

1 SCOT BERNSTEIN (SBN 94915)  
swampadero@sbernsteinlaw.com  
2 LAW OFFICES OF SCOT D. BERNSTEIN,  
A PROFESSIONAL CORPORATION  
3 101 Parkshore Drive, Suite 100  
Folsom, California 95630  
4 Telephone: (916) 447-0100  
Facsimile: (916) 933-5533

5 *Attorneys for Plaintiff*  
6 NICOLE CALAGNO

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 01 2020

CLERK OF THE SUPERIOR COURT  
By M. Williams Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

11 NICOLE CALAGNO, individually and on  
behalf of a class of similarly situated  
12 individuals,

13 Plaintiff,

14 v.

15 RITE AID CORPORATION; and DOES 1  
16 through 50, inclusive,

17 Defendants.

Case No: HG 20064377

CLASS ACTION

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CLASS ACTION COMPLAINT

CASE NO.

Filed By Fax

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Nicole Calagno (“Plaintiff”), on behalf of herself and a class of similarly situated  
3 individuals defined below, alleges on information and belief as follows:

4 **INTRODUCTION**

5 1. Defendant Rite Aid Corporation (“Defendant”) markets and, in stores and online,  
6 sells its own brand of liquid acetaminophen fever reducer and pain reliever, including “infants’  
7 fever reducer and pain reliever” (“Infants’ acetaminophen”) and “children’s fever reducer and  
8 pain reliever” (“Children’s acetaminophen”). Defendant’s branded products, including Infants’  
9 acetaminophen, are sold online and at its retail stores.

10 2. Taking too much acetaminophen, the active ingredient in Defendant’s Infants’  
11 and Children’s pain relievers and fever reducers, can be dangerous and even fatal. This is an  
12 issue that concerns parents and other caregivers and causes them to be extra careful when  
13 purchasing medicines for infants and young children. Defendant exploits this fear and caution  
14 by misleading consumers into believing that the more expensive Infants’ product has unique  
15 qualities that are beneficial or safer for children ages two to three or younger.

16 3. In reality, even though Defendant markets and, in stores and online, sells Infants’  
17 acetaminophen at a price per ounce that is far higher than that of Children’s acetaminophen, the  
18 medicine contained in a bottle of Infants’ acetaminophen contains the exact same active  
19 ingredient in the exact same active-ingredient dosage amount as the medicine contained in a  
20 bottle of Children’s acetaminophen. Despite Defendant’s representations, Infants’  
21 acetaminophen has no special qualities or properties. But Infants’ acetaminophen costs  
22 approximately two and a half times as much per ounce and sometimes more. The representation  
23 on the label that the product is for “infants” takes advantage of parents’ and caregivers’  
24 legitimate caution and concern and misleads them into paying a multiple of the price for an  
25 identical product.

26 4. Thus, despite the two products having identical compositions, Defendant has  
27 created and marketed Infants’ acetaminophen in a manner that deceives reasonable consumers,  
28 like Plaintiff, into believing that Infants’ acetaminophen is specially formulated for children

1 ages two to three or younger and that consumers should pay vastly more per ounce for the same  
 2 medication. The Infants' and Children's products are displayed on the same shelf space in  
 3 Defendant's retail stores. The Infants' acetaminophen box prominently displays the words  
 4 "infants'" and "for ages 2 to 3 years."<sup>1</sup> The Children's acetaminophen box prominently displays  
 5 the word "children's," and states that it is for children "ages 2 to 11 years."



17 5. No reasonable consumer would pay two and a half times as much per ounce and  
 18 sometimes more to purchase Infants' acetaminophen over Children's acetaminophen unless he  
 19 or she had been deceived into thinking that infants cannot safely take the Children's product.

20 **PARTIES**

21 6. Plaintiff Nicole Calagno is an individual and a resident of California.

22 7. Defendant Rite Aid Corporation is a Delaware corporation that systematically  
 23 and continuously does business in California and with California residents.

