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

17 JESSICA ARGUETA, individually
18 and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 vs.

22 WALGREENS COMPANY; and
23 DOES 1 to 10, inclusive,

24 Defendant.

Case No.

COMPLAINT FOR:

1. **BREACH OF EXPRESS WARRANTY;**
2. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; and**
3. **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200, et seq.**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Jessica Argueta (“Plaintiff”), individually and on behalf of all others
2 similarly situated, brings this suit against the Defendant Walgreens Company (“Defendant”
3 or “Walgreens”), and complains and alleges the following based on personal knowledge
4 as to herself, the investigation of counsel, and on information and belief as to all other
5 matters. Plaintiff believes that substantial evidence will support the allegations set forth in
6 this complaint, after a reasonable opportunity for discovery.

7 NATURE OF ACTION

8 1. Millions of Americans trust their corner pharmacy to sell them safe, effective,
9 and lawful remedies for their illnesses. In this regard, pharmacies are the primary point of
10 purchase for over-the-counter (“OTC”) drugs and the primary source of information for
11 OTC medications.¹ Reliance on OTC medications is heightened in underserved
12 communities who are more vulnerable due to their lack of access to medical care and
13 significantly lower education levels. At the same time, the last two decades have seen
14 commoditization of OTC drugs by mercenary interests seeking to exploit the \$37 billion
15 OTC drug market through any means necessary.²

16 2. Given the enormous economic incentives provided by the OTC drug market
17 and the outsized trust bestowed on pharmacies by underserved communities, the
18 opportunity to abuse consumers' trust is manifest. This is particularly so where, as here,
19 the drug at issue, Phenazopyradine Hydrochloride (“PhenAzo”), costs as little as ten cents
20 to make, but can be sold for as much as three to four times that amount per unit, if not
21 more.

22 3. This case is about Defendant’s sale of PhenAzo to treat symptoms of a
23 Urinary Tract Infection (“UTI”), a medical condition that disproportionately impacts
24
25

26 ¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5386627/>

27 ² <https://www.precedenceresearch.com/over-the-counter-drugs-market#:~:text=The%20North%20America%20over%20the,30%25%20market%20share%20in%202021.>
28

1 women, and in particular women in underserved communities. Defendant sells PhenAzo
2 to treat UTI infections even though it is unsafe, ineffective, and **unlawful to sell.**

3 4. Defendant sells PhenAzo over-the-counter, marketed as a finished drug
4 products called “Urinary Pain Relief” (the “Product” or “Products”), as seen here:



20 See [https://www.walgreens.com/store/c/walgreens-urinary-pain-relief-tablets/ID=prod62](https://www.walgreens.com/store/c/walgreens-urinary-pain-relief-tablets/ID=prod6207450-product)
21 [07450-product.](https://www.walgreens.com/store/c/walgreens-urinary-pain-relief-tablets/ID=prod6207450-product)



See <https://www.walgreens.com/store/c/walgreens-maximum-strength-urinary-pain-relief-tablets/ID=prod6028643-product?skuId=400625195>.

THE PARTIES

5. Plaintiff Jessica Argueta is and at all relevant times mentioned was a resident of Kern County, California.

6. Defendant Walgreen Co., is, and at all times mentioned in this Complaint was, a publicly traded corporation with headquarters at 200 Wilmot Road in Deerfield, Illinois 60015. Defendant can sue and be sued in this Court.

7. Plaintiff does not know the true names or capacities of the persons or entities sued as DOES 1 to 10, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is in some manner legally responsible for the damages

1 suffered by Plaintiff and the Class members as alleged in this Complaint. Defendants shall
2 together be referred to as “Defendant” or “Walgreens.”

3 **JURISDICTION AND VENUE**

4 8. This Court has subject matter jurisdiction over this action pursuant to the
5 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because the total matter in
6 controversy exceeds \$5,000,000 and there are over 100 members of the proposed class.
7 Further, at least one member of the proposed class is a citizen of a State within the United
8 States and at least one defendant is the citizen or subject of a foreign state.

