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14 *Attorneys for Plaintiffs and the Class*

15 UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17  
 18 RONY ELKIES and DANIELLE  
 19 ALFANDRY, individually and on  
 behalf of all others situated;

20 Plaintiffs,  
 21 vs.

22 JOHNSON & JOHNSON SERVICES,  
 INC., a New Jersey limited liability  
 23 company, JOHNSON & JOHNSON  
 CONSUMER INC. a New Jersey  
 24 limited liability company, and DOES 1  
 through 100, inclusive,

25 Defendants.  
 26  
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Case No. 2:17-CV-7320-GW-JEM

**FIRST AMENDED CLASS ACTION  
 COMPLAINT**

1. Violations of the False and Misleading Advertising Law, Cal. Bus. & Prof. C. §§ 17500, et seq.
2. Violations of the Consumer Legal Remedies Act, Cal. Civ. C. §§ 1750, et seq.
3. Violations of Unfair Competition Law, ‘Unfair’ and ‘Fraudulent’ Prongs, Cal. Bus. & Prof. C. §§ 17200, et seq.
4. Violations of Unfair Competition Law, ‘Unlawful’ Prong, Cal. Bus. & Prof. C. §§ 17200, et seq.

1 Plaintiffs Rony Elkies and Danielle Alfandry (“Plaintiffs”), by their  
2 undersigned counsel, on behalf of themselves and all persons similarly situated who  
3 purchased Infants’ Tylenol, bring this First Amended Class Action Complaint against  
4 Defendants Johnson & Johnson Services, Inc. (“Johnson & Johnson”) and Johnson &  
5 Johnson Consumer Inc. (“Consumer Inc.”) (herein together “Defendants”). Plaintiffs  
6 allege the following upon information and belief, except for those allegations that  
7 pertain to Plaintiffs, which are based on Plaintiffs’ personal knowledge:

8 **NATURE OF THE ACTION**

9 1. Johnson & Johnson, by and through its wholly owned subsidiary  
10 Consumer Inc., manufactures, markets and sells their own brand of pain reliever and  
11 fever reducer under the “Tylenol” label, including Infants’ Tylenol (“Infants”) and  
12 Children’s Tylenol (“Children’s”), two well-known brand-name Over The Counter  
13 (“OTC”) medications.

14 2. Taking too much acetaminophen, the active ingredient in Tylenol, can  
15 be dangerous and even fatal, a problem that terrifies parents and causes them to be  
16 extra careful when buying medicine for their young children and babies. Defendants  
17 exploit this fear by misleading consumers into believing Infants’ has unique qualities  
18 beneficial for babies and tricking them into buying it.

19 3. In reality, the medicine contained in a bottle of Infants’ and a bottle of  
20 Children’s contains the exact same ingredients in the exact same dosage amounts, yet  
21 Defendants market and sell Infants’ to consumers, such as Plaintiffs, for substantially  
22 more than Children’s. Infants’ has no special qualities despite Defendants’  
23 representations. In stores, Infants’ costs approximately four times as much per ounce  
24 over Children’s for the same amount of the same medicine.

25 4. Despite the products having identical compositions in the same amounts,  
26 Defendants have created and marketed Infants’ in a manner which deceives  
27 reasonable consumers, like Plaintiffs, into believing that Infants’ is specially  
28 formulated for babies. To wit, Defendants represented that Children’s is unfit for

1 children younger than two (2) years old, and that only Infants’ should be given to  
2 children younger than two (2) years old so that consumers will pay a premium for  
3 Infants’; that Infants’ is unique and only fit for children younger than two (2) years  
4 old. In addition to the huge price difference, Defendants purposely package Infants’  
5 with a picture of a mother holding her young baby under the name “Infants’ Tylenol.”  
6 Children’s packaging depicts a picture of a mother hugging her significantly older  
7 child under “Children’s Tylenol.”

8 5. No reasonable consumer would pay approximately four times more for  
9 Infants’ as for Children’s unless he or she was deceived into thinking that infants  
10 cannot safely take Children’s Tylenol.

