minor arthritis and other joint pain, and backache. 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. By increasing the size of the Product packaging, Defendants maximize the shelf presence of their Products over competitor products.

6. 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.

7. 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.

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

9. 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.*

10. Defendants have deceived Plaintiffs and other consumers nationwide by mischaracterizing the 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

11. 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.

12. 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.

13. 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.

14. 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.

15. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendants, because they conduct substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an

office or agency in this state; committing a tortious act in this state; and causing injury to a person or property in this state arising out of Defendants' acts and omissions outside this state.

16. Additionally, 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.

17. 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.

PARTIES

Plaintiffs

18. Plaintiff MARIEL MARTE is, and at all relevant times hereto has been, a citizen of the State of New York. Plaintiff MARTE has purchased the Products for personal consumption within the State of New York. Plaintiff MARTE purchased the Products from CVS locations located throughout New York City. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff MARTE purchased (i) the CVS® 24 Caplet Acetaminophen Product and (ii) the CVS® 24 Coated Tablet Ibuprofen Product in New York County. The Products purchased by Plaintiff MARTE are substantially similar to all the other

Products, are similarly packaged in misleading containers and contain non-functional slack-fill; and she has standing to represent purchasers of all Products. Plaintiff MARTE purchased the Products at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff MARTE to believe that she was receiving more of the Products than she actually was and was financially injured as a result. Further, should Plaintiff MARTE encounter any Products in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff MARTE would still be willing to purchase the current formulations of the Products, absent the price premium, so long as Defendants engage in corrective advertising.

19. Plaintiff JOSEFINA VALDEZ is, and at all relevant times hereto has been, a citizen of the State of California. Plaintiff VALDEZ has purchased the Product from a CVS store located in California. Specifically, in the twelve month period prior to the filing of this Complaint, Plaintiff VALDEZ purchased the CVS® 150 Coated Tablet Ibuprofen Product in San Bernardino, California. The Product purchased by Plaintiff VALDEZ is substantially similar to all the other Products, are similarly packaged in misleading containers and contain non-functional slack-fill; and she has standing to represent purchasers of all Products. Plaintiff VALDEZ purchased the Products at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff VALDEZ to believe that she was receiving more of the Product than she actually was and was financially injured as a result. Further, should Plaintiff VALDEZ encounter any Products in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff VALDEZ would still be willing to purchase the current formulations of the Products, absent the price premium, so long as Defendants engage in corrective advertising.

20. Plaintiff LAUREN FELDMAN is, and at all relevant times hereto has been, a citizen of the State of New Jersey. Plaintiff FELDMAN has purchased the Product for personal consumption within the State of New Jersey. Plaintiff FELDMAN purchased the Products from a CVS store located in New Jersey. Specifically, within the past twelve month prior to filing, Plaintiff FELDMAN purchased the CVS® 10 Coated Tablet Ibuprofen Product in Mercer County, New Jersey. The Product purchased by Plaintiff FELDMAN is substantially similar to all the other Products, are similarly packaged in misleading containers and contain non-functional slack-fill; and she has standing to represent purchasers of all Products. Plaintiff FELDMAN purchased the Product at a premium price in reliance on Defendants' misrepresentations, which misled Plaintiff FELDMAN to believe that she was receiving more of the Product than she actually was and was financially injured as a result. Further, should Plaintiff FELDMAN encounter any Products in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff FELDMAN would still be willing to purchase the current formulations of the Products, absent the price premium, so long as Defendants engage in corrective advertising.

Defendants

21. Defendant CVS HEALTH CORPORATION ("CVS HEALTH") is a corporation organized under the laws of Delaware with its headquarters at One CVS Drive, Woonsocket, RI 02895 and an address for service of process at The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware 19801. CVS HEALTH is a retailer and health care company. CVS HEALTH operates over 7,700 stores, a pharmacy benefit manager, mail order and specialty pharmacies, a retail-based health clinic subsidiary, MinuteClinic®; and an online pharmacy, CVS.com.

22. Defendant CVS PHARMACY, INC. is a corporation organized under the laws of Rhode Island with its headquarters at One CVS Drive, Woonsocket, RI 02895 and an address for service of process at CT Corporation System, 450 Veterans Memorial Parkway, Suite 7A East Providence, Rhode Island 02914. CVS PHARMACY, INC. is a wholly-owned subsidiary of CVS HEALTH CORPORATION.

23. 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.

