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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SIRREON GOODSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JOHNSON & JOHNSON SERVICES, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Sirreon Goodson (“Plaintiff”) brings this action on behalf of himself and all others
2 similarly situated against Johnson & Johnson Services, Inc. (“Defendant”) based on personal
3 knowledge as to himself, the investigation of his counsel, and on information and belief as to all
4 other matters.

5 **NATURE OF THE ACTION**

6 1. Millions of Americans dream of a better night’s sleep. According to the CDC, more
7 than one third of American adults regularly don’t get enough of it.

8 2. The search for sleep has become a cultural obsession – fueling the rise of an entire
9 industry. The most profitable business in America’s sleep industry? Drugs. In 2023, a survey of
10 2,005 adults in the United States conducted by the American Academy of Sleep Medicine found
11 that 22 percent of participants reported using over-the-counter sleep-aids.

12 3. The drug industry, by and large, markets over-the-counter sleep-aids as a harmless
13 solution to a harmful problem. After all, insufficient sleep is linked to depression, ADHD, obesity,
14 type 2 diabetes, cardiovascular disease, cancer, depression, and Alzheimer disease. Big
15 pharmaceutical companies like Johnson & Johnson Services, Inc. promise a solution to America’s
16 public health epidemic of sleeplessness in the form of sleep-aids. But in doing so, they’ve created
17 an epidemic of their own by way of diphenhydramine-based sleep-aids.

18 ***Background and Pharmacology of Diphenhydramine***

19 4. The first antihistamine containing diphenhydramine, Benadryl, burst onto the
20 market in 1946, when medications were not required to pass rigorous drug safety or efficacy
21 testing. It was marketed for allergy relief, but users quickly identified its sedating effects. These
22 effects are the result of Benadryl’s active ingredient: diphenhydramine.

23 5. Quick to capitalize on growing demand, Johnson & Johnson Services, Inc. and
24 others began producing similar products with diphenhydramine and repackaging them for sleep.
25 This is the case with Johnson & Johnson Services, Inc.’s Tylenol PM products (the “Product”).
26 The Products containing Diphenhydramine HCL and prominently stating on the front of their label
27 that they are “Non-habit forming.” To say this strategy was successful would be an understatement.
28

1 Today, the over-the-counter sleep-aid market is a global juggernaut, reaping nearly \$65 billion a
2 year – a number which is only continuing to rise.

3 6. Diphenhydramine is a first-generation antihistamine frequently used, among other
4 uses, to treat insomnia. The sedative effect is related to its easy penetration of the blood-brain
5 barrier. In the brain, diphenhydramine interferes with H₁ receptors, causing drowsiness and
6 sedation.

7 7. Because the chemical floods the brain in large quantities, users can quickly develop
8 a tolerance. Tolerance can develop in as little as 1–2 weeks, requiring users to take larger and
9 larger doses for the same sedating effect, and causing dependency in users who find they need
10 diphenhydramine to fall asleep. The result is habitual use.

11 8. Users of diphenhydramine products are often startled by how quickly tolerance slips
12 into dependency, and how quickly dependency can slip into abuse. For example, the abuse of
13 Benadryl is well-documented by the medical and rehabilitation communities alike. A quick
14 Google search of “Benadryl” or “diphenhydramine addiction” yields hundreds of results pointing
15 individuals toward rehabilitation programs designed to combat diphenhydramine dependency.

16 9. Diphenhydramine elicits a cocaine-like pattern of stimulation of dopamine
17 transmission that can lead to misuse of medications containing diphenhydramine.

18 10. In short, users can become dependent on diphenhydramine if they take it
19 continuously for a period of time and continuous use may cause it to stop working as well.

20 11. There is a significant body of research on diphenhydramine addiction and misuse
21 generally, as well as its use in Benadryl specifically. The primary active ingredient in the Product
22 is the same as the primary active ingredient in Benadryl that can lead to dependency:
23 diphenhydramine.

24 12. Consumers desire products that are safe and do not contain significant side effects.
25 They also prefer and desire sleep-aid products that do not cause habitual use. Johnson & Johnson
26 Services, Inc. has capitalized on those consumer preferences by falsely promising that its Tylenol
27 PM products are “non habit-forming.”
28

1 habit-forming. In short, Plaintiff is unable to rely on the labels in the future, and thus will not be
2 able to purchase the Product.