24 8. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES  
 25 1 through 50, inclusive, and therefore sues those defendants by those fictitious names. Plaintiff

26 \_\_\_\_\_  
 27 <sup>1</sup> The term "infants" is commonly understood to apply to children up to the age of two. Once a  
 28 child learns to walk, around two years of age, the description changes to "toddler."

1 will amend this Complaint to allege their true names and capacities when they are ascertained.  
2 Plaintiff is informed and believes and, on that ground, alleges that each of the fictitiously-named  
3 defendants is responsible in some manner for the occurrences alleged and that Plaintiff's  
4 injuries and damages, as alleged, are proximately caused by those occurrences.

5 9. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
6 times, each Defendant was the principal, agent, partner, joint venturer, officer, director,  
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
8 predecessor in interest of some or all of the other Defendants, and was engaged with some or all  
9 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some  
10 or all of the other Defendants as to be liable for their conduct with respect to the matters alleged  
11 below. Plaintiff is informed and believes and, on that ground, alleges that each Defendant acted  
12 pursuant to and within the scope of the relationships alleged above, and that each knew or  
13 should have known about and authorized, ratified, adopted, approved, controlled, aided and  
14 abetted the conduct of all Defendants.

#### 15 JURISDICTION AND VENUE

16 10. This Court has subject matter jurisdiction over this action under California  
17 Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.* and California Civil Code §§  
18 1770 and 1780.

19 11. This Court has personal jurisdiction over the parties because Defendant  
20 continuously and systematically conducts business in the State of California. Likewise,  
21 Plaintiff's rights were violated in the State of California and arose out of her contact with  
22 Defendant within California.

23 12. Venue is proper in this Court because California Code of Civil Procedure §§ 395  
24 and 395.5, and case law interpreting those sections, provide that if a foreign business entity fails  
25 to designate with the office of the California Secretary of State a principal place of business in  
26 California, it is subject to being sued in any county in the state that a plaintiff desires. On  
27 information and belief, as of the date this Complaint is filed, Defendant is a foreign business  
28 entity which has failed to designate a principal place of business in California with the office of

1 the Secretary of State.

2 13. Venue also is proper under California Civil Code § 1780 (d), as Defendant does  
3 business in this County.

4 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

5 14. Defendant markets Infants' acetaminophen and Children's acetaminophen and, in  
6 stores and online, sells them as two different pediatric over-the-counter pain killers and fever  
7 reducers.

8 15. Before 2011, the concentration of acetaminophen, the industry-wide active  
9 ingredient in infants' and children's acetaminophen products, differed. The differing  
10 concentrations were blamed for some consumers providing wrong dosages to their children,  
11 causing them to overdose. Between 2000 and 2009, the FDA received 20 reports of children  
12 dying from acetaminophen toxicity. At least three of those deaths reportedly were tied directly  
13 to parents' errors involving the different concentration levels.

14 16. Thus, on December 22, 2011, to prevent confusion and accidental acetaminophen  
15 toxicity, the FDA informed the public that liquid acetaminophen marketed for infants would be  
16 available only in concentrations of 160 milligrams per 5 milliliters (160 mg/5 ml), matching the  
17 concentration in children's liquid acetaminophen.

18 17. At all times since April 2016, the Infants' and Children's liquid acetaminophen  
19 products marketed and sold by Defendant under its own brand have been available only in  
20 identical 160 mg/5ml concentrations. The **only** differences between the Infants' and Children's  
21 products have been the prices, the words on the box, and the dosing instrument that is included  
22 with the product. Infants' acetaminophen comes with a small plastic syringe, while Children's  
23 acetaminophen comes with a plastic cup.

24 18. As the Infants' and Children's products have the identical concentration of  
25 acetaminophen – 160 mg/5ml – both are equally suitable for infants and children, with  
26 adjustments for the dosage based only on the weight and age of the child.