9 9. The Eastern District of California has specific personal jurisdiction over
10 Walgreens. Specific jurisdiction over a non-resident defendant exists where: (1) “[t]he non-
11 resident defendant . . . purposefully direct[s] [it]s activities or consummate[s] some
12 transaction with the forum or resident thereof; or perform[s] some act by which [it]
13 purposefully avails [it]self of the privilege of conducting activities in the forum, thereby
14 invoking the benefits and protections of its laws;” (2) the claim is one that “arises out of or
15 relates to” the defendant’s activities in the forum state; and (3) the exercise of jurisdiction
16 comports with “fair play and substantial justice, i.e. it must be reasonable.”
17 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff
18 need only establish the first two prongs, while it is the defendant’s burden to “present a
19 compelling case” that the exercise of jurisdiction would not be reasonable. *Id.*

20 10. ***Purposeful Availment.*** Under the first prong of the three-part test,
21 “purposeful availment” includes both purposeful availment and purposeful direction,
22 which are two distinct concepts. *Id.* Where a case sounds in tort, as here, courts employ the
23 purposeful direction test. Purposeful direction requires the defendant have “(1) committed
24 an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
25 defendant knows is likely to be suffered in the forum state.” *Morrill v. Scott Fin. Corp.*,
26 873 F.3d 1136, 1142 (9th Cir. 2017) (citing *Schwarzenegger*, 374 F.3d at 802).

27 11. On information and belief, Walgreens regularly sells its Products to
28 consumers in California, including Plaintiff, who purchased and received the Products in

1 Kern County, California. In addition, because Walgreens does a substantial amount of
2 business in California, it is knowingly selling an illegal drug directed at and harming
3 California residents, including Plaintiff.

4 12. ***Claim Arising Out of Action in the Forum Prong.*** Under the second prong
5 of the three-part specific jurisdiction test, personal jurisdiction exists where, as here, the
6 claim “arises out of or relates to” the defendant’s activities in the forum state. Courts in the
7 Ninth Circuit use a “but for” test to determine whether the claim “arises out of” the
8 nonresident’s forum-related activities. In other words, the test is satisfied if the plaintiff
9 would not have suffered loss “but for” defendant’s activities. *Ballard v. Savage*, 65 F.3d
10 1495, 1500 (9th Cir. 1995). Here, Walgreens’s contact with the forum—knowingly selling
11 an illegal drug directed at California residents—is the basis of its violations of law. But for
12 Walgreens’s contact with the forum, Plaintiff (and the thousands of other individuals who
13 purchased Walgreens’s Products) would not have suffered harm.

14 13. ***Venue.*** Venue is proper in the United States District Court for the Eastern
15 District of California pursuant to 28 U.S.C. § 1391 because Walgreens:

- 16 a) is authorized to conduct business in this District and has intentionally
17 availed itself of the laws and markets within this District;
- 18 b) does substantial business within this District;
- 19 c) is subject to personal jurisdiction in this District because it has availed itself
20 of the laws and markets within this District; and the injury to Plaintiff
21 occurred within this District.

22 **HISTORY OF PHENAZO**

23 14. PhenAzo’s analgesic properties were discovered in 1932 by Bernhard Joos,
24 the founder of Cilag (a pharmaceutical company). Joos later branded his discovery as
25 Pyridazil, a drug marketed to relieve urinary pain.

26 15. PhenAzo is a urinary analgesic used for the relief of urinary pain, burning,
27 and discomfort associated with urinary tract infections or other urinary conditions. It is not
28

1 an antibiotic and will not cure the infection itself. (See [https://www.mayoclinic.org/drugs-](https://www.mayoclinic.org/drugs-supplements/phenazopyridine-oral-route/side-effects/drg-20065473?p=1)
2 [supplements/phenazopyridine-oral-route/side-effects/drg-20065473?p=1.](https://www.mayoclinic.org/drugs-supplements/phenazopyridine-oral-route/side-effects/drg-20065473?p=1))

3 **HOW PHENAZO CAME TO BE SOLD UNLAWFULLY**

4 16. The Food and Drug Administration (“FDA”), under the Federal Food, Drug,
5 and Cosmetic Act (“FFDCA”), regulates the safety and effectiveness of prescription and
6 nonprescription (“over-the-counter, or OTC”) drugs sold in the United States.³ The use of
7 PhenAzo pre-dates the existence of the FDA.

