

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLARKSON LAW FIRM, P.C.
Yana Hart (SBN 306499)
yhart@clarksonlawfirm.com
Cassandra Rasmussen (*phv forthcoming*)
crasmussen@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TASHA AMARAL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHATTEM INC. d/b/a Opella North
America, and SANOFI-AVENTIS U.S. LLC

Defendants.

Case No. 3:26-cv-5474

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

TABLE OF CONTENTS

Page No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. JURISDICTION6

III. VENUE7

IV. DIVISIONAL ASSIGNMENT7

V. PARTIES7

 A. Plaintiff Tasha Amaral7

 B. Defendant Chattem, Inc. d/b/a Opella North America9

 C. Defendant Sanofi-Aventis U.S. LLC9

VI. FACTUAL ALLEGATIONS10

 A. Defendants Built a Marketing Campaign Around the False and Misleading “Non-Habit Forming” Representation10

 B. Reasonable Consumers Understand “Non-Habit Forming” to Mean No Risk of Habitual Use.....16

 C. Defendants Knew that their “Non-Habit Forming” Representations were False17

 D. The Unpurchased Products Are Substantially Similar to the Purchased Product.....19

 E. Lack of Adequate Remedy at Law.....19

VII. CLASS ACTION ALLEGATIONS20

VIII. CAUSES OF ACTION23

IX. PRAYER FOR RELIEF39

1 Plaintiff Tasha Amaral (“Plaintiff”), individually and on behalf of all others similarly
 2 situated, as more fully described herein (the “Class” and “Class Members”), brings this class action
 3 complaint against Defendants Chattem, Inc. (“Chattem”), and Sanofi-Aventis U.S. LLC (“Sanofi
 4 US”) (together, “Defendants”), and alleges as follows:

5 I. INTRODUCTION

6 1. Millions of Americans suffer without a good night’s sleep. According to the CDC,
 7 more than one third of American adults are not getting enough sleep regularly.¹ Insufficient sleep
 8 is a prominent and pervasive problem in today’s society and is linked to depression, ADHD, obesity,
 9 Type 2 diabetes, cardiovascular disease, cancer, and Alzheimer’s.² Thus, consumers turn to over-
 10 the-counter products in search of sleep, which has become a “cultural obsession—fueling the rise
 11 of an entire industry.”³

12 2. Over the counter products promoting nighttime use are not used sporadically; they are
 13 taken routinely, habitually, night after night, often in stretches that blur together – a pattern well

14 ¹ *1 in 3 Adults Don’t Get Enough Sleep*, CDC,
 15 [https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2016/p0215-enough-](https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2016/p0215-enough-sleep.html)
 16 [sleep.html](https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2016/p0215-enough-sleep.html) (last visited June 1, 2026); *See also Sleeping Aids Market Share, Size, Trends, Industry*
 17 *Analysis Report, By Product (Mattresses & Pillows, Sleep Laboratories, Medications, Sleep*
 18 *Apnea Devices); By Sleep Disorders; By Region; Segment Forecast, 2026–2034*, POLARIS
 19 MARKET RESEARCH (June 2022), [https://www.polarismarketresearch.com/industry-](https://www.polarismarketresearch.com/industry-analysis/sleeping-aids-market)
 20 [analysis/sleeping-aids-market](https://www.polarismarketresearch.com/industry-analysis/sleeping-aids-market) (last visited June 1, 2026) (noting that 12% of Americans suffer
 21 from chronic insomnia, and often turn to sleep-aid products).

22 ² *See* Kristen L. Knutson, et. al, *Role of Sleep Duration and Quality in the Risk and Severity of*
 23 *Type 2 Diabetes Mellitus*, 116 *Arch Intern Med* 1768 (Sept. 18, 2006),
 24 <https://pubmed.ncbi.nlm.nih.gov/16983057/> (last visited June 1, 2026) (linking sleep loss to
 25 increased diabetes risk); Patrick H. Finan, et. al, *The Effects of Sleep Continuity Disruption on*
 26 *Positive Mood and Sleep Architecture in Healthy Adults*, 38 *Sleep* 1735 (2015),
 27 <https://gwern.net/doc/zeo/2015-finan.pdf> (last visited June 1, 2026) (sleep deprivation and
 28 disruption can lead to a decrease in positive mood); Vijay K. Chattu, et. al. *The Global Problem of*
Insufficient Sleep and Its Serious Public Health Implications, 7 *Healthcare* 1, 9-10 (2019),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6473877/> (last visited June 1, 2026) (“[g]ood
 sleep is necessary for good physical and mental health and a good quality of life”); *Sleep and*
Chronic Disease, Centers for Disease Control and Prevention (June 2023),
https://www.cdc.gov/pcd/collections/pdf/Sleep_Deprivation_collection_508.pdf (last visited June
 2, 2026) (linking the risk of diabetes, cardiovascular disease, obesity, and depression to
 insufficient sleep); Neil Howe, *America The Sleep-Deprived*, *Forbes* (Aug. 18, 2017),
[https://www.forbes.com/sites/neilhowe/2017/08/18/america-the-sleep-](https://www.forbes.com/sites/neilhowe/2017/08/18/america-the-sleep-deprived/?sh=684e9c611a38)
[deprived/?sh=684e9c611a38](https://www.forbes.com/sites/neilhowe/2017/08/18/america-the-sleep-deprived/?sh=684e9c611a38) (last visited June 1, 2026).

³ *See* Howe, *supra* note 2.

1 understood by the companies that market them. According to Gallup, a long-established research
 2 and analytics firm which has tracked public health and behavioral trends for decades, roughly 41%
 3 of U.S. adults who are using an over-the-counter (“OTC”) aid used the drugs for a year or longer.⁴
 4 Extrapolated to the greater U.S. population, these numbers indicate that nearly 10 million consumers
 5 habitually use sleep-aid Products.⁵ In a more recent study of 2,006 adults in the United States
 6 conducted in 2021 by the American Academy of Sleep Medicine (“AASM”), 51% reported using a
 7 sleep aid, and 53% reported that they used the aid “often” to fall asleep, with only 5% reporting that
 8 they relied on a sleep aid “rarely.”⁶ Therefore, the sleep aid market has become a global juggernaut,
 9 reaping nearly \$65 billion a year, which is only continuing to rise.⁷ Notably, North America
 10 accounts for the highest purported market share.⁸ A 2015 Consumer Reports survey of 4,023 adults
 11 found that 20 percent of participants reported use of OTC medication in the last year to improve
 12 sleep.⁹ Of those, almost 18 percent reported that they took OTC sleep-aids daily.¹⁰

13 3. Because of the prevalent use of sleep-aids, consumers desire products that are safe
 14 and do not cause significant side effects.¹¹ They specifically look for sleep-aid products that cannot
 15 and do not cause habitual use,¹² turning to natural alternatives and products that are advertised as
 16 non-habit forming.¹³

17
 18 ⁴ *Id.*

19 ⁵ *Id.*

20 ⁶ *AASM Sleep Prioritization Survey: Sleep Aid Use*, AMERICAN ACADEMY OF SLEEP MEDICINE (2021), <https://aasm.org/wp-content/uploads/2021/04/sleep-prioritization-survey-2021-sleep-aid-use.pdf> (last visited June 1, 2026).

21 ⁷ *See supra* note 1, *Sleeping Aids Market Share, Size, Trends, Industry Analysis Report*.

22 ⁸ *Id.* (“The high prevalence of sleep disorders contributes to the regional market dominance.”).

23 ⁹ Ginger Skinner, *Can You Get Hooked on Over-the-Counter Sleep Aids?*, CONSUMER REPORTS (Dec. 29, 2016), <https://www.consumerreports.org/drugs/over-the-counter-sleep-aids-can-you-get-hooked/> (last visited June 1, 2026).

24 ¹⁰ *Id.*

25 ¹¹ Eric Suni, et. al, *Sleep Aids*, SLEEP AIDS: KNOW THE TYPES, BENEFITS, & RISKS (July 9, 2025), <https://www.sleepfoundation.org/sleep-aids> (last visited June 1, 2026).

26 ¹² Eric Suni, et. al, *Natural Sleep Aids*, SLEEP AIDS (July 15, 2025), <https://www.sleepfoundation.org/sleep-aids/natural-sleep-aids#:~:text=Many%20customers%20prefer%20natural%20sleep%20supplements%20because%20they,about%20the%20addictive%20potential%20of%20prescription%20sleep%20aids> (last visited June 1, 2026).

27 ¹³ *See generally id.*; *see also Functional Ingredients in Sleep Supplements: Global Market Overview*, INNOVA MARKET INSIGHTS (Sept. 17, 2025), <https://www.innovamarketinsights.com/trends/functional-ingredients-in-sleep-supplements/> (last visited June 1, 2026).

4. To capitalize on consumers' demand for non-habit forming sleep aids, and in an effort to increase profits, Defendants prominently marketed their Unisom® brand Over-The-Counter Sleep Aid Products that contain Diphenhydramine (the "Products") as "Non-Habit Forming" (hereinafter, "Habit Representation" and/or "Challenged Representation"), deliberately leading reasonable consumers, including Plaintiff, to incorrectly believe that the Products do not and cannot cause habitual use. *See infra*, ¶ 5 (Product List). Fair and accurate depictions of examples of the Products' front-facing labels and packaging are included below, featuring the Challenged Representation.¹⁴



¹⁴ *Unisom SleepGels Softgels, 32 CT*, CVS PHARMACY, <https://www.cvs.com/shop/unisom-sleepgels-softgels-32-ct-prodid-1650017> (last visited June 1, 2026); *Unisom PM Pain Nighttime Sleep Aid + Pain Reliever, 30 CT*, WALMART, <https://www.walmart.com/ip/2-pack-Unisom-PM-Pain-Nighttime-Sleep-aid-Pain-Reliever-Acetaminophen-Diphenhydramine-HCl-30-Caplets/13371964871> (last visited June 1, 2026); *Unisom SleepMinis Mini-Capsules Nighttime Sleep-Aid, 60 CT*, WALMART, <https://www.walmart.com/ip/Unisom-SleepMinis-Mini-Capsules-Nighttime-Sleep-Aid-60-Count/46120225> (last visited June 1, 2026).



Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 5. The “Non-Habit Forming” representation is prominently displayed at the top front of
2 every Product label, designed to capture consumers’ attention. It is there to reassure the public that
3 this accessible over-the-counter medication to combat sleeplessness will not come with the risks
4 associated with dependence. But the Products contain diphenhydramine HCl, a sedating
5 antihistamine known to lead to dependence, chronic consumption of which can lead to abuse,
6 withdrawal, agitation, tremors, neurologic symptoms, and mental status changes – including
7 psychosis.¹⁵

8 6. Given the known pharmacological profile of diphenhydramine and its intended use as
9 a routine nighttime sleep aid – naturally taken repeatedly over consecutive nights – Defendants
10 knew that consumers would use the Products in sustained patterns that increase the risk of
11 dependence and/or abuse. Yet, the Products’ front label offered a categorical reassurance that the
12 Products are “non-habit forming,” without caveat, creating a misleading impression of the Products’
13 effects which does not reflect the reality of its repeated use.

14 7. Consumers are not medical specialists who can reasonably be expected to evaluate
15 the clinical significance of ingredients listed on the product label, nor should they be required to do
16 so. They also cannot reasonably determine whether other ingredients in the Products mitigate or
17 offset any habit-forming properties of other ingredients, and lack the specialized knowledge
18 required to assess pharmacological interactions. When faced with a prominent, front-facing
19 representation such as “Non-Habit Forming,” reasonable consumers are entitled to rely on that
20 representation instead of second-guessing it and researching medical literature. Consumers purchase
21 over-the-counter sleep aids in ordinary retail settings – walking down the aisle, scanning labels,
22 placing products in carts. They do not undergo the same deliberative process akin to purchasing a
23 house or even a car. It is a routine transaction, shaped by the information presented at a glance.

24 8. As a result of Defendants’ deceptive advertising and marketing practices, consumers,

25
26 ¹⁵ Saran J., Barbano, R., *Chronic diphenhydramine abuse and withdrawal*, 7 NEUROL. CLIN. PRACT.
27 439 (Oct. 2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5874453/>; Kate Warren, *Acute*
28 *Delirium Associated with Diphenhydramine Withdrawal in a Patient with Complex Medical*
Conditions, 20 AM. J. PSYCHIATRY RESIDENTS’ J. 12 (June 4, 2025),
<https://pmc.ncbi.nlm.nih.gov/articles/PMC5874453/>.

1 including Plaintiff, are paying a premium for “non-habit-forming” sleep aid products that, in fact,
2 induce habitual use.

3 9. Through falsely, misleadingly, and deceptively labeling, packaging, and advertising
4 the Products with the Challenged Representation, Defendants sought to take advantage of
5 consumers’ desire, perceived value, and willingness to pay more for safer sleep-aids that do not
6 pose a risk of forming a habit. In this way, Defendants have charged consumers a premium for habit-
7 forming products falsely advertised and warranted as “*Non-Habit Forming*,” while reaping the
8 financial benefits. Defendants have done so at the expense of unwitting consumers as well as
9 Defendants’ lawfully acting competitors who, given the science demonstrating a risk of habit
10 formation, do not falsely label products with active ingredient diphenhydramine as “non habit
11 forming,” thus giving Defendants an unfair competitive advantage. Accordingly, Defendants’ Habit
12 Representation is misleading and deceptive, and therefore unlawful.

13 10. The products at issue are the Unisom® brand Over-The-Counter Sleep Aid products,
14 which are labeled with the Challenged Representation, contain the active ingredient
15 diphenhydramine, and are sold to consumers in the United States, regardless of the Products’ form,
16 size, or variations—such as pill count, multi or single pack, flavors, or additional features
17 (collectively referred to herein and throughout this complaint as the “Products”). The Products
18 include, but are not necessarily limited to, the following product lines:

- 19 a) Unisom® SleepGels;
- 20 b) Unisom® SleepMinis;
- 21 c) Unisom® PM Pain.

22 11. Plaintiff brings this action to recover the price premium that consumers overpaid for
23 Products that do not comport with the “Non-Habit Forming” representation, and to obtain injunctive
24 relief requiring Defendants to cease manufacturing, marketing, and selling the Products with the
25 false and misleading Challenged Representation.

26 II. JURISDICTION

27 12. This Court has original jurisdiction over this action pursuant to the Class Action
28 Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100 or more

1 members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
2 minimal diversity exists. This Court also has supplemental jurisdiction over the state law claims
3 pursuant to 28 U.S.C. § 1367.

4 13. This Court has personal jurisdiction over Defendants because Defendants
5 purposefully availed themselves of this forum by conducting substantial business within California
6 such that Defendants have significant, continuous, and pervasive contacts with the State of
7 California.

8 III. VENUE

9 14. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
10 the events and omissions giving rise to Plaintiff's claims occurred in this District. Specifically,
11 Plaintiff purchased the unlawful Products in this District, and Defendants have deliberately
12 marketed, advertised, and sold the Products within this District using the Challenged
13 Representation.

14 IV. DIVISIONAL ASSIGNMENT

15 15. A substantial part of the events or omissions giving rise to the claims in this action
16 occurred San Francisco County, California—where Plaintiff resides and purchased the Product at
17 issue. *See infra* at ¶¶ 11. Accordingly, assignment to the San Francisco Division is proper pursuant
18 to Civil L.R. 3-2(c) and Civil L.R. 3-2(d).

19 V. PARTIES

20 A. Plaintiff Tasha Amaral

21 16. Plaintiff Tasha Amaral is, and at all relevant times hereto was, an individual residing
22 in the state of California.

23 17. On or around April 1, 2025, Plaintiff purchased the Unisom SleepGels (60 count) (the
24 “Purchased Product”) for approximately \$12.48 from Amazon.com while located in San Francisco,
25 California.

26 18. In making the purchase, Plaintiff read the Challenged Representation on the Product's
27 label or packaging, leading Plaintiff to believe that the Product does not, and cannot, cause habitual
28 use—i.e., does not pose a risk of frequent use over prolonged periods.

1 19. At the time of purchase, Plaintiff did not know that the Challenged Representation
2 was false—i.e., that the Product can or does cause habitual use.

3 20. Plaintiff did not notice any disclaimer, qualifier, or other explanatory statement or
4 information on the Product’s labels or packaging that contradicted the prominent Challenged
5 Representation or otherwise suggested that the Products would or may cause habitual use.

6 21. Plaintiff would not have purchased the Product or would not have paid as much for
7 the Product, had Plaintiff known that the Challenged Representation was false—i.e., that the
8 Products can or do cause habitual use.

9 22. Plaintiff continues to see the Products available for purchase and desires to purchase
10 them again if the Challenged Representation was in fact true.

11 23. Plaintiff does not personally know whether the Products or diphenhydramine can lead
12 to frequent use over prolonged periods, or the psychological impacts of sleep aides and whether
13 they can or cannot lead users to habitually use them. Plaintiff does not possess any specialized
14 knowledge, skill, experience, or education in sleep-aid products, similar to and including the active
15 or inactive ingredients used in the Products at issue. Plaintiff also does not know and cannot
16 reasonably determine whether other ingredients in the Products mitigate or offset any habit-forming
17 properties, and lacks the specialized knowledge required to assess pharmacological interactions of
18 those ingredients. Plaintiff also is not aware of whether Defendants have changed their ingredients
19 or formula to ensure that the Products become consistent with the representation on the label. As a
20 result, Plaintiff had and still has no way of determining whether the Challenged Representation on
21 the Products were and are true.

22 24. Plaintiff is, and continues to be, unable to rely on the truth of the Challenged
23 Representation on the Products’ labels.

24 25. Defendants continue to advertise, market, and sell the Products with the Challenged
25 Representation. Plaintiff would like to purchase the Products in the future if they lived up to and
26 conformed with the Challenged Representation. However, Plaintiff is an average consumer who is
27 not sophisticated in the chemistry, medicine, manufacturing, formulation, and psychological
28 impacts of sleep-aid products. Indeed, Plaintiff does not have any personal knowledge regarding

1 active ingredients and the formulations of the Products. Thus, Plaintiff cannot accurately
2 differentiate between active ingredients in sleep-aid products that pose a risk of habitual use and
3 those which do not and cannot. Since Plaintiff desires to purchase the Products again to obtain the
4 benefits of the Challenged Representation—despite the fact that the Products were once marred by
5 false advertising or warranties—Plaintiff would likely and reasonably, but incorrectly, assume the
6 Products are true to and conform with the Challenged Representation on their labels, packaging,
7 and Defendants’ advertisements, including Defendants’ website and social media platforms.
8 Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendants have fixed
9 the Products such that Plaintiff may buy them again, believing they are no longer falsely advertised
10 and warranted, and instead believing that they comply with the Challenged Representation. In this
11 regard, Plaintiff is currently and in the future deprived of the ability to rely on the Challenged
12 Representation to purchase the Products.

13 **B. Defendant Chattem, Inc. d/b/a Opella North America**

14 26. Defendant Chattem, Inc., doing business as Opella North America (“Chattem”), is a
15 Tennessee corporation with its principal place of business at 1715 West 38th Street, Chattanooga,
16 Tennessee 37409.

17 27. At all times relevant to this action, Chattem has manufactured, marketed, distributed,
18 and sold the Class Products, identified as the manufacturer on Class Product packaging, and is the
19 entity listed on the Unisom website’s contact page for consumer inquiries.

20 28. At all times relevant to this action, Chattem was responsible for the design, creation,
21 and dissemination of the Challenged Representations, and for the failure to disclose the material
22 information identified in the Challenged Omissions, alleged herein.

23 **C. Defendant Sanofi-Aventis U.S. LLC**

24 29. Defendant Sanofi-Aventis U.S. LLC (“Sanofi US”) is a Delaware limited liability
25 company with its principal place of business at 55 Corporate Drive, Bridgewater, New Jersey 08807.

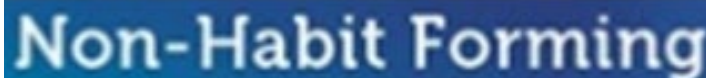
26 30. On information and belief, Sanofi US has at all relevant times jointly with Chattem
27 manufactured, distributed, marketed, advertised, labeled, and sold the Class Products throughout
28 the United States.

1 34. Because mice and rats are biologically similar to humans, they provide “excellent”
2 animal models for studying human physiology. Mice and rats share 95 percent of their genes with
3 humans, have similar immune systems, and obtain similar diseases for many of the same genetic
4 reasons. Rats are also similar to humans in how their brains interpret rewards and in habit formation.
5 Because of this, mice and rats serve as primary model systems for studying human pathophysiology
6 in clinical settings.

