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15 *Attorneys for Plaintiff*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 William Foreman, on Behalf of Himself
19 and All Others Similarly Situated,

20 Plaintiff,

21 vs.

22 CVS Pharmacy Inc., a Rhode Island
23 Corporation,

24 Defendant.

Case No. **'25CV2147 WQHAHG**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1

2 **CLASS ACTION COMPLAINT**

3 Plaintiff William Foreman (“Plaintiff”), by and through his attorneys, brings
4 this action on behalf of himself and all others similarly situated against CVS
5 Pharmacy, Inc. (“Defendant”). Plaintiff hereby alleges, on information and belief,
6 except for information based on personal knowledge, which allegations are likely to
7 have evidentiary support after further investigation and discovery, as follows:
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10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction over this matter under the Class Action
12 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2)(A), as the amount in controversy
13 exceeds \$5 million, exclusive of interests and costs; it is a class action of over 100
14 members; and the Plaintiff is a citizen of a state different from at least one Defendant.
15

16 2. This Court has personal jurisdiction over Defendants. Defendant has
17 sufficient minimum contacts with the state of California and purposefully availed
18 itself, and continues to avail itself, of the jurisdiction of this California through the
19 privilege of conducting its business ventures in the state of California, thus rendering
20 the exercise of jurisdiction by the Court permissible under traditional notions of fair
21 play and substantial justice.
22

23 3. Venue is proper in this district under 28 U.S.C. § 1391(a) because a
24 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in
25 this district, as Defendant does business throughout this district, and Plaintiff made
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1 his purchase of Defendants' Maximum Strength Anti-Fungal Liquid (the "Product")
2 in San Diego, California from a retail store in this district and his CVS antifungal
3 product purchased was delivered to, and used, in this district.
4

5 **PARTIES**

6 4. Plaintiff is a natural person and a citizen of San Diego County,
7 California. Plaintiff purchased Defendant's antifungal liquid from a local retailer for
8 treatment of his toenail fungus. Before his purchase, Plaintiff saw and reviewed
9 Defendant's advertising claims on the packaging, and he made his purchase of the
10 antifungal product in reliance thereon. Plaintiff specifically relied upon
11 representations made by Defendant. Plaintiff did not receive the promised benefits or
12 the total value of his purchase. Plaintiff would purchase the product again if he was
13 assured the product was not falsely advertised.
14
15

16 5. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation with its
17 principal business offices located at 1 CVS Drive, Woonsocket, Rhode Island. CVS
18 is licensed to conduct business in California. Defendant is an American multinational
19 consumer goods corporation.
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22 6. Plaintiff reserves the right to amend his Complaint to add different or
23 additional defendants, including without limitation any officer, director, employee,
24 supplier, or distributor of Defendant who has knowingly and willfully aided, abetted,
25 or conspired in the false and deceptive conduct alleged herein.
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FACTUAL ALLEGATIONS

7. Fungal nail infections, also known as “onychomycosis,” are very common. They may affect up to 14% of the general population.¹

8. Toenail fungus is an infection that gets in through cracks in your nail or cuts in your skin. Because toes are often warm and damp, fungus grows well there. Different kinds of fungi and sometimes yeast affect different parts of the nail. Left untreated, an infection could spread to other toenails, skin, or even your fingernails.

9. Infected nails are usually thicker than usual and could be warped or oddly shaped. They can break easily. Nails with fungus might look yellow. Sometimes a white dot appears on the nail and then grows larger. When fungus builds up under your nail, it can loosen and even separate the nail from the bed. The fungus can also spread to the skin around your nail.

10. With toenail fungus, your nail becomes thick and yellow and may show white spots and streaks. A type of mold called dermatophyte causes tinea unguium, the most common nail fungus. Tinea unguium most frequently targets your toenails, but it can also affect your fingernails. Onychomycosis is another name for the condition.