8 17. The FFDCA, established in 1938 and subsequently amended multiple times,
9 initially required drug manufacturers to submit a New Drug Application (“NDA”) before
10 marketing a new drug to demonstrate its safety. (P.L. 75-717 (Prior to the 1938 law, drugs
11 were marketed in the United States without FDA review).)

12 18. In 1962, the Kefauver-Harris Drug Amendments expanded this requirement
13 to include substantial evidence of effectiveness in addition to safety. (P.L. 87-781.) This
14 set the foundation for the modern drug approval process.

15 19. For drugs introduced between 1938 and 1962, which were considered safe but
16 of unknown effectiveness, the FDA initiated the Drug Efficacy Study Implementation
17 (“DESI”) in 1966. (31 Fed. Reg. 9426 (July 6, 1966).) This effort aimed to evaluate the
18 effectiveness of prescription drugs, initially, and later, OTC drugs. Holders of NDAs
19 approved between 1938 and 1962 were required to submit data and information supporting
20 the effectiveness of drugs approved during that time to the FDA for evaluation. (31 Fed.
21 Reg. 9426 (July 6, 1966).)

22 20. The FDA’s final DESI determination categorized drugs as either effective for
23 their labeled indications or lacking substantial evidence of effectiveness. If a drug was
24

25 ³ Prescription drugs require health practitioner supervision to ensure their safe usage, as they can pose
26 risks due to toxicity, potential adverse effects, or their method of administration. FFDCA §503(b)(1) [21
27 U.S.C. §355(b)(1)]. On the other hand, OTC drugs do not require a prescriber’s authorization and can be
28 used by consumers as long as they have a substantial safety margin, a low likelihood of misuse or abuse,
and are appropriately labeled to enable consumers to self-diagnose their condition, choose the medication,
and manage their condition independently. FDA, “Regulatory Approaches for Prescription to OTC
Switch,” July 2, 2015, <https://www.fda.gov/media/93193/download>.

1 classified as effective, it could be marketed with FDA approval for safety and
2 effectiveness, either through a New Drug Application (“NDA”) or an Abbreviated New
3 Drug Application (“ANDA”) for related products (generic drugs). Once approved, the drug
4 no longer fell under DESI regulation. However, if a drug was deemed lacking substantial
5 evidence of effectiveness, a hearing opportunity (“DESI proceeding”) was provided. If no
6 hearing was requested or if it was denied, the FDA withdrew approval, leading to
7 enforcement actions against the drug and similar products, rendering them unmarketable
8 as unapproved new drugs. The final decisions of DESI proceedings were issued as “DESI
9 notices.”

10 21. On July 29, 1983, the FDA published a DESI notice in the Federal Register
11 (48 Fed. Reg. 34516). This notice outlined the conditions for approval and marketing of
12 old drugs including phenazopyridine-containing drug products, whether they were single
13 entities or fixed combinations.

14 22. Importantly, this notice did not comment on the safety and efficacy of any
15 OTC single entity phenazopyridine products. Instead, the DESI notice specifically
16 highlighted certain labeling statements (a carcinogenicity statement) that were required for
17 phenazopyridine-containing drug products intended for relieving symptoms associated
18 with urinary tract infections. Additionally, the notice also outlined specific labeling
19 requirements (a determined length of dosing) applicable to all phenazopyridine-containing
20 drug products. (48 Fed. Reg. 34516 (July 29, 1983).)

21 23. DESI review soon proved to be burdensome for OTC drugs due to the vast
22 number of OTC drug products on the market at the time (potentially up to 500,000) and
23 the discrepancy of OTC drugs’ FDA approval status, some OTC drugs had been approved
24 under an NDA based on safety but not effectiveness, while others had never been approved
25 at all. (37 Fed. Reg. 85 (January 5, 1972).)