11 **JURISDICTION AND VENUE**

12 6. Jurisdiction and venue are properly vested in this Court because a  
13 substantial portion of the acts, events, and/or failure to act giving rise to the claims  
14 alleged herein occurred in this judicial district. In addition, Defendants have  
15 substantial business contacts with the State of California, or otherwise avail  
16 themselves of the markets within California, through promotion, sale, marketing and  
17 distribution of Infants’ Tylenol and Children’s Tylenol in California, to render the  
18 exercise of jurisdiction by this Court proper and necessary. Moreover, Defendants  
19 can be brought before this Court pursuant to California’s ‘long-arm’ jurisdictional  
20 statute.

21 7. This action is brought pursuant to the Class Action Fairness Act, 28  
22 U.S.C. § 1332 (CAFA). Jurisdiction is vested in this Court in that the amount in  
23 controversy exceeds \$5,000,000, exclusive of interests and costs, and this is a  
24 proposed nationwide class action in which more than two-thirds of the proposed  
25 plaintiff class, on the one hand, and Defendants, on the other, are citizens of different  
26 states.

27 8. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part  
28 of the events and misrepresentations giving rise to Plaintiffs’ claims occurred in this

1 District. Specifically, Plaintiffs bought Infants’ Tylenol in Los Angeles County.

2 **PARTIES**

3 9. At all relevant times, Plaintiffs Rony Elkies and Danielle Alfandry  
4 (collectively, “Plaintiffs”) have resided in Sherman Oaks, California. At the time  
5 Plaintiff Rony Elkies and/or his wife, Danielle Alfandry, purchased Infants’ for the  
6 first time on or about January 11, 2016, they resided and were domiciled in Sherman  
7 Oaks. Plaintiffs are the parents of a baby girl, G.E, who is was born in November  
8 2015 and is 24 months old.

9 10. Defendant Johnson & Johnson Services Inc. is, and at all times  
10 mentioned in this Complaint was, a corporation organized and existing under the  
11 laws of the State of New Jersey with headquarters at One Johnson & Johnson Plaza,  
12 New Brunswick, New Jersey 08933. Defendant Johnson & Johnson Services Inc.  
13 can sue and be sued in this Court.

14 11. Defendant Johnson & Johnson Consumer Inc. is, and at all times  
15 mentioned in this Complaint was, organized and existed under the laws of the State  
16 of New Jersey with headquarters at 7050 Camp Hill road, Fort Washington,  
17 Pennsylvania 19034. Johnson & Johnson Consumer Inc. was formerly McNeil PPC,  
18 Inc. (“McNeil”) Defendant Johnson & Johnson Consumer Inc. can sue and be sued in  
19 this Court.

20 **FACTUAL ALLEGATIONS**

21 12. McNeil created Tylenol as a prescription painkiller for children in 1955.

22 13. Defendant Johnson & Johnson Services Inc. bought McNeil in 1959,  
23 turning Tylenol into an OTC drug the next year.

24 14. Defendants manufacture and market two different pediatric OTC  
25 painkillers—Infants’ and Children’s.

26 15. Prior to the acts complained of herein, Infants’ was only available with a  
27 concentration of 80 mg/mL of acetaminophen, and Children’s was only available  
28 with a concentration of 160 mg/5 mL of acetaminophen.

1           16. The different concentrations caused some consumers to accidentally  
2 provide the wrong dosage of medicine to their children, causing them to overdose.

3           17. In 1995, a lawsuit in San Francisco County Superior Court brought to  
4 light a potential for confusion between their Infants' and Children's products  
5 stemming from the different concentrations.

6           18. Between 2000 and 2009 the FDA received reports of twenty (20)  
7 children dying from acetaminophen toxicity, and at least three (3) deaths were tied  
8 directly to mix-ups involving the two pediatric medicines.

9           19. Upon information and belief, in May 2011 Defendants changed Infants'  
10 to 160 mg/5 mL, the same concentration as Children's.

