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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

NIKOLAS CHAPLIN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PRESTIGE CONSUMER HEALTHCARE,
INC., a Delaware corporation; and DOES 1 to
50, inclusive,

Defendants.

Case No.: **22CV022517**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Nikolas Chaplin (“Plaintiff”) brings this action against Defendant Prestige
2 Consumer Healthcare, Inc. (“Defendant”), individually and on behalf of all others similarly situated,
3 and alleges upon personal knowledge as to Plaintiff’s acts and experiences, and, as to all other
4 matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.

5 NATURE OF THE ACTION

6 1. This is a consumer protection action that seeks to remedy the unlawful, deceptive, and
7 misleading business practices of Defendant with respect to the marketing and sales of its gripe water
8 products, including Little Remedies Gripe Water (“Little Remedies” or “Products”).

9 2. Defendant distributes, markets, and sells Little Remedies as an effective remedy for
10 the symptoms associated with colic in newborn babies.

11 3. The Little Remedies advertising is unlawful because Defendant intends that the
12 product is for use as a drug which requires premarket approval from federal authorities. Defendant
13 has failed to obtain this approval and is selling an illegal product. The Food and Drug Administration
14 has stated that these types of “colic relief” advertising claims are unlawful.

15 4. Further, none of the ingredients in Little Remedies provide the advertised benefits.
16 Little Remedies is not “highly effective” at treating the symptoms of colic as Defendant contends.
17 Scientific studies have found that gripe water is ineffective for treating colic in newborns and may
18 in fact, at higher doses, increase the risk of vomiting and constipation. No respected medical
19 practitioner recommends the use of herbal remedies or gripe water for use in colicky infants.
20 Defendant is peddling snake oil at the expense of desperate consumers.

21 5. Throughout the Class Period Defendant manufactured, sold, and distributed Little
22 Remedies using a marketing and advertising campaign that is centered around claims that the Little
23 Remedies are “Everything [newborns] need. Nothing they don’t,” “A highly-effective herbal
24 supplement which eases stomach discomfort often associated with colic and hiccups,” and “provides
25 fast and gentle relief to your little one’s gas/discomfort. This highly-effective herbal supplement
26 helps to ease stomach distress.”

27 6. Defendant communicates the same substantive colic symptom relief message
28 throughout its advertising and marketing of Little Remedies, including at point of sale and on the

1 front of the Little Remedies packaging. Accordingly, each consumer who has purchased Little
2 Remedies has been exposed to Defendant’s unlawful and misleading advertising.

3 7. Defendant’s Little Remedies do not provide effective relief for any colic symptoms.
4 This is not surprising, as Little Remedies’ main ingredients are water and vegetable glycerin—a
5 common sugar alcohol.

6 8. As a direct and proximate result of Defendant’s unlawful, false, and misleading
7 advertising claims and marketing practices, Defendant has caused Plaintiff and the members of the
8 Class to purchase an illegal and falsely advertised product which does not, and cannot, perform as
9 represented. Plaintiff and other similarly situated consumers have been harmed in the amount they
10 paid for Little Remedies.

11 9. Plaintiff brings this action individually, and on behalf of all purchasers of Little
12 Remedies Gripe Water products, to halt Defendant’s unlawful sales and marketing of these products
13 and for violations of the California Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750,
14 *et seq.*, Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200, *et seq.*, False Advertising
15 Law (“FAL”), Bus. & Prof. Code §§ 17500, *et seq.*, breach of express warranty, breach of implied
16 warranty of fitness for a particular purpose, and for unjust enrichment.

17 **JURISDICTION AND VENUE**

18 10. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
19 Constitution and California Code of Civil Procedure § 410.10.

20 11. This Court has personal jurisdiction over Defendant because Defendant conducts and
21 transacts business in the State of California, contracts to supply goods within the State of California,
22 and supplies goods within the State of California. Defendant has intentionally availed itself of the
23 markets within California through its advertising, marketing and sales of Little Remedies to
24 consumers, including Plaintiff.

25 12. Venue is proper in this Court because Defendant is doing business in this County, and
26 Plaintiff purchased Little Remedies Gripe Water in this County.

PARTIES

1
2 13. Plaintiff Nikolas Chaplin is an individual consumer who, at all times relevant to this
3 action, was a citizen of and resided in California. Before purchasing the Little Remedies Gripe
4 Water products, Plaintiff saw Defendant's representations by reading the label of Little Remedies
5 Gripe Water including Defendant's representations on the packaging labels that the products
6 "Gently Relieves Stomach Discomfort from Gas, Colic + Hiccups" at Walgreens retail stores on
7 numerous occasions during the Class Period. In reliance on the claims at issue made on the label
8 and on the belief that the products were legal to sell, Plaintiff purchased Little Remedies Gripe
9 Water for his child that was suffering from colicky symptoms between approximately 2019 and
10 2020 at Walgreens retail stores in California, including in Alameda County. Relying on the
11 product's colic relief representations, Plaintiff paid approximately \$15 for Little Remedies Gripe
12 Water. Had Plaintiff known the truth—that the product was not legally sold and the representations
13 he relied upon in making his purchase were unlawful, false, and deceptive—he would not have
14 purchased the Little Remedies Gripe Water products. Plaintiff did not receive the benefit of the
15 bargain, because Defendant's Little Remedies do not and cannot improve the symptoms of colic as
16 advertised. By purchasing the illegally sold and falsely advertised product, Plaintiff suffered injury-
17 in-fact and lost money. Plaintiff continues to desire to purchase a legally sold colic relief product
18 and believes he would purchase a colic relief product if it worked as advertised and was legally sold.
19 However, as a result of Defendant's ongoing false and unlawful advertising, Plaintiff will be unable
20 to rely on the advertising when deciding in the future whether to purchase Little Remedies Gripe
21 Water.

22 14. Plaintiff understood that each purchase involved a direct transaction between himself
23 and Defendant, because the product came with packaging, labeling, and other materials prepared by
24 Defendant, including representations and warranties regarding the advertised claims.