26 24. The posed challenges of product-by-product review of OTC drugs lead to the
27 proposal of the OTC Drug Review in 1972. (37 Fed. Reg. 9464 (May 11, 1972).) This
28 process allowed the lawful marketing of certain OTC drugs (OTC drugs based on active

1 ingredient(s) vs. OTC drugs as a finished drug product) pursuant to a GRASE (or
2 “generally recognized as safe and effective”) determination within their respective
3 therapeutic drug category (e.g., antacids). OTC drug monographs were established,
4 revised, and amended through the rulemaking process. Before a final monograph was
5 established, tentative final monographs outlined generally recognized as safe and effective
6 (GRASE) conditions for specific therapeutic categories through proposed rules. The final
7 OTC drug monographs were codified in regulations under Title 21 of the CFR (Code of
8 Federal Regulations).

9 25. In 2003, the FDA requested data on the safety and efficacy of all OTC urinary
10 antiseptics/analgesics that are eligible for original OTC drug review but have not been
11 reviewed by the FDA to date—phenazopyridine fell into this category. (68 Fed. Reg. 75585
12 (Dec. 31, 2003).)

13 26. In this notice, the FDA states that “none of the single-entity [PhenAzo] drugs
14 marketed . . . have been the subject of an approved [NDA].” (*Id.*) In reviewing
15 phenazopyridine’s dual-marketing status—as a prescription when tablets contained 200
16 mg and as an OTC when tablets contained 190 or 195 mg or less—the FDA allowed
17 phenazopyridine to retain its dual marketing status (determined by the mg level) on the
18 basis of its marketing history alone. (*Id.*) All submissions in response to the FDA’s request
19 for data regarding phenazopyridine OTC drug products did not report newly conducted
20 clinical studies, as is required by the FDA to establish safety and efficacy.

21 27. In 2020, the Coronavirus Aid, Relief, and Economic Security Act (the
22 “CARES Act”) replaced the OTC drug monograph rulemaking process with a new
23 administrative order process.

24 28. The CARES Act changed the framework for regulating OTC monograph
25 drugs with the addition of section 505G to the FFDCA. At the time the CARES Act was
26 enacted, some OTC monographs were still in the proposed rulemaking stage, either entirely
27 or partially. According to section 505G(b)(8) of the FFDCA, a final monograph or tentative
28 final monograph that establishes conditions of use for a drug described in section

1 505G(a)(1) or (2) of the FDCA and represents the most recent version of the conditions,
2 including any modifications by proposed or final rules, is considered a final order.

3 CURRENT OTC DRUGS REGULATIONS

4 29. Prior to entering the U.S. market, OTC drugs must be approved by the FDA
5 to ensure they are either (a) known to be safe and effective for their intended use as a
6 finished drug product or (b) as an active ingredient are generally recognized as safe and
7 effective (GRASE) for their intended use within a therapeutic drug category. FDA approval
8 serves as an assurance to consumers that the OTC drug's effects have been reviewed by
9 the FDA's Center for Drug Evaluation and Research (CDER), and that its benefits
10 outweigh known and potential risks for the intended population. (See
11 <https://www.fda.gov/drugs/development-approval-process-drugs>.)

12 30. There are two regulatory pathways to bring an OTC drug into the U.S. market.
13 (See <https://www.fda.gov/drugs/otc-drug-review-process-otc-drug-monographs>.) A
14 manufacturer can either (1) submit an NDA or ANDA for approval to FDA or (2) use the
15 OTC drug monograph process. (FDCA §505 [21 U.S.C. §355].)

16 31. Both the NDA or ANDA and monograph pathways involve a scientific
17 decision by FDA; however, the two mechanisms are different. A primary difference is that
18 approval of an NDA or ANDA results in the approval to sell a specific *finished drug*
19 *product*, whereas the OTC drug monograph process focuses on the safety and effectiveness
20 of one or more *active ingredients* within a drug category.⁴

21 32. The first pathway is through the drug application process (NDA or ANDA),
22 which involves submitting an FDA drug application for a specific finished drug product.
23 This process requires a manufacturer to submit clinical trial data demonstrating safety and
24 effectiveness of an individual OTC drug product and FDA approval prior to marketing.

