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

15 ROBERT ROMOFF, individually and  
 16 on behalf of all others similarly  
 17 situated,

18 *Plaintiff,*

19 v.

20 JOHNSON & JOHNSON  
 21 CONSUMER INC.,

22 *Defendant.*

23 Case No. '22CV75 LL JLB

24 **Class Action Complaint**

25 **Demand for Jury Trial**

**Table of Contents**

1

2 I. Introduction..... 1

3 II. Parties..... 1

4 III. Jurisdiction and Venue..... 1

5 IV. Facts..... 2

6 A. Defendant makes, markets, and sells Tylenol products prominently labeled “Non-

7 Drowsy.” ..... 2

8 B. The Non-Drowsy Tylenol Products cause drowsiness. .... 5

9 C. Defendant’s Non-Drowsy representations are misleading to reasonable

10 consumers. .... 6

11 D. Plaintiff was misled by Defendant’s misrepresentations. .... 9

12 E. Class Action Allegations..... 10

13 V. Claims. .... 11

14 VI. Jury Demand. .... 22

15 VII. Prayer for Relief..... 23

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1 **I. Introduction.**

2 1. Defendant makes, sells, and markets “Tylenol” over-the-counter cough  
3 medicine. Many Tylenol products contain the active ingredient Dextromethorphan  
4 Hydrobromide (“DXM”) and state prominently on the front of their label that they are  
5 “Non-Drowsy.”<sup>1</sup>

6 2. By prominently labeling these products as “Non-Drowsy,” Defendant led  
7 Plaintiff and other reasonable consumers to believe that the Non-Drowsy Tylenol  
8 Products do not cause drowsiness, and that drowsiness is not a side effect of those  
9 products. But the truth is that products containing DXM—and thus the Non-Drowsy  
10 Tylenol Products—do cause drowsiness, and that drowsiness is a common side effect of  
11 DXM.

12 3. In this way, Defendant misled Plaintiff and other reasonable consumers  
13 about the effects of the Non-Drowsy Tylenol Products.

14 4. Defendant’s misrepresentations allowed it to overcharge Plaintiff and other  
15 consumers for the Non-Drowsy Tylenol Products.

16 **II. Parties.**

17 5. Plaintiff Robert Romoff is a citizen of California (domiciled in San Diego,  
18 California). The proposed class (identified below) includes citizens of every state within  
19 the United States.

20 6. Defendant Johnson & Johnson Consumer Inc. is a citizen of New Jersey. Its  
21 principal place of business is at 199 Grandview Road, Skillman, New Jersey 08558. It is  
22 incorporated in New Jersey.

23 **III. Jurisdiction and Venue.**

24 7. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).  
25 The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
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<sup>1</sup> Throughout this Complaint, Tylenol products containing DXM that state on their  
label that they are “Non-Drowsy” are called “Non-Drowsy Tylenol Products.”

1 and costs, and the matter is a class action in which one or more members of the proposed  
2 class are citizens of a state different from the Defendant.

3 8. The Court has personal jurisdiction over Defendant because Defendant sold  
4 Non-Drowsy Tylenol products to consumers in California, including Plaintiff.

5 9. Venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(d)  
6 because Defendant would be subject to personal jurisdiction in this District if this District  
7 were a separate state, given that Defendant sold the Non-Drowsy Tylenol Products to  
8 consumers in this District, including Mr. Romoff. Venue is also proper under 28 U.S.C.  
9 § 1391(b)(2) because a substantial part of Defendants’ conduct giving rise to the claims  
10 occurred in this District, including selling the Non-Drowsy Tylenol Products to Mr.  
11 Romoff.

12 **IV. Facts.**

13 **A. Defendant makes, markets, and sells Tylenol products prominently**  
14 **labeled “Non-Drowsy.”**

15 10. Defendant makes, markets and sells the Non-Drowsy Tylenol Products.

16 11. The front label of each Non-Drowsy Tylenol Product prominently states that  
17 the product is “Non-Drowsy.” For example:

1  
2 **Tylenol Cold + Flu Severe**



19 **Tylenol Cold MAX**



1 **Tylenol Cold + Mucus Severe**



18 12. These representations are materially the same across Non-Drowsy Tylenol  
19 Products.

