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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SANDRA CHACON, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 CVS PHARMACY, INC.,

19 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1  
2 Plaintiff, Sandra Chacon (“**Plaintiff**”), on behalf of herself and all others  
3 similarly situated, brings this class action against Defendant, CVS Pharmacy, Inc.  
4 (“**Defendant**” or “**CVS**”), and alleges on personal knowledge, investigation of her  
5 counsel, and on information and belief as follows:  
6

7  
8 **INTRODUCTION**

9 1. Defendant, CVS, offers a variety of over-the-counter products  
10 including transdermal products, pain relief products, and skin care products.  
11 Defendant’s over-the-counter lidocaine products include a range of external pain-  
12 relieving Products and creams for pain associated with or caused by ailments such  
13 as arthritis, backache, muscle strains, sprains, and bruises.  
14

15  
16 2. Particularly, Defendant sells, markets, and distributes “CVS Health”  
17 Maximum Strength Lidocaine Pain Relieving patches, creams, roll-ons, sprays,  
18 and menthol lidocaine products (the “**Products**”).<sup>1</sup>  
19

20 3. Nearly every individual suffers muscle aches and pains and seeks  
21 relief for this common problem.  
22

23  
24 <sup>1</sup> The products include but are not limited to CVS Health-branded: Lidocaine Pain-Relieving  
25 Unscented Patches, Maximum Strength Lidocaine Pain Relief Cream, Maximum Strength  
26 Lidocaine Plus Spray, Maximum Strength Lidocaine Pain Relief Roll-On with Lavendar  
27 Essential Oil, XL Maximum Strength Lidocaine Pain Relief Patch, Maximum Strength  
28 Lidocaine Cream, and Maximum Strength Pain Relief Patch (the “**Products**”) Plaintiff reserves  
the right to amend the Complaint to revise the list of products subject to this Complaint.

1 4. When consumers purchase pain-relieving products, the strength of the  
2 dose is an important purchasing consideration. In fact, consumers willingly pay a  
3 premium for pain-reliving products that have strong doses.<sup>2</sup>  
4

5 5. Defendant takes advantage of this consumer preference for strong  
6 doses and/or maximum strength by prominently representing as much the one place  
7 every consumer looks when purchasing a product – the packaging and labels  
8 themselves. In fact, Defendant touts its representation and claim right on the front  
9 of its Products’ labels that the Products are “Maximum Strength” lidocaine  
10 products.  
11

12 6. Consumers including Plaintiff lack the scientific knowledge  
13 necessary to determine whether the Products are “Maximum Strength” lidocaine  
14 products or to ascertain the true nature of the quality or strength of the Products.  
15 As such, reasonable consumers must and do rely on manufacturers, like Defendant,  
16 to be honest and transparent and to properly disclose on the packaging all material  
17 information regarding the Products and their dose and strength.  
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22 <sup>2</sup> Defendant’s competitors sell 4% lidocaine pain relieving Products for approximately \$0.86 per  
23 patch while Defendant sells the ‘maximum strength’ 4% lidocaine Products sell for \$2.25 per  
24 patch. *See* [https://www.walgreens.com/store/c/walgreens-lidocaine-Products/ID=300394242-](https://www.walgreens.com/store/c/walgreens-lidocaine-Products/ID=300394242-product)  
25 [product](https://www.walgreens.com/store/c/walgreens-lidocaine-Products/ID=300394242-product) (for the competitor pricing version, last accessed February 16, 2022) and  
26 [https://www.cvs.com/shop/cvs-health-lidocaine-pain-relieving-uncented-Products-3-15-16-x-5-](https://www.cvs.com/shop/cvs-health-lidocaine-pain-relieving-uncented-Products-3-15-16-x-5-1-2-10-cm-x-14-cm-6-ct-prodid-371271)  
27 [1-2-10-cm-x-14-cm-6-ct-prodid-371271](https://www.cvs.com/shop/cvs-health-lidocaine-pain-relieving-uncented-Products-3-15-16-x-5-1-2-10-cm-x-14-cm-6-ct-prodid-371271) (for Defendant’s ‘maximum strength’ version, last  
28 accessed February 16, 2022). Plaintiff only uses the pricing in the previous paragraph as an  
example to plausibly plead that Defendant does indeed charge a large premium for its Products.  
The specific premium on a granular level will be determined later in the case by an expert.

