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6 Attorneys for Plaintiffs,

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 KENNETH LEVI PACK, an
11 individual, on behalf of himself and
12 all others similarly situated; MIN JI
13 JUNG, an individual, on behalf of
14 herself and all others similarly
situated,

15 Plaintiffs,

16 v.

17
18 Johnson & Johnson Consumer
19 Companies, Inc., a New Jersey
20 corporation; GlaxoSmithKline LLC, a
21 Delaware corporation; Reckitt
22 Benckiser LLC, a Delaware
23 corporation; Bayer Healthcare LLC, a
24 Delaware limited liability corporation;
25 Sanofi- Aventis U.S. LLC, a Delaware
26 limited liability corporation; The
27 Procter & Gamble Company, an Ohio
28 corporation; Church & Dwight Co.,
Inc., a Delaware corporation; Walmart
Inc., a Delaware corporation; Target
Corporation, a Minnesota corporation;
CVS Pharmacy, Inc., a Delaware
corporation; Walgreen Co., an Illinois

CASE NO.

**PLAINTIFFS' CLASS-ACTION
COMPLAINT FOR**

1. **FRAUD**
2. **NEGLIGENT
MISREPRESENTATION**
3. **BREACH OF EXPRESS
WARRANTY**
4. **STRICT LIABILITY-
DEFECTIVE DESIGN**
5. **UNFAIR BUSINESS
PRACTICES (BUSINESS &
PROFESSIONS CODE §
17200)**

DEMAND FOR JURY TRIAL

1 corporation; Albertsons Companies
2 Inc., a Delaware corporation; Rite Aid
3 Corporation, a Delaware corporation;
4 Amazon.com, Inc., a Delaware
corporation; and DOES 1-20.

5 Defendants.

6
7 **COMPLAINT**

8 Plaintiffs KENNETH LEVI PACK and MIN JI JUNG (collectively,
9 “Plaintiffs”), and by and through their undersigned counsel, hereby bring this action
10 on behalf of themselves and all others similarly situated, against Defendants, Johnson
11 & Johnson Consumer Companies, Inc.; GlaxoSmithKline LLC; Reckitt Benckiser
12 LLC; Bayer Healthcare LLC; Sanofi- Aventis U.S. LLC; The Procter & Gamble
13 Company; Church & Dwight Co., Inc.; Walmart Inc.; Target Corporation; CVS
14 Pharmacy, Inc.; Walgreen Co.; Albertsons Companies Inc.; Rite Aid Corporation;
15 Amazon.com, Inc; and DOES 1 through 20 (collectively, “Defendants”), and states:

16 **INTRODUCTION**

17 1. This is an action for damages related to Defendants’ wrongful conduct
18 in connection with the marketing, distribution and sale of products containing
19 phenylephrine—a purported decongestant used as an active ingredient in at least 250
20 products, including without limitation Sudafed Sinus Congestion, Tylenol Cold & Flu
21 Severe, Nyquil Severe Cold & Flu, Theraflu Severe Cold Relief, Mucinex Sinus Max,
22 and many others, including generic brands developed by major retailers like CVS,
23 Walmart, Target and Walgreens (the “Phenylephrine Products”).

24 2. Defendants manufacture, test, promote, advertise, market, distribute and
25 sell the Phenylephrine Products for the treatment of congestion and other associated
26 cold and flu symptoms. Millions of Californians, and hundreds of millions of
27 Americans, spend hard-earned money to purchase these products for help relieving
28 congestion and other associated cold and flu symptoms because they are told by the

1 above-captioned Defendants that they work for that very purpose.

2 3. For years, Defendants have advertised and marketed the Phenylephrine
3 Products to unsuspecting consumers despite knowing that phenylephrine is
4 ineffective for the treatment of nasal congestion and the other cold and flu symptoms
5 for which Defendants promote its use. On or about September 12, 2023, the Federal
6 Drug Administration, after careful study and consideration, announced publicly that
7 phenylephrine is ineffective as a treatment for such symptoms.