3 18. Defendant Johnson & Johnson Services, Inc. is a New Jersey company with its
4 headquarters and principal place of business in New Brunswick, New Jersey. Founded in 1886,
5 Defendant maintains facilities in California and throughout the United States. At all relevant times,
6 Defendant was engaged in manufacturing, marketing, distributing, and advertising its Product
7 throughout the United States online and through brick-and-mortar retail stores.

8 **JURISDICTION AND VENUE**

9 19. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because
10 there are more than 100 Class Members; the aggregate amount in controversy exceeds
11 \$5,000,000.00, exclusive of interest, fees, and costs; and at least one Class member is a citizen of a
12 state different from Defendant.

13 20. This Court has personal jurisdiction over Defendant because Defendant regularly
14 conducts business in this District and has extensive contacts with this forum.

15 21. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
16 transacts substantial business in this District.

17 **FACTUAL ALLEGATIONS**

18 **A. Defendant Misrepresents The Product as “Non Habit-Forming”**

19 22. **Misrepresentation at issue:** Defendant falsely and misleadingly labels its Tylenol
20 PM Extra Strength Pain Reliever, Nighttime Sleep Aid Diphenhydramine HCl Product, depicted
21 below, as “non habit-forming.”
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23. The “non habit-forming” claims on the Product’s packaging are conspicuous and designed to grab the consumer’s attention. The Product prominently claims “non habit-forming” on the primary display panel of the front label or packaging underneath the Product’s name and next to a short description of its usage.

24. In this way, Defendant’s carefully designed labels and packaging, including the placement of the claim, perpetuate the false notion that the Product *is* in fact “non habit-forming.” Defendant intends that consumers viewing the Product’s labels or packaging will read the claim, understand the claim, and rely on the claim.

B. The “Non Habit-Forming” Claim Is False

25. Diphenhydramine is associated with a large variety of adverse effects, including life-threatening toxicities.

26. Effects for elder consumers can be particularly serious. Hospitalized elderly people treated with diphenhydramine have an increased risk of delirium. In adults 65 years and older, long-term, frequent use of first-generation antihistamines like diphenhydramine is associated with development of dementia and Alzheimer’s due to their anticholinergic properties.

27. Overdose, either accidental or intentional, can also lead to death due to antihistamines. The presentation in adults is of sedation leading to a coma, and elderly adults are

1 more sensitive to this toxicity. Paradoxical stimulation with agitation and confusion is often the
2 presenting sign in children, followed by extreme sedation and coma.

3 28. According to the CDC, among 92,033 overdose deaths during 2019–2020, 13,574
4 (14.7%) were antihistamine-positive and 3,345 (3.6%) were antihistamine-involved. Nearly all
5 antihistamine-positive and -involved deaths (13,475, 99.6%; 3,339, 99.8%, respectively) included
6 first-generation H1 antihistamines, primarily diphenhydramine (9,645, 71.1%; 2,226, 66.5%,
7 respectively). Among drug overdose deaths in 2017 that mentioned at least one specific drug on
8 the death certificate, the ten drugs most frequently involved included fentanyl, heroin, cocaine,
9 methamphetamine, alprazolam, oxycodone, morphine, methadone, hydrocodone, *and*
10 *diphenhydramine*.

11 29. Cardiac toxicity, because of prolonged QTc and arrhythmias, has also been reported
12 with diphenhydramine.

13 30. The half-life of diphenhydramine can be as long as 18 hours. Next day “hang over
14 effects” can occur including poor attention, reduced memory, poor sensory-motor performance,
15 and reduced school performance for school-aged children. These hang-over effects can be
16 dangerous. For example, in a simulation of 40 drivers, diphenhydramine resulted in the poorest
17 driving performance – lower than that that of alcohol.

18 31. Because of this evidence, Canadian Society of Allergy and Clinical Immunology
19 recommends that first-generation antihistamines such as diphenhydramine should be considered for
20 availability only on a behind-the-counter basis. The Global Allergy and Asthma European
21 Network also supports implementing a prescription requirement for first-generation antihistamines
22 like diphenhydramine.

23 ***Defendant’s Product Is Habit-Forming***

24 32. Although the Product is marketed as “non habit-forming,” the Product’s primary
25 active ingredient, diphenhydramine, can cause habitual use.

26 33. Habitual use of diphenhydramine is both psychological and physical.

