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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ROBERT BURCHFIELD and
JEANNINE BEATY,
individually and on behalf of all
others similarly situated;

Plaintiffs,
vs.

PRESTIGE CONSUMER
HEALTHCARE, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

1. Violations of California’s False Advertising Laws, Cal. Bus. & Prof. Code §§ 17500, *et seq.*
2. Violations of California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
3. Violations of California’s Unfair Competition Laws, ‘Unfair’ and ‘Fraudulent’ Prongs; Cal. Bus. & Prof. Code §§ 17200, *et seq.*
4. Violations of California’s Unfair Competition Laws, ‘Unlawful’ Prong; Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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- 5. Violations of Illinois Consumer Fraud Act, 815 Ill. Comp. Stat. §§ 505/1, *et seq.*
- 6. Violations of Illinois Consumer Fraud Act, 815 Ill. Comp. Stat. §§ 505/2, *et seq.*

Plaintiffs Robert Burchfield and Jeannine Beaty, (“Plaintiffs”), by their undersigned counsel, on behalf of themselves and all persons similarly situated who purchased Little Remedies Infant Fever + Pain Reliever, bring this Class Action Complaint against Defendant Prestige Consumer Healthcare, Inc. (“Prestige” or “Defendant”). Plaintiffs allege the following upon information and belief, except for those allegations that pertain to Plaintiffs, which are based on Plaintiffs’ personal knowledge:

NATURE OF THE ACTION

1. Prestige is an American corporation that touts itself as being “one of the leading consumer healthcare product platforms in North America,” with a portfolio that includes popular brands like Dramamine®, Clear Eyes®, Goody’s®, and Monistat®, among many others.

2. Prestige’s suite of brands provides its main source of revenue for the company. Since at least 2010, the company has concentrated on “becoming a focused over-the-counter (OTC) company”—one that saw nearly \$1 billion in revenues last year.

3. In 2004, Prestige acquired the Little Remedies® brand of pediatric products, which included nasal products, digestive health products, and cough and cold remedies. Prestige has tailored its advertising messages to “[t]he Little Remedies mom,” who “wants products without any artificial ingredients, flavors or colors. She wants her kids to have only what they need and nothing they don’t.” This insight sparked the message, “Everything they need. Nothing they don’t,” that Prestige

1 brought to a national broadcast audience in 2013. The message is still found on the
2 brand's products today.

3 4. Included in the Little Remedies brand portfolio are over-the-counter pain
4 reliever and fever reducers, including Little Remedies Infant Fever + Pain Reliever
5 ("Infants' Product" or the "Product").

6 5. Prestige acknowledges that consumer perception of safety affects its
7 sales: "We are dependent on consumers' perception of the safety and quality of our
8 products. . . . For example, some of our products contain the active ingredient
9 acetaminophen, which is a pain reliever and fever reducer. We believe our products
10 are safe and effective when used in accordance with label directions. However,
11 adverse publicity about acetaminophen . . . may discourage consumers from buying
12 our products containing those ingredients, which would have an adverse impact on
13 our sales."

14 6. Giving a child too much acetaminophen can be dangerous and even fatal,
15 a problem that terrifies parents and caregivers and causes them to be extra careful
16 when buying medicine for their young children and babies. The FDA warns parents
17 and caregivers to "[b]e very careful when you're giving your infant acetaminophen."
18 Defendant's packaging for its Infants' Product exploits parents' and caregivers' fear
19 of giving their children an improper (and possibly fatal) dosage or formulation.
20 Defendant does this by designing its packaging to mislead a parent into thinking that
21 the Infants' Product is specially-formulated, or otherwise possesses some unique
22 medicinal quality, to make it specifically appropriate for infants as opposed to older
23 children. The front of a box of the Infants' Product contains representations (the
24 product name and depiction of a baby), which are likely to deceive consumers into
25 believing that the Infants' Product is specially formulated for infants or otherwise
26 unique for infants.

27 7. In reality, the medicine contained in a bottle of Infants' Product contains
28 the same active ingredient and formulation (*i.e.* 160 mg per 5 mL of acetaminophen)

1 that is contained in a bottle of Defendant’s Children’s Fever + Pain Reliever
2 (“Children’s Product”). Thus, there is no difference in the medicine sold in the
3 Infants’ Product and the Children’s Product. But Defendant does not disclose this
4 important information anywhere on the Infants’ Product packaging. Accordingly,
5 representing to consumers that the Infants’ Products are somehow different or
6 specially formulated so that they—and they alone—should be used in caring for
7 infants deceives reasonable consumers. This material omission causes consumers
8 economic damage because consumers are charged substantially more money for the
9 Infants’ Product—almost twice as much per ounce—than for the Children’s Product.
10 In other words, the measure of damages (*i.e.* the price premium for the Infant’s
11 Product) can easily be calculated because the medicines are identical.

12 **JURISDICTION AND VENUE**

13 8. Plaintiffs and all members of the proposed Class are or were citizens of
14 the State of California during all times relevant herein.

15 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
16 substantial part of the events and conduct giving rise to the violations of law occurred
17 in this District. This includes the transaction at issue—Plaintiffs’ purchase of the
18 Product.

19 10. Defendant is a publicly-traded corporation authorized to do business in
20 the State of California, and, at all relevant times hereto, was engaged in the
21 manufacturing, labeling, packaging, marketing and sale of the Product in the State of
22 California.

23 11. This action is brought pursuant to the Class Action Fairness Act, 28
24 U.S.C. § 1332 (CAFA). Jurisdiction is vested in this Court in that there is minimal
25 diversity and the aggregate amount in controversy exceeds five million dollars
26 (\$5,000,000,000.00), exclusive of interest and costs.

27 12. Accordingly, this Court has jurisdiction over the parties and the subject
28 matter of this action, and venue is proper.

1 **PARTIES**

2 13. At all relevant times, Plaintiff Robert Burchfield has resided in Los
3 Angeles County, California. Mr. Burchfield is the parent of a child—E.G.D.B.—who
4 was an infant when he first purchased Infants’ Product.

