

1 MATTHEW D. POWERS (SB #212682)  
2 mpowers@omm.com  
3 JOSEPH R. O'CONNOR (SB #272441)  
4 joconnor@omm.com  
5 O'MELVENY & MYERS LLP  
6 Two Embarcadero Center, 28th Floor  
7 San Francisco, CA 94111  
8 Telephone: (415) 984-8700  
9 Facsimile: (415) 984-8701

Attorneys for Defendants

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 RONY ELKIES *et al.*,  
12 Plaintiffs,  
13 v.  
14 JOHNSON & JOHNSON SERVICES,  
15 INC., *et al.*,  
16 Defendants.

Case No. 2:17-CV-7320-GW(JEMx)

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT; DEMAND FOR  
JURY TRIAL**

Judge: Hon. George H. Wu  
Courtroom: 9D

1 Pursuant to Federal Rules of Civil Procedure 7 and 12(a), Defendants  
2 Johnson & Johnson Consumer, Inc. and Johnson & Johnson Services, Inc.  
3 (“Defendants”) answer the First Amended Complaint (“FAC”) of Plaintiffs Rony  
4 Elkies and Danielle Alfandry (“Plaintiffs”) as follows:

5 **NATURE OF ACTION**

6 1. Defendants admit that Johnson & Johnson Consumer Inc. markets and  
7 sells Infants’ Tylenol and Children’s Tylenol. Johnson & Johnson Services Inc. is  
8 not a proper defendant, as it does not manufacturer, market, or sell any products.  
9 Defendants deny the remaining allegations in Paragraph 1.

10 2. Defendants admit that acetaminophen is the active ingredient in  
11 Tylenol, that taking acetaminophen products beyond the recommended dosage can  
12 be dangerous, and that parents should be cautious when administering medicine to  
13 their children. Defendants deny the remaining allegations in Paragraph 2.

14 3. Defendants deny the allegations in Paragraph 3.

15 4. To the extent Plaintiffs purport to describe the contents of the labels of  
16 Infants’ Tylenol and Children’s Tylenol, the labels are the best evidence of their  
17 own contents. Defendants deny the remaining allegations in Paragraph 4.

18 5. The allegations in Paragraph 5 consist of argument to which no  
19 response is required. To the extent that a response is required, Defendants deny the  
20 allegations.

21 **JURISDICTION AND VENUE**

22 6. The allegations in Paragraph 6 consist of argument to which no  
23 response is required. To the extent that a response is required, Defendants deny the  
24 allegations except to admit that Johnson & Johnson Consumer, Inc. distributes and  
25 markets Infants’ Tylenol and Children’s Tylenol in California.

26 7. Defendants lack sufficient knowledge or information to form a belief  
27 as to the allegations relating to the citizenship of members of the class, and, on that  
28 basis, deny those allegations. The remaining allegations in Paragraph 7 consist of

1 argument to which no responses are required. To the extent any response is  
2 necessary, Defendants deny the remaining allegations in Paragraph 7.

3 8. The allegations in Paragraph 8 consist of argument to which no  
4 response is required. To the extent that any response is necessary, Defendants lack  
5 sufficient knowledge or information to form a belief as to the truth or falsity of the  
6 allegations in Paragraph 8 and, on that basis, deny the allegations.

7 **PARTIES**

8 9. Defendants lack sufficient knowledge or information to form a belief  
9 as to the truth or falsity of the allegations in Paragraph 9, and, on that basis deny  
10 those allegations.

11 10. Defendants admit that Johnson & Johnson Services, Inc. is a  
12 corporation organized and existing under the laws of the State of New Jersey with  
13 headquarters at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.  
14 Johnson & Johnson Services Inc. is not a proper defendant, as it does not  
15 manufacturer, market, or sell any products. Defendants deny the remaining  
16 allegations in Paragraph 10.

17 11. Defendants admit that Johnson & Johnson Consumer, Inc. is a  
18 corporation organized and existing under the laws of the State of New Jersey.  
19 Defendants admit that Johnson & Johnson Consumer, Inc. was formerly known as  
20 McNeil PPC, Inc. The allegation that Johnson & Johnson Consumer Inc. can sue  
21 and be sued in this Court consists of argument to which no response is required. To  
22 the extent that any response is necessary, Defendants deny the allegation.  
23 Defendants deny the remaining allegations in Paragraph 11.