8 4. As a proximate result of Defendants' deceptive, fraudulent, unlawful,
9 and/or unfair conduct, Plaintiffs collectively suffered hundreds of millions of dollars
10 in damages in reliance upon Defendants' knowingly false representations about the
11 effectiveness of phenylephrine and the Phenylephrine Products.

12 5. Plaintiffs therefore demand judgment against Defendants and request,
13 among other things, compensatory damages, statutory damages, punitive damages,
14 attorneys' fees, costs and all other available remedies and damages allowed by law.

15 **PLAINTIFFS**

16 6. At all relevant times, Plaintiff **KENNETH LEVI PACK** was and has
17 been a resident and citizen of the State of California.

18 7. On numerous occasions within the statutory time period, in reliance upon
19 Defendants' intentionally false and fraudulent marketing, Plaintiff Pack purchased the
20 Phenylephrine Products, and each of them, within the State of California for the
21 treatment of cold and flu symptoms.

22 8. At all relevant times, Plaintiff **MIN JI JUNG** was and has been a
23 resident and citizen of the State of New York.

24 9. On numerous occasions within the statutory time period, in reliance upon
25 Defendants' intentionally false and fraudulent marketing, Plaintiff Jung purchased the
26 Phenylephrine Products, and each of them, within the State of New York for the
27 treatment of congestion and other associated cold and flu symptoms.

28

DEFENDANTS

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10. Defendant **Johnson & Johnson Consumer Companies, Inc.** is a New Jersey corporation, with headquarters and a principal place of business in the State of New Jersey. Upon information and belief, Defendant Johnson & Johnson Consumer Companies, Inc. is a wholly owned subsidiary of Johnson & Johnson, a New Jersey corporation, with headquarters and a principal place of business in the State of New Jersey (collectively “J&J”). At all times relevant to this complaint, Defendant J&J was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing certain of the Phenylephrine Products, including but not limited to, Tylenol, Sudafed, and Benadryl.

11. Defendant **GlaxoSmithKline LLC** is a Delaware corporation with headquarters and a principal place of business in the State of Pennsylvania. Upon information and belief, GlaxoSmithKline LLC is a wholly-owned subsidiary of GlaxoSmithKline PLC a public limited company organized under the laws of England and Wales (collectively “GSK”). At all times relevant to this complaint, Defendant GSK was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing certain of the Phenylephrine Products, including but not limited to, Robitussin, Theraflu, Contac, and Advil.

12. Defendant **Reckitt Benckiser LLC** is a Delaware limited liability corporation, with headquarters and a principal place of business in the State of New Jersey. Upon information and belief, Reckitt Benckiser LLC, is a wholly-owned subsidiary of Reckitt Benckiser Group PLC, a public limited company organized under the laws of England and Wales (collectively “Reckitt”). At all times relevant to this complaint, Reckitt, was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing certain of the Phenylephrine Products, including but not limited to, Mucinex.

13. Defendant **Bayer Healthcare LLC** is a Delaware limited liability corporation with headquarters and a principal place of business in the State of New

1 Jersey. Upon information and belief, Bayer Healthcare LLC is a wholly-owned
2 subsidiary of Defendant is Bayer Corporation, an Indiana corporation with a principal
3 place of business in the State of Pennsylvania (collectively “Bayer”). At all times
4 relevant to this complaint, Defendant Bayer was engaged in the business of
5 manufacturing, marketing, testing, promoting, selling, and/or distributing certain of
6 the Phenylephrine Products, including but not limited to, Alka-Seltzer.

7 14. Defendant **Sanofi- Aventis U.S. LLC** is a Delaware limited liability
8 corporation with headquarters and a principal place of business in the State of New
9 Jersey. Upon information and belief, Sanofi- Aventis U.S. LLC is a wholly owned
10 subsidiary of Sanofi S.A, a company organized under the laws of France (collectively
11 “Sanofi”). At all times relevant to this complaint, Defendant Sanofi was engaged in
12 the business of manufacturing, marketing, testing, promoting, selling, and/or
13 distributing certain of the Phenylephrine Products, including but not limited to,
14 Allegra.