20 13. The Non-Drowsy Tylenol Products do not disclose anywhere on their  
21 packaging that they do or can cause drowsiness, or that drowsiness is a side effect.

22 14. Based on the prominent “Non-Drowsy” label included on the face of each  
23 product, a reasonable consumer would believe that the products do not cause drowsiness.  
24 That is, a reasonable consumer would believe that drowsiness is not a side-effect of the  
25 products.

26 15. Defendant labeled the products this way because it intended consumers to  
27 rely on the labels and to believe that the products would not cause drowsiness, so that  
28 consumers would buy more products or pay more for them.

1           **B. The Non-Drowsy Tylenol Products cause drowsiness.**

2           16. In truth, products containing DXM—like the Non-Drowsy Tylenol  
3 Products—do cause drowsiness, and drowsiness is a documented side effect of DXM.<sup>2</sup>

4           17. In fact, drowsiness is a common side effect at the recommended dosages.  
5 For example, one study found that “[s]omnolence is a common side effect of centrally  
6 acting antitussive drugs” like dextromethorphan, and that 10.4% of users of products  
7 containing dextromethorphan develop drowsiness within three days of starting treatment  
8 with DXM cough medicine.<sup>3,4</sup> The “cases of intense somnolence” were “related only to  
9 dextromethorphan” and not to the other drug studied. And patients in this clinical study  
10 were given an even smaller dosage of DXM (15 mg three times a day) than the  
11 recommended dose found in many Tylenol products.<sup>5</sup>

12           18. The FDA’s adverse event report database confirms that “sedation” is one of  
13 the most frequently-cited side effects of dextromethorphan-containing products.<sup>6</sup>

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19 <sup>2</sup> Dextromethorphan: MedlinePlus Drug Information, NIH National Library of Medicine,  
20 <https://medlineplus.gov/druginfo/meds/a682492.html> (listing drowsiness as a side effect)

21 <sup>3</sup> E. Catena and L. Daffonchio, “Efficacy and Tolerability of Levodropropizine in Adult  
22 Patients with Non-productive Cough, Comparison with Dextromethorphan,” 10  
23 Pulmonary Pharmacology & Therapeutics 89-96 (1997).

24 <sup>4</sup> The study reports this side effect as “somnolence.” Somnolence means “the quality or  
25 state of being drowsy.” Merriam Webster Dictionary, [https://www.merriam-](https://www.merriam-webster.com/dictionary/somnolence)  
26 [webster.com/dictionary/somnolence](https://www.merriam-webster.com/dictionary/somnolence)

27 <sup>5</sup> For example: Tylenol Cold Max contains 10mg of DXM per caplet and the  
28 recommended dosage for adults and children 12 and over is 2 caplets every 4 hours.

<sup>6</sup> Sedation is associated with drowsiness. *See* IV/Monitored Sedation, American Society  
of Anesthesiologists, [https://www.asahq.org/madeforthismoment/anesthesia-101/types-](https://www.asahq.org/madeforthismoment/anesthesia-101/types-of-anesthesia/ivmonitored-sedation/)  
of-anesthesia/ivmonitored-sedation/ (even “minimal” sedation means that “you’ll feel  
drowsy”)

1 19. For this reason, the Federal Aviation Administration prohibits pilots from  
 2 flying after ingesting medicines that contain “dextromethorphan”:<sup>7</sup>

Cough	Cough/cold products	Coricidin (allowed if no chlorpheniramine)  guaifenesin (found in Mucinex and Robitussin) Mucinex fast-max severe congestion and cough (liquid)  Identify combo vs isolated	dextromethorphan (Delsym)  Dayquil (contains dextromethorphan)  Most “night-time” or “PM” medications contain a sedating antihistamine: - Coricidin HBP cough & cold (contains chlorpheniramine) - Nyquil (contains doxylamine)	Most cough medications are safe for flight, but caution for combination products with sedating antihistamines. <b>If the label states PM (for nighttime use) or DM (containing dextromethorphan), you should not fly for at least 5 half-lives after the last dose (see above).</b>
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9 **C. Defendant’s Non-Drowsy representations are misleading to reasonable consumers.**

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11 20. The Food and Drug Administration prohibits drug labeling that is “false or  
 12 misleading.” 21 C.F.R. § 201.6. It is misleading to label a product “Non-Drowsy” when  
 13 it does cause drowsiness, or if drowsiness is a known side effect of one of its active  
 14 ingredients.