5 14. At all relevant times, Plaintiff Jeannine Beaty has resided in Macon
6 County, Illinois. Ms. Beaty is the parent of a child—B.R.B.—who was an infant when
7 she first purchased Infants’ Product.

8 15. Defendant is, and at all times mentioned in this Complaint was, a publicly
9 traded corporation organized and existing under the laws of the State of Delaware
10 with headquarters at 660 White Plains Road, Tarrytown, New York 10591.
11 Defendant can sue and be sued in this Court.

12 **FACTUAL ALLEGATIONS**

13 **Acetaminophen and the Product**

14 16. Acetaminophen is an active ingredient in hundreds of over-the-counter
15 (OTC) and prescription medications. It relieves pain and fever.

16 17. Acetaminophen is marketed for infants under brand names such as
17 Infants’ Tylenol, Pedia Care Fever Reduce Pain Reliever and Triaminic Infants’
18 Syrup Fever Reducer Pain Reliever.

19 18. Prior to the acts complained of herein, acetaminophen for infants was only
20 available with a concentration of 80 mg/mL of acetaminophen, and acetaminophen
21 for children was only available with a concentration of 160 mg/5 mL of
22 acetaminophen.

23 19. The different concentrations caused some consumers to accidentally
24 provide the wrong dosage of medicine to their children, causing them to overdose.

25 20. In 1995, a lawsuit in the San Francisco County Superior Court brought to
26 light a potential for confusion between acetaminophen products marketed for use by
27 infants versus children stemming from the different concentrations.

1 21. Between 2000 and 2009 the FDA received reports of twenty (20) children
2 dying from acetaminophen toxicity, and at least three (3) deaths were tied directly to
3 mix-ups involving the two pediatric medicines.

4 22. In an industry-wide effort to prevent the ongoing confusion and additional
5 accidental acetaminophen toxicity, in 2011, manufacturers voluntarily changed the
6 liquid acetaminophen marketed for infants from 80 mg per 0.8mL or 80mg per 1mL
7 to be the same concentration as the liquid acetaminophen marketed for children – 160
8 mg per 5mL.

9 23. Since then, the only difference in acetaminophen products marketed for
10 infants and children (including Defendants' Infants' Product and Children's Product)
11 has been the price and the plastic dosing instrument included with the product.

12 24. Defendant's Infants' Product and Children's Product have the same
13 concentration of acetaminophen, and are thus interchangeable – equally suitable for
14 infants and children.

15 25. Since the formula change in 2011, Defendant has been engaging in the
16 unfair, unlawful, and deceptive practice of manufacturing, marketing and selling the
17 Little Remedies brand pediatric acetaminophen as two separate products (one
18 marketed for use in infants and the other for children), such that parents and caregivers
19 mistakenly believe they must purchase the more expensive Infants' Product for their
20 infants.

21 26. Defendant misleads consumers by using deceptive marketing techniques
22 which obscure critical facts from consumers nationwide—most critically, the fact that
23 infants can safely take Children's Products and that the Products are exactly the same.

24 27. Defendant deceives consumers into buying the deceptively-labeled
25 Infants' Products for infants, which cost significantly more than the Children's
26 Products, even though both Products are identically-formulated and contain the same
27 amount of acetaminophen in the same dosage amounts.

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1 28. In the pharmaceutical industry, there are various conventions that are
2 applied in sub-dividing the pediatric population by age. The FDA classification¹ for
3 infants and children is as follows: “infant” means 1 month to 2 years, and “children”
4 means 2 to 12 years.² Similarly, Centers for Disease Control and Prevention (“CDC”)
5 define “infants” as being “0-1 year of age,”³ while the American Academy of
6 Pediatrics has a guide titled “Infant Food and Feeding”⁴ which identifies infants as
7 being between ages 0 and 12 months.⁵ Consumers may reasonably believe that a
8 product that is labeled and marketed for consumption by “infants” is specifically
9 meant to be used by those between the ages of zero months to two years old.

10 29. Defendant distributes, markets, and sells the Products in a manner that
11 deceives reasonable consumers into thinking that infants cannot safely take the
12 Children’s Products.

13 30. The front of the box of the Infants’ Product displays a picture of a baby.
14 The outer packaging also includes the following statements, among others:

- 15 a. “**INFANTS**” (in distinctive red and white lettering) in two separate
16 locations

17 A true and correct copy of the front of the Infants’ Product packaging is pictured
18 below:

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21 ¹ Guidance for Industry – General Considerations for Pediatric Pharmacokinetic
22 Studies for Drugs and Biological products, Draft Guidance, US FDA, 10 November
1998.

23 ² <http://archives.who.int/eml/expcom/children/Items/PositionPaperAgeGroups.pdf>
(last visited August 20, 2020)

24 ³ Child Development – Positive Parenting Tips – Infants (0-1 year) (available at
<https://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/infants.html>) (last
25 visited August 20, 2020).

26 ⁴ AAP.org, Infant Food and Feeding (available at [https://www.aap.org/en-
us/advocacy-and-policy/aap-health-initiatives/HALF-Implementation-Guide/Age-
Specific-Content/Pages/Infant-Food-and-Feeding.aspx](https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/HALF-Implementation-Guide/Age-Specific-Content/Pages/Infant-Food-and-Feeding.aspx)) (last visited August 20,
27 2020).

28 ⁵ *Id.* at “Infant Timeline” (available at [https://www.aap.org/en-us/advocacy-and-
policy/aap-health-initiatives/HALF-Implementation-Guide/Age-Specific-
Content/Pages/Infant-Timeline.aspx](https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/HALF-Implementation-Guide/Age-Specific-Content/Pages/Infant-Timeline.aspx)).

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31. The packaging does not state that this is also the same medicine contained in Children’s Product. Instead, the representations and images create the opposite effect. But the lack of difference in formulations between the Infants’ Product and Children’s Product would be important information to consumers in deciding whether to buy Infants’ Product for a number of reasons, including, *inter alia*, the difference in price between Infants’ Product and Children’s Product.