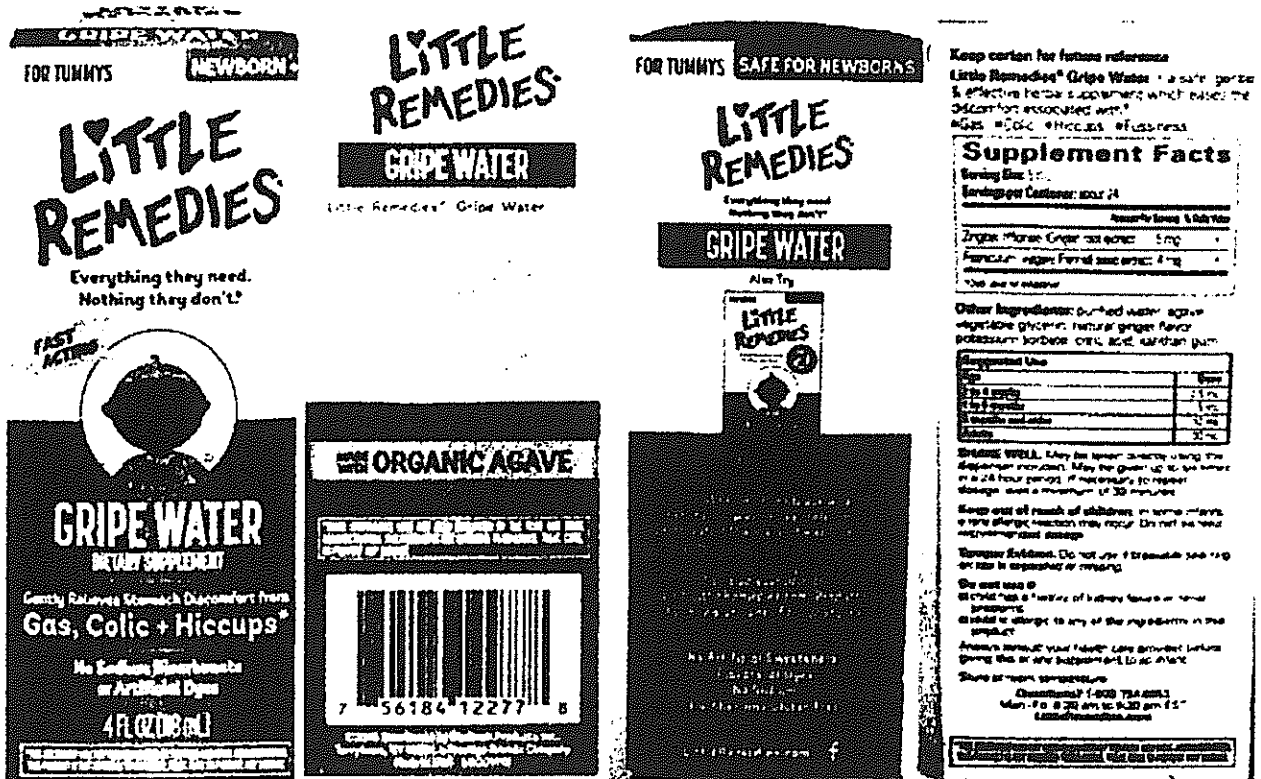
25 15. Defendant Prestige Consumer Healthcare, Inc. is a publicly-traded Delaware
26 corporation, with a principal place of business in Tarrytown, New York. Defendant manufactures,
27 markets, and advertises and distributes Little Remedies Gripe Water products throughout the United
28 States. Defendant manufactured, marketed, and sold Little Remedies Gripe Water products during

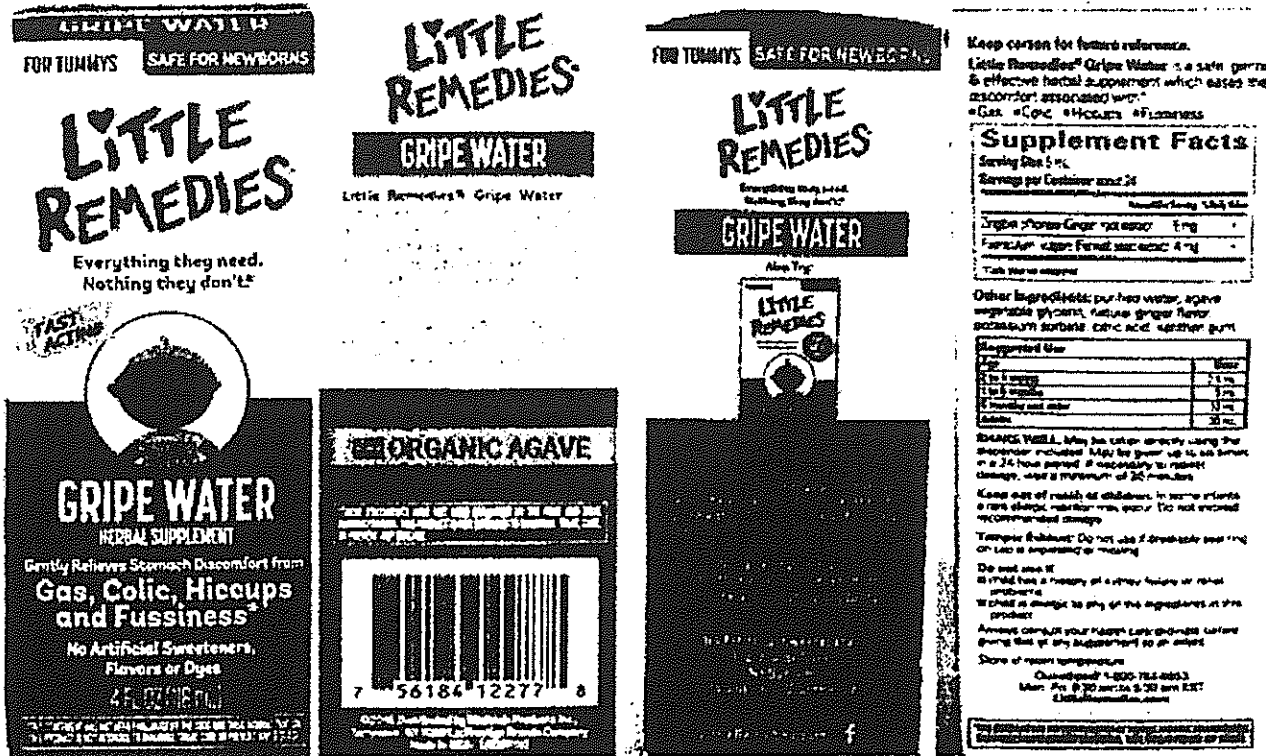
1 the Class Period. The planning and execution of the advertising, marketing, labeling, packaging,
 2 testing, and/or business operations concerning the Little Remedies were primarily carried out at
 3 Defendant's headquarters and facilities in Tarrytown, New York.

4 **FACTUAL BACKGROUND**

5 16. Defendant's Little Remedies Gripe Water products are sold nationwide at a variety of
 6 retail chains, including Target, Rite Aid, Walgreens, and Walmart as well as many online retailers,
 7 such as Amazon.

8 17. The packaging of Little Remedies Gripe Water at is depicted below:





See also Exhibit 1 (Packaging and Labeling Exemplars), attached hereto.

18. As shown above, the packaging for Little Remedies Gripe Water represents that it is a “Dietary Supplement”; “For Tummies” that is “Fast Acting.” That the product is for “Newborn +” “Safe for Newborns” “Gently Relieves Stomach Discomfort from Gas, Colic + Hiccups” and “Gently Relieves Stomach Discomfort from Gas, Colic, Hiccups and Fussiness.”

19. On the side of the label, Little Remedies promotes itself as a “highly effective herbal supplement which eases stomach discomfort often associated with gas, colic, and hiccups. Our product is based on a time-tested formula from Europe that is over 100 years old”:

GRIPE WATER

Little Remedies® Gripe Water is a highly effective herbal supplement which eases stomach discomfort often associated with gas, colic and hiccups. Our product is based on a time-tested formula from Europe that is over 100 years old.