27 34. Diphenhydramine works by acting on certain receptors in the brain, causing
28 sedation. Because of this, individuals can quickly develop a tolerance, requiring larger and larger

1 doses for the same sedating effect, and finding that they are dependent on it to fall asleep.

2 Tolerance can develop in as little as 1–2 weeks.

3 35. There is a substantial body of research that, individually and in the aggregate,
4 demonstrates that diphenhydramine is habit-forming, or alternatively, is more likely than not to be
5 habit-forming. The following is a non-exhaustive list of examples of such research:

- 6 • Schifano S, et al: Focus on Over-the-Counter Drugs' Misuse: A Systematic
7 Review on Antihistamines, Cough Medicines, and Decongestants. *Front*
8 *Psychiatry*, May 2021.
- 9 • Jagroop S, et al: Chronic Diphenhydramine Abuse and Withdrawal: A
10 Diagnostic Challenge. *Neurol Clin Pract*, Oct 2017.
- 11 • Erbe S, Bschor T: [Diphenhydramine Addiction and Detoxification. A
12 Systematic Review and Case Report] Article in German. *Psychiatr Prax*, July
13 2013.
- 14 • Gracious B, et al: The Importance of Taking a History of Over-the-Counter
15 Medication Use: a Brief Review and Case Illustration of “PRN” Antihistamine
16 Dependence in a Hospitalized Adolescent. *J Child Adolesc Psychopharmacol*,
17 Dec 2010.
- 18 • Bonham C, Birkmayer F: Severe Diphenhydramine Dependence and
19 Withdrawal: Case Report. *Journal of Dual Diagnosis*, Vol 5, p 97-103, 2009.
- 20 • Thomas A, et al: Diphenhydramine Abuse and Detoxification: a Brief Review
21 and Case Report. *J Psychopharmacol*, Jan 2009.
- 22 • Herman DM, Bassetti CL: Reversible Opsoclonus after Diphenhydramine
23 Misuse. *Eur Neurol* 53(1):46-47, 2005.
- 24 • Richardson G, et al: Tolerance to Daytime Sedative Effects of H1
25 Antihistamines. *J Clin Psychopharmacol*, Oct 2002.
- 26 • Cox D et al: Diphenhydramine Dependence. *Addiction*, March 2001, p 516-517.
- 27 • Roberts K, et al: Misuse of Diphenhydramine Soft Gel Capsules (Sleepia): a
28 Cautionary Tale from Glasgow. *Addiction*, Oct 1999.
- Dinndorf P, et al: Risk of Abuse of Diphenhydramine in Children and
Adolescents with Chronic Illnesses. *J Pediatr*, Aug 1998.
- De Nesnera AP: Diphenhydramine Dependence: a Need for Awareness. *J Clin*
Psychiatry, March 1996.

- Feldman MD, Behar M: A Case of Massive Diphenhydramine Abuse and Withdrawal from Use of the Drug. JAMA, June 1986.

C. **Reasonable Consumers Were Misled By The “Non Habit-Forming” Claim**

36. **Product at issue:** Defendant manufactures, markets, promotes, advertises, labels, packages, and sells the Tylenol PM Product, which contains the “non habit-forming” claim on its packaging and labels and contains the ingredient diphenhydramine.

37. **Relevant time period:** All of the misrepresentations at issue here were uniformly and consistently made at all times during the last four years, at least. There have been no material changes to the product packaging during the relevant period.

38. **The claims:** On the Product’s labeling and packaging, Defendant prominently, conspicuously, and uniformly displays the words “non habit-forming.”

39. **Reasonable Consumer’s perception:** The “non habit-forming” claim leads reasonable consumers, like Plaintiff, into believing the Product is “non habit-forming.” More specifically, reasonable consumers interpret the “non habit-forming” claim to mean that the Product does not and cannot cause habitual use.

40. Consumers’ interpretation of the “non habit-forming” claim is not only consistent with the APA’s definition and medical understanding of “habit”¹ but also with the ordinary and common usage of the term “habit”:

(a) Cambridge Dictionary: “something that you do often and regularly, sometimes without knowing that you are doing it”; “a particular act or way of acting that you tend to do regularly”²

(b) Merriam-Webster: “a settled tendency or usual manner of behavior”; “an acquired mode of behavior that has become nearly or completely involuntary”; “a behavior pattern acquired by frequent repetition or physiologic exposure that shows itself in regularity or increased facility of performance”³

¹ APA Dictionary of Psychology, “Habit,” <https://dictionary.apa.org/habit> (“*n.* a well-learned behavior or automatic sequence of behaviors that is relatively situation specific and over time has become motorically reflexive and independent of motivational or cognitive influence – that is, it is performed with little or no conscious intent.”)