32. Similarly, Defendant’s Children’s Product leads a reasonable consumer to believe that it consists of medicine that is specific to children, as opposed to infants. The packaging displays a picture of an older child and also includes the following statements, among others:

- a. “**CHILDREN’S**” and is labeled for “AGES 2-11” (in distinctive red and white lettering)

A true and correct copy of the front of the Children’s Product packaging is pictured below:

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33. Like the packaging of the Infants’ Product, nowhere on the label of the Children’s Product does Defendant state that the formulation of the two medicines is entirely identical.

34. Defendant knows that parents and caregivers, such as Plaintiffs, are particularly cautious about what medicine they give to their infants. Indeed, parenting resources express the conventional understanding that infants should not, and *cannot*, tolerate medicines meant for older children. For example, the popular parenting website “What to Expect” warns “**Always use the infant formulations; never give your baby a medication intended for older kids or adults.**”⁶ This conventional

⁶ Colleen de Bellefonds, “Children’s Medication Safety Tips and Guidelines.” What to Expect (Jan. 22, 2019) (available at <https://www.whattoexpect.com/family/childrens-health-and-safety/medication-safety-guidelines-tips#:~:text=Always%20use%20the%20infant%20formulations,baby%20in%20a%20sitting%20position.>) (emphasis added).

1 understanding holds particularly true for parents when they are giving their infant a
2 medicine that has caused accidental deaths in the past.

3 35. While Defendant knows that its Infants' Product is identical to its
4 Children's Product, its deceptive labeling (described above) exploits parents'
5 conventional understanding that parents and caregivers will purchase medicine titled
6 "Infants'" when purchasing medicine for their babies. Defendant's
7 misrepresentations and omissions would be important to a reasonable consumer in
8 deciding whether or not to purchase the Infants' Product.

9 36. Defendant's deceptive and misleading advertising, marketing, packaging
10 and business practices harness the fear of acetaminophen toxicity to trick consumers,
11 including Plaintiffs, into purchasing and overpaying for Infants' Product when
12 Children's Product would be just as safe and effective at a fraction of the price.

13 37. Consumers are injured by Defendant's deceptions. For example, the
14 Infants' Product retails for \$6.87 for two ounces of medicine, while the Children's
15 Product retails for \$7.91 for four ounces of medicine. Accordingly, the Infants'
16 Product costs almost two times as much per ounce than the Children's Product despite
17 being identical. There is a similarly significant price differential throughout the Class
18 Period

19 **Plaintiffs' Respective Purchases of the Product**

20 **Plaintiff Burchfield**

21 38. When E.G.D.B. was an infant, Mr. Burchfield determined that he was in
22 need of a pain and fever reducer suitable for his baby.

23 39. Mr. Burchfield went to the over-the-counter medicine section at, *inter*
24 *alia*, his local Walmart.

25 40. Mr. Burchfield saw that Defendant's Infants' Product was marketed for
26 babies, and, based on the packaging, believed it to be specifically formulated for
27 babies such as E.G.D.B. (and pharmacologically distinct from Defendant's Children's
28 Product or any other children's acetaminophen product).

1 41. Mr. Burchfield then purchased Infants' Product.

2 **Plaintiff Beaty**

3 42. When B.R.B. was about six months old, in April or May, 2020, she
4 developed a slight fever from teething.

5 43. Ms. Beaty went to the over-the-counter medicine section at, *inter alia*, a
6 Walmart retail location.

7 44. Ms. Beaty saw that Defendant's Infants' Product was marketed for
8 babies, and, based on the packaging, believed it to be specifically formulated for
9 babies such as B.R.B. (and pharmacologically distinct from Defendant's Children's
10 Product or any other children's acetaminophen product).

11 45. Ms. Beaty then purchased Infants' Product.

12 46. During both Plaintiffs' interactions with the Infants' Products at the store,
13 Plaintiffs saw and relied upon the Infants' Products packaging and labeling, which
14 was materially similar to the packaging and labeling described and pictured in
15 paragraph 30.

16 47. Specifically, both Plaintiffs saw Defendant's Infants' Product and, based
17 on the packaging, believed it to be specifically formulated for—or otherwise to be
18 used exclusively for—infants such as E.G.D.B. and B.R.B. and purchased the Infants'
19 Product from Walmart because of those representations.

20 48. Plaintiffs purchased the Infants' Product because, based on the label's
21 representations, they believed that the Infants' Product was specifically formulated
22 for—or otherwise to be used exclusively for—infants based on the marketing and
23 labeling of the Infants' Product. Plaintiffs believed that the Infants' Product was
24 different than the Children's Product. If Plaintiffs knew that the Infants' Product was
25 not specially formulated for—or otherwise to be used exclusively for—infants, they
26 would not have purchased it.

27 49. Had Defendant not made the misleading and deceptive representation that
28 the Infants' Products were formulated and designed for "Infants," nor omitted the fact

1 that the Infants’ Products were nothing more than the Children’s Products with the
2 word “Infants” prominently displayed on the front label, Plaintiffs would not have
3 overpaid for the Infants’ Products, or to purchase the Infants’ Product at all. Plaintiffs
4 purchased and paid substantially more for the Infants’ Product than they would have
5 if he had known the truth. The Infants’ Product that Plaintiffs purchased was worth
6 less than the Infants’ Product for which they paid. Plaintiffs were injured in fact and
7 lost money as a result of Defendant’s deceptive conduct.

8 50. Plaintiffs would like to purchase “Infants” products from Defendant in
9 the future and regularly visit retail locations where such products are sold. If Plaintiffs
10 knew that the Infants’ Product’s labels were truthful and not misleading, they would
11 purchase the Infants’ Product in the future.

12 51. At present, however, Plaintiffs cannot purchase the Infants’ Product
13 because they remain unsure as to whether the labeling of the Product is, and will be,
14 truthful and non-misleading. If the Infants’ Product was in fact different from the
15 Children’s Product, or if it were disclosed that the Infants’ Product is the same as the
16 Children’s Product, Plaintiffs would purchase the Infants’ Product in the future.