7 35. Consistent with the science demonstrating that diphenhydramine is habit forming,
8 other sleep aids containing this same active ingredient, which are sold by Defendants’ competitors,
9 do not feature the misleading “Non-Habit Forming” label. For example, CVS’s “Nighttime Sleep
10 Aid” contains front-label claims such as “Fall asleep fast” and “easy to swallow.”¹⁷ Walgreens’
11 “Nighttime Sleep Aid” includes front-label claims including “Maximum Strength,” “Nighttime,”
12 and “Fall asleep fast.”¹⁸ Both of these products contain the same active ingredient as the Products
13 but neither has labels that claim that they are “Non-Habit Forming.”

14 36. By falsely labeling their product as “Non-Habit Forming,” Defendants exploit
15 vulnerable consumers who seek relief from sleep difficulties, giving them a false sense of safety
16 and security based on its “non-habit forming” representation. This deceptive labeling not only takes
17 advantage of these consumers but also provides Defendants with an unfair competitive advantage
18 over other companies which offer similar products with the same active ingredient but which refrain
19 from making such misleading claims.

20 37. Defendants falsely and misleadingly label the Products with the Challenged
21 Representation: “Non-Habit Forming” as depicted below.

22
23 
24

25
26 ¹⁷ CVS Nighttime Sleep Aid Tablets, 48-ct, CVS PHARMACY, <https://www.cvs.com/shop/cvs-nighttime-sleep-aid-tablets-prodid-1012018> (last visited June 1, 2026).

27 ¹⁸ Walgreens Nighttime Sleep Aid Softgels, 32-ct, WALGREENS,
28 <https://www.walgreens.com/store/c/walgreens-nighttime-sleep-aid-softgels/ID=prod3239480-product> (last visited June 1, 2026).

1 38. The Challenged Representation on the Products’ packaging is conspicuous and
2 designed to grab the consumer’s attention.

- 3 a. **Placement.** The Challenged Representation is prominently placed on the top right of
4 the front display panel of each Products’ front label or packaging.
- 5 b. **Sparsity.** The Challenged Representation is not hidden in a sea of information;
6 rather, the front display panel contains scant information about the Products, largely
7 limited to the brand name (Unisom®), identity of the product line (e.g., Nighttime
8 Sleep-Aid a) and size or count (e.g., 100 SoftGels).
- 9 c. **Typeface.** The Challenged Representation stands out from the scant information
10 contained on the front panel, prominently displayed with a bold and large typeface,
11 clear and legible font, and highly visible letters that starkly contrast with the
12 Products’ background.

13 39. In this way, Defendants use the carefully designed labels and packaging, including
14 the Challenged Representation’s placement, repetition, and typeface, alongside the sparsity of
15 competing information, to perpetuate the false notion that the Products are “non-habit-forming.”
16 The net-effect or net-impression of consumers viewing the Products’ labels or packaging is that the
17 Products are “non-habit-forming.”

18 40. Although each of the Products at issue is marketed with the Challenged
19 Representation, the Products, specifically diphenhydramine (an ingredient used in the Products),
20 can cause habitual use. Habitual use of the Products containing diphenhydramine creates a risk of
21 misuse.

22 41. The American Psychological Association (“APA”) defines habit as “well-learned
23 behavior or automatic sequence of behaviors that is relatively situation specific and over time has
24 become motorically reflexive and independent of motivational or cognitive influence---that is, it is
25 performed with little or no conscious intent.”¹⁹ Habits formed through repetition of behavior in
26 specific contexts are automatically triggered as a response to contextual clues that have been

27 _____
28 ¹⁹ APA Dictionary of Psychology “Habit”, AM. PSYCH. ASS’N, <https://dictionary.apa.org/habit> (last visited June 1, 2026).

1 associated with their performance and are formed through a psychological pattern commonly known
2 as a “habit loop.”²⁰

3 42. The APA defines habit-formation as “the process by which, through repetition or
4 conditioning, animals or humans acquire a behavior that becomes regular and increasingly easy to
5 perform.”²¹

6 43. Drug Habituation (e.g., habit of using a substance) results from the repeated
7 consumption of a drug. The characteristics of this include: a desire (but not a compulsion) to
8 continue using a drug or substance for the sense of improved well-being and a degree of psychic
9 dependence on the effect of the drug or substance (but absence of physical dependence).²²

10 44. Most people have a bedtime routine to assist with regular and quality sleep patterns.
11 Data from the CDC shows that more than 8 percent of adults take a sleep aid more than four times
12 a week as a part of their bedtime routine to help fall or stay asleep.²³ Decades of psychological
13 research demonstrate that repetition of a simple action (such as taking a sleep aid like the Product)
14 in a consistent context (before going to bed) leads to the action being activated upon subsequent
15 exposure to those external cues (that is, habitually). This is the case, and such habit is likely to
16 persist, even after conscious attention, motivation, or interest is reduced or dissipates.²⁴

17 ²⁰ *Habit Formation*, PSYCHOLOGY TODAY, <https://www.psychologytoday.com/us/basics/habit-formation> (last visited June 1, 2026); see also Phillipa Lally, Cornelia H. M. Van Jaarsveld, Henry W. W. Potts, & Jane Wardle, *How are habits formed: Modelling habit formation in the real world*, EUROPEAN J. OF SOCIAL PSYCH., 40, 998–1009 (July 16, 2009), <https://scihub.ru/10.1002/ejsp.674> (last visited June 1, 2026).

18 ²¹ APA Dictionary of Psychology “Habit Formation”, AM. PSYCH. ASS’N, <https://dictionary.apa.org/habit-formation> (last visited June 1, 2026).

19 ²² *Expert Committee on Addiction-Producing Drugs (Seventh Report)*, World Health Organization, No. 116 (1957), https://apps.who.int/iris/bitstream/handle/10665/40371/WHO_TRS_116.pdf?sequence=1 (last visited June 1, 2026).

20 ²³ Cynthia Reuben, *Morbidity and Mortality Weekly Report: QuickStats: Percentage of adults aged ≥18 years who took medication to help fall or stay asleep four or more times in the past week, by sex and age group — National Health Interview Survey, United States, 2017–2018*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 13, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6849a5.htm> (last visited June 1, 2026).

21 ²⁴ Benjamin Gardner, et al., *Making health habitual: the psychology of ‘habit-formation’ and general practice*. 62 BRITISH JOURNAL OF GENERAL PRACTICE 664, 664 (Dec. 2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3505409/> (last visited Jan. 27, 2023); see also Peter
22
23
24
25
26
27
28

1 45. Habit is not the same as addiction. A habit does not require any drug blunting effect
2 or physical dependence to form like an addiction requires (i.e., increase in user’s physical tolerance
3 to the drug whereby more of the drug is needed to create the same effect). “Habits . . . are like a
4 lesser form of addiction: [t]he more you engage in the past, the more likely you are to engage
5 today.”²⁵ Habitual behavior in relation to drug-taking habits is characterized as “behavior that has
6 become automatized, highly stimulus bound, inflexible, and insensitive to the associated outcomes
7 (positive or negative).”²⁶ The role of habituation is an “important contribution . . . to our
8 understanding of chronic relapsing drug use.”²⁷

9 46. Diphenhydramine is the active ingredient in all the Products. Diphenhydramine users
10 are at risk of habitually using the Products,²⁸ as daily use and overuse is common.²⁹ Specifically,
11 the Products are used in a situation-specific context, where consumers incorporate them into a
12 bedtime routine that becomes more motorically reflexive and less dependent on motivational or
13 cognitive influence. Indeed, consumers’ repeated use of the Products is likely to occur without their
14 conscious awareness as the “non-habit forming” representation lulls them into a false sense of
15 safety. Medication that provides a feeling of relaxation, sedation, wellbeing, or euphoria is more
16 likely to be habit-forming.

17 47. The habitual use of diphenhydramine creates a risk of misusing products containing

18
19
20 _____
21 J. Bayley, et al., *Robust habit learning in the absence of awareness and independent of the medial*
temporal lobe. 436 NATURE 550, 550 (May 4, 2006) available at
<https://ncbi.nlm.nih.gov/pmc/articles/PMC1457096/> (last visited Jan. 27, 2023).

22 ²⁵ Carmen Nobel, *How to Get People Addicted to a Good Habit*, Forbes (Jan. 27, 2018),
23 [https://www.forbes.com/sites/hbsworkingknowledge/2018/01/27/how-to-get-people-addicted-to-a-](https://www.forbes.com/sites/hbsworkingknowledge/2018/01/27/how-to-get-people-addicted-to-a-good-habit)
good-habit (last visited June 1, 2026).

24 ²⁶ Zsuzsika Sjoerds, et al., *The role of habits and motivation in human drug addiction: a reflection*,
25 5 Front Psychiatry 1, 1 (Jan. 29, 2014),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3905212/pdf/fpsyt-05-00008.pdf> (last visited June
1, 2026).

26 ²⁷ *Id.* at 2.

27 ²⁸ Skinner, *supra* note 10.

28 ²⁹ Antonia Nemanich, et al., *Increased rates of diphenhydramine overdose, abuse, and misuse in*
the United States, 2005–2016, 59 Clinical Toxicology 1 (Mar. 10, 2021),
<https://www.tandfonline.com/doi/full/10.1080/15563650.2021.1892716> (last visited June 1, 2026).

1 the ingredient.³⁰

2 48. The sedative effects of diphenhydramine, combined with its ability to include feelings
3 of relaxation and well-being, make it prone to habitual use even without physical addiction. Clinical
4 research has shown that tolerance to the sedative effects of diphenhydramine can develop within
5 days – as little as only four days, reducing its effectiveness with repeated use.³¹

6 49. Consumers are not expected to have the knowledge that the medication may become
7 less effective or habit forming with prolong use, and may reasonably believe that they can use a
8 sleep aid, labeled “non-habit forming” daily, without risk of tolerance or dependence.

9 50. The high potential for misuse stems from the development of a tolerance to
10 diphenhydramine and an onslaught of withdrawal symptoms that worsen with prolonged use.³²
11 Diphenhydramine blocks the action of acetylcholine, a neurotransmitter involved in various bodily
12 functions.³³ The drug inhibits the reuptake of serotonin, another neurotransmitter affecting mood
13 regulation, contributing to misuse as individuals seek the familiar pattern of its sedating and
14 hallucinogenic effects.³⁴ Frequent use of diphenhydramine leads to developing a tolerance to the
15 drug that makes it difficult to stop without facing withdrawal symptoms.³⁵ Cases documenting the

16
17 ³⁰Jagroop S. Saran, et al., *Chronic diphenhydramine abuse and withdrawal*, 7 *Neurology: Clinical*
18 *Practice* 439 (Oct. 2017), <https://www.neurology.org/doi/10.1212/CPJ.0000000000000304> (last
19 visited June 1, 2026); David F. Craig & Clive S. Mellor, *Dimenhydrinate dependence and*
20 *withdrawal*, 142 *Can. Med. Assoc. J.* 970, 970 (May 1, 1990),
21 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1451752/pdf/cmaj00214-0060.pdf> (last visited
22 June 1, 2026); Fabrizio Schifano, et al., *Focus on Over-the-Counter Drugs’ Misuse: A Systematic*
23 *Review on Antihistamines, Cough Medicines, and Decongestants*, 12 *Frontiers in Psychiatry* 1, 9
24 (May 7, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8138162/> (last visited June 1,
25 2026).