25
26 _____
27 ⁴ FDA, "The ABCs of OTCs: Little-Known Facts About Over-the-Counter Drugs,"
28 presentation by Karen Murry Mahoney, MD, FACE, Deputy Director of the Division of
Nonprescription Drug Products, Center for Drug Evaluation and Research, FDA, p. 29,
<https://www.fda.gov/media/97292/download>.

1 Once the application is approved as either an NDA or ANDA, the drug is deemed to be
2 known safe and effective and can be marketed as an OTC drug.

3 33. The second pathway is through the OTC Drug Review (or “OTC drug
4 monograph”) process. *Id.* An OTC drug monograph is a “rule book” that defines specific
5 conditions, such as active ingredients, uses (indications), doses, routes of administration,
6 labeling, and testing, under which an OTC drug in a given therapeutic category (e.g.,
7 sunscreen, antacid) is generally recognized as safe and effective (GRASE) for its intended
8 use. This approach introduces the nonprescription drug to the market under an OTC drug
9 monograph without the need for an FDA-approved NDA or ANDA application.

10 34. By following the “rule book” of the OTC drug monograph (i.e., the OTC drug
11 product adheres to the conditions outlined in the OTC drug monograph), the OTC drug is
12 deemed to be generally recognized safe and effective (“GRASE”) for its intended use in
13 its given therapeutic category and does not require individual FDA approval as a specific
14 finished drug product prior to entering the market. Compliance with the regulations and
15 requirements outlined in established OTC drug monographs is assessed by the FDA during
16 the inspection process to ensure GRASE standards are met before a finished drug product
17 can be marketed.

18 35. In summary, both pathways allow for legal marketing of OTC drugs in the
19 U.S. The first option requires an FDA-approved drug application for a specific finished
20 drug product, while the second option relies on adherence to an established OTC drug
21 monograph approved by the FDA for a generally recognized safe and effective (GRASE)
22 intended use of one or more active ingredients within a therapeutic category.

23 36. To date, PhenAzo (the Products) has never been approved by the FDA or
24 brought to market under an established OTC drug monograph.

25 **PLAINTIFF’S PURCHASE**

26 37. On or about August 17, 2023, Plaintiff purchased the Product from Walgreens
27 for use in treating a urinary tract infection.
28

1 38. A reasonable consumer understands there are procedures, policies, and
2 regulations in place for bringing drugs to market—i.e., a reasonable consumer understands
3 that there is some sort of approval process that drugs must be subjected to before they can
4 be legally sold to consumers.

5 39. A reasonable consumer also understands that if Walgreens—a trusted local
6 pharmacy—is selling a drug, marketed as a finished product, that such drug is approved
7 for lawful sale.

8 40. Plaintiff is a reasonable consumer who understood and believed that
9 Walgreens could lawfully sell the Products.

10 **CLASS ACTION ALLEGATIONS**

11 41. Plaintiff brings this action on behalf of herself and all persons similarly
12 situated pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure
13 and seeks certification of the following class:

14 All persons in the United States who purchased the Products from
15 Walgreens within the four years prior to the filing of this Complaint.

16 42. The above-described class of persons shall hereafter be referred to as the
17 “Class.” Excluded from the Class are any and all past or present officers, directors, or
18 employees of Walgreens, any judge who presides over this action, and any partner or
19 employee of Class Counsel. Plaintiff reserves the right to expand, limit, modify, or amend
20 this class definition, including the addition of one or more subclasses, in connection with
21 his motion for class certification, or at any other time, based upon, *inter alia*, changing
22 circumstances and/or new facts obtained during discovery.

23 43. In the alternative, Plaintiff seeks certification of the following class pursuant
24 to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure:

25 All persons in the State of California who purchased the Products from
26 Walgreens within the four years prior to the filing of this Complaint.