17 **RULE 9(b) ALLEGATIONS**

18 52. Defendant made—and continues to make—material misrepresentations
19 and failed—and continues to fail—to adequately disclose that the Infant’s Product is
20 simply the Children’s Product sold at a higher price. Except as identified herein,
21 Plaintiffs and Class members are unaware, and therefore, unable to identify, the true
22 names and identities of those individuals employed by, or on behalf of, Defendant
23 who are responsible for such material misrepresentations and omissions.

24 53. Defendant made—and continues to make—material misrepresentations
25 regarding the Infants’ Product. Specifically, at all times relevant to this action,
26 Defendant has labeled, marketed, and sold the Infants’ Product in a manner that
27 indicates to reasonable consumers that they are more appropriate for infants than the
28 Children’s Product (and indeed should be used to the exclusion of the Children’s

1 Product when caring for infants). These representations are misleading because the
2 Infant's Product is the same as the Children's Product. Defendant then charges an
3 inflated price for the Infant's Product.

4 54. Defendant's advertising, labeling, and marketing of the Product has
5 contained the material misrepresentations, omissions, and non-disclosures
6 continuously on every package for the Infants' Product throughout the Class Period.

7 55. Defendant has made numerous misrepresentations in the advertising,
8 labeling, and marketing for the Products that were designed to, and in fact did, mislead
9 Plaintiffs and Class members into purchasing Infants' Products.

10 56. Defendant made these material misrepresentations, omissions, and non-
11 disclosures for the express purpose of inducing Plaintiffs and other reasonable
12 consumers to purchase or otherwise pay a price premium for Infants' Products based
13 on the mistaken belief that Infants' Products were specifically formulated for infants.
14 Defendant profited by selling Infants' Products to thousands or more of unsuspecting
15 consumers.

16 TOLLING

17 **A. Discovery Rule Tolling**

18 57. Class Members had no way of knowing about Defendant's deceptive
19 practices with respect to the marketing of its Infants' Product and Children's Product.
20 Defendant's marketing of the respective products makes clear that it tried to hide the
21 true facts, that there is no pharmacological difference between the two products
22 despite the deceptive labeling of its Infants' Product, as described herein.

23 58. Within the period of any applicable statutes of limitation, Plaintiffs and
24 the other Class Members could not have discovered through the exercise of
25 reasonable diligence that Defendant was hiding its true practices.

26 59. All applicable statutes of limitation have been tolled by operation of the
27 discovery rule.
28

1 and omissions—displayed on the packaging of the Infant’s Products—are ongoing
2 and accordingly represent an ongoing threat to Plaintiffs, Class members, and
3 members of the general public who have not yet (but who are likely to) come into
4 contact with Defendant’s misrepresentations, and who risk becoming injured thereby.
5 Plaintiffs seek, on behalf of themselves, the Class, and the general public, an
6 injunction prohibiting Defendant from the manufacturing, marketing and packaging
7 of the Infant’s Products that contain the misrepresentations challenged herein.
8 Specifically, Plaintiffs, seek clear disclosures that there is no pharmacological
9 distinction between “Infant’s Product” and “Children’s Product” and that the two
10 products can be used interchangeably in a manner that is safe to infants and children
11 alike.

12 CLASS ALLEGATIONS

13 68. Plaintiffs bring this action as a class action on their own behalf and on
14 behalf of all others similarly situated under Federal Rule of Civil Procedure 23, for
15 declaratory judgment, restitution, injunctive relief, damages, costs and attorneys’
16 fees. Plaintiffs seek certification of this action as a class action on behalf of the
17 following Class and Subclass (the “Classes”):

18 **Nationwide Class:**

19 All persons who purchased the Infants’ Product for
20 personal use and not for resale in the United States.

21 **Illinois Subclass:**

22 All persons who purchased the Infants’ Product for
23 personal use and not for resale in Illinois.

24 69. The following persons are excluded from the Classes: Defendant,
25 Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts,
26 representatives, employees, successors, assigns, or other persons or entities related to
27 or affiliated with Defendant and/or its officers and/or directors, or any of them. Also
28 excluded from the proposed Classes are the Court, the Court’s immediate family and

1 Court staff.

2 70. The members of the Classes are so numerous that joinder of all members
3 is impracticable. On information and belief, there are in excess of a thousand members
4 of the Classes. Discovery will reveal, through Defendant's records, the approximate
5 number of Class members.

6 71. Plaintiffs' claims are typical of the Classes. Plaintiffs, like all members of
7 the Classes, have been subjected to Defendant's deceptive and misleading marketing
8 (including the packaging) for Infants' Product. The harm suffered by Plaintiffs and
9 the Classes was and is caused by the same misconduct by Defendant.

10 72. Plaintiffs will fairly and adequately represent and protect the interests of
11 the members of the Classes. Plaintiffs have retained counsel highly experienced in
12 complex consumer class action litigation and intend to prosecute this action
13 vigorously. Plaintiffs are members of the Nationwide Class described herein, and
14 Plaintiff Beaty is a member of the Illinois Subclass. No Plaintiff has interests
15 antagonistic to, or in conflict with, the other members of the Classes.

16 73. A class action is superior to other available methods for the fair and
17 efficient adjudication of this controversy. Because the monetary damages suffered by
18 individual Class members are relatively small, the expense and burden of individual
19 litigation make it impossible for individual Class members to seek redress for the
20 wrongful conduct asserted herein. If Class treatment of these claims is not available,
21 Defendant would likely continue its wrongful conduct, will unjustly retain improperly
22 obtained revenues, and/or otherwise escape liability for its wrongdoing.

23 74. Common questions of law and fact exist as to all members of the Classes,
24 which predominate over any questions that may affect individual Class members.
25 Among the common questions of law and fact are the following:

- 26 a. Whether Defendant's marketing, advertising, labeling, and packaging of
27 Infants' Product is likely to deceive reasonable consumers;
- 28 b. Whether Defendant's marketing, advertising, labeling, and packaging of

- 1 Infants' Product caused Plaintiffs and the Class to suffer economic harm;
- 2 c. Whether Defendant's representations and omissions are material to
- 3 reasonable consumers;
- 4 d. Whether Defendant violated California Business and Professions Code
- 5 §§ 17200, *et seq.*;
- 6 e. Whether Defendant violated California Business and Professions Code
- 7 §§ 17500, *et seq.*;
- 8 f. Whether Defendant violated California Civil Code §§ 1750, *et seq.*;
- 9 g. Whether Defendant violated 815 Ill. Comp. Stat. §§ 505, *et seq.*;
- 10 a. Whether Plaintiffs and the Classes are entitled to injunctive relief; and
- 11 b. Whether Plaintiffs and the Classes are entitled to damages and/or
- 12 restitution and if so, the appropriate measure.