27 19. Since at least April 2016, Defendant has engaged in the unfair, unlawful,  
28 deceptive and fraudulent practice of marketing and selling the same product – liquid

1 acetaminophen – as two unique medicines. As a result, parents, caregivers and other reasonable  
2 consumers have been misled into believing that they must purchase the far-more-expensive  
3 Infants’ product for children ages two to three and younger.

4 20. Since at least April 2016, Defendant has misled reasonable consumers by using  
5 deceptive marketing techniques that obscure critical facts. Those critical facts include that  
6 Infants’ acetaminophen is not better suited for children ages two to three and younger and that  
7 Infants’ and Children’s acetaminophen are the exact same medication.

8 21. Defendant deceives parents, caregivers, and other reasonable consumers so that  
9 they will pay two and a half times as much per ounce or even more for the deceptively-labeled  
10 Infants’ product than they would have to pay for the identical Children’s product.

11 22. Defendant deceives and misleads parents, caregivers and other reasonable  
12 consumers into believing that the higher-price-per-ounce Infants’ product is the only liquid  
13 acetaminophen product that safely can be given to a child ages two to three or younger.

14 23. Defendant is aware of and counts on the reality that parents, caregivers and other  
15 reasonable consumers shopping for products to be given to infants are very cautious about what  
16 products – especially medicines –they give to infants.

17 24. No reasonable consumer would be willing to pay two and a half times as much  
18 per ounce or even more for an identical product unless he or she had been deceived or misled  
19 into believing that the more-expensive product was different and better.

20 25. Plaintiff has had reason to purchase Defendant’s Infants’ liquid acetaminophen  
21 product between April 2016 and the present and has done so. On at least one occasion, Plaintiff  
22 purchased Defendant’s Infants’ liquid acetaminophen from a Rite Aid retail store in California  
23 for use by a child under three years of age. Plaintiff purchased the Infants’ version of  
24 Defendant’s liquid acetaminophen instead of the less expensive Children’s version because the  
25 Infants’ version was specifically marketed and represented as being for children ages two to  
26 three and younger.

**CLASS ACTION ALLEGATIONS**

1  
2 26. Plaintiff brings this action under California Code of Civil Procedure § 382 on  
3 behalf of herself and the class defined as follows:

4 All California residents who purchased “Rite Aid”-branded Infants’ liquid  
5 acetaminophen for a non-commercial use at any time during the applicable limitations  
6 period preceding the filing of the Complaint in this matter and up through and  
7 including the date of resolution.

8 27. The class that Plaintiff seeks to represent contains numerous members and is  
9 ascertainable. Plaintiff reserves the right to amend or modify the class definition and/or to add  
10 subclasses or limitations to particular issues.

11 28. By its unlawful actions, Defendant has violated California Business &  
12 Professions Code §§ 17200, *et seq.* and 17500, *et seq.* and California Civil Code § 1770. The  
13 questions raised are, therefore, of common or general interest to the class members, who have a  
14 well-defined community of interest in the questions of law and fact raised in this action.

15 29. Plaintiff’s claims are typical of those of the class, as Plaintiff now suffers and has  
16 suffered from the same violations of the law as other putative class members. Plaintiff has  
17 retained counsel with substantial experience in prosecuting complex litigation and class actions  
18 to represent her and the class, and Plaintiff will fairly and adequately represent the interests of  
19 the class.

20 **Numerosity**

21 30. Based on information and belief, the Class consists of at least 100 individuals,  
22 making joinder of individual cases impracticable.

23 **Typicality**

24 31. Plaintiff’s claims are typical of the claims of all of the other members of the class.  
25 Plaintiff’s claims and the class members’ claims are based on the same legal theories and arise  
26 from the same unlawful conduct, resulting in the same injury to Plaintiff and to all of the other  
27 class members.