27 44. The above-described class of persons shall hereafter be referred to as the
28 “California Class.” Excluded from the California Class are any and all past or present

1 officers, directors, or employees of Walgreens, any judge who presides over this action,
2 and any partner or employee of Class Counsel. Plaintiff reserves the right to expand, limit,
3 modify, or amend this class definition, including the addition of one or more subclasses, in
4 connection with his motion for class certification, or at any other time, based upon, *inter*
5 *alia*, changing circumstances and/or new facts obtained during discovery.

6 45. **Numerosity**. The Class is so numerous that joinder of all members in one
7 action is impracticable. The exact number and identities of the members of the Class is
8 unknown to Plaintiff at this time and can only be ascertained through appropriate
9 discovery, but on information and belief, Plaintiff alleges that there are thousands of
10 members of the Class, if not more.

11 46. **Typicality**. Plaintiff's claims are typical of those of other members of the
12 Class, all of whom have suffered similar harm due to Walgreens's course of conduct as
13 described in this Complaint. Identical to all members of the Class, Defendant sold a drug
14 that it was not authorized to sell. Plaintiff is advancing the same claims and legal theories
15 on behalf of herself and all absent members of the Class. Walgreens has no defenses unique
16 to the Plaintiff.

17 47. **Adequacy of Representation**. Plaintiff is an adequate representative of the
18 Class and will fairly and adequately protect the interests of the Class. Plaintiff has retained
19 attorneys who are experienced in the handling of complex litigation and class actions, and
20 Plaintiff and her counsel intend to prosecute this action vigorously. Plaintiff has no
21 antagonistic or adverse interests to those of the Class.

22 48. **Existence and Predominance of Common Questions of Law or Fact**.
23 Common questions of law and fact exist as to all members of the Class that predominate
24 over any questions affecting only individual members of the Class. These common legal
25 and factual questions, which do not vary among members of the Class, and which may be
26 determined without reference to the individual circumstances of any member of the Class,
27 include, but are not limited to, the following:
28

- 1 a) Whether Defendant breached the express warranty that it was lawful to
- 2 sell the Products?
- 3 b) Whether Defendant breached the implied warranty of merchantability
- 4 by selling the unlawful Products?
- 5 c) Whether Defendant's sale of the Products violates the unlawful, unfair,
- 6 and fraudulent prongs of the UCL?
- 7 d) To what extent did Defendant's conduct cause, and continue to cause,
- 8 harm to the Class?
- 9 e) Whether the members of the Class are entitled to damages and/or
- 10 restitution.
- 11 f) What type of injunctive relief is appropriate and necessary to enjoin
- 12 Defendant from continuing to unlawfully sell the Products?

13 49. **Superiority**. A class action is superior to other available methods for the fair
14 and efficient adjudication of this controversy because individual litigation of the claims of
15 all members of the Class is impracticable. Requiring each individual class member to file
16 an individual lawsuit would unreasonably consume the amounts that may be recovered.
17 Even if every member of the Class could afford individual litigation, the adjudication of at
18 least thousands of identical claims would be unduly burdensome to the courts.
19 Individualized litigation would also present the potential for varying, inconsistent, or
20 contradictory judgments and would magnify the delay and expense to all parties and to the
21 court system resulting from multiple trials of the same factual issues.

22 50. By contrast, the conduct of this action as a class action, with respect to some
23 or all of the issues presented, presents no management difficulties, conserves the resources
24 of the parties and of the court system, and protects the rights of the members of the Class.
25 Plaintiff anticipates no difficulty in the management of this action as a class action. The
26 prosecution of separate actions by individual members of the Class may create a risk of
27 adjudications with respect to them that would, as a practical matter, be dispositive of the
28 interests of the other members of the Class who are not parties to such adjudications, or

1 that would substantially impair or impede the ability of such non-party Class members to
2 protect their interests.

3 51. **Ascertainability**. Upon information and belief, Walgreens keeps extensive
4 computerized records of its sales and customers through, among other things, databases
5 storing customer orders, customer order histories, customer profiles, customer loyalty
6 programs, and general marketing programs. Walgreens has one or more databases through
7 which a significant majority of members of the Class may be identified and ascertained,
8 and it maintains contact information, including email addresses and home addresses (such
9 as billing, mailing, and shipping addresses), through which notice of this action is capable
10 of being disseminated in accordance with due process requirements.