11           20. On December 22, 2011, the FDA informed the public that liquid  
12 acetaminophen marketed for infants would only be available in 160 mg/5 mL in order  
13 to prevent confusion and accidental acetaminophen toxicity.

14           21. Since then, the only differences in Infants' and Children's has been the  
15 price and the dosing instrument included with the product (Infants' comes with a  
16 syringe while Children's comes with a plastic cup).

17           22. Infants' and Childrens' have the same concentration of acetaminophen,  
18 are interchangeable and therefore suitable for infants and children, adjusting the  
19 dosage based only on the weight and age of the child.

20           23. Since at least September 2014, Defendants have been engaging in the  
21 unfair, unlawful, deceptive, and fraudulent practice of manufacturing, marketing and  
22 selling the same product as two unique medicines, such that parents mistakenly  
23 believe they must purchase the more expensive Infants' for children under two.

24           24. Defendants mislead consumers by using deceptive marketing techniques  
25 which obscure critical facts—including that Infants' is in no way better suited for  
26 children under two and both Infants' and Childrens' are in fact exactly the same—  
27 from consumers nationwide.

28           25. Defendants deceive consumers so that they will buy the deceptively-

1 labeled Infants’, which costs significantly more even though it is the exact same  
2 product and dosage as Children’s.

3 26. Infants’ outer packaging has an image of a mother holding her very  
4 young baby under the word “Infants” and no age range.

5 27. On the official Tylenol website, Defendants include an “Acetaminophen  
6 Dosage for Infants and Children” chart that leaves ages zero (0) to twenty-three (23)  
7 months blank for Children’s.

8 28. In contrast to the Infant’s container, the front cover of Children’s  
9 contains a large image of a mother hugging her school-age daughter underneath the  
10 description “Ages 2-11 Years.”

11 29. Defendants use the product packaging and Defendants’ official website  
12 to deceive consumers and incorrectly lead them to believe that the more expensive  
13 per ounce Infants’ is the only OTC painkiller under the Tylenol brand that can be  
14 safely given to anyone younger than two years old.

15 30. Defendants know that consumers with young infants, such as Plaintiffs,  
16 are typically more cautious about what medicine they give to their babies, especially  
17 when they are giving their babies a product that in the past has caused accidental  
18 deaths.

19 31. No reasonable consumer would be willing to pay more money—and  
20 certainly not approximately 400% more—for Infants’ unless they had good reason to  
21 believe that the Infants’ was different than the Children’s.

22 32. Consumers particularly believe there is no suitable alternative because  
23 Infant’s is marketed as the only Tylenol-brand OTC pain killer suitable for, and  
24 therefore safe for, anyone younger than two years old.

25 33. Indeed, Defendants’ misrepresentations and omissions described above  
26 would be important to a reasonable consumer in deciding whether or not to purchase  
27 Infants’.

28 34. Defendants’ deceptive and misleading advertising, marketing, packaging



1 and sales practices harness consumers' trust for the brand and fear of the  
2 consequence of acetaminophen toxicity to trick consumers, including Plaintiffs, into  
3 vastly overpaying for a product that could easily be purchased at the same store and  
4 that can usually be found on the same shelf.

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

6 35. On or about January 11, 2016, Danielle Alfandry made her first purchase  
7 of Infants'.

8 36. Ms. Alfandry made her purchase after taking her infant daughter, G.E. to  
9 her pediatrician for her two-month well baby check-up.

10 37. At that time, G.E. received vaccinations, and the pediatrician advised  
11 Ms. Alfandry that if G.E. was in discomfort following the vaccine administration, she  
12 could treat her baby with Tylenol.

13 38. Following the appointment, Ms. Alfandry stopped at the CVS pharmacy  
14 located at 14735 Ventura Blvd, Sherman Oaks, CA, 91403.

15 39. Once inside the store, Ms. Alfandry went to the "Infant section" in the  
16 store's OTC medicine section and located Infants' Tylenol.