1 **Common Questions of Law and Fact**

2 32. There are questions of law and fact common to the class that predominate over  
3 any questions affecting only individual class members. Those common questions of law and  
4 fact include, without limitation, the following:

- 5 a. Whether Defendant's marketing, advertising, packaging and pricing of  
6 Infants' acetaminophen are likely to deceive reasonable consumers;
- 7 b. Whether Defendant's marketing, advertising, packaging, and pricing of  
8 Infants' acetaminophen caused Plaintiff and the class to suffer economic  
9 harm;
- 10 c. Whether Defendant violated California Business & Professions Code §§  
11 17200, *et seq.*;
- 12 d. Whether Defendant violated California Business & Professions Code §§  
13 17500, *et seq.*;
- 14 e. Whether Defendant violated California Civil Code § 1770;
- 15 f. Whether Defendant's marketing, advertising, packaging and pricing of  
16 Infants' acetaminophen and/or Children's acetaminophen were material to  
17 reasonable consumers; and
- 18 g. Whether Plaintiff and the class are entitled to restitution and/or other  
19 remedies and, if so, the appropriate measure(s).

20 **Adequacy**

21 33. Plaintiff will fairly and adequately represent and protect the interests of the other  
22 members of the class. Plaintiff has retained counsel with substantial experience in prosecuting  
23 complex litigation and class actions. Plaintiff and her counsel are committed to prosecuting this  
24 action vigorously on behalf of the class members and have the financial resources to do so.  
25 Neither Plaintiff nor her counsel have any interests adverse to those of the other class members.

26 **Superiority**

27 34. Because the monetary damages suffered by individual class members are  
28 relatively small, the expense and burden of individual litigation make it impossible for

1 individual class members to seek redress for the wrongful conduct described in this complaint.  
2 If class treatment of these claims is not available, Defendant likely will continue its wrongful  
3 conduct, unjustly retain improperly-obtained revenues, and otherwise escape responsibility for  
4 its wrongdoing.

5       35. A class action is superior to other available methods for the fair and efficient  
6 adjudication of this controversy because individual litigation of the claims of all class members  
7 is impracticable and questions of law and fact common to the class predominate over any  
8 questions affecting only individual members of the class. Even if every individual class  
9 member could afford individual litigation, the court system could not. It would be unduly  
10 burdensome to the courts if individual litigation of the numerous cases were to be required.  
11 Individualized litigation also would present the potential for varying, inconsistent, or  
12 contradictory judgments and would magnify the delay and expense to all parties and to the court  
13 system resulting from multiple trials of the same factual issues. By contrast, the conduct of this  
14 action as a class action with respect to some or all of the issues will present fewer management  
15 difficulties, conserve the resources of the court system and the parties and protect the rights of  
16 each class member. Further, it will prevent the very real harm that would be suffered by  
17 numerous putative class members who simply will be unable to enforce individual claims of this  
18 size on their own, and by Defendant's competitors, who will be placed at a competitive  
19 disadvantage as their punishment for obeying the law. Plaintiff anticipates no difficulty in the  
20 management of this case as a class action.

21       36. The prosecution of separate actions by individual class members may create a risk  
22 of adjudications with respect to them that would, as a practical matter, be dispositive of the  
23 interests of other class members not parties to those adjudications or that would substantially  
24 impair or impede the ability of those non-party class members to protect their interests.

25       37. The prosecution of individual actions by class members would run the risk of  
26 establishing inconsistent standards of conduct for Defendant.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**  
**Violations of False and Misleading Advertising Law**  
**(Violations of California Bus. & Prof. Code §§ 17500, *et seq.*)**

38. Plaintiff incorporates each allegation set forth above as if fully set forth herein and further alleges as follows.

39. California’s False Advertising Law, California Business & Professions §§ 17500, *et seq.*, makes it unlawful for any person “with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, . . . to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device...or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue **or misleading**, and which is known, or which by the exercise of reasonable care should be known, to be untrue **or misleading**. . . . Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.” [Emphasis added.]