11 52. The California Class also satisfies each of the class action requirements set
12 forth above. The allegations set forth above with regards to the Class, therefore, apply
13 equally to the California Class.

14 **FIRST CLAIM FOR RELIEF**

15 **(Breach of Express Warranty)**

16 53. Plaintiff hereby re-incorporates and re-alleges all the preceding paragraphs as
17 if fully set forth herein.

18 54. Defendant's very sale of the Products is an express warranty that the Products
19 are lawful to sell.

20 55. The affirmations of fact and promises made by Defendant to Plaintiff and the
21 Class regarding the Products became part of the basis of the bargain between Defendant
22 and Plaintiff and the Class, thereby creating an express warranty that the Product would
23 conform to those affirmations of fact, representations, promises, and descriptions—i.e.,
24 that the Products were legal to sell.

25 56. The Products are not, in fact, legal to sell as the Products are not FDA
26 approved and they are not marketed under an established OTC drug monograph.

1 57. Plaintiff and members of the Class suffered economic injury as a direct and
2 proximate result of Defendant’s breach of warranty because they would not have purchased
3 the Product on the same terms if they had known that the Product was illegal to sell.

4 58. As a result, Plaintiffs and members of the Class have been damaged either in
5 the full amount of the purchase price of the Products or in the difference in value between
6 the Products as warranted and the Products as sold.

7 **SECOND CLAIM FOR RELIEF**

8 **(Breach of Implied Warranty of Merchantability)**

9 59. Plaintiff hereby re-incorporates and re-alleges all the preceding paragraphs
10 as if fully set forth herein.

11 60. Walgreens is and was at all relevant times a “merchant” within the meaning
12 of the Uniform Commercial Code (“UCC”). Walgreens sold and marketed the Product,
13 which is a “good” within the meaning of the UCC. Consequently, Walgreens impliedly
14 warranted that the Product was merchantable, including that the Products were finished
15 drugs Products that were legal to sell. However, this implied warranty was false with
16 respect to the goods of the kind sold to Plaintiff and Class members.

17 61. Under U.C.C. § 2-314(2), in order for goods to be merchantable, they must at
18 least conform to the promise or affirmations of fact made on the container or label. Inherent
19 in the Products’ containers or labels is the representation that the Products are drugs
20 capable of being lawfully sold.

21 62. However, the Products are not, in fact, legal to sell as the Products are not
22 FDA approved and they are not marketed under an established OTC drug monograph.

23 63. In reliance upon Defendant’s skill and judgment and the implied warranties
24 above, Plaintiff and Class members purchased the Products.

25 64. The Products were not altered by Plaintiff or Class members in a manner that
26 would render the Products lawful to sell.

1 73. A business act or practice is “fraudulent” within the meaning of the UCL if
2 members of the public are likely to be deceived. Here, members of the public (reasonable
3 consumers) are likely to be deceived by Defendant’s conduct in selling the Products as
4 lawful, finished-drug products, when the Products are, in fact, unlawful to sell. As a result,
5 Plaintiff’s claims are fraudulent within the meaning of the UCL.

6 74. The UCL also prohibits “unfair” business practices. A business practice can
7 be “unfair”—and violative of Section 17200—even if it is not “deceptive” and even if it is
8 “lawful.” *See Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20
9 Cal.4th 163, 180 (1999). Defendant’s business practice of selling the Products as lawful,
10 finished-drug products, when the Products are, in fact, unlawful to sell is immoral,
11 unethical, oppressive, unscrupulous, and therefore substantially injurious to consumers
12 who purchase the Products. Defendant’s having realized profits from the sale of the
13 Products is “unfair” within the meaning of the UCL.