11. Defendant CVS Pharmacy, Inc. manufactures, distributes, advertises, and sells the Product, which for all relevant purposes is identical. At all relevant times, Defendant has marketed the Product in a consistent and uniform manner relating to

¹ See <https://www.cdc.gov/fungal/nail-infections.html>.

1 ingredients, potency, and effect. Defendant sells the Product on its website and
2 through various retail stores nationwide.

3 12. The antifungal liquid treatment is advertised as a treatment for nail
4 fungus. However, the active ingredient Tolnaftate is ineffective against nail fungus.
5 In fact, the FDA requires a disclaimer on anti-fungal treatments containing tolnaftate
6 that the product is not effective on nails.²
7

8 13. Defendant misleadingly advertises that its Maximum Strength Anti-
9 Fungal Liquid product is a treatment for nail fungus. The Product name and package
10 is clear – Anti-Fungal (with a picture of perfect toenails) – every reasonable consumer
11 will immediately assume the Product is a nail fungus treatment.
12

13 14. The front of the package states “For fingernails or toenails” in bold
14 lettering with a picture next to a pristine set of toenails:
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27 ² [https://www.accessdata.fda.gov/drugsatfda_docs/omuf/OTC%20Monograph_M005-](https://www.accessdata.fda.gov/drugsatfda_docs/omuf/OTC%20Monograph_M005-Topical%20Antifungal%20drug%20products%20for%20OTC%20Human%20Use%2012.16.2021.pdf)
28 [Topical%20Antifungal%20drug%20products%20for%20OTC%20Human%20Use%2012.16.2021](https://www.accessdata.fda.gov/drugsatfda_docs/omuf/OTC%20Monograph_M005-Topical%20Antifungal%20drug%20products%20for%20OTC%20Human%20Use%2012.16.2021.pdf)
[.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/omuf/OTC%20Monograph_M005-Topical%20Antifungal%20drug%20products%20for%20OTC%20Human%20Use%2012.16.2021.pdf) (Over-the-Counter (OTC) Monograph M005: Topical Antifungal Drug Products for Over-the-Counter Human Use)



15. All of the misrepresentations at issue here were consistently made at all times during the class period. Defendant made uniform misrepresentations about the Product, exposing Plaintiff and all class members to the same false and misleading advertisements.

16. The CVS website states the same claims:

CVS Maximum Strength Antifungal Liquid with the only active ingredient clinically proven to cure and prevent athlete's foot. This product treats fungus of the toes & fingers on skin surrounding and under the nails. Use the brush for easy application. Can be applied on fingernails or toenails.

- Treats fungus of the toes & fingers on skin surrounding and under the

nails

- Use brush for easy application
- For fingernails or toenails

17. The easy application brush is a nail polish brush, even though the Product does not kill nail fungus:



18. The misrepresentation identified above, when viewed in the context of the labeling as a whole and the product at issue, has the tendency or capacity to deceive or confuse reasonable consumers into believing that the Product will treat nail fungus.

1 19. Plaintiff and Class members would not have purchased the Product or
2 would not have paid as much for the Product, had they known the truth about the
3 mislabeled and falsely advertised Product.

4
5 20. Plaintiff would purchase the Product again, however; at this time
6 Plaintiff is unable to rely on the labeling of the Product because he is unsure whether
7 those representations are truthful.

8
9 **CLASS ACTION ALLEGATIONS**

10 21. Class Definition: Plaintiff brings this action on behalf of himself and the
11 following Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or
12 (b)(3). Specifically, the Classes are defined as:

13
14 **National Class:** All persons in the United States who purchased the Products
15 during the fullest period of law.

16
17 In the alternative, Plaintiff brings this action on behalf of the following State
18 class.

19 **California Sub-Class:** All persons in the State of California who purchased the
20 Products during the fullest period of law.

21
22 22. Excluded from the Classes are (a) any person who purchased the Product
23 for resale and not for personal or household use, (b) any person who signed a release
24 of any Defendants in exchange for consideration, (c) any officers, directors or
25 employees, or immediate family members of the officers, directors or employees, of
26 any Defendant or any entity in which a Defendant have a controlling interest, (d) any
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1 legal counsel or employee of legal counsel for any Defendants, and (e) the presiding
2 Judge in this lawsuit, as well as the Judge's staff and their immediate family members.