² Cambridge Dictionary, “Habit,” <https://dictionary.cambridge.org/dictionary/english/habit>

³ Merriam-Webster Dictionary, “Habit,” <https://www.merriam-webster.com/dictionary/habit>

1 41. **Materiality:** The “ “non habit-forming” claim was and is material to reasonable
2 consumers, including Plaintiff, in deciding to buy the Product – meaning that the Product’s “non
3 habit-forming” attributes are important to consumers and motivate them to purchase the Product.

4 42. **Reliance:** The Class, including Plaintiff, reasonably relied on the “non habit-
5 forming” claim in deciding to purchase the Product.

6 43. **Falsity:** The “non habit-forming” claim is false and deceptive because the Product
7 poses a risk of habitual use. Specifically, contrary to this claim, the Product promotes habitual use
8 as a part of consumers’ nightly routine and diphenhydramine, an ingredient used in the Product,
9 can also lead to frequent use over a prolonged period. Additionally, as a first-generation
10 antihistamine, diphenhydramine poses a variety of safety risks as discussed herein.

11 44. **Consumers Lack Knowledge of Falsity:** Consumers, including Plaintiff, do not
12 know and have no reason to know, at the time of purchase, that the “non habit-forming” claim was
13 false, misleading, deceptive, and unlawful. That is because consumers, including Plaintiff, do not
14 work for Defendant and the average reasonable consumer does not have the specialized knowledge
15 of the chemicals and ingredient names and the properties of those ingredients used within the
16 Product.

17 45. Reasonable consumers have no reason to independently check whether the Products
18 are non-habit forming, because they reasonably assume that the packaging stating that the Products
19 are non-habit forming is true.

20 46. There are no asterisks or other disclosures qualifying the misrepresentations at issue
21 here, but even if there are, they are buried in fine print such that reasonable consumers are unlikely
22 to see them at the time of purchase, if ever.

23 47. **Defendant’s Knowledge:** Defendant knew, or should have known, that the “non
24 habit-forming” claim was false, misleading, deceptive, and unlawful, at the time that Defendant
25 manufactured, marketed, advertised, labeled, and sold the Product using the “non habit-forming”
26 claim to Plaintiff and the Class. Defendant intentionally and deliberately used the “non habit-
27 forming” claim to cause Plaintiff and similarly situated consumers to buy the Product believing that
28 this claim was true.

1 (a) **Knowledge of Falsity:** Defendant named and marketed the Product with the
2 “non habit-forming” claim, but Defendant opted to formulate and manufacture them
3 in a manner that does not conform to the representation. Specifically, the Product
4 poses a risk of causing habitual use and is not safe because it contains
5 diphenhydramine.

6 (b) **Knowledge of Reasonable Consumers’ Perception:** Defendant knew, or
7 should have known, that the “non habit-forming” claim would lead reasonable
8 consumers into believing that the Product was safe and would not result in habitual
9 use based on internal conjoint and other marketing studies. Defendant labeled and
10 packaged the Product with the “non habit-forming” claim based in part on its market
11 research.

12 (c) **Knowledge of Materiality:** Defendant knew or should have known that the
13 “non habit-forming” claim is material to consumers. First, manufacturers and
14 marketers, like Defendant, generally reserve the front primary display panel of
15 labels of packaging on consumer products for the most important and persuasive
16 information, which they believe will motivate consumers to buy the products. Here,
17 the conspicuousness of the “non habit-forming” claim on the Product’s label and
18 packaging demonstrates Defendant’s awareness of its importance to consumers and
19 Defendant’s understanding that consumers prefer and are motivated to buy products
20 that conform to the “non habit-forming” claim. Second, manufacturers and
21 marketers repeat marketing claims to emphasize and characterize a brand or product
22 line, shaping the consumers’ expectations, because they believe those repeated
23 messages will drive consumers to buy the Product. Here, the constant, unqualified
24 use of the “non habit-forming” claim on the Product evidences Defendant’s
25 awareness that the falsely advertised Product-attribute is important to consumers. It
26 also evidences Defendant’s intent to convince consumers that the Product conforms
27 to the “non habit-forming” claim and, ultimately, drive sales.