15 15. Defendant **The Procter & Gamble Company** (“Proctor”) is an Ohio
16 corporation with headquarters and principal place of business in the State of Ohio. At
17 all times relevant to this complaint, Defendant Proctor was engaged in the business
18 of manufacturing, marketing, testing, promoting, selling, and/or distributing certain
19 of the Phenylephrine Products, including but not limited to, Dayquil and NyQuil.

20 16. Defendant **Church & Dwight Co., Inc.** (“Church & Dwight”) is a
21 Delaware corporation with headquarters and principal place of business in the State
22 of New Jersey. At all times relevant to this complaint, Church & Dwight was engaged
23 in the business of manufacturing, marketing, testing, promoting, selling, and/or
24 distributing certain of the Phenylephrine Products, including but not limited to,
25 Zicam.

26 17. Defendant **Walmart Inc.** (“Walmart”) is a Delaware corporation with
27 headquarters and principal place of business in the State of Arkansas. At all times
28 relevant to this complaint, Walmart was engaged in the business of manufacturing,

1 marketing, testing, promoting, selling, and/or distributing certain of the
2 Phenylephrine Products.

3 18. Defendant **Target Corporation** (“Target”) is a Minnesota corporation
4 with headquarters and principal place of business in the State of Minnesota. At all
5 times relevant to this complaint, Target was engaged in the business of manufacturing,
6 marketing, testing, promoting, selling, and/or distributing certain of the
7 Phenylephrine Products.

8 19. Defendant **CVS Pharmacy, Inc.** (“CVS”) is a Delaware corporation
9 with headquarters and principal place of business in the State of Rhode Island. At all
10 times relevant to this complaint, CVS was engaged in the business of manufacturing,
11 marketing, testing, promoting, selling, and/or distributing certain of the
12 Phenylephrine Products.

13 20. Defendant **Walgreen Co.** (“Walgreens”) is an Illinois corporation with
14 headquarters and principal place of business in the State of Illinois. At all times
15 relevant to this complaint, Walgreens was engaged in the business of manufacturing,
16 marketing, testing, promoting, selling, and/or distributing certain of the
17 Phenylephrine Products.

18 21. Defendant **Albertsons Companies Inc.** (“Albertsons”) is a Delaware
19 corporation with its principal place of business in the State of Idaho. At all times
20 relevant to this complaint, Albertsons was engaged in the business of manufacturing,
21 marketing, testing, promoting, selling, and/or distributing certain of the
22 Phenylephrine Products.

23 22. Defendant **Rite Aid Corporation** (“Rite Aid”) is a Delaware corporation
24 with its principal place of business in the State of Philadelphia. At all times relevant
25 to this complaint, Rite Aid was engaged in the business of manufacturing, marketing,
26 testing, promoting, selling, and/or distributing certain of the Phenylephrine Products.

27 23. Defendant **Amazon.com, Inc.** (“Amazon”) is a Delaware corporation
28 with its principal place of business in the State of Washington. At all times relevant

1 to this complaint, Amazon was engaged in the business of manufacturing, marketing,
2 testing, promoting, selling, and/or distributing certain of the Phenylephrine Products.

3 24. The true names and capacities of defendants Does 1 through 200 are
4 currently unknown to Plaintiffs who, therefore, sue these defendants under these
5 fictitious names. These defendants are each directly and/or vicariously responsible, in
6 some manner, for the harms alleged herein. If/when Plaintiffs learn these defendants'
7 true names and capacities, Plaintiffs will seek leave to amend this pleading
8 accordingly.