24. Defendants created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive packaging for the Products at issue. The packaging for the acetaminophen and ibuprofen Products, relied upon by Plaintiffs, was prepared and/or approved by Defendants and their agents, and was disseminated by Defendants and their agents in misleading containers as alleged herein. The Product packaging was designed to encourage consumers to purchase the Products over others sold in smaller non-misleading bottles and reasonably misled Plaintiffs and the Classes into purchasing the Products.

25. Plaintiffs allege that, at all times relevant herein, Defendant CVS HEALTH and its subsidiaries, affiliates, and other related entities, as well as its respective employees, were the agents, servants and employees of CVS HEALTH, and at all times relevant herein, each was acting within the purpose and scope of that agency and employment. Plaintiffs further allege on information and belief that at all times relevant herein, the distributors who delivered and sold the Products, including CVS PHARMACY, INC., as well as its respective employees, also were CVS HEALTH's agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment. In addition, Plaintiffs allege that, in

committing the wrongful acts alleged herein, CVS HEALTH, in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Products by means of untrue, misleading, deceptive, and/or fraudulent representations, and that CVS HEALTH participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

26. Whenever reference in this Complaint is made to any act by CVS HEALTH or its subsidiaries, affiliates, distributors, and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of CVS HEALTH committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of CVS HEALTH while actively engaged in the scope of their duties

FACTUAL ALLEGATIONS

Identical State and Federal Laws Prohibit Misbranded Drugs

27. 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.

28. 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).

29. 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…."

30. State drug labeling laws also impose requirements which 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 Misleadingly and Contain Non-Functional Slack-Fill

31. Defendants develop, manufacture, market, distribute and sell over-the-counter products under the well-known household brand name, CVS®. The Products are sold at CVS convenience stores and pharmacies throughout the United States and the CVS official website, http://www.cvs.com.

32. Defendants have routinely packaged the Products in containers made, formed or filled as to be misleading and 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.

33. 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 container in comparison to the size of the Products' packaging. The size of the bottles in relation to the actual volume of the tablets contained therein was intended to mislead the consumer into believing the consumer was getting more of the product than what was actually in the container.

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

a. CVS® Extra Strength 24 Caplet Acetaminophen Product
b. CVS® Extra Strength 100 Caplet Acetaminophen Product
c. CVS® Extra Strength 500 Caplet Acetaminophen Product
d. CVS® Extra Strength 1000 Caplet Acetaminophen Product
e. CVS® Extra Strength 24 Gelcap Acetaminophen Product
f. CVS® Extra Strength PM 20 Gelcap Acetaminophen Product
g. CVS® Extra Strength PM 80 Gelcap Acetaminophen Product
h. CVS® Extra Strength PM 100 Caplet Acetaminophen Product
i. CVS® Extra Strength PM 500 Caplet Acetaminophen Product
j. CVS® Extra Strength PM 100 Geltab Acetaminophen Product
k. CVS® 10 Coated Tablet Ibuprofen Product
l. CVS® 20 Coated Tablet Ibuprofen Product
m. CVS® 24 Coated Tablet Ibuprofen Product
n. CVS® 50 Coated Tablet Ibuprofen Product (I)
o. CVS® 50 Coated Tablet Ibuprofen Product (II)
p. CVS® 100 Coated Tablet Ibuprofen Product
q. CVS® 150 Coated Tablet Ibuprofen Product
r. CVS® 200 Coated Tablet Ibuprofen Product
s. CVS® 250 Coated Tablet Ibuprofen Product
t. CVS® 500 Coated Tablet Ibuprofen Product (I)
u. CVS® 500 Coated Tablet Ibuprofen Product (II)
v. CVS® 750 Coated Tablet Ibuprofen Product
w. CVS® 1000 Coated Tablet Ibuprofen Product
x. CVS® 20 Liquid-filled Capsule Ibuprofen Product
y. CVS® 80 Liquid-filled Capsule Ibuprofen Product
z. CVS® 300 Liquid-filled Capsule Ibuprofen Product
aa. CVS® PM 20 Coated Caplet Ibuprofen Product (I)
bb. CVS® PM 20 Coated Caplet Ibuprofen Product (II)
cc. CVS® PM 30 Coated Caplet Ibuprofen Product
dd. CVS® PM 80 Coated Caplet Ibuprofen Product

ee. CVS® PM 180 Coated Caplet Ibuprofen Product
ff. CVS® 24 Coated Caplet Ibuprofen Product
gg. CVS® 250 Coated Caplet Ibuprofen Product
hh. CVS® 500 Coated Caplet Ibuprofen Product
ii. CVS® IB 50 Coated Caplet Ibuprofen Product
jj. CVS® IB 100 Coated Caplet Ibuprofen Product
kk. CVS® IB 225 Coated Caplet Ibuprofen Product
ll. CVS® IB 60 Softgel Ibuprofen Product
mm. CVS® IB 120 Softgel Ibuprofen Product
nn. Any other CVS® acetaminophen or ibuprofen Products that contain non-functional slack-fill.