24 **FACTUAL ALLEGATIONS**

25 12. Defendants admit that Tylenol Elixir for children was a prescription,  
26 aspirin-free pain reliever introduced in 1955. Defendants deny the remaining  
27 allegations in Paragraph 12.

28 13. Defendants admit that McNeil was acquired in 1959 and that Tylenol

1 subsequently became available without a prescription. Defendants deny the  
2 remaining allegations in Paragraph 13.

3 14. Defendants admit that Johnson & Johnson Consumer, Inc.  
4 manufactures and markets Infants' Tylenol and Children's Tylenol. Defendants  
5 deny the remaining allegations in Paragraph 14.

6 15. The allegation "[p]rior to the acts complained of herein" is so vague as  
7 to render a response impossible. To the extent that a response is required,  
8 Defendants admit that prior to 2011 the concentration of acetaminophen in Infants'  
9 Tylenol was 80mg/mL while Children's Tylenol was available with an  
10 acetaminophen concentration of 160 mg/5mL.

11 16. Defendants lack sufficient knowledge or information to form a belief  
12 as to the truth or falsity of the allegations in Paragraph 16 and on that basis deny  
13 those allegations.

14 17. The allegations in Paragraph 17 are so vague as to render a response  
15 impossible. To the extent that a response is necessary, Defendants admit that a  
16 lawsuit was filed in 1995 in San Francisco County Superior Court alleging a strict  
17 products liability claim about the label for Infants' Tylenol and deny the remaining  
18 allegations. To the extent that Plaintiffs purport to describe a complaint and  
19 subsequent court proceedings, that complaint and those proceedings themselves are  
20 the best evidence of their own content.

21 18. Defendants lack sufficient knowledge or information to form a belief  
22 as to the truth or falsity about the allegations in Paragraph 18, and, on that basis  
23 deny those allegations.

24 19. Defendants admit that Johnson & Johnson Consumer Inc. (formerly  
25 McNeil-PPC, Inc.) changed the concentration of acetaminophen in Infants' Tylenol  
26 from 80 mg/mL to 160 mg/5 mL in 2011 and deny the remaining allegations.

27 20. Defendants deny the allegations in Paragraph 20, except they admit  
28 that on December 22, 2011, the FDA released a drug safety communication

1 regarding the availability of a new concentration (160 mg/5 mL) of acetaminophen  
2 marketed for infants. To the extent that Plaintiffs purport to describe the contents  
3 of an FDA publication, that publication itself is the best evidence of its own  
4 contents.

5 21. Defendants deny the allegations in Paragraph 21.

6 22. Defendants admit that, since 2011, Infants' Tylenol and Children's  
7 Tylenol have had the same concentration of acetaminophen. Defendants deny the  
8 remaining allegations in Paragraph 22.

9 23. The allegations in Paragraph 23 consist of argument to which no  
10 response is required. To the extent that any response is necessary, Defendants deny  
11 the allegations in Paragraph 23.

12 24. The allegations in Paragraph 24 consist of argument to which no  
13 response is required. To the extent that any response is necessary, Defendants deny  
14 the allegations in Paragraph 24.

15 25. The allegations in Paragraph 25 consist of argument to which no  
16 response is required. To the extent that any response is necessary, Defendants deny  
17 the allegations in Paragraph 25.

18 26. Defendants admit that the current Infants' Tylenol outer packaging has  
19 an image of a mother holding her baby. To the extent that Plaintiffs purport to  
20 describe the label of Infant's Tylenol, the label itself is the best evidence of its own  
21 contents. Defendants deny the remaining allegations in Paragraph 26.

22 27. Defendants admit that the current Tylenol website includes a chart  
23 providing "Acetaminophen Dosage for Infants and Children." To the extent that  
24 Plaintiffs purport to describe the Tylenol website, the website itself is the best  
25 evidence of its own contents.

26 28. Defendants admit that the current Children's Tylenol outer packaging  
27 has an image of a mother holding her child. To the extent that Plaintiffs purport to  
28 describe the label of Children's Tylenol, the label itself is the best evidence of its

1 own contents.