9 25. The true names and/or capacities, whether individual, corporate,
10 partnership, associate, governmental, or otherwise, of Defendants DOES 1 through
11 20, inclusive, and each of them, are unknown to Plaintiffs at this time, who therefore
12 sues said Defendants by such fictitious names. Plaintiffs are informed and believe,
13 and thereon allege, that each Defendant designated herein as a DOE caused injuries
14 and damages proximately thereby to Plaintiffs as hereinafter allege; and that each
15 DOE defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
16 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs
17 will amend this Complaint to allege the true names and capacities of said DOE
18 Defendants when that same is ascertained.

19 **JURISDICTION & VENUE**

20 26. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).
21 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
22 of \$5,000,000 and is a class action in which there are in excess of 100 class members
23 and many members of the class are citizens of a state different from Defendants.

24 27. This Court has personal jurisdiction over Defendants are authorized to
25 conduct and do conduct business in California. Defendants have engaged in the
26 business of designing, developing, manufacturing, testing, packaging, promoting,
27 marketing, distributing, labeling, and/or selling the Phenylephrine Products to
28 Plaintiffs in California, and Defendants have sufficient minimum contacts with this

1 State and/or sufficiently avail themselves of the markets in this State through their
2 promotion, sales, distribution and marketing within the State to render exercise of
3 jurisdiction by this Court permissible.

4 28. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
5 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
6 occurred while he resided in this judicial district. Venue is also proper under 18
7 U.S.C. § 1965(a) because the Defendants transact substantial business in this District.

8 **CLASS ACTION ALLEGATIONS**

9 29. Pursuant to Rules 23(a), (b)(3), (b)(2), and (c)(4) of the Federal Rules of
10 Civil Procedure, Plaintiffs bring this class action on their own behalf and on behalf of
11 all other similarly situated consumers in the United States as members of the
12 following proposed Nationwide and California State classes. The proposed Classes
13 are defined as follows:

- 14 a. **Nationwide class:** During the fullest period allowed by law, all
15 persons within the United States who purchased the
16 Phenylephrine Products, or any of them, at any time and at any
17 location (the "Class").
- 18 b. **California subclass:** During the fullest period allowed by law,
19 all persons who, while a resident of California, purchased the
20 Phenylephrine Products at any location in California, including
21 without limitation any online purchase made from California
22 (regardless of the shipping address of the consumer) (the
23 "California Subclass" or the "Subclass").
- 24 c. Nationwide class and California subclass members are
25 collectively referred herein as "Class Members."
- 26 d. Like Plaintiffs, all Class Members purchased the Phenylephrine
27 Products based on the misrepresentations that said products were
28 effective in the treatment of congestion and other associated cold

1 and flu symptoms, and that such understanding was reasonable
2 and was a material basis for the decision to purchase the
3 Phenylephrine Products, which Defendants intended to foster
4 through its various marketing activities in connection with the
5 sale of the Phenylephrine Products.

6 30. Excluded from the Class and Subclass are assigned judges and members
7 of their families within the first degree of consanguinity, Defendants, and their
8 subsidiaries, affiliates, officers, and directors.

9 31. The requirements of Federal Rule of Civil Procedure 23 are satisfied for
10 the Class and California Subclass.

11 32. The proposed Class and California Subclass are so numerous that
12 individual joinder of all their members is impracticable because members of the Class
13 number in the tens or hundreds of thousands. The precise number of Class members
14 and their identities are unknown to Plaintiffs at this time but are objectively
15 ascertainable and will be determined through appropriate discovery.

16 33. Defendants possess objective evidence as to the identity of each Class
17 Member and, to a reasonable degree of certainty, the damages suffered by each Class
18 Member, including without limitation sales receipts, phone numbers, names, rewards
19 accounts data, credit card data, customer service complaint forms/emails/date, and
20 other evidence which objectively identifies class members.

21 34. Class Members may be notified of the pendency of this action by mail,
22 publication and/or through the records of Defendants and third-party retailers and
23 vendors.