1 20. On the labeling, Defendant also claims that its “Little Remedies® Gripe Water is a
2 safe, gentle & effective herbal supplement which eases the discomfort associated with Gas, Colic,
3 Upset Stomach Hiccups:

4 **Little Remedies® Gripe Water** is a safe, gentle
5 & effective herbal supplement which eases the
6 discomfort associated with*
7 ■ Gas ■ Colic ■ Upset stomach ■ Hiccups

8 21. Little Remedies also warrants that is a legal “DIETARY SUPPLEMENT” by printing
9 this claim on the front of the packaging. *See above; see also* Ex. 1.

10 22. Highlighted on the front of the Little Remedies packaging, Defendant represents that
11 the Product it “Fast Acting” warranting that it is an effective medicine. *See above; see also* Ex. 1.

12 23. On the other side of the product Defendant cherry-picks certain reviews to reinforce
13 the front-facing packaging panel and prints a sample customer review of the product: “When my
14 friends ask what I did when my son was colicky I refer them to gripe water! Thank you, it was for
15 sure a life saver!” *See above; see also* Ex. 1.

16 24. The only purported ingredients on the Little Remedies’ packaging include 5mg of
17 “ginger root extract,” and 4mg “fennel seed extract.” Non-active “other ingredients” include
18 “purified water, organic agave [sugar], vegetable glycerin [sugar alcohol], natural ginger flavor,
19 potassium sorbate, citric acid, xanthan gum.”

20 25. Upon information and belief, within the last couple of months Defendant has slightly
21 reformulated Little Remedies which includes lemon balm extract and chamomile flower heads
22 extract: “Foeniculum vulgare (Fennel) seed extract, purified water, organic agave syrup, glycerin,
23 corn syrup, maltodextrin, melissa officinalis (lemon balm) leaf extract, natural ginger flavor,
24 matricaria recutita (chamomile) flower heads extract, citric acid, potassium benzoate, xanthan
25 gum.”¹

26
27 ¹ This ingredient list was obtained from Defendant’s website at
28 <https://www.littleremedies.com/remedies/stomach-gas-remedies/little-remedies-gripe-water-chamomile#ingredients> (last visited Nov. 10, 2022).

1 26. None of the ingredients in Little Remedies have been shown to provide the claimed
2 relief for colic symptoms including stomach discomfort associated with gas, colic, hiccups, and /or
3 fussiness.² In fact, the scientific community recommends against the use of gripe water and does
4 not recommend any of the ingredients in Little Remedies for use in colicky infants. The ingredients
5 in Little Remedies are not effective at providing any of the advertised benefits.

6 27. Not only are the ingredients in Little Remedies ineffective, but the serving size is too
7 miniscule to even theoretically provide any possible relief. The ingredient label indicates that it
8 contains 5 mg of ginger root extract and 4mg of fennel seed extract. With a total serving size of 1
9 teaspoon (5 ml), the amount of ginger extract is equivalent to one one-thousandth of a teaspoon
10 (0.0010) and the amount of fennel extract is equivalent to one one-thousand two-hundred and fiftieth
11 of a teaspoon (0.0008). Substances in such trace amounts do not and cannot provide relief from the
12 advertised symptoms.

13 28. Defendant further warrants that its Little Remedies is a dietary supplement which is
14 legal to sell to consumers for personal use. However, as explained below, the products are not
15 lawfully sold in the United States.

16 **DEFENDANT'S UNLAWFUL, FALSE, AND MISLEADING ADVERTISING**

17 *Defendant's Little Remedies Unlawful Disease Claims*

18 29. To legally sell a "dietary supplement" the manufacturer must, among other things, (1)
19 have substantiation the statements on the label are truthful and not misleading; (2) the labeling may
20 not claim or imply that the product can mitigate, treat, cure, or prevent disease; (3) there must be a
21 prominent disclaimer that the Food and Drug Administration (FDA) has not evaluated the product
22 and that the product is not intended to treat, cure, or prevent disease; and (4) the manufacturer must
23 notify the FDA of the labeling claims within 30-days of marketing such claims. See 21 U.S.C. §§
24 343(r)(6)(A)-(C). Defendant has failed to comply with these requirements.

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26
27 ² Divya Jacob, *Why Is Gripe Water Banned?* MedicineNet available at
28 https://www.medicinenet.com/why_is_gripe_water_banned/article.htm (last visited Nov. 9,
2022).

1 30. Infantile colic refers to a widespread clinical condition in infants that causes
2 inconsole crying, fussing, hiccups, stomach discomfort, and irritability. These symptoms range
3 from being benign to life-threatening.³ The only proven treatment of colic is dicyclomine
4 hydrochloride, an anticholinergic drug. However, its use is discouraged due to side-effects. This has
5 not stopped companies like Defendant from exploiting struggling parents seeking to calm their
6 newborns exhibiting prolonged periods of distress.

7 31. Infantile colic is known to have a significant impact on infants and their families.
8 Defendant takes advantage of these desperate parents by unlawfully advertising its Little Remedies
9 Gripe Water as a treatment for colic and its symptoms. The FDA has publicly warned that claims
10 of colic relief classify the product as an unapproved drug which may result in fines, up to one year
11 in jail, a permanent or temporary injunction, or seizure. *See* 21 U.S.C. §§ 332-334.

12 32. In April 2020, the FDA stated that an advertising claim of “Colic Relief” is a claim
13 that the product is intended for use as a drug and directed the company to contact the FDA’s Center
14 for Drug Evaluation and Research.⁴

15 33. In June 2021, the FDA stated that the claims “Helps soothe fussiness and crying in
16 colicky babies” and “to reduce fussiness (crying) associated with colic” were unapproved drug
17 claims because “a number of colicky infants have serious medical conditions[.]”⁵

18 34. In February 2021, the FDA held that “Colic, Inflammation of the Belly, Abdominal
19 pain ...” claims classified a product as “an unapproved new drug” which requires premarket
20 approval.⁶

21 35. In March 2018, the FDA found that a gripe water product advertised with the claims
22 “May aid on occasion your baby’s problems with . . . cramping . . .” established that the product
23 was a drug under 21 U.S.C. § 321(g)(1)(B) because it was “intended for use in the cure, mitigation,
24

25 ³ Savino F & Tarasco V, New treatments for infant colic. Current Opinion in Pediatrics. 2010;22:000-000.

26 ⁴ FDA Warning Letter to Proctor & Gamble Company, dated April 10, 2020, a copy of which is attached as Exhibit 2.

27 ⁵ FDA Warning Letter to SmartyPants Vitamins, dated June 28, 2021, a copy of which is attached as Exhibit 3.