3 23. Plaintiff reserves the right to amend the Class definitions if further
4 investigation and discovery indicates that the Class definitions should be narrowed,
5 expanded, or otherwise modified.

6
7 24. **Numerosity and Ascertainability:** Plaintiff does not know the exact
8 number of members of the putative classes. Due to Plaintiff's initial investigation,
9 however, Plaintiff is informed and believes that the total number of Class members is
10 at least in the tens of thousands, and that members of the Class are numerous and
11 geographically dispersed throughout California and the United States. While the exact
12 number and identities of the Class members are unknown at this time, such
13 information can be ascertained through appropriate investigation and discovery,
14 including Defendants' records, either manually or through computerized searches.

15
16 25. **Typicality and Adequacy:** Plaintiff's claims are typical of those of the
17 proposed Class, and Plaintiff will fairly and adequately represent and protect the
18 interests of the proposed Class. Plaintiff does not have any interests that are
19 antagonistic to those of the proposed Class. Plaintiff has retained counsel competent
20 and experienced in the prosecution of this type of litigation.

21
22 26. **Commonality:** The questions of law and fact common to the Class
23 members, some of which are set out below, predominate over any questions affecting
24 only individual Class members:
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- a. whether Defendants committed the conduct alleged herein;
- b. whether Defendants' conduct constitutes the violations of laws alleged herein;
- c. whether Defendants' labeling, sale and advertising set herein are unlawful, untrue, or are misleading, or reasonably likely to deceive;
- d. whether the Product was misbranded under the California Health & Safety Code or similar federal law;
- e. whether Defendant knew or should have known that the representations were false or misleading;
- f. whether Defendant knowingly concealed or misrepresented material facts for the purpose of inducing consumers into spending money on the Product;
- g. whether Defendant's representations, concealments and non-disclosures concerning the Product are likely to deceive consumers;
- h. whether Defendant's representations, concealments and non-disclosures concerning the Tom's of Maine toothpaste violate California consumer laws and/or the common law;
- i. whether Defendants should be permanently enjoined from making the claims at issue; and
- j. whether Plaintiff and the Class are entitled to restitution and damages.

27. **Predominance and Superiority:** Common questions, some of which are set out above, predominate over any questions affecting only individual Class members. A class action is the superior method for the fair and just adjudication of

1 this controversy. The expense and burden of individual suits makes it impossible and
2 impracticable for members of the proposed Class to prosecute their claims
3 individually and multiplies the burden on the judicial system presented by the
4 complex legal and factual issues of this case. Individualized litigation also presents
5 the possibility of inconsistent or contradictory judgments. In contrast, the class action
6 device presents far fewer management difficulties and provides the benefits of single
7 adjudication, economy of scale, and comprehensive supervision by a single court on
8 the issue of Defendants' liability. Class treatment of the liability issues will ensure
9 that all claims and claimants are before this Court for consistent adjudication of the
10 liability issues. A class action is superior to other available methods for the fair and
11 efficient adjudication of this controversy for at least the following reasons:

12
13 a. given the complexity of issues involved in this action and the expense of
14 litigating the claims, few, if any, Class members could afford to seek legal redress
15 individually for the wrongs that Defendants committed against them, and absent Class
16 members have no substantial interest in individually controlling the prosecution of
17 individual actions;

18
19 b. when Defendant's liability has been adjudicated, claims of all Class
20 members can be determined by the Court;

21
22 c. this action will cause an orderly and expeditious administration of the
23 Class claims and foster economies of time, effort and expense, and ensure uniformity
24 of decisions; and
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1 d. without a class action, many Class members would continue to suffer
2 injury, and Defendants' violations of law will continue without redress while
3 Defendants continue to reap and retain the substantial proceeds of their wrongful
4 conduct.
5