24 35. There are common questions of law and fact affecting Plaintiffs and
25 Class Members. Common legal and factual questions include, but are not limited to:

- 26 a. Whether Defendants market and advertises the Phenylephrine
27 Products in a way that is false or misleading.
28 b. Whether by the misconduct set forth in this complaint,

- 1 Defendants have engaged and continue to engage in unfair,
2 fraudulent, or unlawful business practices;
- 3 c. Whether Defendants' conduct was committed knowingly and/or
4 intentionally;
- 5 d. Whether Defendants' conduct constitutes violations of the
6 federal and/or state laws asserted herein;
- 7 e. Whether Defendants had a duty to correct their fraudulent
8 statements;
- 9 f. Whether Class members were harmed by Defendants' false
10 statements;
- 11 g. Whether Defendants were unjustly enriched by their conduct;
- 12 h. Whether the Class is entitled to punitive damages;
- 13 i. Whether the Class is entitled to recover statutory attorney's fees;
- 14 j. Whether, as a result of Defendants' misconduct as alleged herein,
15 Plaintiffs and Class Members are entitled to restitution,
16 injunctive and/or monetary relief and, if so, the amount and
17 nature of such relief.

18 36. Plaintiffs' claims are typical of the claims of the proposed Class and
19 Subclass because Plaintiffs and Class Members were harmed in the same manner by
20 the same conduct.

21 37. Plaintiffs and Class Members have all sustained economic injury arising
22 out of Defendants violations of common and statutory law alleged herein.

23 38. Plaintiffs will fairly and adequately represent and protect the interests of
24 the Class and Subclass.

25 39. Plaintiffs' interests do not conflict with the interests of the Class and
26 Subclass he seeks to represent. Plaintiffs have retained counsel competent and
27 experienced in prosecuting class actions, and Plaintiffs intend to prosecute this action
28 vigorously.

1 40. The class mechanism is superior to other available means for the fair and
2 efficient adjudication of the claims of Plaintiffs and Class Members.

3 41. Given the relatively small amount of damages at stake for any of the
4 individual Class Members, individual litigation is not practicable.

5 42. Individual Class Members will not wish to undertake the burden and
6 expense of individual cases.

7 43. In addition, individualized litigation increases the delay and expense to
8 all parties and multiplied the burden on the judicial system. Individualized litigation
9 also presents the potential for inconsistent or contradictory judgments.

10 44. In contrast, the class action device presents far fewer management
11 difficulties and provides the benefits of single adjudication, economy of scale, and
12 comprehensive supervision by a single court.

13 45. Questions of law and fact common to all Class Members predominate
14 over any questions affecting only individual Class Members. Injuries sustained by
15 Plaintiffs and Class Members flow, in each instance, from a common nucleus of
16 operative facts as set forth above.

17 46. In each case, Defendant used deceptive marketing and sales techniques
18 aimed at the Class Members, causing harm to all Class Members as a result of such
19 intentional conduct. The resolution of these central issues will be the focus of the
20 litigation and predominate over any individual issues.

21 47. Proposed class counsel possesses the knowledge, experience, reputation,
22 ability, skill, and resources to represent the class and should be appointed lead counsel
23 for the class.

24 **TOLLING OF THE STATUTE OF LIMITATIONS**

25 **A. Discovery Rule Tolling**

26 48. As a result of the acts and omissions of Defendants, Plaintiffs could not
27 have discovered, through the exercise of reasonable due diligence, that the active
28 ingredient in the Phenylephrine Products was ineffective, as has now been declared

1 by the Federal Drug Administration. Thus, the applicable limitations periods did not
2 begin to accrue until Plaintiffs discovered, or through the exercise of reasonable
3 diligence should have discovered, Defendants' wrongful acts and omissions.

4 **B. Fraudulent Concealment Tolling**

5 49. All applicable statutes of limitation have also been tolled by Defendants'
6 knowing and active fraudulent concealment and misrepresentations about the
7 effectiveness of phenylephrine and the Phenylephrine Products throughout the time
8 period relevant to this action.