13 75. Plaintiffs know of no difficulty which will be encountered in the

14 management of this litigation which would preclude its maintenance as a class action.

15 76. The prosecution of separate actions by individual members of the Classes

16 would run the risk of inconsistent or varying adjudications, which might establish

17 incompatible standards of conduct for the Defendant. Prosecution as a class action

18 will eliminate the possibility of repetitious litigation.

19 77. Class certification is also appropriate under Federal Rule of Civil

20 Procedure 23(b)(2) because Defendant's actions are generally applicable to the

21 Classes as a whole, and Plaintiffs seek equitable remedies with respect to the Classes

22 as a whole. Defendant has acted or refused to act on grounds generally applicable to

23 the Classes, thereby making appropriate final injunctive relief or corresponding

24 declaratory relief with respect to the Classes as a whole. Moreover, Plaintiffs continue

25 to have use for OTC pain-relief products for children. If the Court were to grant an

26 injunction enjoining Defendant from making the misrepresentations described above,

27 then Plaintiffs would consider purchasing Infants' Product in the future. Without an

28 injunction, Plaintiffs would be unable to trust Defendant's representations and would

1 not purchase Infants' Product.

2
3 **FIRST CAUSE OF ACTION**
4 **Violations of California's False Advertising Law (FAL)**
5 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
6 **(on behalf of Plaintiffs and the Nationwide Class)**

7 78. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

8 79. In marketing, advertising, labeling, and packaging Infants' Product,
9 Defendant made, and continues to make, misleading statements and omissions in
10 order to induce consumers into purchasing Infants' Product on a false premise.

11 80. In marketing, advertising, labeling, and packaging Infants' Product,
12 Defendant failed and continues to fail to make material disclosures, including a
13 statement that Infants' Product is the same product as Children's Product.

14 81. Defendant is aware that the claims it makes about Infants' Product are
15 deceptive, misleading, without basis, and unreasonable.

16 82. Defendant engaged in the deceptive conduct alleged above to induce the
17 public to purchase the Infants' Product instead of Children's Product.

18 83. In marketing, advertising, labeling, and packaging Infant's Product
19 described above, Defendant knew or should have known its statements regarding the
20 uses and characteristics of Infants' Product were false and misleading.

21 84. Defendant's misrepresentations of the material facts detailed above
22 constitute unfair and fraudulent business practices within Cal. Bus. & Prof. Code §
23 17200.

24 85. There were reasonably available alternatives to further Defendant's
25 legitimate business interests, other than the conduct described herein.

26 86. All of the conduct alleged herein occurs and continues to occur in
27 Defendant's business. Defendant's wrongful conduct is part of a course of conduct
28 repeated on hundreds if not thousands of occasions every day.

1 87. Plaintiffs and the Class were misled into purchasing Infants' Product by
2 Defendant's deceptive conduct and misleading advertising as alleged above.

3 88. Plaintiffs and the Class were misled and, because the misrepresentations
4 and omissions were uniform and material, they believed that Infants' Products have
5 benefits which they do not; namely that they are uniquely suited or the only safe
6 product for infants.

7 89. In addition, Defendant's use of the Product's packaging as advertising
8 and marketing has deceived and is likely to continue deceiving the consuming public,
9 in violation of Cal. Bus. & Prof. Code § 17500.

10 90. Plaintiffs and the Class have suffered injury in fact and have lost money
11 as a result of Defendant's misrepresentations and omissions. Indeed, Plaintiffs and
12 the Class purchased Infants' Product because of Defendant's misrepresentations that
13 Infants' Product is specially formulated or otherwise uniquely suitable for infants.
14 Defendant's misrepresentations caused consumers to suffer economic damages
15 because Defendant charges consumers substantially more for the Infants' Product—
16 as much as twice as much per ounce—than for its Children's Product. Plaintiffs and
17 the Class would not have purchased the Infant's Product if they had known the truth.

18 **SECOND CAUSE OF ACTION**

19 **Violations of Consumers Legal Remedies Act (CLRA)**

20 **Cal. Civ. Code §§ 1750, *et seq.***

21 **(on behalf of Plaintiffs and the Nationwide Class)**

22 91. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

23 92. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered
24 injury in fact and lost money as a result of Defendant's actions as set forth herein.

25 93. At all times relevant hereto, Defendant is a "person" as defined in Cal.
26 Civ. Code § 1761(d).

27 94. At all times relevant hereto, Defendant's Infants' Product is a "good" as
28 defined in Cal. Civ. Code § 1761(d).

1 95. At all relevant times hereto, Plaintiffs’ and Class members’ purchases of
2 Infants’ Product constitute “transactions” as defined in Cal. Civ. Code § 1761(e).

3 96. The following subsections of the CLRA prohibit the following unfair
4 methods of competition and unfair or deceptive acts or practices undertaken by any
5 person in a transaction is intended to result or which results in the sale or lease of
6 goods or services to any consumer:

7 a. Cal. Civ. Code § 1770(a)(5): Representing that goods or services have
8 sponsorship, approval, characteristics, ingredients, uses, benefits, or
9 quantities which they do not have or that a person has a sponsorship,
10 approval, status, affiliation, or connection which they do not have;

11 b. Cal. Civ. Code § 1770(a)(9): Advertising goods or services with intent
12 not to sell them as advertised; and,

13 c. Cal. Civ. Code § 1770(a)(16): Representing that the subject of a
14 transaction has been supplied in accordance with a previous
15 representation when it has not.

16 97. Defendant has violated and continues to violate Cal. Civ. Code
17 §1770(a)(5) by representing that the Infants’ Product has sponsorship, approval,
18 characteristics, ingredients, benefits or quantities which they do not have.