28 ⁶ https://www.accessdata.fda.gov/cms_ia/importalert_190.html (last visited Nov. 9, 2022)

1 treatment, or prevention of disease. ... introducing or delivering these products for introduction into
2 interstate commerce for such uses violates the Act.”⁷

3 36. As shown below, there is overwhelming evidence that the labeling claims are false
4 and misleading. Upon information and belief, Defendant did not provide the required Little
5 Remedies Gripe Water labeling claims to the FDA within the 30-day period. The disclaimer is also
6 not prominent. On its packaging, Defendant includes a fine-print statement required by the FDA
7 that the products are not intended to diagnose, treat, cure or prevent any disease. The statement,
8 however, does not disavow the express statements Defendant makes on the packaging. It also
9 directly contradicts these statements in violation of consumer protection law. It is well established
10 that consumers regularly do not read and do not consider the fine-print statement when buying
11 dietary supplements. France and Bone (2005) looked at the impact this mandatory statement has on
12 consumer beliefs when interpreting such claims.⁸ They found that consumer disease beliefs are not
13 “lower when the [mandatory statement] is used on the package than when it is not.” Mason et al.
14 (2007) conducted two surveys about the impact of the mandatory statement on consumer
15 perceptions of safety or efficacy of dietary supplements.⁹ The authors concluded “No difference
16 was found in efficacy perceptions for subjects exposed to the disclaimer compared to the control.”
17 They also observed that “It is particularly noteworthy that the mandated disclaimer did not impact
18 either efficacy perceptions (as intended) or safety perceptions (as might be expected, given the
19 nature of the disclaimer) any differently than the control message.”¹⁰

20
21 ⁷ FDA Warning Letter to Ozark Country Herbs, dated March 30, 2018, available at
22 <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/ozark-country-herbs-542508-03302018> (last visited Nov. 9, 2022).

23 ⁸ France and Bone, *Policy Makers’ Paradigms and Evidence from Consumer Interpretations of Dietary Supplement Labels*, *Journal of Consumer Affairs*, 39(1):27-51 (2005).

24 ⁹ Mason et al. *The Impact of Warnings, Disclaimers, and Product Experience on Consumers’ Perceptions of Dietary Supplements*. *Journal of Consumer Affairs*. 2007;41(1):74-99.

25 ¹⁰ See also Kesselheim et al. *Mandatory Disclaimers On Dietary Supplements Do Not Reliably Communicate The Intended Issue*. *Health Affairs*. 2015;34(3):438-446 (“We found ample evidence
26 that such disclaimers are often misunderstood or ignored by consumers and had no effects on
27 consumers’ ability to understand messages about health care products and critically evaluate
28 potentially unsupported statements about effectiveness or safety.”); Tonya Dodge. *Consumers’ perceptions of the dietary supplement health and education act: implications and recommendations, Drug Testing and Analysis*. 2016;8:407-409 (“research suggests that the labelling requirements of

1 37. Defendant also labels Little Remedies with customer reviews on the labeling to
2 reinforce the product's curative properties. The label states "When my friends ask what I did when
3 my son was colicky I refer them to gripe water! Thank you, it was for sure a life saver!" Defendant's
4 use this as "proof" that the product works like a medicine. Anecdotal comments like this are not
5 scientifically valid, are misleading, and bolster the illegal disease claims printed on the front of the
6 label.

7 38. Defendant's colic symptom relief advertising on its Little Remedies Gripe Water
8 labeling is near identical to the claims that the FDA has declared illegal—the front of the label states
9 that the Product is for a "newborn," "Gas, Colic + Hiccups," and "Gas, Colic, Hiccups and
10 Fussiness." As such, the sale of Defendant's Little Remedies Gripe Water products is a violation of
11 federal and state law.¹¹ The products are not legally sold and cannot be legally purchased.

12 ***Defendant's False and Misleading Advertising***

13 39. Gripe water products were originally developed to treat the symptoms of malaria
14 during the 1800s and originally contained a mixture of baking soda, alcohol, and herbs. Gripe water
15 was thought to help calm a fussy baby. However, any perceived benefit was due to the presence of
16 alcohol. Modern formulations of gripe water do not contain alcohol. However, that does not stop
17 companies, like Defendant, from seeking to capitalize from name recognition of gripe water.

18 40. Infants do not need or require the ingredients in Little Remedies Gripe Water. There
19 is no required daily intake for any of the ingredients in Little Remedies—the Centers for Disease
20 Control and Prevention (CDC) states that a child only needs essential vitamins and minerals such
21 as Vitamin D, iron, and zinc to grow healthy and strong.¹² An infant's digestive system does not
22 need any of the ingredients in Little Remedies because the digestive system maintains homeostasis
23

24 _____
25 DSHEA have little reliable impact on consumer beliefs about the risk and effectiveness of dietary
supplements").

26 ¹¹ The FDA regulations at issue are incorporated into California law through the Sherman
Food, Drug, and Cosmetic Law ("Sherman Law"). Health & Saf. Code § 110100. In addition to this
27 blanket provision, the Sherman Law adopts the regulatory provisions at issue here. *See id.* at
§§ 109925, 111550.

28 ¹² *See* <https://www.cdc.gov/nutrition/infantandtoddlernutrition/vitamins-minerals/index.html>
(last visited Nov. 18, 2022).

1 on its own along with the breast milk/formula consumed. Consequently, if a substance such as Little
2 Remedies disrupted this homeostasis, disease and/or increased bacteria, allergies, and intestinal
3 irritation would result.

4 41. The scientific community has warned against the use of gripe water for good reason—
5 “newborn infants should not be given food or drink other than breast milk, unless medically
6 indicated.”¹³

7 42. The scientific community cautions that use of gripe water products like Little
8 Remedies is an “irrational practice” which increases the risk of increased bacteria, allergies, and
9 intestinal irritation.¹⁴ Health Link, a health information service in Canada, also warns new parents,
10 “Do not use unapproved, unproven, or potentially dangerous substances or methods as treatment for
11 your baby who has colic.”¹⁵ The World Health Organization specifically recommends that mothers
12 should exclusively breastfeed infants for optimal health.¹⁶ The Canadian Paediatric Society likewise
13 warns “Talk to your doctor before using over-the-counter or ‘natural’ products for colic. There is
14 very little scientific evidence to show that these products help.”¹⁷

15 43. Accordingly, the scientific community has stated that products advertising colic relief
16 “need to be curbed and we should ensure that no promotion for infant foods or drinks other than
17 breast milk is done ... doctors should stop prescribing these ... medications and laws should be
18 made stringent to prevent over the counter access of the same.”¹⁸

19 44. Evidence-based professional and national recommendations for the treatment of
20 infantile colic recommend against the use of gripe water, herbal supplements, or any of the
21 ingredients in Little Remedies Gripe Water.

22
23 ¹³ Adhisivam B. Is gripe water baby-friendly? *J. Pharmacol. Pharmacother.* 212
Apr;3(2):207-8.

24 ¹⁴ *Id.*

25 ¹⁵ <https://www.healthlinkbc.ca/pregnancy-parenting/parenting-babies-0-12-months/baby-health/colic-harmful-treatments> (last visited Nov. 9, 2011).

26 ¹⁶ Vallenias C, Savage F. *Evidence for the ten steps to successful breastfeeding*. Geneva:
World Health Organization/CHD/98.9; 1998. pp. 48–61.

27 ¹⁷ https://caringforkids.cps.ca/handouts/pregnancy-and-babies/colic_and_crying (last visited
Nov. 9, 2022)

28 ¹⁸ Adhisivam B. Is gripe water baby-friendly? *J. Pharmacol. Pharmacother.* 2012
Apr;3(2):207-8.