2 29. The allegations in Paragraph 29 consist of argument to which no  
3 response is required. To the extent that any response is necessary, Defendants deny  
4 the allegations in Paragraph 29.

5 30. Defendants admit that consumers should be cautious when  
6 administering medicine to their children and that accurate dosing is important.  
7 Defendants deny the remaining allegations in Paragraph 30.

8 31. The allegations in Paragraph 31 consist of argument to which no  
9 response is required. To the extent that any response is necessary, Defendants deny  
10 the allegations in Paragraph 31.

11 32. Defendants lack sufficient knowledge or information to form a belief  
12 as to the truth or falsity about whether consumers believe there is no suitable  
13 alternative to Infants' Tylenol, and, on that basis deny those allegations.  
14 Defendants deny the remaining allegations in Paragraph 32.

15 33. The allegations in Paragraph 33 consist of argument to which no  
16 response is required. To the extent that any response is necessary, Defendants deny  
17 the allegations.

18 34. The allegations in Paragraph 34 consist of argument to which no  
19 response is required. To the extent that any response is necessary, Defendants deny  
20 the allegations.

21 **THE ELKIES FAMILY'S PURCHASES OF INFANTS'**

22 35. Defendants lack sufficient knowledge or information to form a belief  
23 as to the truth or falsity about the allegations in Paragraph 35, and, on that basis,  
24 deny those allegations.

25 36. Defendants lack sufficient knowledge or information to form a belief  
26 as to the truth or falsity about the allegations in Paragraph 36, and, on that basis,  
27 deny those allegations.

28 37. Defendants lack sufficient knowledge or information to form a belief

1 as to the truth or falsity about the allegations in Paragraph 37, and, on that basis,  
2 deny those allegations.

3 38. Defendants lack sufficient knowledge or information to form a belief  
4 as to the truth or falsity about the allegations in Paragraph 38, and, on that basis,  
5 deny those allegations.

6 39. Defendants lack sufficient knowledge or information to form a belief  
7 as to the truth or falsity about the allegations in Paragraph 39, and, on that basis,  
8 deny those allegations.

9 40. Defendants lack sufficient knowledge or information to form a belief  
10 as to the truth or falsity about the allegations in Paragraph 40, and, on that basis,  
11 deny those allegations. To the extent that Plaintiffs purport to describe the label  
12 and marketing materials for Infants' Tylenol, the labels and marketing materials  
13 themselves are the best evidence of their own contents.

14 41. Defendants lack sufficient knowledge or information to form a belief  
15 as to the truth or falsity about the allegations in Paragraph 41, and, on that basis,  
16 deny those allegations.

17 42. Defendants lack sufficient knowledge or information to form a belief  
18 as to the truth or falsity about the allegations in Paragraph 42, and, on that basis,  
19 deny those allegations.

20 43. Defendants lack sufficient knowledge or information to form a belief  
21 as to the truth or falsity about the allegations in Paragraph 43, and, on that basis,  
22 deny those allegations.

23 44. Defendants lack sufficient knowledge or information to form a belief  
24 as to the truth or falsity about the allegations in Paragraph 44, and, on that basis,  
25 deny those allegations.

26 45. Defendants lack sufficient knowledge or information to form a belief  
27 as to the truth or falsity about the allegations in Paragraph 45, and, on that basis,  
28 deny those allegations.





1 response is required. To the extent any response is necessary, Defendants deny the  
2 allegations. Defendants specifically deny that the requisites for class action  
3 treatment are present and that this action could properly proceed as a class action.

4 53. The allegations in Paragraph 53 consist of argument to which no  
5 response is required. To the extent any response is necessary, Defendants deny the  
6 allegations. Defendants specifically deny that the requisites for class action  
7 treatment are present and that this action could properly proceed as a class action.

8 54. The allegations in Paragraph 54 consist of argument to which no  
9 response is required. To the extent any response is necessary, Defendants deny the  
10 allegations. Defendants specifically deny that the requisites for class action  
11 treatment are present and that this action could properly proceed as a class action.