28 (d) **Defendant’s Continued Deception, Despite Its Knowledge:** Defendant, as
the manufacturer and marketer of the Product, had exclusive control over the “non
habit-forming” claim’s inclusion on the Product’s label, packaging, and
advertisements – *i.e.*, Defendant readily and easily could have stopped using the
“non habit-forming” claim to sell the Product. However, despite Defendant’s
knowledge of the “non habit-forming” claim’s falsity, and Defendant’s knowledge
that consumers reasonably rely on the “non habit-forming” claim in deciding to buy
the Product, Defendant deliberately chose to market the Product with the “non
habit-forming” claim thereby misleading consumers into buying or overpaying for
the Product. Thus, Defendant knew, or should have known, at all relevant times,
that the “non habit-forming” claim misleads reasonable consumers, such as Plaintiff,
into buying the Product to attain the Product-attributes that Defendant falsely
advertised and warranted.

48. Plaintiff and similarly situated consumers would not have purchased the Product, or
would not have overpaid a price premium for the Product, if they had known that the “non habit-
forming” claim was false and, therefore, the Product does not have the attribute claimed, promised,

1 warranted, advertised, and/or represented. Accordingly, based on Defendant's material
2 misrepresentations and omissions, reasonable consumers, including Plaintiff, purchased the
3 Product to their detriment.

4 **D. No Adequate Remedy At Law**

5 49. Plaintiff and members of the Class are entitled to equitable relief as no adequate
6 remedy at law exists.

7 50. **Broader Statutes of Limitations:** The statutes of limitations for the causes of
8 action pled herein vary. The limitations period is four years for claims brought under the UCL,
9 which is one year longer than the statutes of limitations under the FAL and CLRA. In addition, the
10 statutes of limitations vary for certain states' laws for fraud, breach of warranty, and unjust
11 enrichment/restitution, between approximately 2 and 6 years. Thus, California Subclass Members
12 who purchased the Product more than 3 years prior to the filing of the complaint will be barred
13 from recovery if equitable relief were not permitted under the UCL. Similarly, Nationwide Class
14 Members who purchased the Product prior to the furthest reach-back under the statute of
15 limitations for breach of warranty or fraud will be barred from recovery if equitable relief were not
16 permitted for restitution/unjust enrichment.

17 51. **More Prompt, Certain, and Efficient:** Legal remedies are inadequate because they
18 are not equally prompt and certain and in other ways efficient as equitable relief. Legal claims for
19 damages are not equally certain as restitution because claims under the UCL and other equitable
20 claims entail few elements.

21 52. **Broader Scope of Conduct:** In addition, the scope of actionable misconduct under
22 the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes,
23 for example, Defendant's overall unfair marketing scheme to promote and brand the Product with
24 the Claims, including the Product's label and packaging, over a long period of time, in order to
25 gain an unfair advantage over competitor products and to take advantage of consumers' desire for
26 products that comport with the "non habit-forming" claim. The UCL also creates a cause of action
27 for violations of law (such as statutory or regulatory requirements and court orders related to
28 similar representations and omissions made on the type of products at issue). Thus, Plaintiff and

1 Class Members may be entitled to restitution under the UCL, while not entitled to damages under
2 other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of
3 the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires,
4 by purchase or lease, any goods or services for personal, family, or household purposes) and other
5 statutorily enumerated conduct; common law fraud claims require a showing of actual deception or
6 reliance). Similarly, unjust enrichment/restitution is broader than breach of warranty. For
7 example, in some states, breach of warranty may require privity of contract or pre-lawsuit notice,
8 which are not typically required to establish unjust enrichment/restitution. Thus, Plaintiff and
9 Class Members may be entitled to recover under unjust enrichment/restitution, while not entitled to
10 damages under breach of warranty, because they purchased the Product from third-party retailers or
11 did not provide adequate notice of a breach prior to the commencement of this action.