40. In its labeling, marketing, advertising, packaging and selling of Infants’ acetaminophen, Defendant made, and continues to make, false and misleading statements in order to induce consumers to purchase Infants’ acetaminophen on a false premise, all in violation of California Business & Professions §§ 17500, *et seq.* Such false and misleading statements include labeling, marketing, advertising, packaging and selling Infants’ acetaminophen in such a manner as to obscure that Infants’ acetaminophen is the same product as the far-less-expensive Children’s acetaminophen.

41. Defendant is engaging and has engaged in the deceptive conduct alleged above to induce the public to purchase the more-expensive Infants’ product instead of the Children’s product. In its labeling, marketing, advertising, packaging and selling of Infants’

1 acetaminophen, Defendant knew or should have known that its statements regarding Infants'  
2 acetaminophen were and are false, misleading, without basis, and unreasonable. Further,  
3 Defendant knew or should have known that the price differential itself would be viewed by  
4 consumers as conveying important information regarding the relative quality and safety of the  
5 two products.

6 42. In its labeling, marketing, advertising, packaging and selling of Infants'  
7 acetaminophen, Defendant knew or through the exercise of reasonable care should have known  
8 that its statements regarding the uses and characteristics of Infants' acetaminophen were false  
9 and misleading. Moreover, Defendant knew or should have known that the price differential  
10 itself would be viewed by consumers as conveying important information regarding the relative  
11 quality and safety of the two products.

12 43. As alleged above, Plaintiff and the class were misled into purchasing Infants'  
13 acetaminophen by Defendant's false and misleading labeling, marketing, advertising, packaging  
14 and selling of Infants' acetaminophen. In particular, Plaintiff and the class were misled by  
15 Defendant's uniform and material misrepresentations and omissions and reasonably believed  
16 that Infants' acetaminophen had benefits that it does not: namely, that it is more suitable and  
17 safer for children ages two to three and younger than Children's acetaminophen would be, when  
18 in fact the two have the identical active ingredient.

19 44. Further, Defendant's use of various forms of labeling, marketing, advertising,  
20 packaging and selling has deceived and is likely to continue to deceive the consuming public in  
21 violation of California Business & Professions Code §§ 17500, *et seq.* No reasonable consumer  
22 would be willing to pay two and a half times as much per ounce or even more for one product  
23 versus an identical product unless he or she were deceived or misled into believing that the  
24 more-expensive product was different and better.

25 45. Plaintiff and the class have suffered injury in fact and have lost money as a result  
26 of Defendant's false representations. Indeed, Plaintiff and the class purchased the more-  
27 expensive Infants' product *because of* Defendant's misrepresentations that Infants'  
28 acetaminophen is a more suitable and safer liquid acetaminophen medicine for children ages

1 two to three and younger than Children's acetaminophen is. Plaintiff, like members of the class,  
2 would not have purchased Infants' acetaminophen if she had known that the advertising and  
3 representations described above were false and misleading.

4 46. Plaintiff's success in this action will enforce important rights affecting the public  
5 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of  
6 herself and the general public.

7 47. Injunctive relief is necessary and appropriate to prevent Defendant from  
8 repeating or continuing its wrongful business practices alleged above.

9 48. Plaintiff takes it upon herself to enforce these laws and lawful claims. There is a  
10 financial burden incurred in pursuing this action and it would be against the interests of justice  
11 to penalize Plaintiff by forcing her to pay attorneys' fees from the recovery in this action.  
12 Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure §  
13 1021.5.

14 **SECOND CAUSE OF ACTION**  
15 **Violations of Unfair Competition Law**  
16 **(Violations of California Bus. & Prof. Code §§ 17200, *et seq.*)**

17 49. Plaintiff incorporates each allegation set forth above as if fully set forth herein  
18 and further alleges as follows.