9 50. Defendants are under a continuing duty to disclose the true character,
10 quality, efficacy, safety issues and safety concerns of phenylephrine and the
11 Phenylephrine Products to its users, including Plaintiffs specifically. To date,
12 Defendants have nevertheless failed to adequately and fully inform consumers about
13 these matters, as discussed above.

14 51. Plaintiffs reasonably relied upon Defendants' knowing, affirmative
15 misrepresentations and/or active concealment when Plaintiffs—and millions of
16 similarly-situated Californians and Americans—purchased the Phenylephrine
17 Products based on the representations and advertisements touting the effectiveness of
18 such products in the treatment of congestion and other associated cold and flu
19 symptoms.

20 52. Because Defendants actively concealed the true facts about the
21 ineffectiveness of phenylephrine and the Phenylephrine Products, they are estopped
22 from relying on any statutes of limitations defense.

23 **FIRST CAUSE OF ACTION**

24 **Fraudulent Misrepresentation**

25 53. Plaintiffs reallege and incorporate the allegations made above as if fully
26 set forth below.

27 54. Plaintiffs bring this claim individually and on behalf of the Class.

28 55. At all relevant times, Defendants had the duty and obligation to truthfully

1 represent to Plaintiffs the facts concerning the ineffectiveness of phenylephrine and
2 the Phenylephrine Products. Instead, Defendants aggressively (and falsely)
3 advertised the effectiveness of phenylephrine and the Phenylephrine Products, despite
4 the fact that each such Defendant knew that phenylephrine and the Phenylephrine
5 Products were entirely ineffective against congestion and the associated cold & flu
6 symptoms the Phenylephrine Products were advertised to treat.

7 56. Defendants willfully deceived Plaintiffs and the public in general by
8 making these intentional misrepresentations regarding the efficacy of phenylephrine
9 and the Phenylephrine Products.

10 57. At the time the aforesaid misrepresentations were made, Defendants
11 intended to induce Plaintiffs to rely upon such misrepresentations.

12 58. At the time Defendants made the above-described misrepresentations,
13 Plaintiffs and the public in general reasonably believed them to be true. In reasonable
14 and justified reliance upon said misrepresentations, Plaintiffs purchased the
15 Phenylephrine Products.

16 59. As a direct and proximate result of Defendants' conduct, Plaintiffs
17 suffered serious financial harm, including the expenditure of substantial sums to
18 purchase the Phenylephrine Products, which Defendants knew were and are
19 ineffective for their advertised purpose.

20 **SECOND CAUSE OF ACTION**

21 **Negligent Misrepresentation**

22 60. Plaintiffs reallege and incorporate the allegations made above as if fully
23 set forth below.

24 61. Plaintiffs bring this claim individually and on behalf of the Class.

25 62. At all relevant times, Defendants had the duty and obligation to truthfully
26 represent to Plaintiffs the facts concerning the ineffectiveness of phenylephrine and
27 the Phenylephrine Products. Instead, Defendants aggressively (and falsely)
28 advertised the effectiveness of phenylephrine and the Phenylephrine Products, despite

1 the fact that each such Defendant should have known that phenylephrine and the
2 Phenylephrine Products were entirely ineffective against congestion and the
3 associated cold & flu symptoms the Phenylephrine Products were advertised to treat.

4 63. Defendants recklessly or at least negligently deceived Plaintiffs and the
5 public in general by making these misrepresentations regarding the efficacy of
6 phenylephrine and the Phenylephrine Products.

7 64. At the time the aforesaid misrepresentations were made, Defendants
8 understood that their careless misrepresentations would induce Plaintiffs to rely upon
9 them.

10 65. At the time Defendants made the above-described misrepresentations,
11 Plaintiffs and the public in general reasonably believed them to be true. In reasonable
12 and justified reliance upon said misrepresentations, Plaintiffs purchased the
13 Phenylephrine Products.

14 66. As a direct and proximate result of Defendants' conduct, Plaintiffs
15 suffered serious financial harm, including the expenditure of substantial sums to
16 purchase the Phenylephrine Products, which Defendants knew or should have known
17 were and are ineffective for their advertised purpose.