15 21. Based on the fact that Defendant labeled the Non-Drowsy Tylenol Products  
 16 as “Non-Drowsy,” a reasonable consumer would expect that those products do not cause  
 17 drowsiness. Similarly, a reasonable consumer would expect that drowsiness is not a side  
 18 effect of the products (much less a common side effect). Indeed, according to Consumer  
 19 Reports, “‘Non-drowsy’ is code for antihistamines and other medications that don’t make  
 20 you sleepy.”<sup>8</sup> This is the plain meaning of “non-drowsy,” which means “not causing or  
 21 accompanied by drowsiness.”

22 22. Tylenol’s labeling does not contain any language that a reasonable consumer  
 23 would understand to qualify these representations, or that would otherwise put a  
 24

25 <sup>7</sup>  
 26 [https://www.faa.gov/licenses\\_certificates/medical\\_certification/media/OTCMedicationsforPilots.pdf](https://www.faa.gov/licenses_certificates/medical_certification/media/OTCMedicationsforPilots.pdf)

27 <sup>8</sup> How to read over the counter (OTC) drug labels, Consumer Reports,  
 28 <https://www.consumerreports.org/cro/2014/04/how-to-read-over-the-counter-drug-labels/index.htm>



1 reasonable consumer on notice of the fact that the Non-Drowsy Tylenol Products actually  
2 cause drowsiness.

3 23. Unlike Defendant, some other drug makers do not falsely claim that DXM-  
4 products are non-drowsy. For example, DXM is an active ingredient in Mucinex DM,  
5 sold by Reckitt. But the Mucinex label does not claim that Mucinex DM is non-drowsy,  
6 because this is not the truth.



18 24. So Defendant could have simply omitted the false and misleading statement,  
19 “Non-Drowsy,” from its products.

20 25. Or, if Defendant wanted to say something to indicate that a Non-Drowsy  
21 Tylenol Product might cause *less* drowsiness than another product, they could have made  
22 a truthful statement to this effect, as other drug makers do.

23 26. For example, Dramamine contains an active ingredient that causes  
24 drowsiness, Dimenhydrinate. Dramamine also sells a “less drowsy” version that contains  
25 a different active ingredient, Meclizine, which causes less drowsiness. The front label of  
26 Dramamine Less Drowsy prominently displays that it is “less drowsy”:  
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12 27. Whether or not an over-the-counter drug causes drowsiness is material to a  
13 reasonable customer. In certain situations, consumers prefer over-the-counter drugs that  
14 will not make them drowsy to products that may make them drowsy. For example, all  
15 else equal, a reasonable consumer would prefer to take a drug that does not cause  
16 drowsiness to one that does cause drowsiness during the day (or any periods of time  
17 when they plan to be awake). As a second example, if a consumer is planning to engage  
18 in activities that require them to be alert (like work), or during which they would prefer to  
19 be alert, that consumer would prefer to take a drug that does not cause drowsiness to one  
20 that does. Indeed, in many situations, taking a drug that does or can cause drowsiness  
21 can be dangerous. For example, taking a drug that causes drowsiness while driving is  
22 dangerous.

23 28. Because Defendant makes and sells the Non-Drowsy Tylenol Products,  
24 Defendant researched the known and common side effects of DXM. This is diligence  
25 that a large company like Defendant would do when selling a drug. As a result,  
26 Defendant knew that DXM causes drowsiness. Furthermore, Defendant controls its  
27 labeling, knowingly put on the “Non-Drowsy” representations, and knows the plain  
28 meaning of “Non-Drowsy.” Finally, it is standard practice in the industry to test labeling

1 with consumers, and Defendant’s testing would confirm that “Non-Drowsy” is  
2 misleading. For these reasons, Defendant knew that its labeling was false and  
3 misleading, or was reckless or willfully blind to this fact. And as alleged above,  
4 Defendant intended that consumers would rely on the “Non-Drowsy” labeling, so that  
5 consumers would purchase more products and pay a price premium.