19 50. California Business & Professions Code §§ 17200, *et seq.* prohibit unfair  
20 competition in the form of any unlawful, unfair, deceptive or fraudulent business act or practice.

21 51. Plaintiff has standing to pursue this claim as Plaintiff has suffered an injury in fact  
22 and has lost money or property as a result of Defendant's actions as described herein. In  
23 particular, Plaintiff purchased Infants' acetaminophen and, in doing so, relied on Defendant's  
24 misrepresentations and omissions of material facts as described herein. Had Defendant disclosed  
25 to Plaintiff that Infants' acetaminophen is identical to Children's acetaminophen and that the  
26 lower-priced Children's acetaminophen is as suitable and safe for use by children ages two to  
27 three and younger as Infants' acetaminophen is, Plaintiff would not have purchased the far-more-  
28 expensive Infants' acetaminophen.

52. Defendant's conduct in labeling, marketing, advertising, packaging and selling

1 Infants' acetaminophen violates, among other statutes, the California False Advertising Law  
2 (California Business & Professions Code §§ 17500, *et seq.*) and the California Consumer Legal  
3 Remedies Act (California Civil Code §§ 1750, *et seq.*), and is likely to deceive reasonable  
4 consumers. No reasonable consumer would be willing to pay two and a half times as much per  
5 ounce or even more for one product versus an identical product unless he or she were deceived  
6 or misled into believing that the more expensive product was different and better.

7 53. Defendant is aware that the claims and representations it makes about Infants'  
8 acetaminophen are deceptive, false, and misleading. Defendant is aware of and counts on the  
9 reality that parents, caregivers and other consumers shopping for products to be given to infants  
10 are cautious about what products – especially medicines – they give to infants.

11 54. The violations of those laws and the acts and practices described in this  
12 Complaint constitute unlawful, unfair, deceptive and fraudulent business acts and practices and  
13 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*  
14 *seq.*

15 55. As a direct and proximate result of those acts and practices, Defendant has  
16 received and continues to hold as ill-gotten gains money and property belonging to Plaintiff and  
17 the class, in that Defendant has profited in those amounts from its unlawful, unfair, deceptive and  
18 fraudulent business acts and practices.

19 56. California Business & Professions Code § 17203 provides that the Court may  
20 restore to any person in interest any money or property which may have been acquired by means  
21 of unfair, deceptive and fraudulent business acts and practices and may order restitution by  
22 Defendant to Plaintiff for the practices alleged in this complaint. Plaintiff and putative class  
23 members are entitled under California Business & Professions Code §§ 17203 and 17208 to  
24 restitution and restoration of all ill-gotten money and property belonging to Plaintiff and the  
25 class.

26 57. Plaintiff's success in this action will enforce important rights affecting the public  
27 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of  
28 herself and the general public.



1 that Defendant misrepresents the particular characteristics, ingredients, uses, benefits or qualities  
2 of the goods.

3 67. California Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or  
4 services are of a particular standard, quality, or grade, or that goods are of a particular style or  
5 model, if they are of another.” Defendant has violated and continues to violate California Civil  
6 Code § 1770(a)(7) by its actions in deceiving consumers into thinking that they should or must  
7 purchase the far-more-expensive Infants’ product for children ages two to three or younger.  
8 Defendant’s conduct constitutes unfair methods of competition and unfair or fraudulent acts or  
9 practices in that Defendant misrepresents the particular standard, quality, or grade of the goods.

10 68. California Civil Code § 1770(a)(9) prohibits “[a]dvertising goods or services  
11 with intent not to sell them as advertised.” Defendant has violated and continues to violate  
12 California Civil Code § 1770(a)(9) by its actions in advertising a product that purportedly was  
13 prepared especially for children ages two to three or younger but then selling a product that was  
14 identical to a far less expensive product for children who are not infants.