6 28. **Manageability:** The trial and litigation of Plaintiff's and the proposed
7 Class claims are manageable. Defendant has acted and refused to act on grounds
8 generally applicable to the Class, making appropriate final injunctive relief and
9 declaratory relief with respect to the Class as a whole.
10

11 29. Accordingly, this Class is properly brought and should be maintained as
12 a class action under Rule 23(b)(3) because questions of law or fact common to Class
13 Members predominate over any questions affecting only individual members, and
14 because a class action is superior to other available methods for fairly and efficiently
15 adjudicating this controversy.
16
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18 **FED. RULE CIV. PROC. 9(b) ALLEGATIONS**

19 30. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n
20 alleging fraud or mistake, a party must state with particularity the circumstances
21 constituting fraud or mistake." To the extent necessary, as detailed in the paragraphs
22 above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing
23 the following elements with sufficient particularity.
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1 31. WHO: Defendant made material misrepresentations and/or omissions of
2 fact in its labeling and marketing of the Product by representing that the Product is
3 for the treatment of nail fungus.

4
5 32. WHAT: Defendant's conduct here was and continues to be fraudulent
6 because it has the effect of deceiving consumers into believing that the Product is for
7 the treatment of nail fungus. Defendant specifically marketed the Product for treating
8 fingernail or toenail fungus. Defendant knew or should have known that this
9 information is material to all reasonable consumers and impacted consumers'
10 purchasing decisions.
11

12
13 33. WHEN: Defendant made material misrepresentations and/or omissions
14 detailed herein, including that the Product is for the treatment of nail fungus
15 continuously throughout the applicable Class period(s).
16

17 34. WHERE: Defendant's material misrepresentations and omissions, that
18 the Product is for nail fungus treatment, were located on the very center of the front
19 label of the Product in bold lettering and a picture of pristine toenails, which instantly
20 catches the eye of all reasonable consumers, including Plaintiff, at the point of sale in
21 every transaction. The Product is sold in numerous retail stores and online stores.
22

23 35. HOW: Defendant made written misrepresentations right on the front
24 label of the Product that the Product was for nail fungus treatment, even though it is
25 not. As such, Defendant's claims are false and misleading. And as discussed in detail
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1 throughout this Complaint, Plaintiff and Class Members read and relied on
2 Defendant's representations and omissions before purchasing the Product.

3 36. WHY: Defendant misrepresented that its Product was suitable for nail
4 fungus treatment for the express purpose of inducing Plaintiff and Class Members to
5 purchase the Product at a substantial price premium. As such, Defendant profited by
6 selling the misrepresented Product to at least thousands of consumers throughout the
7 nation.
8
9

10 **CLAIMS**

11 **COUNT I**

12
13 **Violation of the Unfair Competition Law ("UCL")**
14 **Cal. Bus. & Prof. Code § 17200, *et seq.***
15 **(On behalf of the California Subclass)**

16 37. Plaintiff incorporates by reference the allegations contained in
17 paragraphs 1 through 36 of this complaint.

18 38. The UCL proscribes "any unlawful, unfair or fraudulent business act or
19 practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof.
20 Code § 17200.
21

22 39. The unlawful prong of the UCL prohibits any unlawful business
23 practices.
24

25 40. Defendants are a "business" as defined under the UCL.

26 41. Defendant's conduct was unlawful, in violation of the UCL, because
27 Defendant's conduct described in this complaint constitutes a violation of California's
28

False Advertising Law and the California Consumers Legal Remedies Act (“CLRA”) (as alleged in this Complaint) and all constitute separate and cumulative violations of the unlawful prong of the UCL.

42. The fraudulent prong of the UCL prohibits business practices that are likely to deceive the public.

43. Defendant’s practice of not disclosing the presence of *Listeria monocytogenes* rendered the Products less valuable, and then misrepresenting the contamination status at the expense of its competitors, is a practice that is likely to deceive members of the public.