6 29. Defendant’s false statements increased the demand for Non-Drowsy Tylenol  
7 Products and allowed Defendant to charge a price premium. As explained above,  
8 consumers specifically value the “Non-Drowsy” claim because consumers demand cough  
9 medicine that will not make them drowsy (e.g., during the day, at work or while driving).  
10 As a result, Defendant was able to charge more for these products than it would have  
11 been able to had the labeling been truthful. Accordingly, as a direct result of Defendant’s  
12 false statements, Defendant was able to charge a price premium for these products. As  
13 purchasers, Plaintiff and each class member paid this price premium and sustained  
14 economic injury.

15 **D. Plaintiff was misled by Defendant’s misrepresentations.**

16 30. In 2021, Plaintiff bought a Non-Drowsy Tylenol Product (Tylenol Cold +  
17 Flu Severe) at a pharmacy in San Diego, California. The package said “Non-Drowsy”  
18 prominently on the label, and Plaintiff read and relied on this statement when purchasing  
19 the product. But when Plaintiff took the Tylenol medication, he became unexpectedly  
20 drowsy. He would not have bought the Tylenol medication had he known that the  
21 product did, in fact, cause drowsiness, and that drowsiness was a known side-effect of the  
22 product.

23 31. Plaintiff would purchase Non-Drowsy Tylenol Products again if they were  
24 actually “Non-Drowsy” (i.e., if the product was sold as advertised). Plaintiff, however,  
25 faces an imminent threat of harm because he will not be able to rely on the labels in the  
26 future, and thus will not be able to purchase the products.

1           **E. Class Action Allegations.**

2           32. Plaintiff brings certain claims on behalf of the proposed class of: all persons  
3 who purchased a Non-Drowsy Tylenol Product in the United States during the applicable  
4 statute of limitations (the “**Nationwide Class**”).

5           33. For other claims, Plaintiff brings those claims on behalf of a subclass of  
6 consumers who live in the identified states (the “**Consumer Protection Subclass**”).

7           34. For certain claims, Plaintiff brings those claims on behalf of a subclass of  
8 consumers who, like Plaintiff, purchased Non-Drowsy Tylenol Products in California  
9 (the “**California Subclass**”).

10          35. The following people are excluded from the Class and the Subclasses: (1)  
11 any Judge or Magistrate Judge presiding over this action and the members of their family;  
12 (2) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity  
13 in which the Defendant or its parents have a controlling interest and their current  
14 employees, officers and directors; (3) persons who properly execute and file a timely  
15 request for exclusion from the Class; (4) persons whose claims in this matter have been  
16 finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel and  
17 Defendant’s counsel, and their experts and consultants; and (6) the legal representatives,  
18 successors, and assigns of any such excluded persons.

19           ***Numerosity***

20          36. The proposed class contains members so numerous that separate joinder of  
21 each member of the class is impractical. Based on the pervasive distribution of Non-  
22 Drowsy Tylenol Products, there are millions of proposed class members.

23           ***Commonality***

24          37. There are questions of law and fact common to the proposed class.  
25 Common questions of law and fact include, without limitation:

- 26           • Whether the Non-Drowsy Tylenol Products cause drowsiness;  
27           • Whether Defendant’s labeling of the Non-Drowsy Tylenol Products as  
28           “Non-Drowsy” is deceptive and misleading;

- 1 • Whether Defendant violated state consumer protection statutes;
- 2 • Whether Defendant committed a breach of express warranty; and
- 3 • Damages needed to reasonably compensate Plaintiff and the proposed class.

4 ***Typicality***

5 38. Plaintiff’s claims are typical of the proposed class. Like the proposed class,  
6 Plaintiff purchased Non-Drowsy Tylenol Products.

7 ***Predominance and Superiority***

8 39. The prosecution of separate actions by individual members of the proposed  
9 class would create a risk of inconsistent or varying adjudication with respect to individual  
10 members, which would establish incompatible standards for the parties opposing the  
11 class. For example, individual adjudication would create a risk that breach of the same  
12 express warranty is found for some proposed class members, but not others.

13 40. Common questions of law and fact predominate over any questions affecting  
14 only individual members of the proposed class. These common legal and factual  
15 questions arise from central issues which do not vary from class member to class  
16 member, and which may be determined without reference to the individual circumstances  
17 of any particular class member. For example, a core liability question is common:  
18 whether Defendant’s “Non-Drowsy” labeling is false and misleading.

19 41. A class action is superior to all other available methods for the fair and  
20 efficient adjudication of this litigation because individual litigation of each claim is  
21 impractical. It would be unduly burdensome to have individual litigation of millions of  
22 individual claims in separate lawsuits, every one of which would present the issues  
23 presented in this lawsuit.