15 69. California Civil Code § 1770(a)(16) prohibits “[r]epresenting that the subject of  
16 a transaction has been supplied in accordance with a previous representation when it has not.”  
17 By selling a product that, after it is sold, continues to bear its label containing the  
18 misrepresentation that the product is specifically for infants, Defendant is making an ongoing  
19 misrepresentation that a product made specifically for children ages two to three or younger has  
20 been sold when, in reality, the product is no different from Defendant’s product for children  
21 who are older. By making that misrepresentation on the product’s label, Defendant has violated  
22 and continues to violate California Civil Code § 1770(a)(16). That ongoing misrepresentation  
23 is deleterious to consumers because it reinforces the misrepresentation that led to the original  
24 sale and thereby increases the likelihood that they will make subsequent purchases of Infant’s  
25 acetaminophen.

26 70. Defendant’s misrepresentations and omissions were uniform and material and  
27 made with the intent to deceive Plaintiff and the class and deprive them of their legal rights and  
28 money. Plaintiff and the class acted reasonably when they purchased Infants’ acetaminophen on

1 the belief that Defendant's representations were true and lawful.

2 71. Defendant knew and has known that Infants' acetaminophen and Children's  
3 acetaminophen are identical and that the lower-priced Children's acetaminophen is suitable and  
4 safe for children ages two to three and younger. Plaintiff and the class suffered injuries caused  
5 by Defendant because they would not have purchased Infants' acetaminophen instead of the  
6 identical Children's acetaminophen absent Defendant's misrepresentations and omissions.

7 72. Under California Civil Code § 1780(a), Plaintiff and the class seek injunctive and  
8 equitable relief for Defendant's violations of the California Consumer Legal Remedies Act.

9 73. On May 21, 2020, Plaintiff sent Defendant a California Civil Code § 1782(a)  
10 notice advising Defendant of its violations of California Civil Code § 1770. If Defendant fails to  
11 take corrective action within 30 days of receipt of the demand letter, Plaintiff will amend the  
12 complaint to include a request for damages as permitted by California Civil Code § 1782(d).

13 74. Attached hereto as Exhibit 1 is the declaration of venue required by California  
14 Civil Code § 1780(d).

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff, on behalf of herself and members of the class, prays for the  
17 following relief:

- 18 a. An order certifying the class, appointing Plaintiff Nicole Calagno as the  
19 representative of the class, and appointing counsel for Plaintiff as lead counsel for  
20 the class;
- 21 b. An order enjoining Defendant from engaging in the acts and practices complained  
22 of in this complaint;
- 23 c. Disgorgement of profits and restitution and restoration of all costs incurred, sums  
24 or property unlawfully withheld, and losses caused by the acts and practices that  
25 violated California Business & Professions Code §§ 17500, *et seq.*;
- 26 d. Disgorgement of profits and restitution and restoration of all costs incurred, sums  
27 or property unlawfully withheld, and/or losses caused by the acts and practices  
28 that violated California Business & Professions Code §§ 17200, *et seq.*;

- 1 e. Equitable relief arising from the acts and practices that violated California Civil
- 2 Code § 1770;
- 3 f. Payment of costs of the suit;
- 4 g. Payment of attorneys' fees and costs under California Code of Civil Procedure §
- 5 1021.5 and California Civil Code § 1780(e);
- 6 h. An award of pre- and post-judgment interest to the extent allowed by law; and
- 7 i. Such other or further relief as the Court may deem proper.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

Dated: May 29, 2020

**LAW OFFICES OF SCOT D. BERNSTEIN,  
A PROFESSIONAL CORPORATION**

By:   
 \_\_\_\_\_  
 SCOT BERNSTEIN  
*Attorneys for Plaintiff*

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: May 29, 2020

**LAW OFFICES OF SCOT D. BERNSTEIN,  
A PROFESSIONAL CORPORATION**

By:   
 \_\_\_\_\_  
 SCOT BERNSTEIN  
*Attorneys for Plaintiff*