1           7.       However, Defendant makes this “Maximum Strength” representation  
2 in a knowingly false and deceptive manner because Defendant’s Products contains  
3 only 4% lidocaine; with regard to “Patch” products, similar prescription Products  
4 manufactured by at least one of Defendant’s competitors contains 5% lidocaine;  
5 with regard to “cream” products, similar creams manufactured by at least one of  
6 Defendant’s competitors contain 5% lidocaine and are also available over-the-  
7 counter as Defendant’s Products are.<sup>3</sup>  
8  
9

10           8.       Moreover, Defendant has not only represented that its Products are  
11 “Maximum Strength” lidocaine products, but it has also omitted from the Products’  
12 labeling the fact that there are other prescription products available in the market  
13 that contain a higher percentage of lidocaine (i.e. 5%).  
14

15           9.       Defendant sells and distributes the Products employing a marketing  
16 and advertising campaign centered around claims that appeal to consumers who  
17 Defendant knows seek out strong and/or maximum doses of lidocaine to relieve  
18 their back pain and aches by touting their Products as “Maximum Strength”. As  
19 such, reasonable consumers, like Plaintiff, reasonably believe that they are  
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24 <sup>3</sup> Regarding lidocaine cream products, at least one of Defendant’s competitors offers a  
25 prescription lidocaine cream with a 5% concentration. *See*  
26 [https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=88ca9cba-0c4a-482f-b502-  
ceefdb1bfbcd&type=display](https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=88ca9cba-0c4a-482f-b502-<br/>ceefdb1bfbcd&type=display), *see also*  
27 [https://www.drugsdepot.com/store.php/drugsdepot/pd9612367/lidocaine-5-ointment-3544-gm-  
by-fougera-amp-co](https://www.drugsdepot.com/store.php/drugsdepot/pd9612367/lidocaine-5-ointment-3544-gm-<br/>by-fougera-amp-co) (Last Accessed February 16, 2022).

1 purchasing a Lidocaine product which is at maximum strength, i.e. the highest  
2 dosage they can buy.

3 10. Defendant’s knowing, multiple, and prominent systematic  
4 mislabeling of the Products form a pattern of unlawful and unfair business practices  
5 that deceives and harms consumers and the public.  
6

7 11. Accordingly, Plaintiff brings this suit on behalf of herself and  
8 similarly situated consumers who purchased Defendant’s Products. Plaintiff and  
9 Class Members were damaged because they would not have purchased (or would  
10 not have paid a premium) for Defendant’s Products had they known the true facts  
11 regarding the Products’ “Maximum Strength” representations and omissions.  
12

13 12. For all the reasons set forth herein, including but not limited to  
14 Defendant’s misrepresentations and omissions regarding its “Maximum Strength”  
15 claims, Plaintiff seeks relief in this action individually, and as a class action on  
16 behalf of similarly situated purchasers of Defendant’s Products, for: (i) violation  
17 of California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.  
18 (“FAL”); (ii) violation of California’s Unfair Competition Law, Cal. Bus. & Prof.  
19 Code §§ 17200 et seq. (“UCL”); (iii) violation of California’s Consumers Legal  
20 Remedies Act, Cal. Civ. Code §§ 1750 et seq. (“CLRA”); (iv) common law fraud;  
21 and (v) unjust enrichment.  
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**THE PARTIES**

1  
2 13. Plaintiff Sandra Chacon is a resident and citizen of California residing  
3 in San Jose, California. She purchased CVS Maximum Strength Lidocaine Pain  
4 Relieving Patch product on numerous occasions during all applicable statute of  
5 limitations periods, most recently in January 2022. Plaintiff Chacon purchased the  
6 Products at a CVS brick and mortar retail location in San Jose, California.  
7