44. Defendant’s conduct is fraudulent in violation of the UCL because it is likely to deceive a reasonable consumer:

- Defendant promoted and sold a Product that was falsely advertised, despite knowing that customers would expect the Product to cure nail fungus;
- Defendant represented through advertising, product packaging, and other sources that the Product possessed particular qualities that were inconsistent with Defendant’s actual knowledge of the Product

45. Plaintiff and Class Members would not have purchased the Product, or would not have purchased the Products at the prices they did had the Product not been advertised as a treatment for nail fungus.

1 46. Defendant was under a duty to properly advertise the Product because of
2 its exclusive knowledge, because the misrepresentations resulted in material and
3 unreasonable impairment to the Product.

4 47. Plaintiff and Class Members were unaware of Defendant's practices.
5 Had Defendant not marketed the Product as a treatment for nail and toenail fungus,
6 Plaintiff and Class Members would have been aware of the true nature of the Product
7 and would not have purchased the Product, and would have paid substantially less for
8 the Product.

9 48. The unfair prong of UCL prohibits unfair business practices that either
10 offend an established public policy or that are immoral, unethical, oppressive,
11 unscrupulous or substantially injurious to consumers.

12 49. Defendant repeatedly and misleadingly, inaccurately, and deceptively
13 advertised and marketed its Product to consumers—and Defendant continues to do
14 so. These practices offend an established public policy or are immoral, unethical,
15 oppressive, unscrupulous, or substantially injurious to consumers.

16 50. Defendant also acted in an unethical, unscrupulous, outrageous,
17 oppressive, and substantially injurious manner with respect to Plaintiff and the Class
18 Members by engaging in unfair and anticompetitive business practices that harmed
19 consumer welfare. Defendant engaged in unfair business practices and acts in at least
20 the following respects:

- 21 • Defendant promoted and sold a Product advertised for nail fungus treatment,

1 despite knowing the Product was not effective for that purpose;

- 2 • Defendant represented through advertising, product packaging, press releases,
3 and other sources that the Product possessed particular qualities that were
4 inconsistent with Defendant's actual knowledge of the Product
5

6 51. These are practices and uniform courses of conduct that offend an
7 established public policy or that are immoral, unethical, oppressive, unscrupulous, or
8 substantially injurious to consumers.
9

10 52. The harm to consumers, competition, and the general public substantially
11 outweighs any legitimate purpose or benefit of Defendant's conduct. There is no
12 legitimate reason why Defendant should be allowed to sell the Product without
13 providing its customers the opportunity to make fully informed purchases. There is
14 no legitimate reason why Defendant should be allowed to deceive its customers about
15 the efficacy of its Product.
16
17

18 53. Absent Defendant's unlawful, unfair and fraudulent conduct, Plaintiff
19 and Class Members would not have purchased the Product or would have paid
20 substantially less for it.
21

22 54. Plaintiff and Class Members accordingly seek appropriate relief,
23 including: (1) restitution under the UCL; and (2) such orders or judgments as may be
24 necessary to enjoin Defendants from continuing its unfair, unlawful, and fraudulent
25 practices. Plaintiff also respectfully seeks reasonable attorneys' fees and costs under
26 applicable law, including under California Code of Civil Procedure Section 1021.5.
27
28

COUNT II
California False Advertising Law
Cal. Bus. & Prof. Code § 17500
(On behalf of the California Subclass)

55. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 36 of this complaint.

56. Defendant violated Cal. Bus. & Prof. Code section 17500 by using false and misleading statements, and material omissions, to promote the sale of the Product and otherwise “concerning any circumstance or matter of fact connected with the proposed performance or disposition of services.”

57. The Product does not possess the level of quality or value that Defendant promised.

58. Defendant made uniform representations and material omissions that communicated to Plaintiff and Class Members that the Product was an effective nail fungus treatment, despite knowing the Product was not.

59. Had Plaintiff and Class Members known that the Product contained was not effective in treating nail fungus, they would not have purchased the Product in the first place.