35. Fifteen of the Products listed contain cotton to prevent pill breakage:

a. CVS® 50 Coated Tablet Ibuprofen Product (I)
b. CVS® 50 Coated Tablet Ibuprofen Product (II)
c. CVS® 100 Coated Tablet Ibuprofen Product
d. CVS® 150 Coated Tablet Ibuprofen Product
e. CVS® 200 Coated Tablet Ibuprofen Product
f. CVS® 250 Coated Tablet Ibuprofen Product
g. CVS® 500 Coated Tablet Ibuprofen Product (I)
h. CVS® 500 Coated Tablet Ibuprofen Product (II)
i. CVS® 750 Coated Tablet Ibuprofen Product
j. CVS® 1000 Coated Tablet Ibuprofen Product
k. CVS® 24 Coated Caplet Ibuprofen Product
l. CVS® 500 Coated Caplet Ibuprofen Product
m. CVS® IB 50 Coated Caplet Ibuprofen Product
n. CVS® IB 100 Coated Caplet Ibuprofen Product
o. CVS® IB 225 Coated Caplet Ibuprofen Product

36. Pictures of the sample Products and packaging are shown in **EXHIBIT A**, with horizontal lines indicating the approximate height of the pills in the respective bottles.

37. 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 of up to 83% in violation of federal and state laws.

38. The size of the bottles of the Products in relation to the volume of the products actually contained therein gives the false impression that the consumer is buying more than they are actually receiving.

39. There is no functional purpose for the excessive empty space in the Products. Of the Products, only fifteen contain cotton to prevent pill breakage. Each Product contains approximately 2 inches of cotton though far less cotton is necessary to prevent breakage. The remaining Products do not contain cotton or any other filler material to prevent pill breakage.[1]

40. 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 or ibuprofen pills.

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

41. 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.

42. There is no practical reason for the excessive empty space and non-functional in the Products other than to mislead consumers as to the actual volume of the Products being purchased.

43. As a result of Defendants' deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products packaged in containers made, formed or filled as to be misleading and that contain non-functional slack-fill. Moreover, Plaintiffs and Class members have paid a premium for the Products over other acetaminophen or ibuprofen products sold on the market.

[1] While a certain amount of headspace may be necessary to prevent breakage in some Products, the amount of headspace present in the Products serves no functional purpose.

44. 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. If any one representation in the labeling is misleading, the entire drug is misbranded. No other statement in the labeling cures a misleading statement. "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.

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

The Nationwide Class

45. Plaintiffs bring 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

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

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

The California Class

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

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

The New Jersey Class

48. Plaintiff FELDMAN seeks to represent a class consisting of the following subclass (the "New Jersey Class"):

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

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 it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

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

50. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through the appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class. Other members of the Class may be identified from records maintained by Defendants and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

51. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct.

52. Plaintiffs will fairly and adequately protect the interests of the members of the Class in that Plaintiffs have no interests antagonistic to those of the other members of the Class. Plaintiffs have retained experienced and competent counsel.

53. 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.

54. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

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

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 labeling, packaging, marketing, advertising and/or sale of Products;

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

vi. Whether any of the Products during the relevant statutory period were packaged in containers made, formed or filled as to be misleading;

vii. Whether any of the Products during the relevant statutory period contained unlawful non-functional slack-fill;

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

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

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

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

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

55. 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 which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

56. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this

forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

57. 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.

58. 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.

59. 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.

60. 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)

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

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

63. 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."

64. 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)).

65. The practices employed by Defendants, whereby Defendants packaged, advertised, promoted, marketed and sold its Products in containers with excessive empty space and non-functional slack-fill is 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."

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

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

68. Plaintiff MARTE, on behalf of herself 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)

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

70. Plaintiff MARTE brings this claim individually and on behalf of the other members of the New York Class for Defendants' violations of NY GBL § 349.

71. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in her 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.

72. 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.