8  
9 14. Defendant CVS is a Rhode Island corporation, with its principal place  
10 of business and headquarters located at One CVS Drive, Woonsocket, RI 02895. As  
11 such, Defendant is a resident and citizen of Rhode Island. Defendant CVS markets,  
12 distributes, and sells the Products to consumers throughout the United States through  
13 their brick-and-mortar locations and online through Defendant’s website.  
14

15 15. Plaintiff reserves the right to amend this Complaint to add different or  
16 additional defendants, including without limitation any officer, director, employee,  
17 supplier, or distributor of Defendant who has knowingly and willfully aided,  
18 abetted, or conspired in the false and deceptive conduct alleged herein.  
19  
20

21 **JURISDICTION AND VENUE**

22 16. This Court has personal jurisdiction over Defendant in this matter.  
23 The acts and omissions giving rise to this action occurred in the state of California.  
24 Defendant has been afforded due process because it has, at all times relevant to this  
25 matter, individually or through its agents, subsidiaries, officers and/or  
26  
27

1 representatives, operated, conducted, engaged in and carried on a business venture  
2 in this state and/or maintained an office or agency in this state, and/or marketed,  
3 advertised, distributed and/or sold products in this state, committed a statutory  
4 violation within this state related to the allegations made herein, and caused injuries  
5 to Plaintiff and putative Class Members, which arose out of the acts and omissions  
6 that occurred in the state of California, during the relevant time period, at which  
7 time Defendant were engaged in business activities in the state of California.  
8  
9

10 17. This Court has subject matter jurisdiction over this matter pursuant to  
11 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100  
12 or more putative Class Members, (ii) the aggregate amount in controversy exceeds  
13 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity  
14 because at least one Plaintiff and Defendant are citizens of different states. This  
15 Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28  
16 U.S.C. § 1367.  
17  
18

19 18. Pursuant to 28 U.S.C. § 1391(a), venue is proper because a substantial  
20 part of the events giving rise to the claims asserted occurred in this District. Venue  
21 is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant conducts  
22 substantial business in this District, has sufficient minimum contacts with this  
23 District, and otherwise purposely avails itself of the markets in this District, through  
24 the promotion, sale, and marketing of the Products in this District. Furthermore,  
25  
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28

1 Plaintiff resides in this District.

2 **INTRADISTRICT ASSIGNMENT**

3 19. Pursuant to Civil Local Rule 3-2(c-d), a substantial part of the events  
4 giving rise to the claims herein arose in Santa Clara County, California and this  
5 action should be assigned to the San Jose Division.  
6

7 **FACTS COMMON TO ALL CLASS MEMBERS**

8  
9 20. Lidocaine is the active ingredient in Defendant’s Products, and it  
10 forms the basis for Defendant’s “Maximum Strength” misrepresentations on the  
11 Products’ front labeling, omissions, and overall advertising and marketing  
12 campaign.  
13

14 21. “Lidocaine belongs to the family of medicines called local  
15 anesthetics. This medicine prevents pain by blocking the signals at the nerve  
16 endings in the skin.”<sup>4</sup>  
17

18 22. Lidocaine is commonly used in products such as Defendant’s  
19 Products to help with body soreness and pain.  
20  
21  
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26 <sup>4</sup>[https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-](https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-route/description/drg-20072776)  
27 [route/description/drg-20072776](https://www.mayoclinic.org/drugs-supplements/lidocaine-topical-application-route/description/drg-20072776) (last accessed February 16, 2022)



1 **A. Defendant's Products Prominently Feature the "Maximum Strength"**  
2 **Misrepresentation**

3 23. At all relevant times, Defendant has marketed its Products in a  
4 consistent and uniform manner nationwide. Defendant sells the Products in all 50  
5 states in their brick-and-mortar stores and through their online store.

6  
7 24. Aware of the consumer preference for strong and/or maximum doses  
8 of lidocaine in pain-relieving products to alleviate their pain, aches, and soreness,  
9 Defendant specifically advertises its Products as "Maximum Strength" lidocaine  
10 products.