60. Defendant omitted the material fact that the purportedly safe Product was not an effective treatment for nail fungus. Defendant had a duty to disclose the truthful nature of the Product.

61. Defendant knew, or in the exercise of reasonable diligence should have known, that its representations and omissions were false and misleading at the time it

1 made them. Defendant deliberately provided false representations and omissions to
2 prevent customers from learning the true nature of the Product and further inducing
3 its customers to purchase the Product.
4

5 62. Defendant's false and misleading advertising statements deceived the
6 general public.

7 63. As a direct and proximate result of Defendant's misleading and false
8 advertising, Plaintiff and Class Members have suffered injury-in-fact and have lost
9 money and property.
10

11 64. Plaintiff and Class Members reasonably relied to their detriment on
12 Defendant's material misrepresentations and omissions regarding its Product.
13

14 65. Plaintiff and Class Members seek to enjoin, under Bus. & Prof. Code
15 section 17535, the violations described herein and to require Defendant to issue a
16 recall and refund.
17

18 66. Defendant's false advertising will continue to harm consumers unless
19 and until it is enjoined.
20

21 67. Plaintiff and Class Members therefore seek an order requiring Defendant
22 to cease their false advertising and unlawful practices, provide full restitution of all
23 monies Defendant derived from its false advertising, interest at the highest rate
24 allowable by law, and for an award of reasonable attorney's fees and costs under
25 applicable law, including Code of Civil Procedure section 1021.5.
26
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COUNT III

**Violation of the California Consumers Legal Remedies Act (“CLRA”)
Cal. Civ. Code § 1770(a)(5), *et seq.*
(On behalf of the California Subclass)**

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 36 of this complaint.

69. Cal. Civ. Code section 1770(a)(5) of the CLRA prohibits representing that a seller’s goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.

70. Cal. Civ. Code section 1770(a)(7) of the CLRA prohibits representing that its goods or services are of a particular standard, quality, or grade, if they are of another.

71. Cal. Civ. Code section 1770(a)(9) of the CLRA prohibits advertising goods and services with the intent not to sell them as advertised.

72. Defendant violated Cal. Civ. Code sections 1770(a)(5) and 1770(a)(7) of the CLRA by representing that the Product was or treatment of nail fungus when, at the point of sale, Defendant knew or should have known that the Product was ineffective at treating nail fungus.

73. Defendant violated Cal. Civ. Code section 1770(a)(9) of the CLRA when it advertised the Product as an effective nail fungus treatment with the intent not to sell them as advertised.

1 74. As a result of these violations of certain sections of the CLRA, Plaintiff
2 incurred damages in the form of purchasing the Product at issue that lost all value as
3 a nail fungus treatment.

4
5 75. As a result of this violation, Plaintiff and Class Members have been
6 deprived of the nail fungus treatment Product which Defendant represented they were
7 purchasing. Had Plaintiff and Class Members known the true nature of the Product,
8 Plaintiff and Class Members would have paid less for the Product, or would not have
9 purchased the Product at all.

10
11 76. Under Cal Civ. Code section 1781(a), any consumer who suffers damage
12 as a result of a violation of this section may bring a class action on behalf of himself
13 and all those similarly situated.

14
15 77. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and the Class seek
16 injunctive and equitable relief for Defendant's CLRA violations. Concurrent with the
17 filing of this Complaint, Plaintiff has mailed an appropriate demand letter as required
18 under California Civil Code § 1782(a). If Defendant fails to take corrective actions
19 within 30 days of receipt of the demand letter, Plaintiff will amend his complaint to
20 include a request for claims for actual, punitive, and statutory damages, as
21 appropriate.