17 40. Ms. Alfandry saw that it was marketed for babies.

18 41. Ms. Alfandry then purchased Infants' from CVS. She recalls paying  
19 approximately \$8.90 for 1 fl oz. of Infants'.

20 42. She administered Infants' to G.E. when G.E. appeared to be in  
21 discomfort following her vaccine administration.

22 43. In the following months, Ms. Alfandry and/or her husband Mr. Elkies,  
23 used Infants' to treat their daughter G.E. They made several additional purchases of  
24 Infants' at their CVS pharmacy.

25 44. Just after G.E. turned one year old, G.E had been ill with a high fever.  
26 Because of her high fever, Plaintiffs took G.E. to an urgent care in Tarzana,  
27 California.

28 45. The urgent care doctor determined that Mr. and Ms. Alfandry could treat

1 G.E.'s fever by again giving her Tylenol. At that time, the doctor told the Plaintiffs  
2 that although G.E. was only one year old, they did not need to purchase Infants', but  
3 rather could buy Childrens', as it was the same product, but was sold for less money  
4 and in a larger volume.

5 46. Following G.E.'s visit to urgent care, Plaintiffs returned to CVS to  
6 purchase Tylenol for G.E. Although the doctor had told them that the products were  
7 the same, and while they did see the Children's Tylenol product in the CVS store, the  
8 Plaintiffs continued to purchase Infants' because they were still concerned that it was  
9 not safe to give G.E. Children's.

10 **CLASS ALLEGATIONS**

11 47. Plaintiffs bring this action as a class action on behalf of themselves and  
12 the Class (the "Class") consisting of:

13 All persons who purchased Infants' Tylenol for personal  
14 use in the United States since October 3, 2014.

15 48. Plaintiffs also brings this suit as a class action on behalf of the following  
16 subclass ("California State Subclass"):

17 All persons who purchased Infants' Tylenol for personal  
18 use in California since October 3, 2014.

19 49. The following persons are excluded from the Class and Subclass:  
20 Defendants, Defendants' officers, directors, agents, trustees, parents, children,  
21 corporations, trusts, representatives, employees, successors, assigns, or other persons  
22 or entities related to or affiliated with Defendants and/or their officers and/or  
23 directors, or any of them. Also excluded from the proposed Class and Sub-Class are  
24 the Court, the Court's immediate family and Court staff.

25 50. The Class satisfies the numerosity, commonality, typicality, adequacy,  
26 predominance, and superiority requirements of Federal Rule of Civil Procedure 23(a)  
27 and (b)(3).

28 51. The members of the Class and Subclass are so numerous that joinder of



1 all members is impracticable. On information and belief, there are in excess of tens of  
2 thousands of members of the Class.

3 52. Plaintiffs' claims are typical of the Class and the California State  
4 Subclass. Plaintiffs, like all members of the Class, have been subjected to  
5 Defendant's deceptive and misleading advertising, marketing, packaging and pricing  
6 for Infants'. The harm suffered by Plaintiffs and the Class was and is caused by the  
7 same misconduct by Defendants.

8 53. Plaintiffs will fairly and adequately represent and protect the interests of  
9 the members of the Class and Subclass. Plaintiffs have retained counsel highly  
10 experienced in complex consumer class action litigation and intend to prosecute this  
11 action vigorously. Plaintiffs are members of the Class and Subclass described herein  
12 and do not have interests antagonistic to, or in conflict with, the other members of the  
13 Class and Subclass.

14 54. A class action is superior to other available methods for the fair and  
15 efficient adjudication of this controversy. Because the monetary damages suffered by  
16 individual Class members are relatively small, the expense and burden of individual  
17 litigation make it impossible for individual Class members to seek redress for the  
18 wrongful conduct asserted herein. If Class treatment of these claims is not available,  
19 Defendants would likely continue their wrongful conduct, will unjustly retain  
20 improperly obtained revenues, and/or otherwise escape liability for their wrongdoing.