12 53. **Injunctive Relief to Cease Misconduct and Dispel Misperception:** Injunctive
13 relief is appropriate on behalf of Plaintiff and members of the Class because Defendant continues
14 to misrepresent the Product with the “non habit-forming” claim. Injunctive relief is necessary to
15 prevent Defendant from continuing to engage in the unfair, fraudulent, and/or unlawful conduct
16 described herein and to prevent future harm – none of which can be achieved through available
17 legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in
18 the form of removing the “non habit-forming” claim, is necessary to dispel the public
19 misperception about the Product that has resulted from years of Defendant’s unfair, fraudulent, and
20 unlawful marketing efforts. An injunction requiring removal of the claim will prevent the ongoing
21 deception and repeat purchases based thereon. It is also not available through a legal remedy (such
22 as monetary damages). In addition, Plaintiff is currently unable to accurately quantify the damages
23 caused by Defendant’s future harm, because discovery and Plaintiff’s investigation has not yet
24 completed, rendering injunctive relief all the more necessary. For example, because the court has
25 not yet certified any class, the following remains unknown: the scope of the class, the identities of
26 its members, their respective purchasing practices, prices of past/future Product sales, and
27 quantities of past/future Product sales.
28

1 Classes may be modified or narrowed as appropriate, including with multi-state subclasses to
2 account for material variations in state law, if any.

3 58. Excluded from the Classes are: (1) anyone who bought the Products for the purpose
4 of resale; (2) any Judge or Magistrate presiding over this action and any members of their families;
5 (3) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which
6 Defendant or its parent has a controlling interest and their current or former employees, officers,
7 and directors; and (4) Plaintiff's counsel and Defendant's counsel.

8 59. **Numerosity:** At this time, Plaintiff does not know the exact number of members of
9 the aforementioned Classes. However, given the nature of the claims, Plaintiff believes the
10 Members of the Classes are so numerous that joinder of all members is impracticable.

11 60. **Commonality and Predominance:** There is a well-defined community of interest
12 in the questions of law and facts involved in this case. Questions of law and fact common to the
13 Classes that predominate over questions that may affect individual Class Members include:

- 14 (a) Whether the Product is "non habit-forming."
- 15 (b) Whether Defendant's representations and warranties are false;
- 16 (c) Whether Plaintiff reasonably relied on Defendant's representations and
17 warranties;
- 18 (d) Whether Defendant's conduct violated state laws and the common law;
- 19 (e) Whether Defendant has been unjustly enriched as a result of the unlawful
20 conduct alleged in this Complaint such that it would be inequitable for
21 Defendant to retain the benefits conferred upon it by Plaintiff and the
22 members of the Classes;
- (f) Whether Plaintiff and the Class Members sustained damages as a result of
23 Defendant's violations of state and common law.

24 61. **Typicality:** The claims of the named Plaintiff are typical of the claims of the Class
25 Members because Plaintiff, like the Class Members, purchased the Product from Defendant relying
26 on Defendant's same representations and warranties that the Product was "non habit-forming."

27 62. **Adequate Representation:** Plaintiff is an adequate representative of the Classes
28 because his interests do not conflict with the interests of the Class Members he seeks to represent.
Plaintiff has retained competent counsel experienced in prosecuting class actions, and he intends to

1 prosecute this action vigorously. The interests of the Class Members will be fairly and adequately
2 protected by Plaintiff and his counsel.

3 63. **Superiority:** The class mechanism is superior to other available means for the fair
4 and efficient adjudication of the claims of the Class Members. Each individual Member may lack
5 the resources to undergo the burden and expense of individual prosecution of the complex and
6 extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases
7 the delay and expense to all parties and multiplies the burden on the judicial system presented by
8 the complex legal and factual issues of this case. Individualized litigation also presents a potential
9 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
10 management difficulties and provides the benefits of single adjudication, economy of scale and
11 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment
12 of the liability issue will ensure that all the claims and claimants are before this Court for consistent
13 adjudication of issues.

14 **CAUSES OF ACTION**

15 **COUNT I**

16 **Violation of California’s Consumer Legal Remedies Act (CLRA)**

17 64. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
18 above as though fully set forth herein.

19 65. Plaintiff brings this cause of action on behalf of himself and the California Subclass
20 and Multi-state Consumer Protection Class.

21 66. Plaintiff and Class Members are “consumers,” as the term is defined by California
22 Civil Code § 1761(d).

23 67. Plaintiff, Class Members, and Defendant have engaged in “transactions” as that
24 term is defined by California Civil Code § 1761(e).

25 68. The conduct alleged in this Complaint constitutes unfair methods of competition
26 and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was
27 undertaken by Defendant in transactions intended to result in, and which did result in, the sale of
28 goods to consumers.

1 69. As alleged more fully above, Defendant has violated the CLRA by falsely
2 representing to Plaintiff and the other Class Members that the Product is not habit-forming when in
3 fact the Product is.