12 55. The allegations in Paragraph 55 consist of argument to which no  
13 response is required. To the extent any response is necessary, Defendants deny the  
14 allegations. Defendants specifically deny that the requisites for class action  
15 treatment are present and that this action could properly proceed as a class action.

16 56. Defendants lack sufficient knowledge or information to form a belief  
17 as to the truth or falsity about the allegations in Paragraph 56 (which purports to  
18 describe what “Plaintiffs know”) and, on that basis, deny those allegations.  
19 Defendants specifically deny that the requisites for class action treatment are  
20 present and that this action could properly proceed as a class action.

21 57. The allegations in Paragraph 57 consist of argument to which no  
22 response is required. To the extent any response is necessary, Defendants deny the  
23 allegations. Defendants specifically deny that the requisites for class action  
24 treatment are present and that this action could properly proceed as a class action.

25 58. Defendants lack sufficient knowledge or information to form a belief  
26 as to the truth or falsity of whether Plaintiffs frequently visit stores that offer  
27 Children’s Tylenol and Infants’ Tylenol, and whether Plaintiffs continue to use  
28 OTC pain-relief products for their daughter G.E., and, on that basis, deny those

1 allegations. The remaining allegations in Paragraph 58 consist of argument to  
2 which no response is required. To the extent any response is necessary, Defendants  
3 deny the allegations. Defendants specifically deny that the requisites for class  
4 action treatment are present and that this action could properly proceed as a class  
5 action.

6 **FIRST CAUSE OF ACTION**  
7 **Violations of False and Misleading Advertising Law (FAL)**  
8 **California's False Advertising Law, Bus. & Prof. Code §§ 17500, *et seq.***  
9 **(on behalf of Plaintiff and the proposed Class)**

9 59. Defendants incorporate their answers to Paragraphs 1-58 herein.

10 60. The allegations in Paragraph 60 consist of argument to which no  
11 response is required. To the extent any response is necessary, Defendants deny the  
12 allegations.

13 61. The allegations in Paragraph 61 consist of argument to which no  
14 response is required. To the extent any response is necessary, Defendants deny the  
15 allegations.

16 62. The allegations in Paragraph 62 consist of argument to which no  
17 response is required. To the extent any response is necessary, Defendants deny the  
18 allegations.

19 63. The allegations in Paragraph 63 consist of argument to which no  
20 response is required. To the extent any response is necessary, Defendants deny the  
21 allegations.

22 64. The allegations in Paragraph 64 consist of argument to which no  
23 response is required. To the extent any response is necessary, Defendants deny the  
24 allegations.

25 65. The allegations in Paragraph 65 consist of argument to which no  
26 response is required. To the extent any response is necessary, Defendants deny the  
27 allegations.

28 66. The allegations in Paragraph 66 consist of argument to which no

1 response is required. To the extent any response is necessary, Defendants deny the  
2 allegations.

3 67. The allegations in Paragraph 67 consist of argument to which no  
4 response is required. To the extent any response is necessary, Defendants deny the  
5 allegations except to admit that Johnson & Johnson Consumer, Inc. manufactures  
6 and markets both Children’s Tylenol and Infants’ Tylenol.

7 68. The allegations in Paragraph 68 consist of argument to which no  
8 response is required. To the extent any response is necessary, Defendants deny the  
9 allegations.

10 69. The allegations in Paragraph 69 consist of argument to which no  
11 response is required. To the extent any response is necessary, Defendants deny the  
12 allegations.

13 70. The allegations in Paragraph 70 consist of argument to which no  
14 response is required. To the extent any response is necessary, Defendants deny the  
15 allegations. Defendants specifically deny that they have violated California  
16 Business and Professions Code § 17500.

17 71. The allegations in Paragraph 71 consist of argument to which no  
18 response is required. To the extent any response is necessary, Defendants deny the  
19 allegations.

20 **SECOND CAUSE OF ACTION**  
21 **Violations of Consumer Legal Remedies Act (CLRA)**  
22 **California Civil Code §§ 1750, *et seq.***  
**(On behalf of Plaintiffs and the California Subclass)**

23 72. Defendants incorporate their answers to Paragraphs 1-71 herein.