24 **V. Claims.**

25 **Count I: Violations of State Consumer Protection Acts**

26 **(on behalf of Plaintiff and the Consumer Protection Subclass)**

27 42. Plaintiff incorporates by reference each and every factual allegation set forth  
28 above.

1           43. This count is brought on behalf of Plaintiff and the Consumer Protection  
2 Subclass for violations of the following state consumer protection statutes:

State	Statute
Arizona	Ariz. Rev. Stat. §§ 44-1521, and the following.
Arkansas	Ark. Code § 4-88-101, and the following.
California	Cal. Bus. & Prof. Code § 17200, and the following; <i>Id.</i> §17500, and the following Cal. Civ. Code §1750 and the following;
Colorado	Colo. Rev. Stat. Ann. § 6-1-101, and the following.
Connecticut	Conn. Gen Stat. Ann. § 42- 110, and the following.
Delaware	6 Del. Code § 2513, and the following.
Washington, D.C.	D.C. Code § 28-3901, and the following.
Georgia	Ga. Code Ann. § 10-1-390, and the following.
Hawaii	Haw. Rev. Stat. § 480-2, and the following.
Idaho	Idaho Code. Ann. § 48-601, and the following.
Illinois	815 ILCS § 501/1, and the following.
Kansas	Kan. Stat. Ann. § 50-623, and the following.
Louisiana	LSA-R.S. § 51:1401, and the following.
Maine	Me. Rev. Stat. Ann. Tit. 5, § 207, and the following.

1	Maryland	Md. Code Ann. Com. Law, § 13-301, and
2		the following.
3	Massachusetts	Mass. Gen Laws Ann. Ch. 93A, and the
4		following.
5	Michigan	Mich. Comp. Laws Ann. § 445.901, and the
6		following.
7	Minnesota	Minn. Stat. § 325F, and the following.
8	Montana	Mont. Code Ann. §§ 30-14-101, and the
9		following.
10	Missouri	Mo. Rev. Stat. § 407, and the following.
11	Nebraska	Neb. Rev. St. § 59-1601, and the following.
12	Nevada	Nev. Rev. Stat. § 41.600, and the following.
13	New Hampshire	N.H. Rev. Stat. § 358-A:1, and the
14		following.
15	New Jersey	N.J. Stat. Ann. § 56:8, and the following.
16	New Mexico	N.M. Stat. Ann. § 57-12-1, and the
17		following.
18	New York	N.Y. Gen. Bus. Law § 349, and the
19		following.
20	North Carolina	N.C. Gen Stat. § 75-1.1, and the following.
21	North Dakota	N.D. Cent. Code § 51-15, and the
22		following.
23	Ohio	Ohio Rev. Code Ann. § 1345.01, and the
24		following.
25	Oklahoma	Okla. Stat. tit. 15 § 751, and the following.
26	Oregon	Or. Rev. Stat. § 646.605, and the following.
27	Pennsylvania	73 P.S. § 201-1, and the following.
28		

1 2	Rhode Island	R.I. Gen. Laws § 6-13.1- 5.2(B), and the following.
3 4	South Carolina	S.C. Code Ann. § 39-5-10, and the following.
5 6	South Dakota	S.D. Codified Laws § 37-24-1, and the following.
7 8	Tennessee	Tenn. Code Ann. § 47-18-101, and the following.
9 10	Texas	Tex. Code Ann., Bus. & Con. § 17.41, and the following.
11 12	Utah	Utah Code. Ann. § 13-11-175, and the following.
13	Vermont	9 V.S.A. § 2451, and the following.
14 15	Virginia	Va. Code Ann. § 59.1-199, and the following.
16 17	Washington	Wash. Rev. Code § 19.86.010, and the following.
18	West Virginia	W. Va. Code § 46A, and the following.
19	Wisconsin	Wis. Stat. § 100.18, and the following
20 21	Wyoming	Wyo. Stat. Ann. § 40-12-101, and the following.

22 44. Each of these consumer protection statutes prohibits unfair, unconscionable,  
23 and/or deceptive acts or practices in the course of trade or commerce or in connection  
24 with the sales of goods or services to consumers. Defendant's conduct, including the  
25 false labeling of the Non-Drowsy Tylenol Products and sale of those misleading products  
26 to Plaintiff and Class members, violates each statute's prohibitions.