26 ³¹GS Richardson, et al., *Tolerance to Daytime Sedative Effects of H1 Antihistamines* 22, *J. of Clin.*
27 *Pharm.* 511-515 (Oct. 2022); Chen TY, et al., *Diphenhydramine dependence through deep*
28 *intramuscular injection resulting in myonecrosis and prolonged QT c interval*, 39 *J. Clin. Pharm.*
Therapeutics 325-327 (2014).

³² Saran, *supra* note 36, at 440.

³³ Antonia Nemanich, et al., *Increased rates of diphenhydramine overdose, abuse, and misuse in*
the United States, 2005–2016, 59 *Clinical Toxicology* 1002 (Mar. 10, 2021),
<https://www.tandfonline.com/doi/full/10.1080/15563650.2021.1892716> (last visited June 1, 2026).

³⁴ *Id.*

³⁵ Paula K. Schweitzer, et al., *Sleepiness and performance during three-day administration of*
cetirizine or diphenhydramine, 94 *J. Allergy Clinical Immunology* 716, 722 (Oct. 1994),
<https://pubmed.ncbi.nlm.nih.gov/7930305/> (last visited June 1, 2026).

1 severe effects of diphenhydramine dependence illustrate the risk undertaken by consumers who
 2 purchase a product containing the ingredient.³⁶ From 2005 to 2016, there was a reported 63 percent
 3 increase in intentional exposure to diphenhydramine.³⁷ The decade-long study found that adults
 4 over 55 had a 230% increase in rates of diphenhydramine misuse.³⁸ The pharmacological properties
 5 of diphenhydramine commonly induce habitual misuse and dependence. The Products’ non-habit-
 6 forming representations falsely suggesting that consumers are not at risk further exacerbate the
 7 alarming probability of dependency associated with the use of Defendants’ Products.

8 **B. Reasonable Consumers Understand “Non-Habit Forming” to Mean No Risk of**
 9 **Habitual Use**

10 51. The Challenged Representation, in isolation or combined with Defendants’ pervasive
 11 marketing campaign and brand strategy, lead reasonable consumers, like Plaintiff, into believing
 12 the Products conform to the Challenged Representation. More specifically, reasonable consumers
 13 interpret the Challenged Representation to mean that the Products are “non-habit-forming”—
 14 meaning that the Products do not and cannot cause habitual use—i.e., do not pose a risk of frequent
 15 routine use over prolonged periods. This interpretation is not only consistent with the APA’s
 16 definition and medical understanding of “habit,” as described above, but it is also consistent with
 17 the ordinary and common usage of the term “habit” defined by various dictionaries, as follows:

- 18 a. Cambridge Dictionary: “something that you do often and regularly, sometimes
 19 without knowing that you are doing it”; “a particular act or way of acting that you
 20 tend to do regularly”³⁹

21 ³⁶ Anne Roussin, et al., *Misuse and Dependence on Non-Prescription Codeine Analgesics or*
 22 *Sedative H1 Antihistamines by Adults: A Cross-Sectional Investigation in France*, 8 PLOS ONE 1,
 23 1 (Oct. 3, 2013), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0076499> (last
 24 visited June 1, 2026); Caroline Bonham & Florian Birkmayer, *Severe Diphenhydramine*
Dependence and Withdrawal: Case Report, 5 J. Dual Diagnosis 97, 101–102 (Jan. 20, 2009),
<https://www.tandfonline.com/doi/abs/10.1080/15504260802620269> (last visited June 1, 2026).

25 ³⁷ Antonia Nemanich, Erica Liebelt, & Amber K. Sabbatini, *Increased Rates of Diphenhydramine*
 26 *Overdose, Abuse, and Misuse in the United States, 2005–2016*. 59 *Clinical Toxicology* 1002, 1004
 (Feb. 2021) [https://docslib.org/doc/12853967/increased-rates-of-diphenhydramine-overdose-](https://docslib.org/doc/12853967/increased-rates-of-diphenhydramine-overdose-abuse-and-misuse-in-the-united-states-2005-2016)
 27 [abuse-and-misuse-in-the-united-states-2005-2016](https://docslib.org/doc/12853967/increased-rates-of-diphenhydramine-overdose-abuse-and-misuse-in-the-united-states-2005-2016) (last visited June 1, 2026).

³⁸ *Id.* at 1005.

³⁹ Cambridge Dictionary, *Habit*, <https://dictionary.cambridge.org/dictionary/english/habit> (last
 28 visited June 1, 2026).

- 1 b. Merriam-Webster: “a settled tendency or usual manner of behavior”; “an acquired
2 mode of behavior that has become nearly or completely involuntary”; “a behavior
3 pattern acquired by frequent repetition or physiologic exposure that shows itself in
4 regularity or increased facility of performance”⁴⁰
- 5 c. Collins Dictionary: “A habit is something that you do often or regularly”; “a thing
6 done often and hence, usually, done easily; practice; custom”; “a pattern of action that
7 is acquired and has become so automatic that it is difficult to break”; “a tendency to
8 perform a certain action or behave in a certain way; usual way of doing”; “an acquired
9 behavior pattern regularly followed until it has become almost involuntary”;
10 “customary practice or use”; “a particular practice, custom, or usage”; “a dominant or
11 regular disposition or tendency”⁴¹
- 12 d. Dictionary.com: “an acquired behavior pattern regularly followed until it has become
13 almost involuntary”; “customary practice or use”; “a tendency or disposition to act in
14 a particular way”; “established custom, usual practice, etc.”⁴²
- 15 e. Oxford Learners Dictionary: “a thing that you do often and almost without thinking,
16 especially something that is hard to stop doing”; “usual behaviour”⁴³

17 **C. Defendants Knew that their “Non-Habit Forming” Representations were False**

18 52. Defendants knew that the Challenged Representation was false, misleading,
19 deceptive, and unlawful at the time that Defendants manufactured, marketed, advertised, labeled,
20 and sold the Products using the Challenged Representation to Plaintiff and the Class. Defendants
21 intentionally and deliberately used the Challenged Representation, alongside its marketing
22 campaign and brand strategy, to cause Plaintiff and similarly situated consumers to buy the Products
23 with the belief that the Challenged Representation is true.

24 53. Defendants named and marketed the Products with the Challenged Representation but

25 ⁴⁰ Merriam-Webster Dictionary, *Habit*, <https://www.merriam-webster.com/dictionary/habit> (last
26 visited June 1, 2026).

27 ⁴¹ Collins Dictionary, *Habit*, <https://www.collinsdictionary.com/dictionary/english/habit> (last
28 visited June 1, 2026).

⁴² Dictionary.com, *Habit*, <https://www.dictionary.com/browse/habit> (last visited June 1, 2026).

⁴³ Oxford Learners Dictionary, *Habit*,
<https://www.oxfordlearnersdictionaries.com/definition/english/habit> (last visited June 1, 2026).

1 opted to formulate and manufacture them in a manner that does not conform to the representation.
2 Specifically, Defendants named and advertised the Products as “Non-Habit Forming” sleep-aids.
3 However, the Products pose a risk of causing habitual use because they contain diphenhydramine.

4 54. Defendants knew, or should have known, that the Challenged Representation would
5 lead reasonable consumers into believing that the Products would not result in habitual use.
6 Defendants labeled and packaged each of the Products with the Challenged Representation and
7 utilized a long-standing brand strategy to identify the Products as “non-habit-forming.” Defendants
8 have an obligation under section 5 of the Federal Trade Commission Act, codified as 15 U.S.C. §
9 45, to evaluate their marketing claims from the perspective of a reasonable consumer. That means
10 Defendants are statutorily obligated to consider whether the Challenged Representation, be it in
11 isolation or conjunction with its marketing campaign, would mislead reasonable consumers into
12 believing that the Products are “non-habit-forming.” Thus, Defendants either knew the Challenged
13 Representation was misleading before it marketed the Products to the Class, including Plaintiff, or
14 Defendants would have known it was deceptive had they complied with their statutory obligations.

15 55. Defendants also knew that the Challenged Representation was material to consumers
16 when making their purchasing decisions. First, manufacturers and marketers, like Defendants,
17 generally reserve the front primary display panel of labels of packaging on consumer products for
18 the most important and persuasive information, which they believe will motivate consumers to buy
19 the products. Here, the conspicuousness of the Challenged Representation on the Products’ labels
20 and packaging demonstrates Defendants’ awareness of its importance to consumers and Defendants’
21 understanding that consumers prefer and are motivated to buy products that conform to the
22 Challenged Representation. Second, manufacturers and marketers repeat marketing claims to
23 emphasize and characterize a brand or product line, shaping the consumers’ expectations, because
24 they believe those repeated messages will drive consumers to buy the Product. Here, the constant,
25 unwavering use of the Challenged Representation on the Products, advertisements, and throughout
26 Defendants’ marketing campaign, evidence Defendants’ awareness that the falsely advertised
27 Product-attribute is important to consumers. It also evidences Defendants’ intent to convince
28 consumers that the Products conform to the Challenged Representation and, ultimately, drive sales.

1 56. Defendants, as the manufacturer and marketer of the Products, had exclusive control
2 over the Challenged Representation’s inclusion on the Products’ labels, packaging, and
3 advertisements—i.e., Defendants readily and easily could have stopped using the Challenged
4 Representation to sell the Products if they had chosen to do so. However, despite Defendants’
5 knowledge of the Challenged Representation’s falsity, and Defendants’ knowledge that consumers
6 reasonably rely on the Challenged Representation in deciding to buy the Products, Defendants
7 deliberately chose to market the Products with the Challenged Representation, thereby misleading
8 consumers into buying or overpaying for the Products. Thus, Defendants knew, or should have
9 known at all relevant times that the Challenged Representation misleads reasonable consumers, such
10 as Plaintiff, into buying the Products to attain the product-attributes that Defendants falsely
11 advertised and warranted.