22
23
24 78. Plaintiff has no adequate remedy at law because he is currently unable to
25 determine whether he will be able to use the Product in the future, and he is uncertain
26 whether Defendants will correct the issue or provide other remedies. Unless the Court
27
28

1 enjoins further unlawful acts by Defendant, Plaintiff and Class Members face
2 uncertainty as to which of these choices would minimize their damage. Defendant
3 benefitted substantially from Plaintiff's purchases because Defendant received the
4 majority of the revenue from the purchases.
5

6 79. Therefore, Plaintiff and the Class are entitled to injunctive relief and all
7 other relief that the court deems proper, including costs and attorney's fees, under Cal.
8 Civ. Code section 1780.
9

10 **COUNT IV**
11 **Negligent Misrepresentation**
12 **(On behalf of the Nationwide Class or,**
13 **in the alternative, the California Subclass)**

14 80. Plaintiff incorporates by reference preceding paragraphs 1-36.

15 81. Defendant had a duty to truthfully represent the Product, which it
16 breached.

17 82. This duty was non-delegable, based on Defendant's position, holding
18 itself out as having special knowledge and experience in this area, an industry leader
19 in healthcare products.
20

21 83. These promises were outside of the standard representations that other
22 companies may make in a standard arms-length, retail context.
23

24 84. The representations took advantage of consumer's cognitive shortcuts
25 made at the point-of-sale and their trust in Defendant.
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85. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, his purchase of the Product.

COUNT V
Unjust Enrichment
(On behalf of the Nationwide Class or,
in the alternative, the California Subclass)

86. Plaintiff incorporates by reference preceding paragraphs 1-36.

87. Plaintiff brings this cause of action on behalf of himself and on behalf of the Class.

88. Plaintiff and Class members conferred a benefit on Defendant by purchasing the falsely advertised Product.

89. Defendant received the monies paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

90. Defendant accepted and retained the benefit in the amount of the profits they earned from Defendant's Product sales paid by Plaintiff and Class members.

91. Defendant has profited from their unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

92. Plaintiff does not have an adequate remedy at law against Defendant.

1 93. Plaintiff and Class members are entitled to restitution of the amount paid
2 for the Product and disgorgement of the profits Defendant derived from their
3 deceptively advertised Product sales.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of himself and the Classes defined above,
7 prays for relief as follows:

8
9 A. Determination that the claims alleged herein may be maintained as a
10 class action under Federal Rule of Civil Procedure 23, enter an order certifying the
11 Classes defined above, and appointing Plaintiff's counsel as Class Counsel and
12 Plaintiff as the representative of the Class;

13
14 B. Directing that Defendant bear the costs of any notice sent to the
15 Class(es);

16
17 C. Declaring that Defendant must disgorge, for the benefit of the Class(es),
18 all or part of the ill-gotten profits they received from the sale of the Product, or order
19 Defendant to make full restitution to Plaintiff and the members of the Class(es);

20
21 D. Awarding restitution and other appropriate equitable relief;

22 E. Granting an injunction against Defendant to enjoin it from conducting
23 their business through the unlawful, unfair and fraudulent acts or practices set forth
24 herein;

25
26 F. Granting an Order requiring Defendant to fully and appropriately recall
27 the Product;
28

1 G. Ordering a jury trial and damages according to proof;

2 H. Enjoining Defendant from continuing to engage in the unlawful and
3 unfair business acts and practices as alleged herein;

4
5 I. Awarding attorneys' fees and litigation costs to Plaintiff and members of
6 the Class(es);

7 J. Awarding civil penalties, prejudgment interest and punitive damages as
8 permitted by law; and
9

10 K. Ordering such other and further relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12
13 Plaintiff demands a trial by jury of all issues triable as of right.

14 DATED: August 20, 2025

15
16 Respectfully Submitted,

17 **The Wright Law Office, P.A.**

18 s/Nisha Wright

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

William Foreman

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
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DEFENDANTS

CVS Pharmacy, Inc.

County of Residence of First Listed Defendant Providence
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'25CV2147 WQHAHG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice</div> <div>PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)(A)
Brief description of cause:
False Advertising

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$5,000,0001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):
JUDGE _____ DOCKET NUMBER _____

DATE
Aug 20, 2025

SIGNATURE OF ATTORNEY OF RECORD
Nisha Wright

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.