18 **THIRD CAUSE OF ACTION**

19 **Breach of Express Warranty**

20 67. Plaintiffs reallege and incorporate the allegations made above as if fully
21 set forth below.

22 68. Plaintiffs bring this claim individually and on behalf of the Class.

23 69. Section 2-313 of the Uniform Commercial Code provides that an
24 affirmation of fact or promise, including a description of the goods, becomes part of
25 the basis of the bargain and creates an express warranty that the goods shall conform
26 to the promise and to the description.

27 70. At all times, California and other states have codified and adopted the
28 provisions of the Uniform Commercial Code governing the express warranty of

1 merchantability.

2 71. Plaintiffs, and each member of the Class, formed a contract with
3 Defendants at the time Plaintiffs and the other members of the Class purchased the
4 Phenylephrine Products. The terms of that contract include the cognitive health
5 benefit promises and affirmations of fact made by Defendants on the Phenylephrine
6 Products' labels and packages as described above. These representations constitute
7 express warranties, became part of the basis of the bargain, and are part of a
8 standardized contract between Plaintiffs and the members of the Class on the one
9 hand, and Defendants on the other.

10 72. All conditions precedent to Defendants' liability under this contract have
11 been performed by Plaintiffs and the Class Members.

12 73. At all relevant times, Defendants had the duty and obligation to truthfully
13 represent to Plaintiffs the facts concerning the ineffectiveness of phenylephrine and
14 the Phenylephrine Products. Instead, Defendants aggressively (and falsely)
15 advertised the effectiveness of phenylephrine and the Phenylephrine Products, despite
16 the fact that each such Defendant knew that phenylephrine and the Phenylephrine
17 Products were entirely ineffective against congestion and the associated cold & flu
18 symptoms the Phenylephrine Products were advertised to treat.

19 74. Defendants breached the terms of this contract, including the express
20 warranties, with Plaintiffs and the Class by not providing the Phenylephrine Products
21 that could provide the cognitive health benefits as represented and described above.

22 75. As a result of Defendants' breach of their warranty, Plaintiffs and the
23 Class have been damaged in the amount of the purchase price of the Phenylephrine
24 Products they purchased.

25 **FOURTH CAUSE OF ACTION**

26 **Strict Liability-Design and Manufacturing Defect**

27 76. Plaintiffs reallege and incorporate the allegations made above as if fully
28 set forth below.

1 77. Plaintiffs bring this claim individually and on behalf of the Class.

2 78. At the time that the Phenylephrine Products left the control of the
3 Defendants, the Phenylephrine Products were defective as a result of Defendants'
4 design, manufacture, alteration, or modification. The defects included, but are not
5 limited to, materials that are unsafe for human skin contact, and/or materials not
6 identified on the Product itself.

7 79. At all relevant times, Defendant knew and intended that the
8 Phenylephrine Products would be purchased and used by members of the general
9 public who would rely on Defendants to properly identify the relevant characteristics
10 and usefulness of the Product.

11 80. At the time of the incidents giving rise to this Complaint, the
12 Phenylephrine Products were being used in a manner that was foreseeable by the
13 Defendants and in a manner which the Phenylephrine Products were intended to be
14 used.

15 81. Defendants knew or should have known their manufacture or design of
16 the Phenylephrine Products was defective, causing the Phenylephrine Products to fail
17 to perform as an ordinary consumer would expect when used in an intended or
18 reasonably foreseeable manner.

19 82. In addition, the risks inherent in the design of the Phenylephrine Products
20 outweighs any benefits of that design.

21 83. As a direct and proximate result of Defendants' conduct, Plaintiffs have
22 suffered and continue to suffer serious harm.