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

6 71. Defendant's representations were likely to deceive, and did deceive, Plaintiff and
7 reasonable consumers. Defendant knew, or should have known through the exercise of reasonable
8 care, that these statements were inaccurate and misleading.

9 72. Defendant's misrepresentations were intended to induce reliance, and Plaintiff saw,
10 read, and reasonably relied on them when purchasing Product. Defendant's misrepresentations
11 were a substantial factor in Plaintiff's purchase decision.

12 73. In addition, class-wide reliance can be inferred because Defendant's
13 misrepresentations were material, i.e., a reasonable consumer would consider them important in
14 deciding whether to buy the "non habit-forming" Product.

15 74. Defendant's misrepresentations were a substantial factor and proximate cause in
16 causing damages and losses to Plaintiff and Class Members.

17 75. Plaintiff and Class Members were injured as a direct and proximate result of
18 Defendant's conduct because (1) they would not have purchased the Product if they had known
19 that the Product was habit-forming; (2) they overpaid for the Product because the products are sold
20 at a price premium due to Defendant's misrepresentations; or (3) they received products that were
21 worthless for their intended purpose.

22 76. Accordingly, Plaintiff, on behalf of himself and all other members of the Class,
23 seeks to enjoin the unlawful acts and practices described herein.

24 77. On October 23, 2024, a CLRA demand letter was sent to Defendant's headquarters
25 and registered agent, via certified mail with return receipt requested. This letter provided notice of
26 Defendant's violation of the CLRA, for Plaintiff and the class, and demanded that Defendant
27 correct the unlawful, unfair, false and/or deceptive practices alleged here.

28

COUNT II
Violation of California's Unfair Competition Law (UCL)

1
2 78. Plaintiff incorporates by reference and re-alleges herein the allegations contained in
3 all preceding paragraphs of this complaint.

4 79. Plaintiff brings this claim on behalf of himself and the California Subclass and
5 Multi-state Consumer Protection Class.

6 80. California Business and Professions Code § 17200 prohibits “any unlawful, unfair,
7 or fraudulent business act or practice.” For the reasons discussed above, Defendant has engaged
8 unlawful, unfair, and fraudulent business acts or practices in violation of California Business and
9 Professions Code § 17200.

10 81. Defendant has violated the UCL by engaging in **unlawful business practices** by
11 violating the CLRA, Cal. Civ. Code §§1770(a)(5), (a)(7), and (a)(9), by violating California's False
12 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*, and by violating the common law by,
13 *inter alia*, making false representations and warranties concerning the Product and retaining the
14 unlawfully obtained benefit therefrom. Plaintiff reserves the right to allege additional violations of
15 law which constitute other unlawful business acts or practices.

16 82. Defendant has also violated the UCL's prohibition on **unfair business practices**
17 because its conduct is substantially injurious to consumers, offends public policy, and is immoral,
18 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged
19 benefits attributable to such conduct.

20 83. There were reasonably available alternatives to further Defendant's legitimate
21 business interest other than by engaging in the conduct described above.

22 84. Defendant has further violated the UCL's prohibition on **fraudulent business**
23 **practices** by making knowingly, or that which Defendant reasonably should know, false and
24 misleading representations and warranties about its Product which were likely to deceive the
25 consuming public within the meaning of Bus. & Prof. Code § 17200.
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1 94. Defendant, nonetheless, continues to represent otherwise to consumers.

2 95. In making and disseminating these statements, Defendant knew, or reasonably
3 should have known, that its advertisements were untrue and misleading in violation of California
4 law. Plaintiff and the Class Members based their purchasing decision on Defendant's
5 representations about the capability of its Product. Plaintiff and the Class Members were injured in
6 fact and lost money as a result.

7 96. The misrepresentations by Defendant about the material facts described and detailed
8 herein constitute false and misleading advertising and, therefore, constitute a violation of Cal. Bus.
9 & Prof. Code §§ 17500, *et seq.*

10 97. As a result of Defendant's wrongful conduct, Plaintiff and the Class Members lost
11 money in an amount to be proven at trial. Plaintiff and the Class Members are therefore entitled to
12 restitution as appropriate for this cause of action.

13 98. Plaintiff seeks all available relief under the FAL.

14 **COUNT IV**
15 **Breach of Express Warranty**

16 99. Plaintiff hereby incorporates by reference and re-alleges herein the allegations
17 contained in all preceding paragraphs of this complaint.