1 45. The American Academy of Family Physicians (AAFP) does not recommend the use
2 of gripe water and herbal supplements including fennel, chamomile, lemon balm.¹⁹ The AAFP
3 warns that the use of herbal products should not be administered as a treatment for infantile colic:
4 “parents should be cautioned about their use.”²⁰ The AAFP also notes that use of herbal products
5 can create a “potential interference with normal feeding.”

6 46. Ellwood et al. (2020) performed a systematic review of the available guidelines for
7 the treatment of infantile colic which was published in the *British Medical Journal*.²¹ The aim of
8 the study was to compare meta-data from different systematic review and national treatments
9 guidelines for infantile colic on common outcomes. The authors specifically assessed the
10 effectiveness of several treatment modalities on colic symptoms including infant crying time, sleep
11 distress and adverse events. The authors note the herbal mixtures “may be harmful because herbal
12 mixtures may affect optimal milk consumption.” The analysis found that “herbal supplements (e.g.,
13 fennel)” are “non-recommended interventions” by The National Institute for Health and Care
14 Excellence (NICE) on two separate occasions (2015 and 2017). Similarly, gripe water products were
15 reported as a “non-recommended intervention” by American Academy of Family Physicians.

16 47. The National Institutes of Health (NIH) “Colic and crying – self-care” guide does not
17 recommend the use of gripe water or any other herbal supplements.²² Instead, the NIH recommends
18 several techniques to comfort and calm an infant.

19 48. The National Health Service (NHS), the publicly funded healthcare system in
20 England, recently published evidence-based treatment guidelines titled *Managing Colic in Infants*
21 *Pathway*.²³ The NHS has a “Do not recommend” rating for herbal supplements like Little Remedies.

22
23
24 ¹⁹ Johnson J.D. et al. Infantile colic: recognition and treatment. *American Family Physician*.
25 2015;92(7):577-582.

26 ²⁰ Roberts D.M. et al. Infantile Colic. *American Family Physician*. 2004;70(4):735-740.

27 ²¹ Ellwood J. et al. Comparison of common interventions for the treatment of infantile colic:
28 a systematic review of reviews and guidelines. *BMJ Open*. 2020;10e035405.

²² See MedlinePlus [Internet]. Bethesda (MD): National Library of Medicine (US) available
at <https://medlineplus.gov/ency/patientinstructions/000753.htm> (last visited Nov. 9, 2022).

²³ NHS. *Managing Colic in Infants Pathway* (September 2022).

1 49. The Royal Children’s Hospital (RCH) published evidence-based clinical practice
2 guidelines for unsettled or crying babies in 2019. The guideline has been endorsed by the Paediatric
3 Improvement Collaborative and specifically does not recommend “colic mixtures (e.g., gripe water)
4 – no proven benefit.”²⁴

5 50. The British Journal of Family Medicine (BJFM) has published treatment guidelines
6 for infantile colic. The BJFM guidelines “do not support the[] use” of herbal remedies.²⁵

7 51. Biagioli and colleagues published a systematic review to assess the effectiveness and
8 safety of agents for reducing colic in infants younger than four months of age. The authors utilized
9 the standard methodological procedures of The Cochrane Collaboration. The “Authors conclusions”
10 were “available evidence shows that herbal agents, sugar, ... cannot be recommended for infants
11 with colic.”²⁶

12 52. In 2019, peer-reviewed treatment guidelines were published which found that “Herbal
13 remedies should not be given as there are potential risks of side effects, which may interfere with
14 the infant’s feeding.”²⁷ Instead, the guidelines recommend parental reassurance and an allergen-
15 restricted diet for mothers with a history of food intolerance or allergies.

16 53. Zhang et al. (2015) conducted a comprehensive study using data from the Infant
17 Feeding Practices Study II, a longitudinal survey of women studied from pregnancy through the
18 infant’s first year. This was the first study to examine the prevalence of dietary botanical supplement
19 use among US infants. The authors concluded that “many supplements and teas used were marketed
20 and sold specifically for infants” and warn others that “supplements given to infants may pose health
21 risks, health care providers need to recognize that infants under their care may be receiving
22 supplements or teas.”²⁸

23 _____
24 ²⁴ https://www.rch.org.au/clinicalguide/guideline_index/Crying_Baby_Infant_Distress/ (last
visited Nov. 9, 2022).

25 ²⁵ Wall A. and Bogle V. Spotlight: infantile colic. BJFM. 2018;6(4).

26 ²⁶ Biagioli_E, Tarasco_V, Lingua_C, Moja_L, Savino_F. Pain-relieving agents for infantile
colic. Cochrane Database of Systematic Reviews 2016;9(CD009999).

27 ²⁷ Lam T.M.L et al. Approach to infantile colic in primary care. Singapore Med J.
2019;60(1):12-16.

28 ²⁸ Zhang Y. et al. Feeding of Dietary Botanical Supplements and Teas to Infants in the
United States. Pediatrics. 2015;127(6):1060-1066.

1 54. Jain et al. (2015)²⁹ published a cross-sectional study examining 335 mothers of
2 infants. The authors concluded that gripe water “administration is a common problem in infants and
3 remains a significant challenge that thwarts exclusive breast feeding.” The authors also commented
4 that gripe water does not prevent infantile colic and may be associated with vomiting and
5 constipation.

6 55. Gutiérrez-Castrellón et al. (2017) performed a systematic review and network meta-
7 analysis of clinical trials published between 1960 and 2015 for the treatment of infantile colic.
8 Pooled interventions included in the network meta-analysis were herbal remedies, including the
9 ingredients found in Little Remedies. The authors reported wide confidence intervals in the results
10 with considerable heterogeneity which crossed the line of no effect. In conclusion, the authors did
11 not recommend herbal medicine, including the ingredients in Little Remedies, for colic.³⁰

12 56. Instead of using sound science, Defendant uses scientifically invalid, anecdotal
13 comments which it prints on the Little Remedies packaging. For example, the label states “When
14 my friends ask what I did when my son was colicky, I refer them to gripe water! Thank you, it was
15 for sure a life saver!” Defendant uses this as “proof” that the product works like a medicine.
16 Anecdotal comments like this are not scientifically valid, are misleading, and bolster the illegal
17 disease claims printed on the front of the label. The FDA and Federal Trade Commission regulations
18 state that “advertisers should not make claims either through consumer or expert endorsements that
19 would be deceptive or could not be substantiated if made directly. It is not enough that a testimonial
20 represents the honest opinion of the endorser. Under FTC law, advertisers must also have
21 appropriate scientific evidence to back up the underlying claim.”³¹ As shown above, the
22 overwhelming scientific evidence concludes that the ingredients in Little Remedies do not work and
23 should not be given to colicky infants. Consumer reviews printed on a product’s label or elsewhere
24 are imputed to Defendant and are false.

25 _____
26 ²⁹ Jain K. et al. Gripe water administration in Infants 1-6 months of age - a cross-sectional
study. Clin Diagn Res. 2015 Nov;9(11):SC06-8.

27 ³⁰ Gutiérrez-Castrellón P, Indrio F, Bolio-Galvis A, et al. Efficacy of *Lactobacillus reuteri*
DSM 17938 for infantile colic. Systematic review with network meta-analysis. Medicine.
2017;96(51).