24 73. The allegations in Paragraph 73 consist of argument to which no  
25 response is required. To the extent any response is necessary, Defendants deny the  
26 allegations.

27 74. The allegations in Paragraph 74 consist of argument to which no  
28 response is required. To the extent any response is necessary, Defendants deny the

1 allegations.

2 75. The allegations in Paragraph 75 consist of argument to which no  
3 response is required. To the extent any response is necessary, Defendants deny the  
4 allegations.

5 76. The allegations in Paragraph 76 consist of argument to which no  
6 response is required. To the extent any response is necessary, Defendants deny the  
7 allegations.

8 77. The allegations in Paragraph 77 consist of a statement of law to which  
9 no response is required.

10 78. The allegations in Paragraph 78 consist of a statement of law to which  
11 no response is required.

12 79. The allegations in Paragraph 79 consist of a statement of law to which  
13 no response is required.

14 80. The allegations in Paragraph 80 consist of a statement of law to which  
15 no response is required.

16 81. The allegations in Paragraph 81 consist of argument to which no  
17 response is required. To the extent any response is necessary, Defendants deny the  
18 allegations. Defendants specifically deny that they have violated Cal. Civ. C.  
19 §1770(a)(5).

20 82. The allegations in Paragraph 82 consist of argument to which no  
21 response is required. To the extent any response is necessary, Defendants deny the  
22 allegations. Defendants specifically deny that they have violated Cal. Civ. C.  
23 §1770(a)(9).

24 83. The allegations in Paragraph 83 consist of argument to which no  
25 response is required. To the extent any response is necessary, Defendants deny the  
26 allegations. Defendants specifically deny that they have violated Cal. Civ. C.  
27 §1770(a)(16).

28 84. The allegations in Paragraph 84 consist of argument to which no

1 response is required. To the extent any response is necessary, Defendants deny the  
2 allegations. Defendants specifically deny that they have violated Cal. Civ. C. §  
3 1770(a)(5), (a)(9) and (a)(16).

4 85. The allegations in Paragraph 85 consist of argument to which no  
5 response is required. To the extent any response is necessary, Defendants deny the  
6 allegations.

7 86. The allegations in Paragraph 86 consist of argument to which no  
8 response is required. To the extent any response is necessary, Defendants deny the  
9 allegations in Paragraph 86.

10 87. Defendants admit that Plaintiffs filed a document purporting to be a  
11 declaration of venue on the same day that this First Amended Complaint was filed.

12 88. The allegations in Paragraph 88 consist of argument to which no  
13 response is required. To the extent any response is necessary, Defendants deny the  
14 allegations. Defendants specifically deny that they have violated Cal. Civ. C. §  
15 1770(a)(5).

16 89. The allegations in Paragraph 89 consist of argument to which no  
17 response is required. To the extent any response is necessary, Defendants deny the  
18 allegations.

19 90. The allegations in Paragraph 90 consist of argument to which no  
20 response is required. To the extent any response is necessary, Defendants deny the  
21 allegations. Defendants specifically deny that they have violated the CLRA.

22 91. The allegations in Paragraph 91 consist of argument to which no  
23 response is required. To the extent any response is necessary, Defendants deny the  
24 allegations. Defendants specifically deny that Plaintiffs are entitled to restitution,  
25 an injunction, or any other relief.

26 92. The allegations in Paragraph 92 consist of argument to which no  
27 response is required. To the extent any response is necessary, Defendants admit  
28 that they received a letter dated October 5, 2017 from the Plaintiffs. To the extent

1 that Plaintiffs purport to describe the contents of that letter, the letter is the best  
2 evidence of its own contents. Defendants deny the remaining allegations in  
3 Paragraph 92. Defendants specifically deny that they have violated Section 1770 of  
4 the CLRA.

5 **THIRD CAUSE OF ACTION**  
6 **Violations of Unfair Competition Law (UCL)**  
7 **‘Unfair’ and ‘Fraudulent’ Prongs**  
8 ***Cal. Bus. & Prof. C. §§ 17200, et seq.***  
9 **(On behalf of Plaintiffs and the Class)**

10 93. Defendants incorporate their answers to Paragraphs 1-92 herein.