11  
12 25. One attribute that consumers specifically value when purchasing any  
13 pain-relieving product is the strength of the dose.<sup>5</sup>

14  
15 26. Aware of this consumer preference, Defendant specifically advertises  
16 its Products as "MAXIMUM STRENGTH" Lidocaine Products. For example,  
17 below is an image of the CVS Health Maximum Strength Lidocaine Pain Relieving  
18 Patch front label<sup>6</sup>:

19  
20  
21  
22 <sup>5</sup> Strength of dose is so important that nearly every manufacturer of common pain-relieving  
23 products emphasize it. See [https://www.tylenol.com/products/tylenol-extra-strength-](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)  
24 [caplets?utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=GO-USA-ENG-PS-Tylenol-](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)  
25 [BC-EX-RN-Brand-](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)  
26 [Core+EST&utm\\_content=Core&utm\\_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAM](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)  
27 [WFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd\\_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw\\_](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)  
28 [wcB&gclsrc=aw.ds&? \(Tylenol extra strength\); see also](https://www.tylenol.com/products/tylenol-extra-strength-caplets?utm_source=google&utm_medium=cpc&utm_campaign=GO-USA-ENG-PS-Tylenol-BC-EX-RN-Brand-Core+EST&utm_content=Core&utm_term=extra+tylenol&gclid=Cj0KCCQjwi7yCBhDJARIsAMWFScPTqYK8J3go53nS0bag4R7EVHQZ7ogd_3MoAMUKWoVzH4FMj8sQj9kaAtbXEALw_wcB&gclsrc=aw.ds&)

<https://www.bayeraspirin.com/products/bayer-extra-strength-aspirin> (extra strength aspirin).  
<sup>6</sup> The labels shown in the complaint represents the labeling present, upon information and belief,  
of each product at the time of filing and that Plaintiff and the proposed classes read and relied on.



27. As shown above, the “MAXIMUM STRENGTH” representation is located on the very top of the front label of the Products in bold, yellow lettering that contrasts with the background of the packaging, which instantly catches the eye of all reasonable consumers, including Plaintiff and Class Members.

28. Defendant, however, is well aware that its Products are not a “maximum strength” or maximum strength lidocaine products and deceives

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<https://www.cvs.com/shop/cvs-health-lidocaine-pain-relieving-unscented-Products-3-15-16-x-5-1-2-10-cm-x-14-cm-6-ct-prodid-371271>; (last accessed February 16, 2022).

1 trusting reasonable consumers like Plaintiff to believe that they are in fact  
2 purchasing such Products while omitting from the Products’ labeling the fact that  
3 there are other prescription products available in the market that contain a higher  
4 percentage of lidocaine (i.e. 5%).  
5

6 29. Indeed, Defendant’s over-the-counter Products contain only 4%  
7 lidocaine while competing prescription lidocaine products contain 5% lidocaine.<sup>7</sup>  
8

9 30. So, consumers can obtain a stronger dose comparable lidocaine  
10 product that is available in the market.

11 31. As such, Defendant’s Products are not “Maximum Strength”  
12 lidocaine products as advertised.  
13

14 32. But rather than accurately advertise its Products through its labeling,  
15 Defendant preys on consumers’ desire for maximum pain relief to drive substantial  
16 profits.  
17

18 33. All reasonable consumers, including Plaintiff, read and relied on  
19 CVS’s “Maximum Strength” representations when purchasing the Products.  
20

21 34. Defendant’s “Maximum Strength” representation was material to  
22 Plaintiff’s and Class Members’ decision to purchase the Products.  
23  
24

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25 <sup>7</sup> “This article discusses lidocaine 5% patch products available by your doctor’s prescription.  
26 While there are similar over-the-counter varieties available, those contain a lower percentage  
27 of lidocaine.” See [https://www.spineuniverse.com/treatments/medication/prescription-  
lidoderm-Products-may-help-relieve-back-pain](https://www.spineuniverse.com/treatments/medication/prescription-lidoderm-Products-may-help-relieve-back-pain) (last accessed February 16, 2022)

1 35. Defendant’s marketing efforts are made in order to – and do in fact –  
2 induce consumers to purchase the Products at a premium because consumers  
3 believe they are getting lidocaine products with “Maximum Strength.”  
4

5 36. As shown throughout this Complaint, however, Defendant’s Products  
6 are *not* “Maximum Strength” lidocaine products. Defendant’s representations and  
7 omissions are false and misleading.  
8

9 37. Defendant intended for Plaintiff and Class Members to be deceived or  
10 mislead by its misrepresentations and omissions.