21 55. Common questions of law and fact exist as to all members of the Class,  
22 which predominate over any questions that may affect individual Class members.  
23 Among the questions of law and fact common to the Class are the following:

- 24 a. Whether Defendants' marketing, advertising, packaging and pricing of  
25 Infants' is likely to deceive reasonable consumers;
- 26 b. Whether Defendants' marketing, advertising, packaging and pricing of  
27 Infants' caused Plaintiffs and the Class to suffer economic harm;
- 28 c. Whether Defendants violated California Business and Professions Code

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17200, *et seq*;

- d. Whether Defendants violated California Business and Professions Code 17500, *et seq*;
- e. Whether Defendants’ advertising, marketing, packaging, and pricing of Infants’ Tylenol and/or Children’s was material to reasonable consumers; and,
- f. Whether Plaintiffs are entitled to restitution and if so, the appropriate measure.

56. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

57. The prosecution of separate actions by individual members of the Class would run the risk of inconsistent or varying adjudications, which might establish incompatible standards of conduct for the Defendants. Prosecution as a class action will eliminate the possibility of repetitious litigation.

58. Plaintiffs also satisfy the requirements of Rule 23(b)(2). Specifically, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. Plaintiffs frequently visit stores which offer Children’s and Infants’. Moreover, Plaintiffs continue to have use for OTC pain-relief products for their daughter G.E. If the Court were to grant an injunction enjoining Defendants from making the misrepresentations described above, then Plaintiffs would consider purchasing Children’s or Infants’ in the future. Without an injunction, Plaintiffs would be unable to trust Defendants’ representations and would not purchase Infants’ or Children’s, although they would like to.

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

59. Plaintiffs hereby incorporate by reference each of the preceding

1 allegations as if fully set forth herein.

2 60. In labeling, marketing and advertising Infants', Defendants made, and  
3 continue to make, false and misleading statements in order to induce consumers into  
4 purchasing Infants' on a false premise.

5 61. In labeling, marketing and advertising Infants', Defendants failed and  
6 continue to fail to make material disclosures, including a disclosure notifying  
7 consumers that Infants' is the same product as Children's.

8 62. Defendants are aware that the claims they make about Infants' are false,  
9 misleading, without basis, and unreasonable.

10 63. Defendants engaged in the deceptive conduct alleged above to induce  
11 the public to purchase the more expensive Infants' product instead of Children's.

12 64. In labeling, marketing and advertising Infant's described above,  
13 Defendants knew or should have known their statements regarding the uses and  
14 characteristics of Infants' were false and misleading.

15 65. Defendants' misrepresentations of the material facts detailed above  
16 constitute unfair and fraudulent business practices within *Cal. Bus. & Prof. C. §*  
17 *17200*.

18 66. There were reasonably available alternatives to further Defendants'  
19 legitimate business interests, other than the conduct described herein.

20 67. All of the conduct alleged herein occurs and continues to occur in  
21 Defendants' business. Defendants' wrongful conduct is part of a course of conduct  
22 repeated on hundreds if not thousands of occasions every day.

23 68. Plaintiffs were misled into purchasing Infants' by Defendants' deceptive  
24 conduct and misleading advertising as alleged above.

25 69. Plaintiffs were misled and, because the misrepresentations and  
26 omissions were uniform and material, presumably believed that Infants' has benefits  
27 which it does not; namely that it is more suitable and safer for babies than Children's.

28 70. In addition, Defendants' use of various forms of advertising and

1 marketing have deceived and are likely to continue deceiving the consuming public,  
2 in violation of California Business and Professions Code § 17500.

3 71. Plaintiffs have suffered injury in fact and have lost money as a result of  
4 Defendants' false representations. Indeed, Plaintiffs purchased Infants' because of  
5 Defendants' misrepresentations that Infants' is a more suitable and safer Tylenol-  
6 brand OTC medicine for babies than Children's. Plaintiffs would not have purchased  
7 Infants' if they had known that the advertising and representations as described  
8 herein were false.