28 ³¹ FDA, *Dietary Supplements: An Advertising Guide for Industry* (April 2001).

1 57. Defendant's Little Remedies Gripe Water does not relieve colic or the signs and
2 symptoms of colic in newborns or infants. It is not a "Dietary Supplement." The Product is not "Fast
3 Acting." Little Remedies does not help "Newborn +" and does not "Gently Relieve[] Stomach
4 Discomfort from Gas, Colic + Hiccups." Little Remedies is not a "highly effective herbal
5 supplement which eases stomach discomfort often associated with gas, colic, and hiccups." It also
6 is not "a time-tested formula."

7 **THE IMPACT OF DEFENDANT'S WRONGFUL CONDUCT**

8 58. Defendant has ignored California law, federal regulations, and the scientific evidence
9 demonstrating Little Remedies ineffectiveness. It has conveyed and continues to convey that Little
10 Remedies is a "dietary supplement" (it is not) capable of benefiting the symptoms of colic (it does
11 not).

12 59. As the manufacturer and distributor of Little Remedies, Defendant possesses
13 specialized knowledge regarding its content and effects of its ingredients, and Defendant is in a
14 superior position to know whether Little Remedies works as advertised.

15 60. Specifically, Defendant knew, but failed to disclose, or should have known, that Little
16 Remedies is a product that cannot be legally sold and cannot benefit the symptoms of colic.

17 61. Defendant knew, but failed to disclose, or should have known, that Little Remedies is
18 ineffective at relieving colic because the evidence-based science has determined that Little
19 Remedies does not relieve the signs and symptoms of colic.

20 62. Plaintiff and the class members have been and will continue to be deceived or misled
21 by Defendant's false and deceptive colic-relief representations.

22 63. Defendant's colic-relief representations and omissions were a material factor in
23 influencing Plaintiff's and the class members' decision to purchase Little Remedies. In fact, the
24 only purpose for purchasing Little Remedies is to obtain the promised colic-relief benefits.
25 Defendant's conduct has injured Plaintiff and the class members because Little Remedies does not
26 provide the advertised benefits. Had Plaintiff and other reasonable consumers known this, they
27 would not have purchased Little Remedies or would not have paid the prices they paid. Furthermore,
28 had Plaintiff and other reasonable consumers known that Little Remedies is not a dietary supplement

1 and cannot be legally sold, they would not have purchased Little Remedies or would not have paid
2 the prices they paid.

3 64. Little Remedies retails for approximately \$15 per unit. Because of Defendant's
4 unlawful, false, and deceptive advertising, Little Remedies Gripe Water has become one of the
5 highest-selling products in the gripe water category.

6 **CLASS ACTION ALLEGATIONS**

7 65. Plaintiff brings this class action pursuant Cal. Code. Civ. Proc. § 382 on behalf of the
8 following classes:

9 **Nationwide Class (the "Class")**

10 All persons who purchased Little Remedies Gripe Water for personal use in the
11 United States until the date notice is disseminated.

12 **California Subclass (the "Subclass")**

13 All persons in California who purchased Little Remedies Gripe Water for
14 personal use until the date notice is disseminated.

15 66. Excluded from the from the Class are: (i) Defendant and its officers, directors, and
16 employees; (ii) any person who files a valid and timely request for exclusion; and (iii) judicial
17 officers and their immediate family members and associated court staff assigned to the case.

18 67. Plaintiff reserves the right to amend or otherwise alter the class definition presented
19 to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to facts
20 learned through discovery, legal arguments advanced by Defendant, or otherwise.

21 68. The Class is appropriate for certification because Plaintiff can prove the elements of
22 the claims on a classwide basis using the same evidence as would be used to prove those elements
23 in individual actions alleging the same claims.

24 69. Numerosity: Class Members are so numerous that joinder of all members is
25 impracticable. Plaintiff believes that there are thousands of consumers who are Class Members
26 described above who have been damaged by Defendant's deceptive and misleading practices.

27 70. Commonality: There is a well-defined community of interest in the common questions
28 of law and fact affecting all Class Members. The questions of law and fact common to the Class

1 Members which predominate over any questions which may affect individual Class Members
2 include, but are not limited to;

- 3 a. Whether Defendant is responsible for the conduct alleged herein which was uniformly
4 directed at all consumers who purchased the Products;
- 5 b. Whether Defendant's misconduct set forth in this Complaint demonstrates that
6 Defendant engaged in unfair, fraudulent, or unlawful business practices with
7 respect to the advertising, marketing, and sale of the Products;
- 8 c. Whether Defendant made false and/or misleading statements concerning the Products
9 that were likely to deceive the public;
- 10 d. Whether Plaintiff and the Class are entitled to injunctive relief;
- 11 e. Whether Plaintiff and the Class are entitled to money damages under the same causes
12 of action as the other Class Members.

13 71. Typicality: Plaintiff is a member of the Classes Plaintiff seeks to represent. Plaintiff's
14 claims are typical of the claims of each Class Member in that every member of the Class was
15 susceptible to the same deceptive, misleading conduct and purchased the Products. Plaintiff is
16 entitled to relief under the same causes of action as the other Class Members.

17 72. Adequacy: Plaintiff is an adequate Class representative because Plaintiff's interests
18 do not conflict with the interests of the Class Members Plaintiff seeks to represent; the consumer
19 fraud claims are common to all other members of the Class, and Plaintiff has a strong interest in
20 vindicating Plaintiff's rights; Plaintiff has retained counsel competent and experienced in complex
21 class action litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no
22 interests which conflict with those of the Class. The Class Members' interests will be fairly and
23 adequately protected by Plaintiff and proposed Class Counsel. Defendant has acted in a manner
24 generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class
25 Members. The prosecution of separate actions by individual Class Members would create a risk of
26 inconsistent and varying adjudications.

1 73. The Class is properly brought and should be maintained as a class action because a
2 class action is superior to traditional litigation of this controversy. A class action is superior to the
3 other available methods for the fair and efficient adjudication of this controversy because:

- 4 a. The joinder of hundreds of individual Class Members is **impracticable**, cumbersome,
5 unduly burdensome, and a waste of judicial and/or litigation resources;
- 6 b. The individual claims of the Class Members may be relatively modest compared with
7 the expense of litigating the claim, thereby making it **impracticable**, unduly
8 burdensome, and expensive to justify individual actions;
- 9 c. When Defendant's liability has been adjudicated, all Class Members' claims can be
10 determined by the Court and administered efficiently in a **manner far less burdensome**
11 and expensive than if it were attempted through filing, **discovery**, and trial of all
12 individual cases;
- 13 d. This class action will promote orderly, efficient, **expeditious**, and appropriate
14 adjudication and administration of Class claims;
- 15 e. Plaintiff knows of no difficulty to be encountered in the **management** of this action
16 that would preclude its maintenance as a class action;
- 17 f. This class action will assure uniformity of decisions among **Class Members**;
- 18 g. The Class is readily definable and prosecution of this **action as a class action** will
19 eliminate the possibility of repetitious litigation;
- 20 h. Class Members' interests in individually controlling the **prosecution** of separate
21 actions is outweighed by their interest in efficient resolution by **single class action**;
22 and
- 23 i. It would be desirable to concentrate in this single venue the **litigation** of all plaintiffs
24 who were induced by Defendant's uniform false advertising to purchase the Products.