14 75. The UCL also permits a cause of action to be brought if a practice violates
15 some other law. In effect, the “unlawful” prong of Section 17200 makes a violation of the
16 underlying law a *per se* violation of Section 17200. *See Kasky v. Nike, Inc.*, 27 Cal.4th 939,
17 950 (2002) (upholding false advertising claims against Nike; the Supreme Court explained
18 that the “unlawful” prong of Section 17200 makes a violation of the underlying law a *per*
19 *se* violation of the UCL; the court held, “The UCL’s scope is broad. By defining unfair
20 competition to include any ‘unlawful . . . business act or practice,’ the UCL permits
21 violations of other laws to be treated as unfair competition that is independently
22 actionable.”) (emphasis in original); *see also Stop Youth Addiction, Inc. v. Lucky Stores,*
23 *Inc.*, 17 Cal.4th 553, 561 (1998), *overruled on other grounds in Arias v. Superior Court,*
24 46 Cal.4th 969 (2009) (holding that § 17200 allows a remedy even if the underlying statute
25 confers no private right of action).

26 76. California law is clear that virtually any law or regulation—here, the laws and
27 regulations surrounding the drug approval process—can serve as a predicate for a Section
28 17200 “unlawful” violation.

1 77. Thus, because the Products are not lawful to sell, Walgreens has violated the
2 “unlawful” prong of Section 17200.

3 78. Plaintiff and each member of the Class suffered an injury in fact and lost
4 money or property as a result of Defendant’s unlawful, unfair, and/or fraudulent business
5 practices.

6 79. Plaintiff, on behalf of herself and the members of the Class, seeks restitution
7 as well as disgorgement of all moneys received by Defendant through the conduct
8 described above.

9 80. Plaintiff, on behalf of herself and the members of the Class, seeks a temporary,
10 preliminary, and/or permanent injunction from this Court prohibiting Defendant from
11 engaging in the patterns and practices described herein, including but not limited to, putting
12 a stop to the unlawful sale of the Products.

13 81. Injunctive relief is necessary to prevent future harm to consumers, including
14 Plaintiff. Every day, consumers like Plaintiff are misled into believing they are purchasing
15 a finished-drug product that has been approved for lawful sale. Without injunctive relief,
16 Defendant will continue to mislead consumers, and consumers will continue to purchase
17 the unlawful Products.

18 **PRAYER**

19 WHEREFORE, Plaintiff prays for relief and judgment in favor of herself and the
20 Class as follows:

21 1. For an order certifying that the action be maintained as a class action, that
22 Plaintiff be designated the class representative, and that undersigned counsel be designated
23 as class counsel.

24 2. For an injunction putting a stop to the illegal conduct described in this
25 Complaint and ordering Defendant to correct its illegal conduct and refrain from selling
26 the unlawful Products.

27 3. For an order awarding Plaintiff and the proposed Class members actual,
28 consequential, restitution, punitive, and statutory damages, as appropriate.

1 4. For an award of restitution and disgorgement of moneys paid that Defendant
2 obtained as a result of its unfair, deceptive, untrue, and misleading business practices, all
3 as described above.

4 5. For pre- and post-judgment interest and costs of suit incurred.

5 6. For reasonable attorneys' fees pursuant to California Code of Civil Procedure
6 § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the public
7 interest and satisfies the statutory requirements for an award of attorneys' fees

8 7. Plaintiff be awarded such other and further relief as the Court deems just and
9 proper.

10
11 Respectfully submitted,

12
13 DATED: January 17, 2024

TAULER SMITH LLP

14
15 By: /s/ Robert Tauler
16 Robert Tauler, Esq.
17 *Attorney for Plaintiff*
18 *Jessica Argueta*

19 DATED: January 17, 2024

KJC LAW GROUP, A.P.C.

20
21 By: /s/ Kevin J. Cole
22 Kevin J. Cole, Esq.
23 *Attorney for Plaintiff*
24 *Jessica Argueta*

JURY DEMAND

Plaintiff Jessica Argueta hereby demands a jury trial for its claims against Defendant.

DATED: January 17, 2024

TAULER SMITH LLP

By: /s/ Robert Tauler
Robert Tauler, Esq.
Attorney for Plaintiff
Jessica Argueta

DATED: January 17, 2024

KJC LAW GROUP, A.P.C.

By: /s/ Kevin J. Cole
Kevin J. Cole, Esq.
Attorney for Plaintiff
Jessica Argueta