9  
10 **SECOND CAUSE OF ACTION**  
11 **Violations of Consumer Legal Remedies Act (CLRA)**  
12 **California Civil Code §§ 1750, *et seq.***  
13 **(On behalf of Plaintiffs and the California Subclass)**

14 72. Plaintiffs hereby incorporate by reference each of the preceding  
15 allegations as if fully set forth herein.

16 73. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered  
17 injury in fact and lost money as a result of Defendants' actions as set forth herein.

18 74. At all times relevant hereto, Defendants were and are "persons" as  
19 defined in Cal. Civ. C. § 1761(d).

20 75. At all times relevant hereto, Defendants' Infants' Tylenol is a "good" as  
21 defined in Cal. Civ. C. § 1761(d).

22 76. At all relevant times hereto, Plaintiffs' purchases of Infants' constitute  
23 "transactions" as defined in Cal. Civ. C. § 1761(e).

24 77. The following subsections of the CLRA prohibit the following unfair  
25 methods of competition and unfair or deceptive acts or practices undertaken by any  
26 person in a transaction is intended to result or which results in the sale or lease of  
27 goods or services to any consumer:

28 78. Cal. Civ. C. § 1770(a)(5): Representing that goods or services have  
sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which  
they do not have or that a person has a sponsorship, approval, status, affiliation, or

1 connection which they do not have;

2 79. Cal. Civ. C. § 1770(a)(9): Advertising goods or services with intent not  
3 to sell them as advertised; and,

4 80. Cal. Civ. C. § 1770(a)(16): Representing that the subject of a  
5 transaction has been supplied in accordance with a previous representation when it  
6 has not.

7 81. Defendants have violated and continue to violate Cal. Civ. C.  
8 §1770(a)(5) by representing that Infants' has sponsorship, approval, characteristics,  
9 ingredients, benefits or quantities which it does not have.

10 82. Defendants have violated and continue to violate Cal. Civ. C.  
11 §1770(a)(9) by advertising Infants' with the intent not to sell it as advertised.

12 83. Defendants have violated and continue to violate Cal. Civ. C.  
13 §1770(a)(16) by representing Infants' has been supplied in accordance with previous  
14 representations when it has not.

15 84. Defendants have violated and continue to violate Cal. Civ. C. §  
16 1770(a)(5), (a)(9) and (a)(16) by deceiving consumers into thinking that infants  
17 cannot safely take Children's and they must buy the more expensive Infants', as  
18 described more fully above. Indeed, Plaintiffs relied on Infants' packaging and shelf  
19 placement before purchasing. These representations and omissions were uniformly  
20 made and would be important to a reasonable consumer in deciding whether to  
21 purchase Infants'. No reasonable consumer would be willing to pay approximately  
22 400% more for the Infants' unless they had good reason to believe that the Infants'  
23 was different than the Children's.

24 85. Defendants' misrepresentations and omissions were done with the  
25 intention of deceiving Plaintiffs and the Class and depriving them of their legal rights  
26 and money.

27 86. Defendants knew that Infants' is not uniquely for infants (those under  
28 two years old), that Children's is the same product as Infants', and that Children's is

1 safe and suitable for infants as Defendants deceptively advertised or intentionally  
2 omitted in Infants’ packaging, television commercials, and online materials.

3 87. Plaintiffs are concurrently filing the declaration of venue required by  
4 Cal. Civ. C. § 1780(d).

5 88. The policies, acts, and practices hereto described were intended to result  
6 in the sale of Infants’ to the consuming public, particularly to cautious parents with  
7 sick babies who needed medicine, and violated and continues to violate § 1770(a) (5)  
8 of the act by representing that Infants’ has characteristics, benefits, uses, or quantities  
9 which it does not have.

10 89. Defendants’ actions as described herein were done with conscious  
11 disregard of Plaintiffs’ rights and Defendants have acted wantonly and maliciously in  
12 their concealment of the same.

13 90. Defendants’ wrongful business practices constituted, and constitute, a  
14 continuing course of conduct in violation of the CLRA since Defendants continue to  
15 make the same misrepresentations and omit material information regarding Infants.’