27 45. Defendant's misrepresentations were a substantial factor in Plaintiff's  
28 purchase decision and the purchase decision of Class members. Defendant's



1 misrepresentations were misleading to a reasonable consumer, and Plaintiff and Class  
2 members reasonably relied on Defendant's misrepresentations.

3 46. Defendant intended that Plaintiff and the proposed Class members would  
4 rely on their materially deceptive representations. Defendant were also aware of the side  
5 effects of DXM and thus knew that their representations were false and were likely to  
6 mislead consumers.

7 47. For applicable statutes, Plaintiff mailed a written notice and demand for  
8 correction, to Defendant's headquarters and California registered agent, on January 12,  
9 2022. Upon the expiration of any governing statutory notice period, Plaintiff and the  
10 Class seek all available injunctive or monetary relief.

11 48. Plaintiff and Class members were injured as a direct and proximate result of  
12 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
13 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
14 products because they are sold at a price premium due to the misrepresentation. In this  
15 way, Plaintiff and the proposed Class members have suffered an ascertainable loss, in an  
16 amount to be determined at trial.

17 **Count II: Violation of California's Unfair Competition Law (UCL)**

18 **(on behalf of Plaintiff and the California Subclass)**

19 49. Plaintiff incorporates by reference and re-alleges each and every factual  
20 allegation set forth above as though fully set forth herein.

21 50. As alleged in Count I, state consumer protection laws are sufficiently similar  
22 such that Plaintiff may bring a claim on behalf of the Consumer Protection Subclass. In  
23 the alternative, Plaintiff brings this cause of action on behalf of himself and members of  
24 the California Subclass.

25 51. Defendant has violated California's Unfair Competition Law (UCL) by  
26 engaging in unlawful, fraudulent, and unfair conduct (i.e., violating each of the three  
27 prongs of the UCL).

28 ***The Unlawful Prong***



1           60. Plaintiff and Class members were injured as a direct and proximate result of  
2 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
3 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
4 products because they are sold at a price premium due to the misrepresentation.

5                   **Count III: Violation of California's False Advertising Law (FAL)**

6                           **(on behalf of Plaintiff and the California Subclass)**

7           61. Plaintiff incorporates by reference and re-alleges each and every allegation  
8 set forth above as though fully set forth herein.

9           62. Plaintiff brings this cause of action on behalf of himself and members of the  
10 California Subclass.

11           63. As alleged more fully above, Defendant has falsely advertised Non-Drowsy  
12 Tylenol Products by falsely representing that the products do not cause drowsiness and  
13 that drowsiness is not a side-effect of the products.

14           64. Defendant's representations were likely to deceive, and did deceive, Plaintiff  
15 and reasonable consumers. Defendant knew, or should have known through the exercise  
16 of reasonable care, that these statements were inaccurate and misleading.

17           65. Defendant's misrepresentations were intended to induce reliance, and  
18 Plaintiff saw, read and reasonably relied on them when purchasing Non-Drowsy Tylenol  
19 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase  
20 decision.

21           66. In addition, classwide reliance can be inferred because Defendant's  
22 misrepresentations were material, i.e., a reasonable consumer would consider them  
23 important in deciding whether to buy the Non-Drowsy Tylenol Products.

24           67. Defendant's misrepresentations were a substantial factor and proximate  
25 cause in causing damages and losses to Plaintiff and Subclass members.

26           68. Plaintiff and Class members were injured as a direct and proximate result of  
27 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
28

1 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
2 products because they are sold at a price premium due to the misrepresentation.

3 **Count IV: Violation of California’s Consumer Legal Remedies Act (CLRA)**  
4 **(on behalf of Plaintiff and the California Subclass)**

5 69. Plaintiff incorporates by reference and re-alleges each and every allegation  
6 set forth above as though fully set forth herein.

7 70. Plaintiff brings this cause of action on behalf of himself and members of the  
8 California Subclass.

9 71. Plaintiff and the other members of the California Subclass are “consumers,”  
10 as the term is defined by California Civil Code § 1761(d).

11 72. Plaintiff, the other members of the California Subclass, and Defendant has  
12 engaged in “transactions,” as that term is defined by California Civil Code § 1761(e).