11 38. Defendant’s deceptive and misleading practices proximately caused  
12 harm to Plaintiff and the Class.  
13

14 39. Plaintiff and Class Members would not have purchased the Products  
15 or would have not paid as much for the Products, had they known the truth about  
16 the mislabeled and falsely advertised Products.  
17

18 **PLAINTIFF CHACON’S FACTUAL ALLEGATIONS**

19 40. Plaintiff Chacon purchased the Products in January 2022 from a CVS  
20 brick and mortar store in San Jose, California for approximately \$13.49 for the  
21 Products. Before purchasing the Products, Plaintiff Chacon reviewed information  
22 about the Products on the Products’ labels and the fact that the Products were being  
23 sold for personal use, and not resale. At the time of purchasing her Products,  
24 Plaintiff Chacon also reviewed the accompanying disclosures, warranties, and  
25  
26  
27

1 marketing materials, and understood them as representations and warranties by  
2 CVS, specifically the "MAXIMUM STRENGTH" Representations. Plaintiff  
3 Chacon relied on these representations and warranties in deciding to purchase  
4 CVS's Products. Accordingly, these representations and warranties were part of  
5 the basis of the bargain, in that she would not have purchased the Products had she  
6 known these representations were not true. Here, Plaintiff did not receive the  
7 benefit of her bargain because CVS's MAXIMUM STRENGTH" representations  
8 are false.

9  
10  
11 41. As a result of CVS's concealment, Defendant's "Maximum Strength"  
12 Representations and omissions, Plaintiff Chacon purchased the Products. Had  
13 Plaintiff known the true nature of the Products, she would not have purchased the  
14 Products.

#### 15 16 17 **FED. R. CIV. P. 9(b) ALLEGATIONS**

18 42. Rule 9(b) of the Federal Rules of Civil Procedure provides that "[i]n  
19 alleging fraud or mistake, a party must state with particularity the circumstances  
20 constituting fraud or mistake." To the extent necessary, as detailed in the  
21 paragraphs above and below, Plaintiff has satisfied the requirements of Rule 9(b)  
22 by establishing the following elements with sufficient particularity.

23  
24  
25 43. **WHO:** Defendant, CVS Pharmacy, Inc., made material  
26 misrepresentations and/or omissions of fact in its labeling and marketing of the  
27

1 Products by representing that the Products are “Maximum Strength” lidocaine  
2 products.

3 44. **WHAT:** Defendant’s conduct here was and continues to be fraudulent  
4 because it has the effect of deceiving consumers into believing that the Products  
5 are “Maximum Strength” lidocaine products. Defendant omitted from Plaintiff and  
6 Class Members that the Products are not “Maximum Strength” lidocaine products  
7 because other lidocaine products exist in the market that contain a higher amount  
8 (i.e. 5%) of lidocaine. Defendant knew or should have known this information is  
9 material to all reasonable consumers and impacts consumers’ purchasing  
10 decisions. Yet, Defendant has and continues to represent that the Products are  
11 “Maximum Strength” lidocaine products when they are not, and has omitted from  
12 the Products’ labeling the fact that there are other prescription products available  
13 in the market that contain a higher percentage of lidocaine (i.e. 5%).

14 45. **WHEN:** Defendant made material misrepresentations and/or  
15 omissions detailed herein, including that the Products are “Maximum Strength”  
16 lidocaine products, continuously throughout the applicable Class period(s).