16 91. Pursuant to Cal. Civ. C. § 1780(a), Plaintiffs currently seek restitution  
17 and an order enjoining Defendants from engaging in the methods, acts and practices  
18 alleged herein, and any other relief deemed proper by the Court.

19 92. Concurrent with filing the original Complaint, Plaintiffs sent Defendants  
20 notice advising Defendants they violated and continues to violate, Section 1770 of  
21 the CLRA (the “Notice”). The Notice complied in all respects with Section 1782 of  
22 the CLRA. Plaintiff sent the Notice by Certified U.S. Mail, return-receipt requested  
23 to Defendant at Defendant’s principal place of business. Plaintiffs’ Notice advised  
24 Defendants they must correct, repair, replace or otherwise rectify its conduct alleged  
25 to be in violation of Section 1770. However, Defendants failed to do so within thirty  
26 (30) days of receipt of this notice. Plaintiffs therefore file this Amended Complaint to  
27 also seek actual damages and punitive damages.  
28



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

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5 93. Plaintiffs hereby incorporate by reference each of the preceding  
6 allegations as if fully set forth herein.

7 94. As alleged above, Plaintiffs have standing to pursue this claim as  
8 Plaintiffs have suffered injury in fact and have lost money or property as a result of  
9 Defendants’ actions. Specifically, prior to the filing of this action, Plaintiffs  
10 purchased Infants’ for their own personal household use. In so doing, Plaintiffs relied  
11 on Defendants’ misrepresentations and omissions of material facts, as alleged in  
12 detail above. Had Defendants disclosed to Plaintiffs that Infants’ and Children’s are  
13 identical and that Children’s is in fact suitable and safe for infants, they would not  
14 have purchased the more expensive Infants’.

15 95. Defendants’ conduct in marketing, advertising, labeling and selling  
16 Infants’ is likely to deceive reasonable consumers. Indeed, no reasonable consumer  
17 would be willing to pay approximately 400% more for Infants’ unless they had good  
18 reason to believe that the Infant’s was different than the Children’s.

19 96. Defendants are aware that the claims it makes about Infants’ are  
20 deceptive, false and misleading. Defendants are also aware consumers, such as  
21 Plaintiffs, with infants are typically more cautious about what medicine to give their  
22 baby, especially when they are giving their baby a product that in the past has caused  
23 accidental deaths.

24 97. The misrepresentations by Defendants make constitute unfair and  
25 fraudulent business practice within the meaning of Cal. Bus. & Prof. C. §§ 17500, *et*  
26 *seq.*

27 98. Defendant’s business practices, as alleged herein, are unfair because: (1)  
28 the injury to the consumer is substantial—they were deceived into thinking they

1 could only purchase Infants' and that they could not purchase the identical yet  
2 cheaper Children's; (2) the injury is not outweighed by countervailing benefits to  
3 consumers or competition, as there can be no benefit to consumers where they are  
4 required to pay nearly quadruple the price for the same medicine; (3) consumers  
5 could not reasonably have avoided the injury because Defendants intentionally  
6 misled the consuming public by means of its advertising, marketing and labeling of  
7 Infants'.

8 99. Defendant's business practices are also unfair because their conduct in  
9 selling, advertising, marketing and labeling Infants' offends established public policy  
10 and is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
11 consumers. Such public policy is tethered to specific constitutional and statutory  
12 provisions, including California's consumer protection statutes.

13 100. Defendants' wrongful business practices constitute a continuing course  
14 of conduct of unfair competition since Defendants are marketing and selling Infants'  
15 in a manner likely to deceive the public.

16 101. Defendants have peddled, and continue to peddle, its misrepresentations  
17 through a national advertising campaign.

18 102. In addition, Defendants' use of various forms of advertising media to  
19 advertise, call attention to or give publicity to the sale of goods or merchandise which  
20 are not as represented constitutes unfair competition, unfair, deceptive, untrue or  
21 misleading advertising, and an unlawful business practice within the meaning of Cal.  
22 Bus. & Prof. C. §§ 17200, *et seq.*

23 103. There were reasonably available alternatives to further Defendants'  
24 legitimate business interests, other than the conduct described above.