13 73. The conduct alleged in this Complaint constitutes unfair methods of  
14 competition and unfair and deceptive acts and practices for the purpose of the CLRA, and  
15 the conduct was undertaken by Defendant in transactions intended to result in, and which  
16 did result in, the sale of goods to consumers.

17 74. As alleged more fully above, Defendant has violated the CLRA by falsely  
18 representing to Plaintiff and the other members of the California Subclass that the Non-  
19 Drowsy Tylenol Products do not cause drowsiness, and that drowsiness is not a side  
20 effect of the products, when in fact, the products do cause drowsiness.

21 75. As a result of engaging in such conduct, Defendant has violated California  
22 Civil Code § 1770(a)(5), (a)(7), and (a)(9).

23 76. Defendant’s representations were likely to deceive, and did deceive, Plaintiff  
24 and reasonable consumers. Defendant knew, or should have known through the exercise  
25 of reasonable care, that these statements were inaccurate and misleading.

26 77. Defendant’s misrepresentations were intended to induce reliance, and  
27 Plaintiff saw, read and reasonably relied on them when purchasing Non-Drowsy Tylenol  
28

1 Products. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase  
2 decision.

3 78. In addition, classwide reliance can be inferred because Defendant's  
4 misrepresentations were material, i.e., a reasonable consumer would consider them  
5 important in deciding whether to buy the Non-Drowsy Tylenol Products.

6 79. Defendant's misrepresentations were a substantial factor and proximate  
7 cause in causing damages and losses to Plaintiff and Subclass members

8 80. Plaintiff and Class members were injured as a direct and proximate result of  
9 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
10 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
11 products because they are sold at a price premium due to the misrepresentation.

12 81. Accordingly, pursuant to California Civil Code § 1780(a)(3), Plaintiff, on  
13 behalf of himself and all other members of the California Subclass, seeks injunctive  
14 relief.

15 82. CLRA § 1782 NOTICE. On January 12, 2022, a CLRA demand letter was  
16 sent to Defendant's headquarters and California registered agent, via certified mail  
17 (return receipt requested). This letter provided notice of Defendant's violation of the  
18 CLRA and demanded that Defendant correct the unlawful, unfair, false and/or deceptive  
19 practices alleged here. If Defendant does not fully correct the problem for Plaintiff and  
20 for each member of the California subclass within 30 days of receipt, Plaintiff and the  
21 California subclass will seek all monetary relief allowed under the CLRA.

22 83. A CLRA venue declaration is attached.

23 **Count V: Breach of Express Warranty**

24 **(on behalf of Plaintiff and a Nationwide Class)**

25 84. Plaintiff incorporates by reference each and every factual allegation set forth  
26 above.

27 85. Plaintiff brings this count individually and for the Nationwide Class.  
28

1 86. Defendant, as the designer, manufacturer, marketer, distributor, supplier,  
2 and/or seller of the Non-Drowsy Tylenol Products, issued material, written warranties by  
3 representing that the products were “Non-Drowsy.” This was an affirmation of fact about  
4 the products (i.e., a description of the effects of the ingredients) and a promise relating to  
5 the goods.

6 87. This warranty was part of the basis of the bargain and Plaintiff and members  
7 of the Nationwide Class relied on this warranty.

8 88. In fact, the Non-Drowsy Tylenol Products do not conform to the above-  
9 referenced representation because, as alleged in detail above, they cause drowsiness.  
10 Thus, the warranty was breached.

11 89. Because Plaintiff purchased from a third-party pharmacy and did not  
12 purchase directly from Defendant, pre-suit notice is not required. In any case Plaintiff  
13 provided Defendant with notice of this breach of warranty, by mailing a notice letter to  
14 Defendant’s headquarters and California registered agent, on January 12, 2022.

15 90. Plaintiff and the Nationwide Class were injured as a direct and proximate  
16 result of Defendant’s breach, and this breach was a substantial factor in causing harm,  
17 because (a) they would not have purchased Non-Drowsy Tylenol Products if they had  
18 known that the products cause drowsiness, or (b) they overpaid for the products because  
19 they are sold at a price premium due to the warranty.

20 **Count VI: Negligent Misrepresentation**

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

22 91. Plaintiff incorporates by reference the facts alleged above.