11 94. The allegations in Paragraph 94 consist of argument to which no  
12 response is required. To the extent any response is necessary, Defendants deny the  
13 allegations.

14 95. The allegations in Paragraph 95 consist of argument to which no  
15 response is required. To the extent any response is necessary, Defendants deny the  
16 allegations.

17 96. The allegations in Paragraph 96 consist of argument to which no  
18 response is required. To the extent any response is necessary, Defendants admit  
19 that consumers should be cautious when administering medicine to their children  
20 and that accurate dosing is important. Defendants deny the remaining allegations in  
21 Paragraph 96.

22 97. The allegations in Paragraph 97 consist of argument to which no  
23 response is required. To the extent any response is necessary, Defendants deny the  
24 allegations. Defendants specifically deny that they have violated Cal. Bus. & Prof.  
25 C. §§ 17500, *et seq.*

26 98. The allegations in Paragraph 98 consist of argument to which no  
27 response is required. To the extent any response is necessary, Defendants deny the  
28 allegations.

99. The allegations in Paragraph 99 consist of argument to which no

1 response is required. To the extent any response is necessary, Defendants deny the  
2 allegations.

3 100. The allegations in Paragraph 100 consist of argument to which no  
4 response is required. To the extent any response is necessary, Defendants deny the  
5 allegations.

6 101. The allegations in Paragraph 101 consist of argument to which no  
7 response is required. To the extent any response is necessary, Defendants deny the  
8 allegations.

9 102. The allegations in Paragraph 102 consist of argument to which no  
10 response is required. To the extent any response is necessary, Defendants deny the  
11 allegations. Defendants specifically deny that they have violated Cal. Bus. & Prof.  
12 C. §§ 17200, *et seq.*

13 103. The allegations in Paragraph 103 consist of argument to which no  
14 response is required. To the extent any response is necessary, Defendants deny the  
15 allegations.

16 104. The allegations in Paragraph 104 consist of argument to which no  
17 response is required. To the extent any response is necessary, Defendants deny the  
18 allegations.

19 105. The allegations in Paragraph 105 consist of argument to which no  
20 response is required. To the extent any response is necessary, Defendants deny the  
21 allegations.

22 106. The allegations in Paragraph 106 consist of argument to which no  
23 response is required. To the extent any response is necessary, Defendants deny the  
24 allegations. Defendants specifically deny that Plaintiffs are entitled to an  
25 injunction pursuant to section 17203 of the UCL, or any other relief.

26 107. The allegations in Paragraph 107 consist of argument to which no  
27 response is required. To the extent any response is necessary, Defendants deny the  
28 allegations. Defendants specifically deny that Plaintiffs are entitled to restitution.

1 Defendants specifically deny that the requisites for class action treatment are  
2 present and that this action could properly proceed as a class action.

3 **FOURTH CAUSE OF ACTION**  
4 **Violations of Unfair Competition Law (UCL)**  
5 **Unfair and Fraudulent Prongs**  
6 ***Cal. Bus. & Prof. C. §§ 17200, et seq.***  
7 **(On behalf of Plaintiffs and the Class)**

8 108. Defendants incorporate their answers to Paragraphs 1-107 herein.

9 109. The allegations in Paragraph 109 consist of argument to which no  
10 response is required. To the extent any response is necessary, Defendants deny the  
11 allegations. Defendants specifically deny that they have violated Cal. Bus. & Prof.  
12 C. §§ 17200, *et seq.*

13 110. The allegations in Paragraph 110 consist of argument to which no  
14 response is required. To the extent any response is necessary, Defendants deny the  
15 allegations. Defendants specifically deny that they have violated the FAL, CLRA,  
16 or UCL.

17 111. The allegations in Paragraph 111 consist of argument to which no  
18 response is required. To the extent any response is necessary, Defendants deny the  
19 allegations.

20 112. The allegations in Paragraph 112 consist of argument to which no  
21 response is required. To the extent any response is necessary, Defendants deny the  
22 allegations. Defendants specifically deny that Plaintiffs are entitled to seek an  
23 injunction, or any other relief.