25 74. In the alternative, the Class also may be certified because Defendant has acted or
26 refused to act on grounds generally applicable to the Class thereby making **final declaratory** and/or
27 **injunctive relief** with respect to the members of the Class as a whole, **appropriate**.

28

1 (b) Defendant represented that the Products are of a particular standard, quality, or grade,
2 which they are not (Civil Code § 1770(a)(7));

3 (c) Defendant advertised the Products with an intent not to sell the Products as advertised
4 (Civil Code § 1770(a)(9)); and

5 (d) Defendant represented that the subject of a transaction has been supplied in
6 accordance with a previous representation when it has not (Civil Code § 1770(a)(16)).

7 84. Defendant violated the CLRA because the Products do not relieve the symptoms of
8 colic and are not legally sold. Defendant knew or should have known that its Products do not relieve
9 the symptoms of colic and are not capable of being legally sold.

10 85. Defendant's actions as described herein were done with conscious disregard of
11 Plaintiff's rights and was wanton and malicious.

12 86. Defendant's wrongful business practices constituted, and constitute, a continuing
13 course of conduct in violation of the CLRA since Defendant is still representing that its Products
14 have characteristics which they do not have.

15 87. Pursuant to Civil Code section 1782(d), Plaintiff and members of the Class seek an
16 order enjoining Defendant from engaging in the methods, acts, and practices alleged herein, and for
17 restitution and disgorgement.

18 88. Pursuant to Civil Code section 1782, Plaintiff notified Defendant in writing by
19 certified mail of the alleged violations of the CLRA and demanded that Defendant rectify the
20 problems associated with the actions detailed above and give notice to all affected consumers of its
21 intent to so act. A copy of the letter is attached as Exhibit 4. If Defendant has failed to rectify or
22 agree to rectify the problems associated with the actions detailed herein and give notice to all
23 affected consumers within 30 days of the date of written notice pursuant to § 1782 of the CLRA,
24 Plaintiff will amend this complaint to add claims for actual, punitive, and statutory damages, as
25 appropriate.

26 89. Pursuant to § 1780(d) of the CLRA, attached as Exhibit 5 is an affidavit showing that
27 this action was commenced in a proper forum.
28

COUNT II

**Violation of False Advertising Law
Business & Professional Code §§ 17500, *et seq.***

1
2
3 90. Plaintiff and members of the Class reallege and incorporate by reference each
4 allegation set forth above as if fully set forth herein.

5 91. Plaintiff brings this claim individually and on behalf of the California Subclass against
6 Defendant.

7 92. California's FAL, (Bus. & Prof. Code §§ 17500, *et seq.*) makes it "unlawful for any
8 person to make or disseminate or cause to be made or disseminated before the public in this
9 state,...in any advertising device...or in any other manner or means *whatever*, including over the
10 Internet, any statement, concerning...personal property or services, professional or otherwise, or
11 performance or disposition thereof, which is untrue or misleading and which is known, or which by
12 the exercise of reasonable care should be known, to be untrue or misleading."

13 93. Throughout the Class Period, Defendant committed acts of false advertising, as
14 defined by § 17500, by using false and misleading statements to promote the sale of Little Remedies,
15 as described above, including but not limited to, representing that Little Remedies could relieve
16 stomach discomfort and colic in newborns, when in fact they could not.

17 94. Defendant knew or should have known, through the exercise of reasonable care that
18 the statements were untrue and misleading.

19 95. Defendant's actions in violation of § 17500 were false and misleading such that the
20 general public is and was likely to be deceived.

21 96. As a direct and proximate result of these acts, consumers have been and are being
22 harmed. Plaintiff and members of the Class have suffered injury and actual out-of-pocket losses
23 because: (a) Plaintiff and members of the Class would not have purchased the Products if they had
24 known the true facts regarding the effectiveness of the Products; (b) Plaintiff and members of the
25 Class paid a price premium due to the misrepresentations about the Products; and (c) the Products
26 did not have the promised quality, effectiveness, or value.

27 97. Plaintiff brings this action pursuant to § 17535 for injunctive relief to enjoin the
28 practices described herein and to require Defendant to issue corrective advertising and disclosures

1 to consumers. Plaintiff and members of the California Subclass are therefore entitled to: (a) an order
2 requiring Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all
3 monies paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate
4 allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs.

5 COUNT III

6 **Violation of Unfair Competition Law** 7 **Business & Professional Code §§ 17200, *et seq.***

8 98. Plaintiff and Class Members reallege and incorporate by reference each allegation set
9 forth above as if fully set forth herein.

10 99. Plaintiff brings this claim individually and on behalf of members of the California
11 Subclass against Defendant.

12 100. Defendant is subject to the UCL, Bus. & Prof. Code § 17200 *et seq.* The UCL
13 provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or
14 fraudulent business practices and unfair, deceptive, untrue or misleading advertising" The UCL
15 also provides for injunctive relief and restitution for violations.

16 101. "By proscribing any unlawful business practice, § 17200 borrows violations of other
17 laws and treats them as unlawful practices that the UCL makes independently actionable." *Cel-Tech*
18 *Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations
19 and internal quotation marks omitted).

20 102. Virtually any law or regulation—federal or state, statutory, or common law—can
21 serve as a predicate for a UCL "unlawful" violation. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App.
22 4th 1342, 1383 (2012).

23 103. Defendant has violated the UCL's "unlawful prong" as a result of its violations of the
24 CLRA, and FAL, as well as by breaching express and implied warranties as described herein. By
25 failing to comply federal and state regulations governing drugs and dietary supplements, Defendant
26 has also violated 21 U.S.C. § 343(r)(6), 21 U.S.C. § 343(a), 21 U.S.C. § 321(g)(1)(B), 21 U.S.C.
27 §§ 332-334 and California Health & Saf. Code §§ 109925, 110100, 111550. Throughout the Class
28 Period, Defendant committed acts of unfair competition, as defined by § 17200, by using unlawful,
false, and misleading statements to promote the sale of the Products, as described above.

1 104. Defendant’s misrepresentations and other conduct, described herein, violated the
2 “unfair prong” of the UCL because the conduct is substantially injurious to consumers, offends
3 public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct
4 outweighs any alleged benefits. Defendant’s conduct is unfair in that the harm to Plaintiff and
5 members of the California Subclass arising from Defendant’s conduct outweighs the utility, if any,
6 of those practices.

7 105. Defendant’s practices as described herein are of no benefit to consumers who are
8 tricked into believing that the Products will provide relief for stomach discomfort for their
9 newborns. Defendant’s practice of injecting misinformation into the marketplace about the
10 capabilities of its Products is unethical and unscrupulous, especially because consumers trust
11 companies like Defendant to provide accurate information about Products for newborns. Taking
12 advantage of that trust, Defendant misrepresents the effectiveness of its Products to increase its
13 sales. Consumers believe that Defendant is an authority on the effectiveness and quality of gripe
14 water Products for their newborns and therefore believe Defendant’s representations that its
15 Products can magically provide stomach relief for their newborns.