23 92. Plaintiff alleges this claim individually and on behalf of the Nationwide  
24 Class.

25 93. As alleged in detail above, Defendant’s labeling represented to Plaintiff and  
26 Class members that the Non-Drowsy Tylenol Products do not cause drowsiness and that  
27 drowsiness is not a side effect of these products.

1 94. These representations were false. As alleged above, the Non-Drowsy  
2 Tylenol Products do cause drowsiness and drowsiness is a documented side effect.

3 95. When Defendant made these misrepresentations, it knew or should have  
4 known that they were false. Defendant had no reasonable grounds for believing that  
5 these representations were true when made.

6 96. Defendant intended that Plaintiff and Class members rely on these  
7 representations and Plaintiff and Class members read and reasonably relied on them.

8 97. In addition, classwide reliance can be inferred because Defendant's  
9 misrepresentations were material, i.e., a reasonable consumer would consider them  
10 important in deciding whether to buy the Non-Drowsy Tylenol Products.

11 98. Defendant's misrepresentations were a substantial factor and proximate  
12 cause in causing damages and losses to Plaintiff and Class members.

13 99. Plaintiff and Class members were injured as a direct and proximate result of  
14 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
15 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
16 products because they are sold at a price premium due to the misrepresentation.

17 **Count VII: Intentional Misrepresentation**

18 **(on behalf of Plaintiff and the National Class)**

19 100. Plaintiff incorporates by reference the facts alleged above.

20 101. Plaintiff alleges this claim individually and on behalf of the Nationwide  
21 Class.

22 102. As alleged in detail above, Defendant's labeling represented to Plaintiff and  
23 Class members that the Non-Drowsy Tylenol Products do not cause drowsiness and that  
24 drowsiness is not a side effect of these products.

25 103. These representations were false and misleading. As alleged above, the  
26 Non-Drowsy Tylenol Products do cause drowsiness and drowsiness is a documented side  
27 effect.

28

1 104. As alleged in detail above, when Defendant made these misrepresentations,  
2 Defendant knew that they were false, was reckless to the truth, or was willfully blind.

3 105. Defendant intended that Plaintiff and Class members rely on these  
4 representations and Plaintiff and class members read and reasonably relied on them.

5 106. In addition, classwide reliance can be inferred because Defendant's  
6 misrepresentations were material, i.e., a reasonable consumer would consider them  
7 important in deciding whether to buy the Non-Drowsy Tylenol Products.

8 107. Defendant's misrepresentations were a substantial factor and proximate  
9 cause in causing damages and losses to Plaintiff and Class members.

10 108. Plaintiff and Class members were injured as a direct and proximate result of  
11 Defendant's conduct because (a) they would not have purchased Non-Drowsy Tylenol  
12 Products if they had known that they cause drowsiness, and/or (b) they overpaid for the  
13 products because they are sold at a price premium due to the misrepresentation.

14 **Count VIII: Quasi-Contract / Unjust Enrichment**

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

16 109. Plaintiff incorporates by reference the facts alleged above.

17 110. Plaintiff alleges this claim individually and on behalf of the Nationwide  
18 Class.

19 111. As alleged in detail above, Defendant's false and misleading labeling caused  
20 Plaintiff and the Class to purchase Non-Drowsy Tylenol Products and to pay a price  
21 premium for these products.

22 112. In this way, Defendant received a direct and unjust benefit, at Plaintiff's  
23 expense.

24 113. Plaintiff and the Nationwide Class seek restitution.

25 **VI. Jury Demand.**

26 114. Plaintiff demands a jury trial on all issues so triable.

27

28



1 **VII. Prayer for Relief.**

2 115. Plaintiff seeks the following relief individually and for the proposed class  
3 and subclasses:

- 4 • An order certifying the asserted claims, or issues raised, as a class action;
- 5 • A judgment in favor of Plaintiff and the proposed class;
- 6 • Damages, treble damages, and punitive damages where applicable;
- 7 • Restitution;
- 8 • Disgorgement, and other just equitable relief;
- 9 • Pre- and post-judgment interest;
- 10 • An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- 11 • Reasonable attorneys' fees and costs, as allowed by law;
- 12 • Any additional relief that the Court deems reasonable and just.

13  
14 Dated: January 20, 2022

Respectfully submitted,

15  
16 By: /s/ Jonas B. Jacobson

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