19 98. Defendant has violated and continues to violate Cal. Civ. Code
20 §1770(a)(9) by advertising the Infants’ Product with the intent not to sell it as
21 advertised.

22 99. Defendant has violated and continues to violate Cal. Civ. Code
23 §1770(a)(16) by representing the Infants’ Product has been supplied in accordance
24 with previous representations when it has not.

25 100. Defendant has violated and continues to violate Cal. Civ. Code §§
26 1770(a)(5), (a)(9) and (a)(16) by deceiving consumers into believing the Infants’
27 Product is specially formulated or otherwise medicinally unique for infants, as
28 described more fully above. Indeed, Plaintiffs relied on the Infants’ Product

1 packaging before purchasing.

2 101. Defendant's misrepresentations and omissions were done with the
3 intention of deceiving Plaintiffs and the Class and depriving them of their legal rights
4 and money.

5 102. Defendant knew the Infants' Product was not specially formulated or
6 medicinally unique for infants.

7 103. Plaintiffs are concurrently filing the declaration of venue required by Cal.
8 Civ. Code § 1780(d).

9 104. The policies, acts, and practices hereto described were intended to result
10 in the sale of the Infants' Product to the consuming public, particularly to cautious
11 parents with sick babies who needed medicine, and violated and continue to violate
12 Cal. Civ. Code § 1770(a)(5) of the act by representing that Infants' Product has
13 characteristics, benefits, uses, or quantities which it does not have.

14 105. Defendant's actions as described herein were done with conscious
15 disregard of Plaintiffs' rights and the rights of Class members, and Defendant has
16 acted wantonly and maliciously in its concealment of the same.

17 106. Defendant's wrongful business practices constituted, and constitute, a
18 continuing course of conduct in violation of the CLRA since Defendant continues to
19 make the same misrepresentations and omit material information regarding Infants'
20 Product.

21 107. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs currently seek restitution
22 and an order enjoining Defendant from engaging in the methods, acts and practices
23 alleged herein, and any other relief deemed proper by the Court.

24 108. Plaintiffs and the Class have suffered injury in fact and have lost money
25 as a result of Defendants' misrepresentations and omissions. Indeed, Plaintiffs and
26 the Class purchased Infant's Product because of Defendants' misrepresentations that
27 Infant's Product is specially formulated or otherwise uniquely suitable for infants.
28 Defendants' misrepresentations caused consumers to suffer economic damages

1 because Defendants charge consumers substantially more for the Infants’ Product—
2 as much as twice as much per ounce—than for its Children’s Product.

3 109. Concurrent with the filing of this Complaint, Plaintiffs sent Defendant
4 notice advising Defendant that it violated and continues to violate, Section 1770 of
5 the CLRA (the “Notice”). The Notice complied in all respects with Section 1782 of
6 the CLRA. Plaintiffs sent the Notice by Certified U.S. Mail, return-receipt requested
7 to Defendant at Defendant’s principal place of business. Plaintiffs’ Notice advised
8 Defendant that it must correct, repair, replace or otherwise rectify its conduct alleged
9 to be in violation of Section 1770 within 35 days. If Defendant fails to do so, Plaintiffs
10 will amend this Complaint to seek damages.

11 **THIRD CAUSE OF ACTION**

12 **Violations of Unfair Competition Law (UCL)**

13 **‘Unfair’ and ‘Fraudulent’ Prongs**

14 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

15 **(on behalf of Plaintiffs and the Nationwide Class)**

16 110. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

17 111. As alleged above, Plaintiffs have standing to pursue this claim as they
18 have suffered injury in fact and lost money or property as a result of Defendant’s
19 actions. Specifically, prior to the filing of this action, Plaintiffs purchased Infants’
20 Product for their own personal household use. In so doing, Plaintiffs relied on
21 Defendant’s misrepresentations and omissions of material facts, as alleged in detail
22 above. Had Defendant disclosed on the packaging that Infants’ Product and
23 Children’s Product are identical, Plaintiffs would not have purchased the more
24 expensive Infants’ Product.

25 112. Defendant’s conduct in marketing, advertising, labeling, and packaging
26 Infants’ Product is likely to deceive reasonable consumers. The representations and
27 omissions are likely to lead reasonable consumers to believe that the Infant’s Product
28 was specially formulated for infants or has some other medicinal quality for infants.
Defendant harnesses parents’ and caregivers’ fear of inadvertently harming their

1 infants by administering age-inappropriate medicine, which leads parents and
2 caregivers of infants to seek out medication labeled as being for “infants.”

3 113. Defendant is aware that the claims it makes about Infants’ Product are
4 deceptive, false and misleading. Defendant is also aware consumers with babies, such
5 as Plaintiffs and members of the Class, are typically more cautious about what
6 medicine to give their baby, especially when they are giving their baby a product that
7 in the past has caused accidental deaths.

8 114. The misrepresentations by Defendant constitute unfair and fraudulent
9 business practices within the meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

10 115. Defendant’s business practices, as alleged herein, are unfair because: (1)
11 the injury to consumers is substantial—they were deceived into thinking Infants’
12 Product was specially formulated or otherwise unique for infants; (2) the injury is not
13 outweighed by countervailing benefits to consumers or competition, as there can be
14 no benefit to consumers where they are required to pay up to more than twice the
15 price for the same medicine; (3) consumers could not reasonably have avoided the
16 injury because Defendant intentionally misled the consuming public by means of its
17 advertising, marketing and labeling of Infants’ Product.

18 116. Defendant’s business practices are also unfair because its conduct in
19 selling, advertising, marketing and labeling Infants’ offends established public policy
20 and is immoral, unethical, oppressive, unscrupulous or substantially injurious to
21 consumers. Such public policy is tethered to specific constitutional and statutory
22 provisions, including California’s consumer protection statutes.

23 117. Defendant’s wrongful business practices constitute a continuing course
24 of conduct of unfair competition since Defendant is marketing and selling Infants’
25 Product in a manner likely to deceive the public.

26 118. Defendant has peddled, and continues to peddle, its misrepresentations
27 through a national advertising campaign.