17 46. **WHERE:** Defendant’s material misrepresentations and omissions,  
18 that the Products are “Maximum Strength” lidocaine products, were located on the  
19 very top of the front label of the Products in bold yellow lettering that contrasts  
20 with the background of the packaging, which instantly catches the eye of all  
21  
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1 reasonable consumers, including Plaintiff and Class Members at the point of sale  
2 in every transaction. The Products are sold in Defendant’s brick and mortar stores  
3 and online store in California and nationwide.  
4

5         **47. HOW:** Defendant made written misrepresentations right on the front  
6 label of the Products that the Products were “Maximum Strength” lidocaine  
7 products even though other stronger lidocaine products are available in the market.  
8 As such, Defendant’s “Maximum Strength” representations are false and  
9 misleading. Moreover, Defendant omitted from the Products’ labeling the fact that  
10 there are other prescription products available in the market that contain a higher  
11 percentage of lidocaine (i.e. 5%). And as discussed in detail throughout this  
12 Complaint, Plaintiff and Class Members read and relied on Defendant’s  
13 “Maximum Strength” representations and omissions before purchasing the  
14 Products.  
15  
16  
17

18         **48. WHY:** Defendant misrepresented its Products as being “Maximum  
19 Strength” lidocaine products and omitted from the Products’ labeling the fact that  
20 there are other prescription products available in the market that contain a higher  
21 percentage of lidocaine (i.e. 5%) for the express purpose of inducing Plaintiff and  
22 Class Members to purchase the Products at a substantial price premium. As such,  
23 Defendant profited by selling the misrepresented Products to at least thousands of  
24 consumers throughout the nation.  
25  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

1  
2 49. Plaintiff brings this action on behalf of herself and the following  
3 Classes pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and/or (b)(3).  
4 Specifically, the Classes are defined as:  
5

6 **National Class:** During the fullest period allowed by  
7 law, all persons in the United States who purchased the  
8 Products in the United States for personal use and not  
9 for resale.

10 **California Sub-Class:** During the fullest period  
11 allowed by law, all persons in the State of California  
12 who purchased the Products in the State of California  
13 for personal use and not for resale.

14 50. Excluded from the Classes are (a) any person who purchased the  
15 Products for resale and not for personal or household use, (b) any person who  
16 signed a release of any Defendant in exchange for consideration, (c) any officers,  
17 directors or employees, or immediate family members of the officers, directors or  
18 employees, of any Defendant or any entity in which a Defendant has a controlling  
19 interest, (d) any legal counsel or employee of legal counsel for any Defendant, and  
20 (e) the presiding Judge in this lawsuit, as well as the Judge’s staff and their  
21 immediate family members.  
22

23 51. Plaintiff reserves the right to amend the definition of the Classes if  
24 discovery or further investigation reveals that the Classes should be expanded or  
25 otherwise modified.  
26  
27



1 52. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** Class  
2 Members are so numerous and geographically dispersed that joinder of all Class  
3 Members is impracticable. While the exact number of Class Members remains  
4 unknown at this time, upon information and belief, there are thousands, if not  
5 hundreds of thousands, of putative Class Members. Moreover, the number of  
6 members of the Classes may be ascertained from Defendant’s books and records.  
7  
8 Class Members may be notified of the pendency of this action by mail and/or  
9 electronic mail, which can be supplemented if deemed necessary or appropriate by  
10 the Court with published notice.  
11

12  
13 53. **Predominance of Common Questions of Law and Fact – Federal**  
14 **Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and  
15 fact exist as to all Class Members and predominate over any questions affecting  
16 only individual Class Members. These common legal and factual questions  
17 include, but are limited to, the following:  
18

- 19 a. Whether Defendant made the “MAXIMUM STRENGTH”  
20 Representations;
- 21  
22 b. Whether Defendant promoted the Products with false and misleading  
23 statements of fact and material omissions;
- 24  
25 c. Whether Defendant’s “MAXIMUM STRENGTH” Representations  
26 are deceptive, unfair or misleading;  
27

- 1 d. Whether Defendant’s actions and/or omissions violate California law;
- 2 e. Whether Defendant’s conduct violates public policy;
- 3 f. Whether Defendant’s acts, omissions or misrepresentations of
- 4 material facts constitute fraud;
- 5
- 6 g. Whether Plaintiff and putative members of the Classes have suffered
- 7 an ascertainable loss of monies or property or other value as a result
- 8 of Defendant’s acts, omissions or misrepresentations of material facts;
- 9
- 10 h. Whether Defendant was unjustly enriched at the expense of Plaintiff
- 11 and members of the putative Classes in connection with the Products;
- 12
- 13 i. Whether Plaintiff and members of the putative Classes are entitled to
- 14 monetary damages and, if so, the nature of such relief; and
- 15
- 16 j. Whether Plaintiff and members of the putative Classes are entitled to
- 17 equitable, declaratory or injunctive relief and, if so, the nature of such
- 18 relief.