16 106. Defendant’s conduct described herein, violated the “fraudulent” prong of the UCL by
17 representing that the Products were effective at providing relief related for stomach discomfort in
18 newborns, when in fact they were not.

19 107. Plaintiff and members of the California Subclass are not sophisticated experts with
20 independent knowledge of the formulations or efficacy of gripe water Products, and they acted
21 reasonably when they purchased the Products based on their belief that Defendant’s representations
22 were true.

23 108. Defendant knew or should have known, through the exercise of reasonable care, that
24 its representations about the Products were untrue and misleading.

25 109. As a direct and proximate result of these acts, consumers have been and are being
26 harmed. Plaintiff and members of the California Subclass have suffered injury and actual out of
27 pocket losses as a result of Defendant’s unfair, unlawful, and fraudulent business acts and practices
28 because: (a) Plaintiff and members of the California Subclass would not have purchased the

1 Products on the same terms if they had known the true facts regarding the effectiveness and contents
2 of the Products; (b) Plaintiff and members of the California Subclass paid a price premium due to
3 the misrepresentations of Defendant's Products; and (c) Defendant's Products did not have the
4 quality and effectiveness or value as promised.

5 110. Pursuant to California Business & Professions Code § 17203, Plaintiff and members
6 of the California Subclass are therefore entitled to: (a) an Order requiring Defendant to cease the
7 acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendant as a
8 result of its deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment
9 of Plaintiff's attorneys' fees and costs.

10 COUNT IV

11 **Breach of Express Warranty**

12 111. Plaintiff and Class Members reallege and incorporate by reference each allegation set
13 forth above as if fully set forth herein.

14 112. Plaintiff brings this claim individually and on behalf of the members of the Class
15 against Defendant.

16 113. As the designer, manufacturer, marketer, distributor, and/or seller, Defendant
17 expressly warranted that the Products are effective in treating stomach discomfort and colic.

18 114. Defendant's affirmations of fact and promise made to Plaintiff and the Class on the
19 Products' labels, became part of the basis of the bargain between Defendant on the one hand, and
20 Plaintiff and Class members on the other, thereby creating express warranties that the Products
21 would conform to Defendant's affirmations of fact, representations, promises, and descriptions.

22 115. However, the scientific evidence shows that the Products cannot provide any
23 appreciable relief to consumers. Moreover, to the extent any of the ingredients could potentially
24 provide relief to consumers, the quantities they are provided in are far too low to provide any
25 therapeutic benefit.

26 116. As such, Defendant breached this warranty because the Products are not effective for
27 providing the advertised relief. In short, the Products do not perform as expressly warranted.
28

1 117. Plaintiff and Class Members were injured as a direct and proximate result of
2 Defendants' breach because: (a) they would not have purchased the Products on the same terms if
3 they had known the true facts; (b) they paid a price premium due to the mislabeling of the Products;
4 and (c) the Products did not have the quality, effectiveness or value as promised.

5 118. Prior to filing this action, Plaintiff served a pre-suit notice letter on Defendant that
6 complied in all respects with U.C.C. § 2-607. Plaintiff and the Class sent Defendant a letter via
7 certified mail, return receipt requested, advising Defendant that it breached numerous warranties
8 and violated state consumer protection laws, and demanding that Defendant cease and desist from
9 such violations and make full restitution by refunding the monies received therefrom. *See Exhibit*
10 *4.*

11 **COUNT V**

12 **Breach of Implied Warranty of Fitness for a Particular Purpose**

13 119. Plaintiff and Class Members reallege and incorporate by reference each allegation set
14 forth above as if fully set forth herein.

15 120. Plaintiff brings this claim individually and on behalf of the members of the Class
16 against Defendant.

17 121. Defendant, through its acts and omissions set forth herein, in its sale, marketing, and
18 promotion of the Products made implied representations to Plaintiff and the Class that the Products
19 were fit for the particular purpose of providing relief related to stomach discomfort in newborns.
20 However, the Products are not capable of providing the aforementioned benefits. At the time the
21 Products were sold, Defendant knew or should have known that Plaintiff and members of the Class
22 would rely on Defendant's skill and judgment regarding the efficacy of the Products.

23 122. In reliance on Defendant's skill and judgment and the implied warranties of fitness
24 for this purpose, Plaintiff and members of the Class purchased the Products for use to provide
25 stomach relief for their newborns.

26 123. The Products were not altered by Plaintiff or Class members.

27 124. Defendant knew that the Products would be purchased and used without additional
28 testing by Plaintiff and Class members.

1 125. Plaintiff and members of the Class have sustained damages as a direct and proximate
2 result of Defendant's breach because: (a) they would not have purchased the Products if the true
3 facts concerning their efficacy had been known; (b) they paid a price premium for the Products
4 based on Defendant's representations regarding the Products' efficacy; and (c) the Products did not
5 have the characteristics, uses, or benefits as promised. As a result, Plaintiff and members of the
6 Class have been damaged.

7 **COUNT VI**

8 **Unjust Enrichment**

9 126. Plaintiff and Class Members reallege and incorporate by reference each allegation set
10 forth above as if fully set forth herein.

11 127. Plaintiff brings this claim individually and on behalf of the members of the Class
12 against Defendant.

13 128. Plaintiff and Class members conferred a benefit on Defendant by purchasing the
14 Products and by paying a price premium for them. Defendant has knowledge of such benefits.

15 129. Defendant has been unjustly enriched in retaining the revenues derived from Class
16 members' purchases of the Products, which retention under these circumstances is unjust and
17 inequitable because Defendant misrepresented that the Products were effective in treating stomach
18 discomfort and colic. This misrepresentation cause injuries to Plaintiff and Class Members, because
19 they would not have purchased the Products if the true facts regarding the effectiveness of the
20 Products were known.

21 130. Because Defendant's retention of the non-gratuitous benefit conferred on it by
22 Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff
23 and the Class members for their unjust enrichment, as ordered by the Court.

24 **JURY DEMAND**

25 131. Plaintiff demands a trial by jury on all issues so triable.

26 **REQUEST FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of the Class and Subclass, requests for
28 judgment as follows:

1 (a) Declaring this action to be a proper class action and certifying Plaintiff as the
2 representative of the Class and the California Subclass, and Plaintiff's attorneys as Class Counsel
3 to represent the Class and California Subclass members;

4 (b) An order declaring Defendant's conduct violates the statutes referenced herein;

5 (c) Entering preliminary and permanent injunctive relief against Defendant, directing
6 Defendant to correct its practices and to comply with consumer protection statutes nationwide;

7 (d) Awarding monetary damages, including treble damages

8 (e) Awarding punitive damages;

9 (f) Awarding Plaintiff and Class and Subclass Members their costs and expenses incurred in
10 this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and
11 reimbursement of Plaintiff's expenses; and

12 (g) Granting such other and further relief as the Court may deem just and proper.

13 Dated: November 22, 2022

CROSNER LEGAL, P.C.

14
15 By: 

Michael R. Crosner
Zachary M. Crosner
Chad A. Saunders
Craig W. Straub

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17 Attorneys for Plaintiff
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