73. The practices employed by Defendants, whereby Defendants packaged, advertised, promoted, marketed and sold their Products in containers with excessive empty space is 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.

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

75. 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.

76. Plaintiff MARTE 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 MARTE 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 excessive empty space in the Products. In order for Plaintiff MARTE 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 excessive empty space in the Products.

COUNT III

VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE § 1750, *et seq*.

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

78. 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). 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.

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

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

81. 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.

82. 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, Defendants 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.

83. 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, Defendants 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.

84. 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.

85. 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 packaging; and (c) the Products did not have the quantities as promised.

86. On or about 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). Plaintiff LICHUN HUO sent PFIZER, INC. 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 Plaintiff LICHUN HUO's letter is attached hereto as **EXHIBIT C**.

87. Wherefore, Plaintiff VALDEZ and the California Class seek 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*.

88. Plaintiffs HUO and VALDEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

89. Plaintiffs HUO and VALDEZ bring 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*.

90. 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 …."

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

92. 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 and labeling practices as described herein are unlawful also because they violated Section 403(r) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(d), California Health & Safety Code § 110690, the CLRA, and other applicable law as described herein.

93. 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' packaging and advertising is of no benefit to consumers.

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

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

96. Plaintiffs HUO and 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 packaging; 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.*

97. Plaintiffs HUO and VALDEZ realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

98. Plaintiffs HUO and VALDEZ bring 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*.

99. 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."

100. Defendants engaged in a scheme of offering misbranded acetaminophen and ibuprofen Products for sale to Plaintiffs HUO and VALDEZ and the California Class members by way of product packaging, advertising, and other promotional materials including the Internet. These materials misrepresented the true content and nature of the misbranded CVS® 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, labeling, and promotional materials were intended as inducements to purchase Defendants' Products, and are statements disseminated by Defendants to Plaintiffs HUO and VALDEZ and the California Class members. Defendants knew that these statements were unauthorized, inaccurate, and misleading.

101. 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 or ibuprofen pills than they actually do.

102. Defendants violated § 17500, *et seq*. by misleading Plaintiffs HUO and VALDEZ and the California Class to believe that the CVS® bottles contain more acetaminophen or ibuprofen pills than they actually do.

103. 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 Products were untrue and misleading.

104. Plaintiffs HUO and 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 packaging and marketing; and (c) the Products did not have the quantities as promised.

COUNT VI

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

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

106. Plaintiff FELDMAN 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.*

107. At all relevant times, each Defendant was and is a "person," as defined by N.J.S.A. 56:8-1(d).

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

109. 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).

110. 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).

111. 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…"

112. 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 or ibuprofen pills than they actually do.

113. As described in detail above, Defendants uniformly misrepresented to Plaintiff FELDMAN and each member of the New Jersey Class, by means of its advertising, marketing and other promotional materials, and on the Products' packaging, the Products' contents.

114. 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 its 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*.

115. As a direct and proximate result of Defendants' improper conduct, Plaintiff FELDMAN 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 VII

NEGLIGENT MISREPRESENTATION
(All States)

116. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

117. Defendant, directly or through their agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendant, through its deceptive packaging of the Products, makes uniform representations regarding the Products.

118. 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 in misleading containers or 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 they had a duty to disclose constitutes material misrepresentations and misleading omissions. Such misrepresentations and misleading omissions

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

119. Plaintiffs and members of the Class reasonably relied on Defendants' representation that their Products contain more product than actually packaged.

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

121. 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.

122. 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.

123. 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.

124. 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.

125. 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.

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

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

COUNT VIII

UNJUST ENRICHMENT
(All States and the District of Columbia)

128. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

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

130. 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).

131. 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.

132. 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.

133. Plaintiffs and members of the Class conferred a tangible benefit on Defendants, without knowledge that the Products were packaged in containers made, formed or filled as to be misleading. 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, Plaintiffs and members of the Class were not receiving the Products as they had been represented by Defendants, and which reasonable consumers would have expected.

134. 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.

135. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that it received from Plaintiffs, and all others similarly situated, in light of the fact that the volumes of the Products purchased by Plaintiffs and the Class, was not what Defendants purported them 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 its Products in packaging with excessive empty space. 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 excessive empty space in the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray 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 MARTE 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 New Jersey Class, appointing Plaintiff FELDMAN representative of the New Jersey Class, and designating her counsel as counsel for the New Jersey 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: December 2, 2015

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
Anne Seelig (AS 3976)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

/s/ C.K. Lee
BY: C.K. Lee, Esq.