

1 **SINGLETON SCHREIBER, LLP**  
 CHRISTOPHER R. RODRIGUEZ, SB# 212274  
 2 E-Mail: crodriguez@singletonschreiber.com  
 ANDREW D. BLUTH, SB# 232387  
 3 E-Mail: abluth@singletonschreiber.com  
 1414 K Street, Suite 470  
 4 Sacramento, California 95814  
 Telephone: (619) 333-7479  
 5 Facsimile: (619) 255-1515

6 Attorneys for Plaintiffs,

7  
 8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

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

16 Plaintiffs,

17 v.

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

CASE NO.

**PLAINTIFFS' CLASS-ACTION COMPLAINT FOR**

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

**DEMAND FOR JURY TRIAL**

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

5 Defendants.

6  
7 **COMPLAINT**

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

16 **INTRODUCTION**

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

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

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

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

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

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

15 **PLAINTIFFS**

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

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

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

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

28

**DEFENDANTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **JURISDICTION & VENUE**

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

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

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

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

8 **CLASS ACTION ALLEGATIONS**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 24                           **TOLLING OF THE STATUTE OF LIMITATIONS**

### 25           **A. Discovery Rule Tolling**

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

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

4 **B. Fraudulent Concealment Tolling**

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

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

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

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

23 **FIRST CAUSE OF ACTION**

24 **Fraudulent Misrepresentation**

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

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

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

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

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

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

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

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

## 20 **SECOND CAUSE OF ACTION**

### 21 **Negligent Misrepresentation**

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Breach of Express Warranty**

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

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

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

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

1 merchantability.

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

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

23 **FIFTH CAUSE OF ACTION**

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

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

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



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

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

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

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

14 **Additional Allegations Regarding Punitive Damages**

15 **(All Applicable Causes of Action)**

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

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

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

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

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

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

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for judgment as follows:

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

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

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

DATED: September 12, 2023                      SINGLETON SCHREIBER, LLP



By: \_\_\_\_\_  
CHRISTOPHER R. RODRIGUEZ  
Attorneys for Plaintiffs KENNETH LEVI  
PACK and MIN JI JUNG

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Active Ingredient in Hundreds of Cold and Flu Meds Is 'Entirely Ineffective,' Class Action Says](#)

---