25 104. Plaintiffs were misled into purchasing Infants' by Defendants' deceptive  
26 and fraudulent conduct as alleged above.

27 105. Plaintiffs were misled and, because the misrepresentations and  
28 omissions were uniform and material, presumably believed Infants' and Children's

1 are not identical and Infants' is in fact the only suitable Tylenol-brand OTC pain and  
2 fever reliever for infants (those under two years old).

3 106. Pursuant to section 17203 of the UCL, Plaintiffs seek an order of this  
4 Court enjoining Defendants from engaging in the unfair and fraudulent business  
5 practices alleged herein in connection with the sale of Infants' and Children's.

6 107. Additionally, Plaintiffs seek an order awarding Plaintiffs and the Class  
7 restitution of the money wrongfully acquired by Defendants by means of the unfair  
8 and fraudulent business practices alleged herein.

9  
10 **FOURTH CAUSE OF ACTION**  
11 **Violations of Unfair Competition Law (UCL)**  
12 **Unfair and Fraudulent Prongs**  
13 ***Cal. Bus. & Prof. C. §§ 17200, et seq.***  
14 **(On behalf of Plaintiffs and the Class)**

15 108. Plaintiffs hereby incorporate by reference each of the preceding  
16 allegations as if fully set forth herein.

17 109. Defendants' actions, as alleged herein, constitute illegal and unlawful  
18 business practices in violation of Cal. Bus. & Prof. C. §§ 17200, *et seq.*

19 110. Defendants are unlawfully labeling, selling, marketing and advertising  
20 Infants' and Children's. Indeed, Defendants' violations of the FAL, CLRA and the  
21 UCL alleged above, constitute predicate acts which violate the UCL's 'unlawful'  
22 prong.

23 111. Plaintiffs were misled because Defendants' misrepresentations and  
24 omissions, described above, were uniform and material. Plaintiffs reasonably relied  
25 on those misrepresentations and material omissions, believing based thereon that  
26 Infants' and Children's are not identical and that Infants' is in fact the only Tylenol-  
27 brand OTC pain and fever reliever safe for infants (those under two years old). As a  
28 result of Defendants' misrepresentations and omissions, Plaintiffs lost money or  
property.

112. Pursuant to section 17203 of the UCL, Plaintiffs seek an order of this

1 Court enjoining Defendants from engaging in the unlawful business practices alleged  
2 herein in connection with the sale of Infants' and Children's.

3 113. Additionally, Plaintiff seek an order awarding Plaintiffs and the Class  
4 restitution of the money wrongfully acquired by Defendants by means of the unfair  
5 and fraudulent business practices alleged herein.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of herself and on behalf of the members  
9 of the Class defined herein, prays for judgment and relief on all Causes of Action as  
10 follows:

- 11 A. An order certifying that the action may be maintained as a Class Action  
12 and that Plaintiffs be appointed the Class Representatives and their  
13 counsel as Class Counsel;
- 14 B. An order enjoining Defendants from pursuing the policies, acts, and  
15 practices complained of herein;
- 16 C. Pre-judgment interest from the date of filing this suit;
- 17 D. Restitution;
- 18 E. Damages;
- 19 F. Punitive damages;
- 20 G. Reasonable attorneys' fees;
- 21 H. Costs of this suit; and
- 22 I. Such other and further relief as the Court may deem necessary or  
23 appropriate.
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**JURY DEMAND**

Plaintiffs, individually and on behalf of the Class, by and through their undersigned counsel, hereby request a trial by jury as to all issues so triable.

Date: November 21, 2017

Respectfully submitted,

/s/ Gillian L. Wade  
Gillian L. Wade  
Sara D. Avila  
Andrew Whitman  
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KALIK, P.C.**

*Counsel for Plaintiffs*