12 **D. The Unpurchased Products Are Substantially Similar to the Purchased Product**

13 57. As described herein, Plaintiff purchased the Unisom® SleepGels. The Unisom®
14 SleepMinis and Unisom® PM Pain (collectively, the “Unpurchased Products”) are substantially
15 similar to the Purchased Product. All Products are manufactured, sold, marketed, advertised,
16 labeled, and packaged by Defendants and sold under the same brand name, Unisom®.

17 58. All Products contain the same active ingredient, diphenhydramine, and are marketed
18 directly to consumers for personal use. All Products contain the same Challenged Representation,
19 “Non-Habit Forming,” conspicuously and prominently placed on the primary display panel of the
20 front label and/or packaging, and Defendants buttress the Challenged Representation through a
21 pervasive and consistent brand strategy effectuated through their marketing campaign to identify
22 the Products as being “Non-Habit Forming.” All Products are packaged in similar packaging, with
23 the phrase “Non-Habit Forming” appearing on the front label in prominent, bold type font. The
24 misleading effect of the Challenged Representation on consumers is the same for all Products:
25 consumers pay for non-habit-forming products but receive Products that can cause habitual use.

26 **E. Lack of Adequate Remedy at Law**

27 59. Plaintiff and members of the Class are entitled to equitable relief as no adequate
28 remedy at law exists.

1 63. Excluded from the Class are: (i) Defendants, their assigns, successors, and legal
2 representatives; (ii) any entities in which Defendants have controlling interests; (iii) federal, state,
3 and/or local governments, including, but not limited to, their departments, agencies, divisions,
4 bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer
5 presiding over this matter and person within the third degree of consanguinity to such judicial
6 officer.

7 64. Plaintiff reserves the right to amend or otherwise alter the class definition presented
8 to the Court at the appropriate time in response to facts learned through discovery, legal arguments
9 advanced by Defendants, or otherwise.

10 65. **Numerosity:** Members of the Class are so numerous that joinder of all members is
11 impracticable. Upon information and belief, the Nationwide Class consists of tens of thousands of
12 purchasers (if not more) dispersed throughout the United States, and the California Subclass
13 likewise consists of thousands of purchasers (if not more) dispersed throughout the state of
14 California. Accordingly, it would be impracticable to join all members of the Class before the Court.

15 66. **Common Questions Predominate:** There are numerous and substantial questions of
16 law or fact common to all members of the Class that predominate over any individual issues.
17 Included within the common questions of law or fact are:

- 18 a) Whether Defendants engaged in unlawful, unfair or deceptive business
19 practices by advertising and selling the Products;
- 20 b) Whether Defendants' conduct of advertising and selling the Products as
21 "Non-Habit Forming" when they contain habit-forming ingredients
constitutes an unfair method of competition, or unfair or deceptive act or
22 practice, in violation of Civil Code section 1750, et seq.;
- 23 c) Whether Defendants used the deceptive representation in connection with
the sale of the Products in violation of Civil Code section 1750, et seq.;
- 24 d) Whether Defendants represented that the Products have characteristics or
25 quantities that they do not have in violation of Civil Code section 1750, et
seq.;
- 26 e) Whether Defendants advertised the Products with intent not to sell them as
27 advertised in violation of Civil Code section 1750, et seq.;
- 28 f) Whether Defendants' labeling and advertising of the Products are untrue or
misleading in violation of Business and Professions Code section 17500, et
seq.;

- 1 g) Whether Defendants knew or by the exercise of reasonable care should have
2 known its labeling and advertising was and is untrue or misleading in
3 violation of Business and Professions Code section 17500, et seq.;
- 4 h) Whether Defendants' conduct is an unfair business practice within the
5 meaning of Business and Professions Code section 17200, et seq.;
- 6 i) Whether Defendants' conduct is a fraudulent business practice within the
7 meaning of Business and Professions Code section 17200, et seq.;
- 8 j) Whether Defendants' conduct is an unlawful business practice within the
9 meaning of Business and Professions Code section 17200, et seq.;
- 10 k) Whether Plaintiff and the Class paid more money for the Products than they
11 actually received;
- 12 l) How much more money Plaintiff and the Class paid for the Products than
13 they actually received;
- 14 m) Whether Defendants' conduct constitutes breach of express warranty;
- 15 n) Whether Defendants' conduct constitutes breach of implied warranty;
- 16 o) Whether Plaintiff and the Class are entitled to injunctive relief; and
- 17 p) Whether Defendants was unjustly enriched by their unlawful conduct.

18 67. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members she seeks
19 to represent because Plaintiff, like the Class Members, also purchased Defendants' misleading and
20 deceptive Products. Defendants' unlawful, unfair and/or fraudulent actions concern the same
21 business practices described herein irrespective of where they occurred or were experienced.
22 Plaintiff and the Class sustained similar injuries arising out of Defendants' conduct. Plaintiff's and
23 Class Members' claims arise from the same practices and course of conduct and are based on the
24 same legal theories.

25 68. **Adequacy:** Plaintiff is an adequate representative of the Class she seeks to represent
26 because her interests do not conflict with the interests of the Class Members Plaintiff seeks to
27 represent. Plaintiff will fairly and adequately protect Class Members' interests and has retained
28 counsel experienced and competent in the prosecution of complex class actions, including litigating
complex questions that arise in consumer protection and class action cases.

69. **Superiority:** A class action is superior to all other available means of fairly and
efficiently adjudicating the claims brought by Plaintiff and the Class. Common questions of law and

1 fact predominate here, as each Class Member's claims arise from the same course of conduct by
2 Defendants and require resolution of the same legal and factual issues. The injury each individual
3 Class Member has suffered is small when compared to the burden and expense of individually
4 prosecuting the complex and extensive litigation Defendants' conduct necessitates. It would be
5 impossible for Class Members on an individual basis to effectively redress the wrongs done to them.
6 Even if Class Members could afford such individual litigation, the courts cannot. Absent class-wide
7 relief, Class Members will continue to suffer harm while Defendants continue to profit from their
8 unlawful conduct without consequence or remedy. Individualized litigation presents a potential for
9 inconsistent or contradictory judgments. Individualized litigation increases the delay and expense
10 to all parties and to the court system, particularly where the subject matter of the case may be
11 technically complex. By contrast, the class action device presents far fewer management difficulties,
12 and provides the benefits of single adjudication, an economy of scale, and comprehensive
13 supervision by a single court.

14 70. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for
15 injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendants have acted
16 or refused to act on grounds generally applicable to the Class, thereby making appropriate final
17 injunctive or equitable relief with respect to the Class as a whole.

18 VIII. CAUSES OF ACTION

19 COUNT ONE

20 FRAUD BY MISREPRESENTATION

21 **(Brought by Plaintiff on behalf of the Nationwide Class, or Alternatively, the California**
22 **Subclass)**

23 71. Plaintiff and the Class incorporate by reference each preceding and succeeding
24 paragraph as though fully set forth at length herein.

25 72. Plaintiff brings this claim against Defendants on behalf of herself and on behalf of the
26 Nationwide Class under California law, or alternatively, the California Subclass.

27 73. Defendants affirmatively misrepresented the capabilities, quality, and nature of the
28 Products when selling and marketing them.

1 74. Defendants also knew that their misrepresentations regarding the Products were
2 material, and that a reasonable consumer would rely upon Defendants’ representations in making
3 purchasing decisions.

4 75. Plaintiff and Class Members did not know—nor could they have known through
5 reasonable diligence—about the true nature of the Products.

6 76. Plaintiff and Class Members would have been reasonable in relying on Defendants’
7 misrepresentations in making their purchasing decisions.

8 77. Plaintiff and Class Members had a right to rely upon Defendants’ representations as
9 Defendants maintained monopolistic control over knowledge of the true quality of the Products.

10 78. Plaintiff and Class Members sustained damages as a result of their reliance on
11 Defendants’ misrepresentations, thus causing Plaintiff and Class Members to sustain actual losses
12 and damages in a sum to be determined at trial, including punitive damages.

13 **COUNT TWO**

14 **UNJUST ENRICHMENT**

15 **(Brought by Plaintiff on Behalf of the Nationwide Class, or Alternatively, the California**
16 **Subclass)**

17 79. Plaintiff and the Class incorporate by reference each preceding and succeeding
18 paragraph as though fully set forth at length herein.

19 80. Plaintiff brings this claim against Defendants on behalf of herself and on behalf of the
20 Nationwide Class under California law, or alternatively, the California Subclass.

21 81. By purchasing the Products, Plaintiff and members of the Class conferred a benefit on
22 Defendants in the form of the purchase price of the Products.

23 82. Defendants had knowledge of such benefit and Defendants appreciated the benefit
24 because, were consumers not to purchase the Products, Defendants would not generate revenue from
25 the sales of the Products.

26 83. Defendants’ knowing acceptance and retention of the benefit is inequitable and unjust
27 because the benefit was obtained by Defendants’ fraudulent, misleading, and deceptive
28 representations and omissions.

1 84. As a direct and proximate result of Defendants’ unjust enrichment, Plaintiff and
2 members of the Class were harmed in the amount of the purchase price they paid for the Products.
3 Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses
4 and other damages including, but not limited to, the amounts paid for the Products, and any interest
5 that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff
6 seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-
7 gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to
8 enjoin Defendants’ misconduct to prevent ongoing and future harm that will result.

9 **COUNT THREE**

10 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

11 **(Cal. Bus. & Prof. Code, §§ 17200, et seq.)**

12 **(Brought by Plaintiff on Behalf of the California Subclass)**

13 85. Plaintiff and the Class incorporate by reference each preceding and succeeding
14 paragraph as though fully set forth at length herein.

15 86. Plaintiff brings this cause of action against Defendants on behalf of herself and the
16 California Subclass.

17 87. This cause of action is brought pursuant to Business and Professions Code section
18 17200, *et seq.*, on behalf of Plaintiff and a California Subclass who purchased the Products.

19 88. California Business & Professions Code sections 17200, *et seq.* (the “UCL”) prohibits
20 unfair competition and provides, in pertinent part, that “unfair competition shall mean and include
21 unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
22 advertising.”

23 89. Defendants, in their advertising and packaging of the Products, made false and
24 misleading statements and fraudulent omissions regarding the quality and characteristics of the
25 Products—specifically, the “Non-Habit Forming” representation—despite the fact the Products
26 promote habitual use as part of consumers’ nightly routine because of the inclusion of
27 diphenhydramine in the Products. Such claims and omissions appear on the label and packaging of
28 the Products, which are sold at retail stores and point-of-purchase displays.