19 54. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on

20 grounds generally applicable to the putative Classes, thereby making final

21 injunctive or corresponding declaratory relief appropriate with respect to the

22 putative Classes as a whole. In particular, Defendant has, marketed, advertised,

23 distributed and sold Products containing the Products’ “MAXIMUM

24 STRENGTH” Representations, which are false and misleading.

25

26

27

28

1           **55. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s  
2 claims are typical of those of the absent Class Members in that Plaintiff and the  
3 Class Members each purchased and used the Products and each sustained damages  
4 arising from Defendant’s wrongful conduct, as alleged more fully herein. Plaintiff  
5 shares the aforementioned facts and legal claims or questions with putative  
6 members of the Classes, and Plaintiff and all members of the putative Classes have  
7 been similarly affected by Defendant’s common course of conduct alleged herein.  
8 Plaintiff and all members of the putative Classes sustained monetary and economic  
9 injuries including, but not limited to, ascertainable loss arising out of Defendant’s  
10 false and deceptive Lidocaine Products “Maximum Strength” Representations, as  
11 alleged herein.  
12

13  
14  
15           **56. Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff will  
16 fairly and adequately represent and protect the interests of the members of the  
17 putative Classes. Plaintiff has retained counsel with substantial experience in  
18 handling complex class action litigation, including complex questions that arise in  
19 this type of consumer protection litigation. Further, Plaintiff and her counsel are  
20 committed to the vigorous prosecution of this action. Plaintiff does not have any  
21 conflicts of interest or interests adverse to those of putative Classes.  
22  
23  
24

25           **57. Insufficiency of Separate Actions – Federal Rule of Civil**  
26 **Procedure 23(b)(1).** Absent a class action, Plaintiff and members of the Classes will  
27

1 continue to suffer the harm described herein, for which they would have no remedy.  
2 Even if separate actions could be brought by individual consumers, the resulting  
3 multiplicity of lawsuits would cause undue burden and expense for both the Court  
4 and the litigants, as well as create a risk of inconsistent rulings and adjudications that  
5 might be dispositive of the interests of similarly situated consumers, substantially  
6 impeding their ability to protect their interests, while establishing incompatible  
7 standards of conduct for Defendant. Accordingly, the proposed Classes satisfy the  
8 requirements of Fed. R. Civ. P. 23(b)(1).  
9  
10

11         **58. Declaratory and Injunctive Relief – Federal Rule of Civil**  
12 **Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally  
13 applicable to Plaintiff and all Members of the Classes, thereby making appropriate  
14 final injunctive relief and declaratory relief, as described below, with respect to the  
15 members of the Classes as a whole.  
16  
17

18         **59. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class  
19 action is superior to any other available methods for the fair and efficient  
20 adjudication of the present controversy for at least the following reasons:  
21

- 22             a. The damages suffered by each individual members of the putative  
23 Classes do not justify the burden and expense of individual  
24 prosecution of the complex and extensive litigation necessitated by  
25 Defendant’s conduct;  
26  
27

- 1 b. Even if individual members of the Classes had the resources to pursue  
2 individual litigation, it would be unduly burdensome to the courts in  
3 which the individual litigation would proceed;  
4
- 5 c. The claims presented in this case predominate over any questions of  
6 law or fact affecting individual members of the Classes;  
7
- 8 d. Individual joinder of all members of the Classes is impracticable;  
9
- 10 e. Absent a Class, Plaintiff and members of the putative Classes will  
11 continue to suffer harm as a result of Defendant's unlawful conduct;  
12 and
- 13 f. This action presents no difficulty that would impede its management  
14 by the Court as a class action, which is the best available means by  
15 which Plaintiff and members of the putative Classes can seek redress  
16 for the harm caused by Defendant.  
17
- 18 g. In the alternative, the Classes may be certified for the following  
19 reasons:  
20
- 21 i. The prosecution of separate actions by individual members of the  
22 Classes would create a risk of inconsistent or varying  
23 adjudication with respect to individual members of the Classes,  
24 which would establish incompatible standards of conduct for  
25 Defendant;  
26  
27  
28