28 119. In addition, Defendant’s use of the packaging to call attention to or give

1 publicity to the sale of goods or merchandise which are not as represented constitutes
2 unfair competition, unfair, deceptive, untrue or misleading advertising, and an
3 unlawful business practice within the meaning of Cal. Bus. & Prof. Code §§ 17200,
4 *et seq.*

5 120. There were reasonably available alternatives to further Defendant's
6 legitimate business interests, other than the conduct described above.

7 121. Plaintiffs and members of the Class were misled into purchasing the
8 Infants' Product by Defendant's deceptive and fraudulent conduct as alleged above.

9 122. Plaintiffs and members of the Class were misled and, because the
10 misrepresentations and omissions were uniform and material, presumably believed
11 Infants' Product was specially formulated or unique for infants.

12 123. Pursuant to section 17203 of the UCL, Plaintiffs and members of the
13 Class seek an order of this Court enjoining Defendant from engaging in the unfair and
14 fraudulent business practices alleged herein in connection with the sale of Infants'
15 Product.

16 124. Plaintiffs and the Class have suffered injury in fact and have lost money
17 as a result of Defendant's misrepresentations and omissions. Indeed, Plaintiffs and
18 the Class purchased Infant's Product because of Defendant's misrepresentations that
19 Infant's Product is specially formulated or otherwise uniquely suitable for infants.
20 Defendant's misrepresentations caused consumers to suffer economic damages
21 because Defendant charges consumers substantially more for the Infants' Product—
22 as much as twice as much per ounce—than for its Children's Product.

23
24 125. Additionally, Plaintiffs seek an order awarding Plaintiffs and the Class
25 restitution of the money wrongfully acquired by Defendant by means of the unfair
26 and fraudulent business practices alleged herein.

27 **FOURTH CAUSE OF ACTION**
28 **Violations of Unfair Competition Law (UCL)**

‘Unlawful’ Prong
Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(on behalf of Plaintiffs and the Nationwide Class)

126. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

127. Defendant’s actions, as alleged herein, constitute illegal and unlawful business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

128. Defendant is unlawfully labeling, selling, marketing and advertising Infants’ Product. Indeed, Defendant’s violations of the FAL, CLRA and the UCL, as alleged above, constitute predicate acts, which violate the UCL’s “unlawful” prong.

129. Plaintiffs and members of the Class were misled because Defendant’s misrepresentations and omissions, described above, were uniform and material. Plaintiffs reasonably relied on those misrepresentations and material omissions, believing based thereon that Infants’ Product was specially formulated or otherwise unique for infants. As a result of Defendant’s misrepresentations and omissions, Plaintiffs and members of the Class lost money or property.

130. Pursuant to section 17203 of the UCL, Plaintiffs seek an order of this Court enjoining Defendant from engaging in the unlawful business practices alleged herein in connection with the sale of Infants’ Product.

131. Plaintiffs and the Class have suffered injury in fact and have lost money as a result of Defendant’s misrepresentations and omissions. Indeed, Plaintiffs and the Class purchased Infant’s Product because of Defendant’s misrepresentations that Infant’s Product is specially formulated or otherwise uniquely suitable for infants. Defendant’s misrepresentations caused consumers to suffer economic damages because Defendant charges consumers substantially more for the Infants’ Product—as much as twice as much per ounce—than for its Children’s Product.

132. Additionally, Plaintiffs seek an order awarding Plaintiffs and the Class restitution of the money wrongfully acquired by Defendant by means of the unfair and fraudulent business practices alleged herein.

FIFTH CAUSE OF ACTION
Violations of Illinois Consumer Fraud Act
815 Ill. Comp. Stat 505/1, *et seq.*

(on behalf of Plaintiff Beaty and the Illinois Subclass)

133. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

134. In Illinois, the Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1, *et. seq.*, prohibits “unfair 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 or the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act.’”

135. Plaintiff Beaty and the Illinois Subclass were injured by Defendant’s deceptive misrepresentations, concealments and omissions and these misrepresentations, concealments and omissions were material and deceived Plaintiff and the Illinois Subclass. Because Plaintiff and the Illinois Subclass relied on Defendant’s misrepresentations, concealments and omissions when purchasing Infants’ Products, they were injured at the time of purchase.

136. Defendant does business in Illinois, sells and distributes Infants’ Products in Illinois, and engaged in deceptive acts and practices in connection with the sale of Infants’ Products in Illinois and elsewhere in the United States.

137. The Infants’ Products purchased by Plaintiff Beaty and the Illinois Subclass were “consumer items” as that term is defined under the Illinois Consumer Fraud Act.

138. Defendant engaged in unfair and deceptive acts in violation of 815 Ill. Comp. Stat. 505/2 when it misrepresented and deceptively concealed, suppressed and/or omitted the material information known to Defendant as set forth above concerning its Infants’ Products, which has caused damage and injury to Plaintiff

1 Beaty and the Illinois Subclass at the time of purchase.

2 139. Defendant represented, directly or indirectly, that Infants' Products were
3 manufactured, developed, and designed to be used for infants, when it knew that the
4 Children's Products were the same product, yet sold at a significantly lower cost.

5 140. In marketing, advertising and labeling Infants' Products, Defendant
6 made, and continues to make, false and misleading statements in order to induce
7 consumers into purchasing Infants' Products on a false premise.

8 141. In marketing, advertising and labeling Infants' Products, Defendant failed
9 and continues to fail to make material disclosures, including a disclosure notifying
10 consumers that Infants' Products is the same product as Children's Products.

11 142. Defendant is aware that the claims that it makes about Infants' Products
12 are false, misleading, without basis, and unreasonable.

13 143. Defendant engaged in the deceptive conduct alleged above in order to
14 induce the public to purchase the more expensive Infants' Products, instead of
15 Children's Products.

16 144. In marketing, advertising and labeling Infants' Products described above,
17 Defendant knew or should have known that its representations and statements
18 regarding the uses and characteristics of Infants' Products were false and misleading.

19 145. Defendant had reasonably available alternatives to further its legitimate
20 business interests, other than the conduct described in this Complaint.