24 113. The allegations in Paragraph 113 consist of argument to which no  
25 response is required. To the extent any response is necessary, Defendants deny the  
26 allegations. Defendants specifically deny that Plaintiffs are entitled to seek  
27 restitution or any other relief. Defendants specifically deny that the requisites for  
28 class action treatment are present and that this action could properly proceed as a  
class action.



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**AFFIRMATIVE DEFENSES**

Defendants set forth below their affirmative defenses. By setting forth these affirmative defenses, Defendants do not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to the Plaintiffs, or the putative Class or California State Subclass (collectively the “Class”) members. Moreover, nothing stated herein is intended, or should be construed, as an acknowledgement that any particular issue or subject matter necessarily is relevant to Plaintiffs’ allegations.

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

114. The FAC fails, in whole or in part, to state a claim against Defendants upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

(Lack of Injury and Damages)

115. Plaintiffs’ and the putative Class’s claims are barred, in whole or in part, because they suffered no injury and/or incurred no damages.

**THIRD AFFIRMATIVE DEFENSE**

(Lack of Standing)

116. Plaintiffs lack standing to assert the claims herein, in whole or in part, or to act as a Class representative.

**FOURTH AFFIRMATIVE DEFENSE**

(Equity)

117. Plaintiffs’ and the putative Class’s claims are barred, in whole or in part, based on principles of equity.

**FIFTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

118. Plaintiffs and the putative Class are barred from recovery by the doctrine of unclean hands.

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**SIXTH AFFIRMATIVE DEFENSE**

(Waiver and Estoppel)

119. By their actions and conduct, Plaintiffs and the putative Class have waived their right to sue Defendants for any relief sought and/or their claims are barred, in whole or in part, by the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

(Laches)

120. Plaintiffs and the putative Class are barred, in whole or in part, from recovery by the doctrine of laches.

**EIGHTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

121. Plaintiffs' and the putative Class's claims are barred, in whole or in part, by the applicable statutes of limitations, including, but not limited to, California Business and Professions Code Section 17208, California Civil Code Section 338(d), California Civil Code Section 1783, and California Civil Code Sections 2607(3)(a) and 2725(1), (2).

**NINTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

122. To the extent Plaintiffs or the putative Class suffered any damages, they failed to mitigate them.

**TENTH AFFIRMATIVE DEFENSE**

(First Amendment)

123. Plaintiffs' and the putative Class's claims are barred, in whole or in part, by the First Amendment of the United States Constitution and similar provisions of the Constitution of the State of California, which protect, among other things, Defendant's right to promote and advertise its products.

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**ELEVENTH AFFIRMATIVE DEFENSE**

(Due Process)

124. The FAC, and the certification of the proposed Class, are barred, in whole or in part, by the Due Process Clauses of the Constitutions of the United States and the State of California, and by the Due Process Clauses of any other state Constitutions that may be applicable.

**TWELFTH AFFIRMATIVE DEFENSE**

(Inadequate Notice (CLRA))

125. The FAC is barred, in whole or in part, by Plaintiffs’ and the putative Class’s failure to comply with the notice and demand procedures required under California Civil Code § 1750 *et seq.*

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Preemption)

126. The FAC is barred, in whole or in part, by the doctrine of federal preemption including, but not limited to, preemption by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Puffery)

127. The FAC is barred, in whole or in part, to the extent that it is based on non-actionable puffery.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Primary Jurisdiction)

128. Plaintiffs’ and the putative Class’s claims are barred, in whole or in part, by the primary jurisdiction doctrine.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(No Extra-Territorial Application of State Laws to Out-of-State Purchases)

129. Plaintiffs’ and the putative Class’s claims are barred to the extent they

1 apply any state’s laws to any class member’s out-of-state purchase of the products.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 (Voluntary Payment Doctrine)

4 130. Plaintiffs’ and the putative Class’s claims are barred, in whole or in  
5 part, by the voluntary payments doctrine.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 (Consent)

8 131. Plaintiffs’ and the putative Class’s claims are barred, in whole or in  
9 part, to the extent the consumer consented to the purported wrong alleged in the  
10 FAC.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 (Additional Defenses)

13 132. Defendants reserve the right to raise additional affirmative defenses as  
14 may be established during discovery and by the evidence in this case.

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