1 90. Defendants do not have any reasonable basis for the claims about the Products made
2 in Defendants’ advertising and on Defendants’ packaging or labeling because the Products can result
3 in habitual use, contrary to the Challenged Representation. Defendants knew, and still know, that
4 the Products do not conform to the Challenged Representation, though Defendants intentionally
5 advertised and marketed the Products to deceive reasonable consumers into believing that they are
6 “Non-Habit Forming.”

7 91. Defendants’ labeling and advertising of the Products led to, and continues to lead to,
8 reasonable consumers, including Plaintiff, believing that the Products do not and cannot cause
9 habitual use.

10 92. Plaintiff and the California Subclass have suffered an injury in fact and have lost
11 money as a result of and in reliance upon Defendants’ Challenged Representation—namely Plaintiff
12 and the California Subclass lost the purchase price for the Products they bought from the
13 Defendants.

14 93. Defendants’ conduct, as alleged herein, constitutes unfair, unlawful, and fraudulent
15 business practices pursuant to the UCL. The UCL prohibits unfair competition and provides, in
16 pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent
17 business practices and unfair, deceptive, untrue or misleading advertising.” Cal. Bus & Prof. Code,
18 § 17200. In addition, Defendants’ use of various forms of advertising media to advertise, call
19 attention to, or give publicity to the sale of goods or merchandise that are not as represented in any
20 manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an
21 unlawful business practice within the meaning of Business and Professions Code sections 17200
22 and 17531, which advertisements have deceived and are likely to deceive the consuming public, in
23 violation of Business and Professions Code section 17200.

24 94. Defendants failed to avail themselves of reasonably available, lawful alternatives to
25 further their legitimate business interests.

26 95. All of the conduct alleged herein occurred and continues to occur in Defendants’
27 business. Defendants’ wrongful conduct is part of a pattern, practice and/or generalized course of
28 conduct, which will continue on a daily basis until Defendants voluntarily alter their conduct or

1 Defendants are otherwise ordered to do so.

2 96. Pursuant to Business and Professions Code sections 17203 and 17535, Plaintiff and
3 the members of the California Subclass seek an order from this Court enjoining Defendants from
4 continuing to engage, use, or employ their practice of labeling and advertising the sale and use of
5 the Products. Likewise, Plaintiff and the members of the California Subclass seek an order requiring
6 Defendants to disclose such misrepresentation, and to preclude Defendants' failure to disclose the
7 existence and significance of said misrepresentation.

8 97. As a direct and proximate result of Defendants' misconduct in violation of the UCL,
9 Plaintiff and members of the California Subclass were harmed in the amount of the purchase price
10 they paid for the Products. Further, Plaintiff and members of the California Subclass have suffered
11 and continue to suffer economic losses and other damages including, but not limited to, the amounts
12 paid for the Products, and any interest that would have accrued on those monies, in an amount to be
13 proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the UCL in restitution,
14 and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said
15 monies, as well as injunctive relief to enjoin Defendants' misconduct to prevent ongoing and future
16 harm that will result.

17 ***“Unfair” Prong***

18 98. Under the UCL, a challenged activity is “unfair” when “any injury it causes outweighs
19 any benefits provided to consumers and the injury is one that the consumers themselves could not
20 reasonably avoid.” *Camacho v. Auto Club of Southern California*, 142 Cal.App.4th 1394, 1403
21 (2006).

22 99. Defendants' action of mislabeling the Products with the Challenged Representation
23 does not confer any benefit to consumers; rather, doing so causes injuries to consumers, who do not
24 receive products commensurate with their reasonable expectations, overpay for the Products, and
25 receive Products of lesser standards than what they reasonably expected to receive. Consumers
26 cannot avoid any of the injuries caused by Defendants' deceptive labeling and advertising of the
27 Products. Accordingly, the injuries caused by Defendants' deceptive labeling and advertising
28 outweigh any benefits.

1 100. Some courts conduct a balancing test to decide if a challenged activity amounts to
2 unfair conduct under California Business and Professions Code section 17200. They “weigh the
3 utility of the Defendants’ conduct against the gravity of the harm to the alleged victim.” *Davis v.*
4 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012).

5 101. Here, Defendants’ conduct of labeling the Products with the Challenged
6 Representation when, in reality, the Products promote habitual use in consumers’ nightly routine
7 has no utility and financially harms purchasers. Thus, the utility of Defendants’ conduct is vastly
8 outweighed by the gravity of harm.

9 102. Some courts require that “unfairness must be tethered to some legislative declared
10 policy or proof of some actual or threatened impact on competition.” *Lozano v. AT&T Wireless*
11 *Servs. Inc.*, 504 F. 3d 718, 735 (9th Cir. 2007).

12 103. Defendants’ labeling and advertising of the Products, as alleged herein, is false,
13 deceptive, misleading, and unreasonable, and constitutes unfair conduct. Defendants knew or should
14 have known of their unfair conduct. Defendants’ misrepresentation constitutes an unfair business
15 practice within the meaning of California Business and Professions Code section 17200.

16 104. There existed reasonably available alternatives to further Defendants’ legitimate
17 business interests, other than the conduct described herein. Defendants could have refrained from
18 labeling the Products with the Challenged Representation.

19 105. All of the conduct alleged herein occurs and continues to occur in Defendants’
20 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct
21 repeated on thousands of occasions daily.

22 106. Pursuant to Business and Professions Code sections 17203, Plaintiff and the
23 California Subclass seek an order from this Court enjoining Defendants from continuing to engage,
24 use, or employ their practices of labeling the Products with the Challenged Representation.

25 107. Plaintiff and the California Subclass have suffered injury in fact and have lost money
26 as a result of Defendants’ unfair conduct. Plaintiff and the California Subclass paid an unwarranted
27 premium for these Products. Specifically, Plaintiff and the California Subclass paid for Products
28 that were truly “non-habit forming.” Plaintiff and the California Subclass would not have purchased

1 the Products, or would have paid substantially less for the Products, if they had known that the
2 Products' advertising and labeling were deceptive. Accordingly, Plaintiff seeks restitution and/or
3 disgorgement of ill-gotten gains pursuant to the UCL.

4 ***"Fraudulent" Prong***

5 108. The UCL considers conduct fraudulent (and prohibits said conduct) if it is likely to
6 deceive members of the public. *Bank of the West v. Super. Court*, 2 Cal.4th 1254, 1267 (1992).

7 109. Defendants used the Challenged Representation with the intent to sell the Products to
8 consumers, including Plaintiff and the California Subclass. The Challenged Representation is false,
9 and Defendants knew or should have known of its falsity. The Challenged Representation is likely
10 to deceive consumers into purchasing the Products because they are material to the average,
11 ordinary, and reasonable consumer.

12 110. As alleged herein, the misrepresentation by Defendants constitutes a fraudulent
13 business practice in violation of California Business & Professions Code section 17200.

14 111. Plaintiff and the California Subclass reasonably and detrimentally relied on the
15 material and false Challenged Representation to their detriment in that they purchased the Products.

16 112. Defendants had reasonably available alternatives to further their legitimate business
17 interests, other than the conduct described herein. Defendants could have refrained from labeling
18 the Products with the Challenged Representation.

19 113. All of the conduct alleged herein occurs and continues to occur in Defendants'
20 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct.

21 114. Pursuant to Business and Professions Code sections 17203, Plaintiff and the
22 California Subclass seek an order of this Court enjoining Defendants from continuing to engage,
23 use, or employ their practice of labeling the Products with the Challenged Representation.

24 115. Plaintiff and the California Subclass have suffered injury in fact and have lost money
25 as a result of Defendants' fraudulent and unfair conduct. Plaintiff paid an unwarranted premium for
26 the Products. Specifically, Plaintiff and the California Subclass paid for products that they believed
27 do not and cannot cause habitual use, when, in fact, the Products promote and can result in habit
28 formation. Plaintiff and the California Subclass would not have purchased the Products, or would

1 have paid substantially less for the Products, if they had known the truth about Defendants’
2 misleading and deceptive advertising and labeling scheme. Accordingly, Plaintiff seeks restitution
3 and/or disgorgement of ill-gotten gains pursuant to the UCL.

4 **“Unlawful” Prong**

5 116. The UCL identifies violations of other laws as “unlawful practices that the unfair
6 competition law makes independently actionable.” *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp.
7 2d 1049, 1068 (C.D. Cal. 2008).

8 117. Defendants’ labeling of the Products, as alleged herein, violates California Civil Code
9 sections 1750, *et seq.* (the “CLRA”) and California Business and Professions Code sections 17500,
10 *et seq.* (the “FAL”) as set forth below in the sections regarding those causes of action.

11 118. Defendants’ conduct in making the false representation described herein constitutes a
12 knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set
13 forth herein, all of which are binding upon and burdensome to their competitors. This conduct
14 engenders an unfair competitive advantage for Defendants, thereby constituting an unfair,
15 fraudulent and/or unlawful business practice under California Business & Professions Code sections
16 17200-17208. Additionally, Defendants’ misrepresentation of material facts, as set forth herein,
17 violates California Civil Code sections 1572, 1573, 1709, 1710, 1711, and 1770, as well as the
18 common law.

19 119. Defendants’ packaging, labeling, and advertising of the Products, as alleged herein,
20 are false, deceptive, misleading, and unreasonable, and constitute unlawful conduct. Defendants
21 knew or should have known of their unlawful conduct.

22 120. Defendants had reasonably available alternatives to further their legitimate business
23 interests, other than the conduct described herein. Defendants could have refrained from labeling
24 the Products with the Challenged Representation.

25 121. All of the conduct alleged herein occurs and continues to occur in Defendants’
26 business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct.

27 122. Pursuant to Business and Professions Code section 17203, Plaintiff and the California
28 Subclass seek an order of this Court enjoining Defendants from continuing to engage, use, or employ

1 their practice of false and deceptive advertising of the Products.

2 123. Plaintiff and the California Subclass have suffered injury in fact and have lost money
3 as a result of Defendants' unlawful conduct. Plaintiff and the California Subclass paid an
4 unwarranted premium for the Products. Specifically, Plaintiff and the California Subclass paid for
5 Products that were supposedly "non-habit-forming" despite the fact that diphenhydramine, an
6 ingredient used in the Products, leads to habitual use by unwitting consumers. Plaintiff and the
7 subclass would not have purchased the Products if they had known that Defendants' purposely
8 deceived consumers into believing that the Products truly conform to the Challenged
9 Representation. Accordingly, Plaintiff seeks restitution and/or disgorgement of ill-gotten gains
10 pursuant to the UCL.