18 100. Plaintiff brings this claim under California law on behalf of himself and Members of
19 the Nationwide Class and California Subclass.

20 101. As the designer, manufacturer, marketer, distributor, and/or seller of the Product,
21 Defendant issued an express warranty by representing to consumers at the point of purchase that
22 the Product was "non habit-forming."

23 102. Defendant's representations were part of the description of the Product and the
24 bargain upon which the Product was offered for sale and purchased by Plaintiff and Class Members
25 who reasonably relied on those representations.

26 103. In fact, the Product does not conform to the above-referenced representation
27 because, as alleged in detail above, it is habit-forming. Thus, the warranty was breached.

28 104. On October 23, 2024, prior to the filing of this Complaint, Plaintiff's counsel sent

1 Defendant a warranty notice letter that complied in all respects with U.C.C. 2-607. The letter
2 provided notice of breach of express warranty. The letter was sent via certified mail with return
3 receipt to Defendant advising Defendant that it was in violation of the U.C.C. 2-607 and state
4 consumer protection laws and demanding that it cease and desist from such violations and make
5 full restitution by refunding the monies received therefrom. The letter stated that it was sent on
6 behalf of Plaintiff and all other similarly situated purchasers.

7 105. As a direct and proximate results of Defendant's breach, Plaintiff and the Class
8 Members were injured because they: (1) paid money for the Product that was not as Defendant
9 represented; (2) were deprived of the benefit of the bargain because the Product they purchased
10 was different than Defendant advertised; and (3) were deprived of the benefit of the bargain
11 because the Product they purchased had less value than Defendant represented. Had Defendant not
12 breached the express warranty by making the false representations alleged herein, Plaintiff and the
13 Class Members would not have purchased the Product or would not have paid as much as they did
14 for them.

15 106. Plaintiff seeks all available relief under this cause of action.

16 **COUNT V**
17 **Unjust Enrichment**

18 107. Plaintiff hereby incorporates by reference and re-alleges herein the allegations
19 contained in all preceding paragraphs of this complaint.

20 108. Plaintiff brings this claim under California law on behalf of himself and Members of
21 the Nationwide Class and California Subclass.

22 109. To the extent required by law, Plaintiff alternatively styles this cause of action as a
23 quasi-contract claim seeking restitution.

24 110. Plaintiff and Class Members conferred benefits on Defendant by purchasing the
25 Product.

26 111. Defendant has been unjustly enriched in retaining the revenues derived from
27 Plaintiff and Class Members' purchases of the Product. Retention of those monies under these
28 circumstances is unjust and inequitable because Defendant warranted that the Product was "non

1 habit-forming” when the Product did, in fact, create the risk or cause habitual use. Defendant’s
2 misrepresentations caused injuries to Plaintiff and Class Members because they would not have
3 purchased the Product if the true facts were known.

4 112. Because Defendant’s retention of the non-gratuitous benefits conferred on them by
5 Plaintiff and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiff
6 and Class Members for its unjust enrichment, as ordered by the Court.

7 113. Plaintiff and Class Members have suffered an injury in fact and have lost money as
8 a result of Defendant’s unjust conduct. They lack an adequate remedy at law with respect to this
9 claim and are entitled to non-restitutionary disgorgement of the financial profits that Defendant
10 obtained as a result of its unjust conduct.

11 **COUNT VI**
12 **Fraud**

13 114. Plaintiff hereby incorporates by reference and re-alleges herein the allegations
14 contained in all preceding paragraphs of this complaint.

15 115. Plaintiff brings this claim under California law on behalf of himself and Members of
16 the Nationwide Class and California Subclass.

17 116. As the designer, manufacturer, marketer, distributor, and/or seller of the Product,
18 Defendant representing to consumers that the Product was “non habit-forming” on the Product’s
19 label and packaging.

20 117. Defendant’s representation that the Product was “non habit-forming” was materially
21 false and misleading because the Product is habit-forming due to its active ingredient,
22 diphenhydramine, and its use context.

23 118. Plaintiff is informed and believes and on that basis alleges that Defendant had
24 reason to know this representation was false when Defendant made it for the reasons described
25 herein.

26 119. Plaintiff is informed and believes and on that basis alleges that Defendant
27 deliberately misrepresented the Product as “non habit-forming” to induce Plaintiff to purchase the
28 Product.

1 Dated: November 13, 2024

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