21 146. All of the conduct alleged herein occurs and continues to occur in
22 Defendant's business. Defendant's wrongful conduct is part of a course of conduct
23 repeated on hundreds, if not thousands, of occasions every day.

24 147. Plaintiff Beaty and the Illinois Subclass were misled and, because the
25 misrepresentations and omissions were uniform and material, presumably believed
26 that Infants' Products has benefits which it does not; namely that it is more suitable
27 and safer for infants than the Children's Products.

28 148. Additionally, Defendant's use of various forms of advertising and

1 marketing have deceived and are likely to continue deceiving the consuming public,
2 in violation of the Illinois Consumer Fraud Act.

3 149. Defendant's deceptive acts occurred in a course of conduct involving
4 trade and commerce in Illinois and throughout the United States.

5 150. Defendant intended Plaintiff Beaty and the Illinois Subclass to rely on
6 their deceptive acts when purchasing Defendant's Infants' Products.

7 151. Defendant's deceptive acts proximately caused actual injury and damage
8 to Plaintiff Beaty and the Illinois Subclass at the time of purchase. As a result of
9 Defendant's wrongful conduct, Plaintiff Beaty and the Illinois Subclass have suffered
10 injury in fact and have lost money. Indeed, Plaintiff Beaty and the Illinois Subclass
11 purchased Infants' Products because of Defendant's misrepresentations that Infants'
12 Products are a more suitable and safer OTC medicine for infants than Children's
13 Products.

14 152. Plaintiff Beaty and the Illinois Subclass would not have purchased, or
15 would have paid less for, Defendant's Infants' Products but for Defendant's material
16 misrepresentations as described in this Complaint.

17 **SIXTH CAUSE OF ACTION**

18 **Violations of Illinois Uniform Deceptive Trade Practices Act**
19 **815 Ill. Comp. Stat. 510/2, et seq.**
20 **(on behalf of Plaintiff Beaty and the Illinois Subclass)**

21 153. Plaintiffs hereby incorporate paragraphs 1-77 as if fully set forth herein.

22 154. Plaintiff Beaty brings this cause of action on her own behalf and on behalf
23 of the Illinois Subclass.

24 155. The Illinois Uniform Deceptive Trade Practices Act ("UDTPA"), 815 Ill.
25 Comp. Stat. 510/2, et seq., prohibits "[u]nfair methods of competition and unfair or
26 deceptive acts or practices, including but not limited to the use or employment of any
27 deception, fraud, false pretense, false promise, misrepresentation or the concealment,
28 suppression or omission of any material fact, with intent that others rely upon the

1 concealment, suppression or omission of such material fact.”

2 156. 815 ILCS 510/2 provides in pertinent part that a “person engages in a
3 deceptive trade practice when, in the course of his or her business, vocation, or
4 occupation,” the person does any of the following: “(5) represents that goods or
5 services have . . . uses, benefits or quantities that they do not have . . . ; (7) represents
6 that goods or services are of a particular standard, quality, or grade or that goods are
7 a particular style or model, if they are of another; . . . [or] (12) engages in any other
8 conduct which similarly creates a likelihood of confusion or misunderstanding.”

9 157. Defendant engaged in unfair and deceptive acts in violation of 815 Ill.
10 Comp. Stat. 510/2 when it misrepresented and deceptively concealed, suppressed
11 and/or omitted the material information known to Defendant as set forth above
12 concerning its Infants’ Products, which has caused damage and injury to Plaintiff
13 Beaty and the Illinois Subclass. Plaintiff Beaty and the Illinois Subclass were injured
14 by Defendant’s unfair and deceptive conduct at the time of purchasing Defendants’
15 Infants’ Products.

16 158. Defendant represented, directly or indirectly, that Infants’ Products were
17 manufactured, developed, and designed to be used for infants, when it knew that the
18 Children’s Products were the same product, yet sold at a significantly lower cost.

19 159. In marketing, advertising and labeling Infants’ Products, Defendant
20 made, and continues to make, false and misleading statements in order to induce
21 consumers into purchasing Infants’ Products on a false premise.

22 160. In marketing, advertising and labeling Infants’ Products, Defendant failed
23 and continues to fail to make material disclosures, including a disclosure notifying
24 consumers that Infants’ Products is the same product as Children’s Products.

25 161. Defendant is aware that the claims that it makes about Infants’ Products
26 are false, misleading, without basis, and unreasonable.

27 162. Defendant engaged in the deceptive conduct alleged above in order to
28 induce the public to purchase the more expensive Infants’ Products, instead of

1 Children's Products.

2 163. In marketing, advertising and labeling Infants' Products described above,
3 Defendant knew or should have known that its representations and statements
4 regarding the uses and characteristics of Infants' Products were false and misleading.

5 164. Defendant had reasonably available alternatives to further its legitimate
6 business interests, other than the conduct described in this Complaint.

7 165. All of the conduct alleged herein occurs and continues to occur in
8 Defendant's business. Defendant's wrongful conduct is part of a course of conduct
9 repeated on hundreds, if not thousands, of occasions every day.

10 166. Plaintiff Beaty and the Illinois Subclass were misled and, because the
11 misrepresentations and omissions were uniform and material, presumably believed
12 that Infants' Products has benefits which it does not; namely that it is more suitable
13 and safer for infants than the Children's Products.

14 167. Additionally, Defendant's use of various forms of advertising and
15 marketing have deceived and are likely to continue deceiving the consuming public,
16 in violation of the Illinois Consumer Fraud Act.

17 168. Defendant's deceptive acts occurred in a course of conduct involving
18 trade and commerce in Illinois and throughout the United States.

19 169. Defendant's deceptive acts proximately caused actual injury and damage
20 to Plaintiff Beaty and the Illinois Subclass at the point of purchase.

21 170. Plaintiff Beaty and the Illinois Subclass would not have purchased, or
22 would have paid less for, Defendant's Infants' Products but for Defendant's material
23 misrepresentations as described in this Complaint. Defendant intended Plaintiff Beaty
24 and the Illinois Subclass to rely on their deceptive acts when purchasing Defendant's
25 Infants' Products.

26 **PRAYER FOR RELIEF**

27

28

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