11 **COUNT FOUR**

12 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

13 **(Cal. Bus. & Prof. Code, §§ 17500, et seq.)**

14 **(Brought by Plaintiff on Behalf of the California Subclass)**

15 124. Plaintiff and the Class incorporate by reference each preceding and succeeding
16 paragraph as though fully set forth at length herein.

17 125. Plaintiff brings this cause of action against Defendants on behalf of herself and the
18 California Subclass.

19 126. The False Advertising Law, codified at Cal. Bus. & Prof. Code, §§ 17500, *et seq.*,
20 prohibits "unfair, deceptive, untrue or misleading advertising[.]"

21 127. Defendants violated section 17500 when they advertised and marketed the Products
22 through the unfair, deceptive, untrue, and misleading Challenged Representation disseminated to
23 the public through the Products' labeling, packaging, and advertising. This representation was false
24 because the Products do not conform to it. The representation was material because it is likely to
25 mislead a reasonable consumer into purchasing the Products.

26 128. In making and disseminating the representation alleged herein, Defendants knew or
27 should have known that the representation was untrue or misleading, and acted in violation of
28 section 17500.

1 129. Defendants’ Challenged Representation was specifically designed to induce
2 reasonable consumers, like Plaintiff and the California Subclass, to purchase the Products.

3 130. As a direct and proximate result of Defendants’ misconduct in violation of the FAL,
4 Plaintiff and members of the California Subclass were harmed in the amount of the purchase price
5 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue
6 to suffer economic losses and other damages including, but not limited to, the amounts paid for the
7 Products, and any interest that would have accrued on those monies, in an amount to be proven at
8 trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in restitution, and/or
9 disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for said monies,
10 as well as injunctive relief to enjoin Defendants’ misconduct to prevent ongoing and future harm
11 that will result.

12 **COUNT FIVE**

13 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

14 **(Cal. Civ. Code, §§ 1750, et seq.)**

15 **(Brought by Plaintiff on Behalf of the California Subclass)**

16 131. Plaintiff and the Class incorporate by reference each preceding and succeeding
17 paragraph as though fully set forth at length herein.

18 132. Plaintiff brings this cause of action against Defendants on behalf of herself and the
19 California Subclass.

20 133. The CLRA provides that “unfair methods of competition and unfair or deceptive acts
21 or practices undertaken by any person in a transaction intended to result or which results in the sale
22 or lease of goods or services to any consumer are unlawful.”

23 134. The Products are “goods,” as defined by the CLRA in California Civil Code section
24 1761, subdivision (a).

25 135. Defendants are “persons,” as defined by the CLRA in California Civil Code section
26 1761, subdivision (c).

27 136. Plaintiff and members of the California Subclass are “consumers,” as defined by the
28 CLRA in California Civil Code section 1761, subdivision (d).

1 137. The purchase of the Products by Plaintiff and members of the California Subclass are
2 “transactions” as defined by the CLRA under California Civil Code section 1761, subdivision (e).

3 138. Defendants violated the following sections of the CLRA by selling the Products to
4 Plaintiff and the California Subclass through the false, misleading, deceptive, and fraudulent
5 Challenged Representation:

- 6 a. Section 1770(a)(5) by representing that the Products have “characteristics, . . .
7 . . . uses [or] benefits . . . which they do not have.”
- 8 b. Section 1770(a)(7) by representing that the Products “are of a particular
9 standard, quality, or grade . . . when they are of another.”
- 10 c. Section 1770(a)(9) by advertising the Products “with [the] intent not to sell []
11 as advertised.”

12 139. Defendants’ uniform and material representations and omissions regarding the
13 Products were likely to deceive, and Defendants knew or should have known that their
14 representations and omissions were untrue and misleading.

15 140. Defendants’ conduct is malicious, fraudulent, and wanton in that Defendants
16 intentionally misled and withheld material information from consumers, including Plaintiff, to
17 increase the sale of the Products.

18 141. Plaintiff and members of the California Subclass could not have reasonably avoided
19 such injury. Plaintiff and members of the California Subclass were unaware of the existence of the
20 facts that Defendants suppressed and failed to disclose, and Plaintiff and members of the California
21 Subclass would not have purchased the Products and/or would have purchased them on different
22 terms had they known the truth.

23 142. Plaintiff and the California Subclass suffered harm as a result of Defendants’
24 violations of the CLRA because they relied on the Challenged Representation in deciding to
25 purchase the Products. The Challenged Representation was a substantial factor. The Challenged
26 Representation was material because a reasonable consumer would consider it important in deciding
27 whether to purchase the Products.

28 143. By a letter dated July 17, 2025, Plaintiff advised Defendants of their false and

1 misleading representations and omissions pursuant to California Civil Code Section 1782(a), via
2 U.S. certified mail, return receipt requested. The notices of Defendants' violations and demand for
3 remedial action, as of the filing of this complaint, did not result in adequate correction, repair,
4 replacement, and/or other remedy by Defendants, including all remedial action set forth in the letter
5 and as set forth under section 1782, subdivision (c).

6 144. As a direct and proximate result of Defendants' misconduct in violation of the CLRA,
7 Plaintiff and members of the California Subclass were harmed in the amount of the purchase price
8 they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue
9 to suffer economic losses and other damages including, but not limited to, the amounts paid for the
10 Products, and any interest that would have accrued on those monies, in an amount to be proven at
11 trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act in the form of damages,
12 restitution, disgorgement of ill-gotten gains to compensate Plaintiff and the California Subclass for
13 said monies.

14 145. Given that Defendants' conduct violated California Civil Code section 1780, Plaintiff
15 and members of the California Subclass are entitled to seek, and do hereby seek, injunctive relief to
16 put an end to Defendants' violations of the CLRA. Plaintiff and the California Subclass have no
17 adequate remedy at law. Without equitable relief, Defendants' unfair and deceptive practices will
18 continue to harm Plaintiff and the California Subclass.

19 146. Defendants' unfair, fraudulent, and unlawful conduct described herein constitutes
20 malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as
21 permitted by law. Defendants' misconduct is malicious as Defendants acted with the intent to cause
22 Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Defendants
23 willfully and knowingly disregarded the rights of Plaintiff and consumers as Defendants were, at all
24 times, aware of the probable dangerous consequences of their conduct and deliberately failed to
25 avoid misleading consumers, including Plaintiff. Defendants' misconduct is oppressive as, at all
26 relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would
27 look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct
28 subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights.

1 Defendants' misconduct is fraudulent as Defendants, at all relevant times, intentionally
2 misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers.
3 The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized,
4 adopted, approved, and/or ratified by officers, directors, and/or managing agents of Defendants.
5 Accordingly, Plaintiff seeks an award of punitive damages against Defendants.

6 **COUNT SIX**

7 **BREACH OF EXPRESS WARRANTY**

8 **(Cal. Comm. Code, § 2313)**

9 **(Brought by Plaintiff on Behalf of the California Subclass)**

10 147. Plaintiff and the Class incorporate by reference each preceding and succeeding
11 paragraph as though fully set forth at length herein.

12 148. Plaintiff brings this cause of action against Defendants on behalf of herself and the
13 California Subclass.

14 149. Defendants manufactured, marketed, advertised, labeled, distributed, and sold the
15 Products to Plaintiff and members of the California Subclass.

16 150. In connection with the sale of the Products, Defendants made express warranties to
17 Plaintiff and members of the California Subclass by affirmations of fact and promises relating to
18 the Products that became part of the basis of the bargain. Specifically, Defendants expressly
19 warranted that the Products are "Non-Habit Forming" through the following: (a) The prominent
20 placement of the "Non-Habit Forming" representation on the primary display panel of the Products'
21 front labels and/or packaging; (b) Consistent and repeated representations across the Products'
22 labeling, packaging, and advertising that the Products are "Non-Habit Forming"; and (c) A
23 pervasive marketing campaign and brand strategy, including but not limited to the Unisom® website
24 and social media accounts, designed to identify and distinguish the Products as "Non-Habit
25 Forming" sleep aids.

26 151. The "Non-Habit Forming" representation constitutes an affirmation of fact regarding
27 a specific, material attribute of the Products, not mere puffery or opinion. The representation
28 conveys to reasonable consumers that the Products do not and cannot cause habitual use, meaning

1 the Products do not pose a risk of frequent, routine use over prolonged periods.

2 152. The “Non-Habit Forming” representation became part of the basis of the bargain for
3 Plaintiff and members of the California Subclass. Consumers seeking sleep-aid products specifically
4 prefer and desire products that do not cause habitual use.

5 153. Plaintiff and members of the California Subclass relied on Defendants’ express
6 warranty in deciding to purchase the Products. The “Non-Habit Forming” representation appeared
7 uniformly on every unit of the Products sold to Plaintiff and the California Subclass, and
8 Defendants’ marketing campaign reinforced the representation at every consumer touchpoint.
9 Plaintiff and members of the California Subclass would not have purchased the Products, or would
10 not have paid the prices they paid, absent Defendants’ express warranty that the Products are “Non-
11 Habit Forming.”

12 154. Defendants breached the express warranty because the Products are, in fact, habit-
13 forming. The Products contain diphenhydramine as their active ingredient, which is inherently
14 habit-forming when used regularly.

15 155. Defendants were provided notice of their breach of express warranties prior to
16 Plaintiff initiating this action. On or about July 17, 2025, Plaintiff’s counsel, acting on behalf of all
17 members of the California Subclass, mailed a Demand Letter, via U.S. certified mail, return receipt
18 requested, to Defendant Chattem, Inc. at its headquarters and principal place of business (55
19 Corporate Drive, Bridgewater, NJ 08807) and its registered agent for service of process (CSC –
20 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Ste. 150N, Sacramento, CA 95833),
21 which were delivered to those addresses on July 21, 2025 and July 24, 2025, respectively. Plaintiff’s
22 counsel also mailed the Demand Letter to Defendant Sanofi-Aventis U.S. LLC at its headquarters
23 and principal place of business (55 Corporate Drive, Bridgewater, NJ 08807) and its registered agent
24 for service of process (Belinda Darke, Registered U.S. Agent, 55 Corporate Drive, Bridgewater, NJ
25 08807), which were delivered to those addresses on July 22, 2025. Defendants were further on
26 notice of the breach through publicly available scientific literature and studies demonstrating that
27 diphenhydramine is habit-forming, reports and data from the National Poison Data System
28 documenting increasing rates of diphenhydramine misuse, and the filing of this action.

1 164. California Civil Code § 1791.1(a) states: “Implied warranty of merchantability” or
2 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
3 following:

4 (1) Pass without objection in the trade under the contract description.

5 (2) Are fit for the ordinary purposes for which such goods are used.

6 (3) Are adequately contained, packaged, and labeled.