23 **FIFTH CAUSE OF ACTION**

24 **Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.)**

25 **(Plaintiffs and California Sub-Class Members)**

26 84. Plaintiffs reallege and incorporate the allegations made above as if fully
27 set forth below. Plaintiffs assert this First Cause of Action on behalf of themselves
28 and all other similarly-situated persons in California that paid hard-earned money for

1 the Phenylephrine Products based on the deceptive, false, unfair and unlawful
2 marketing strategy touting the effectiveness of phenylephrine and the Phenylephrine
3 Products for treatment of congestion and associated cold and flu symptoms.

4 85. By engaging in the above-described conduct, Defendants, and each of
5 them, acted in a manner that is unlawful, unfair, and fraudulent, and have thus
6 engaged in unfair business practices to the extreme detriment of Plaintiffs, which
7 conduct is prohibited under California Business & Professions Code sections 17200,
8 et seq.

9 86. Defendants' conduct has caused Plaintiffs to suffer harm, including
10 through the payment of monies for the purchase of the Phenylephrine Products.

11 87. Plaintiffs are thus entitled to restitutionary and injunctive relief,
12 including without limitation disgorgement of any unlawful gains that Defendants have
13 obtained as a result of their unlawful, unfair and fraudulent conduct.

14 **Additional Allegations Regarding Punitive Damages**
15 **(All Applicable Causes of Action)**

16 88. The acts and omissions of Defendants described herein consisted of
17 oppression, fraud and/or malice and were done with advance knowledge, conscious
18 disregard of the rights of others and/or ratification by Defendants' officers, directors
19 and/or managing agents.

20 89. Defendants' actions amounted to actual malice or reckless indifference
21 to the likelihood of harm associated with their acts and omissions.\

22 90. Plaintiffs are entitled to punitive damages because Defendants misled,
23 misrepresented and/or withheld information and materials from consumers and the
24 public at large, including Plaintiffs, concerning the efficacy of phenylephrine and the
25 Phenylephrine Products.

26 91. Despite the fact that Defendants were or should have been in possession
27 of evidence demonstrating the ineffectiveness of phenylephrine and the
28 Phenylephrine Products, Defendants continued to market Phenylephrine Products by

1 providing false and misleading information with regard to the efficacy of such
2 products.

3 92. Defendants failed to provide consumers, including Plaintiffs, with
4 available materials, information and warnings that would have ultimately dissuaded
5 them from purchasing and consuming such products, thus depriving otherwise
6 uninformed consumers from weighing the true risks and benefits of purchasing and
7 ingesting the Phenylephrine Products.

8 93. Defendants' conduct was committed with knowing, conscious and
9 deliberate disregard for the rights and safety of consumers, including Plaintiffs,
10 thereby entitling Plaintiffs to punitive damages in an amount appropriate to punish
11 the Defendants and deter them from similar conduct in the future.

12 94. Consequently, Defendants are liable for punitive damages in an amount
13 to be determined by the jury at trial.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for judgment as follows:

- 16 a. Certifying the Class and the California Subclass as requested
17 herein;
- 18 b. Awarding Plaintiffs and the proposed Class Members damages;
- 19 c. Awarding restitution and disgorgement of Defendants' revenues
20 to Plaintiffs and the proposed Class Members
- 21 d. Awarding declaratory and injunctive relief as permitted by law or
22 equity, including: enjoining Defendants from continuing the
23 unlawful practices as set forth herein, and directing Defendants to
24 identify, with Court supervision, victims of its conduct and pay
25 them all money it is required to pay;
- 26 e. Ordering Defendants to engage in a corrective advertising
27 campaign
- 28 f. Awarding punitive damages;

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- g. Awarding restitutionary disgorgement in favor of Plaintiffs and all other similarly situated persons in California;
- h. Awarding the costs and expenses of this litigation to Plaintiffs;
- i. Awarding reasonable attorneys’ fees and costs to Plaintiffs as provided by law;
- j. Awarding pre-judgment and post-judgment interest to Plaintiffs; and
- k. For such further relief as this Court deems necessary, just and proper.

DATED: September 12, 2023 SINGLETON SCHREIBER, LLP

By: _____
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