7 (4) Conform to the promises or affirmations of fact made on the container or label.

8 165. The Products would not pass without objection in the trade because the Products
9 contain diphenhydramine, an active ingredient that poses a risk of habitual use, rendering the
10 Products unfit for their advertised purpose of providing non-habit-forming sleep assistance. Further,
11 the Products are not adequately labeled because the “Non-Habit Forming” representation on the
12 Products’ packaging is false and misleading, and the Products do not conform to that affirmation of
13 fact made on the container or label.

14 166. Defendants provided Plaintiff and the California Subclass members with an implied
15 warranty that the Products, and any components thereof, are merchantable and fit for the ordinary
16 purposes for which they were sold. The Products, however, are not fit for their ordinary purpose
17 because, inter alia, the Products contain diphenhydramine, which is inherently habit-forming when
18 used regularly, and which poses a risk of tolerance, dependence, and habitual misuse, contrary to
19 the representations made on the Products’ labels and packaging.

20 167. Defendants impliedly warranted that the Products were of merchantable quality and
21 fit for such use. This implied warranty included, inter alia, the following: (i) a warranty that the
22 Products manufactured, marketed, distributed, and/or sold by Defendants were suitable for use as a
23 non-habit forming sleep aid; and (ii) a warranty that the Products would be fit for their intended use,
24 providing non-habit-forming sleep assistance, as represented on the Products’ labels and throughout
25 Defendants’ marketing campaign.

26 168. Contrary to the applicable implied warranties, the Products were not fit for their
27 ordinary and intended purpose. Instead, the Products are defective and fail to conform to the
28 promises and affirmations made on the Products’ labels and packaging, including, but not limited

1 to, the false “Non-Habit Forming” representation, because the Products’ active ingredient,
2 diphenhydramine, poses a significant risk of habitual use, tolerance development, and dependence.

3 169. As a direct and proximate result of Defendants’ breach of the implied warranty of
4 merchantability, Plaintiff and the California Subclass members received goods whose condition
5 substantially impairs their value to Plaintiff and the California Subclass members. Plaintiff and the
6 California Subclass members have been damaged as a result of overpaying for the Products, which
7 were sold at a premium based on the false “Non-Habit Forming” representation, and which do not
8 deliver the non-habit-forming attributes for which Plaintiff and the California Subclass members
9 bargained.

10 170. Pursuant to California Civil Code §§ 1791.1(d) and 1794, Plaintiff and the other
11 California Subclass members are entitled to damages and other legal and equitable relief including,
12 at their election, the purchase price of their Products, or the overpayment or diminution in value of
13 their Products.

14 171. Pursuant to Cal. Civ. Code § 1794, Plaintiff and the other California Subclass
15 members are entitled to attorneys’ fees and costs.

16 172. Defendants’ actions, as complained of herein, breached the implied warranty that the
17 Products were of merchantable quality and fit for such use in violation of California Civil Code §§
18 1792 and 1791.1.

19 IX. PRAYER FOR RELIEF

20 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, prays
21 for judgment against Defendants as follows:

- 22 a. **Certification:** For an order certifying this action as a class action, appointing
23 Plaintiff as the Class Representative, and appointing Plaintiff’s Counsel as
24 Class Counsel;
- 25 b. **Declaratory Relief:** For an order declaring that Defendants’ conduct violates
26 the statutes and laws referenced herein consistent with applicable law and
27 pursuant to only those causes of action so permitted;
- 28 c. **Injunction:** For an order requiring Defendants to alter its their business

1 practices to prevent or mitigate the risk of the consumer deception and
2 violations of law outlined herein. This includes, for example, orders that
3 Defendants immediately cease and desist from making the Challenged
4 Representation in violation of law; that enjoin Defendants from continuing to
5 market, advertise, distribute, and sell the Products in the unlawful manner
6 described herein; that require Defendants to engage in an affirmative
7 advertising campaign to dispel the public misperception of the Products
8 resulting from Defendants' unlawful conduct; and/or that require Defendants
9 to take all further and just corrective action, consistent with applicable law and
10 pursuant to only those causes of action so permitted;

11 d. **Damages/Restitution/Disgorgement:** For an order awarding monetary
12 compensation in the form of damages, restitution, and/or disgorgement to
13 Plaintiff and the Class requested herein, consistent with applicable law and
14 pursuant to only those causes of action so permitted;

15 e. **Punitive Damages/Penalties:** For an order awarding punitive damages,
16 statutory penalties, and/or monetary fines, consistent with applicable law and
17 pursuant to only those causes of action so permitted;

18 f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs,
19 consistent with applicable law and pursuant to only those causes of action so
20 permitted;

21 g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-
22 judgment interest, consistent with applicable law and pursuant to only those
23 causes of action so permitted; and

24 h. **All Just & Proper Relief:** For such other and further relief as the Court deems
25 just and proper.

26
27
28 ///

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

DATED: June 5, 2026

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

/s/ Yana Hart

Yana Hart, Esq.

Cassandra Rasmussen, Esq.

22525 Pacific Coast Highway

Malibu, CA 90265

Tel: (213) 788-4050

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CIVIL COVER SHEET

This civil cover sheet does not replace or supplement the filing and service of pleadings or other papers. The information on this form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket. Instructions are on the reverse of this form.

I. PLAINTIFF(S)

TASHA AMARAL, individually and on behalf of all others similarly situated,

County of Residence of First Listed Plaintiff: San Francisco

Attorney or Pro Se Litigant Information (Firm Name, Address, and Telephone Number)
Yana Hart Esq.; Clarkson Law Firm, P.C., 22525 Pacific Coast Highway Malibu, CA 90265
Tel: (213) 788-4050

DEFENDANT(S)

CHATTEM INC. d/b/a Opella North America, and SANOFI-AVENTIS U.S. LLC

County of Residence of First Listed Defendant:

Defendant's Attorney's Name and Contact Information (if known)

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

- U.S. Government Plaintiff, Federal Question, U.S. Government Defendant, Diversity

III. CAUSE OF ACTION

Cite the U.S. Statute under which you are filing: 28 U.S.C. § 1332
Brief description of case: Violations of CAFA; consumer protection/false advertising/unfair competition state-law based claims

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Labor, etc.

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

- Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from Another District, Multidistrict Litigation-Transfer, Multidistrict Litigation-Direct File

VI. FOR DIVERSITY CASES ONLY: CITIZENSHIP OF PRINCIPAL PARTIES

Table for Plaintiff and Defendant citizenship: Citizen of California, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In California, Incorporated and Principal Place of Business In Another State, Foreign Nation

VII. REQUESTED IN COMPLAINT

- Check if the complaint contains a jury demand.
Check if the complaint contains a monetary demand. Amount: 5,000,000.00
Check if the complaint seeks class action status under Fed. R. Civ. P. 23.
Check if the complaint seeks a nationwide injunction or Administrative Procedure Act vacatur.

VIII. RELATED CASE(S) OR MDL CASE

Provide case name(s), number(s), and presiding judge(s).

IX. DIVISIONAL ASSIGNMENT pursuant to Civil Local Rule 3-2

(Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE 06/05/2026

SIGNATURE OF ATTORNEY OR PRO SE LITIGANT /s/ Yana Hart

COMPLETING THE CIVIL COVER SHEET

Complete the form as follows:

- I. Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use 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.
- 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. In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.
- Attorney/Pro Se Litigant Information.** Enter the firm name, address, telephone number, and email for attorney of record or pro se litigant. If there are several individuals, list them on an attachment.
- II. Jurisdiction.** Under Federal Rule of Civil Procedure 8(a), pleadings must establish the basis of jurisdiction. If multiple bases for jurisdiction apply, prioritize them in the order listed:
- (1) *United States plaintiff.* Jurisdiction based on 28 U.S.C. §§ 1345 and 1348 for suits filed by the United States, its agencies or officers.
 - (2) *United States defendant.* Applies when the United States, its agencies, or officers are defendants.
 - (3) *Federal question.* Select this option when jurisdiction is based on 28 U.S.C. § 1331 for cases involving the U.S. Constitution, its amendments, federal laws, or treaties (but use choices 1 or 2 if the United States is a party).
 - (4) *Diversity of citizenship.* Select this option when jurisdiction is based on 28 U.S.C. § 1332 for cases between citizens of different states and complete Section VI to specify the parties’ citizenship. Note: Federal question jurisdiction takes precedence over diversity jurisdiction.
- III. Cause of Action.** Enter the statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless jurisdiction is based on diversity. Example: U.S. Civil Statute: 47 U.S.C. § 553. Brief Description: Unauthorized reception of cable service.
- IV. Nature of Suit.** Check one of the boxes. If the case fits more than one nature of suit, select the most definitive or predominant.
- V. Origin.** Check one of the boxes:
- (1) *Original Proceedings.* Cases originating in the United States district courts.
 - (2) *Removed from State Court.* Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. § 1441. When the petition for removal is granted, check this box.
 - (3) *Remanded from Appellate Court.* Check this box for cases remanded to the district court for further action, using the date of remand as the filing date.
 - (4) *Reinstated or Reopened.* Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) *Transferred from Another District.* Check this box for cases transferred under Title 28 U.S.C. § 1404(a). Do not use this for within-district transfers or multidistrict litigation (MDL) transfers.
 - (6) *Multidistrict Litigation Transfer.* Check this box when a multidistrict (MDL) case is transferred into the district under authority of Title 28 U.S.C. § 1407.
 - (7) *Multidistrict Litigation Direct File.* Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- VI. Residence (citizenship) of Principal Parties.** Mark for each principal party *only* if jurisdiction is based on diversity of citizenship.
- VII. Requested in Complaint.**
- (1) *Jury demand.* Check this box if plaintiff’s complaint demanded a jury trial.
 - (2) *Monetary demand.* For cases demanding monetary relief, check this box and enter the actual dollar amount being demanded.
 - (3) *Class action.* Check this box if plaintiff is filing a class action under Federal Rule of Civil Procedure 23.
 - (4) *Nationwide injunction.* Check this box if plaintiff is seeking a nationwide injunction or nationwide vacatur pursuant to the Administrative Procedures Act.
- VIII. Related Cases.** If there are related pending case(s), provide the case name(s) and number(s) and the name(s) of the presiding judge(s). If a short-form MDL complaint is being filed, furnish the MDL case name and number.
- IX. Divisional Assignment.** Identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.” Note that case assignment is made without regard for division in the following case types: Property Rights (Patent, Trademark and Copyright), Prisoner Petitions, Securities Class Actions, Anti-Trust, Bankruptcy, Social Security, and Tax.