- 1           ii. Adjudications of claims of the individual members of the Classes  
2                 against Defendant would, as a practical matter, be dispositive of  
3                 the interests of other members of the putative Classes who are  
4                 not parties to the adjudication and may substantially impair or  
5                 impede the ability of other putative Class Members to protect  
6                 their interests; and  
7  
8           iii. Defendant has acted or refused to act on grounds generally  
9                 applicable to the members of the putative Classes, thereby  
10                making appropriate final and injunctive relief with respect to the  
11                putative Classes as a whole.

14  
15    **CLAIMS FOR RELIEF**

16    **COUNT I**

17    **California’s Unfair Competition Law**  
18    **Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”)**  
19    **(On Behalf of the California Sub-Class)**

20           60. Plaintiff re-alleges and incorporates by reference the allegations  
21 contained in the previous paragraphs as though set forth fully herein.

22           61. The UCL prohibits any “unlawful, unfair or fraudulent business act or  
23 practice.” Cal. Bus. & Prof. Code § 17200.

24           62. The acts, omissions, misrepresentations, practices, and non-disclosures  
25 of Defendant as alleged herein constitute business acts and practices.  
26

1           63. Unlawful: The acts alleged herein are “unlawful” under the UCL in that  
2 they violate at least the following laws:

- 3           a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;
- 4           b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;
- 5           c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.;
- 6           and
- 7           d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health  
8           & Safety Code §§ 110100 et seq.

9           64. Unfair: Defendant’s conduct with respect to the labeling, advertising,  
10 and sale of the Products was “unfair” because Defendant’s conduct was immoral,  
11 unethical, unscrupulous, or substantially injurious to consumers and the utility of  
12 their conduct, if any, does not outweigh the gravity of the harm to their victims.

13           65. Defendant’s conduct with respect to the labeling, advertising, and sale  
14 of the Products was and is also unfair because it violates public policy as declared  
15 by specific constitutional, statutory or regulatory provisions, including but not  
16 limited to the applicable sections of: the Consumers Legal Remedies Act, the False  
17 Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the California  
18 Sherman Food, Drug, and Cosmetic Law.

19           66. Defendant’s conduct with respect to the labeling, advertising, and sale  
20 of the Products was and is unfair because the consumer injury was substantial, not  
21

1 outweighed by benefits to consumers or competition, and not one consumer  
2 themselves could reasonably have avoided.

3 67. Fraudulent: A statement or practice is “fraudulent” under the UCL if it  
4 is likely to mislead or deceive the public, applying an objective reasonable consumer  
5 test.  
6

7 68. As set forth herein, Defendant’s “MAXIMUM STRENGTH”  
8 Representations stated on the Products’ labeling and advertising is likely to mislead  
9 reasonable consumers to believe the “MAXIMUM STRENGTH” Representations  
10 regarding the Products are true.  
11

12 69. Defendant profited from its sale of the falsely, deceptively, and  
13 unlawfully advertised Products to unwary consumers.  
14

15 70. Plaintiff and Class Members are likely to continue to be damaged by  
16 Defendant’s deceptive trade practices, because Defendant continues to disseminate  
17 misleading information, in particular the “MAXIMUM STRENGTH”  
18 Representations on the Products’ packaging. Thus, injunctive relief enjoining  
19 Defendant’s deceptive practices is proper.  
20

21 71. Defendant’s conduct caused and continues to cause substantial injury  
22 to Plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a  
23 result of Defendant’s unlawful conduct.  
24  
25  
26  
27  
28





1           77. As alleged herein, CVS committed acts of false and misleading  
2 advertising, as defined by the FAL, by using statements to promote the sale of it's  
3 the Products and making "MAXIMUM STRENGTH" Representations. CVS knew  
4 or should have known that its advertising claims have not been substantiated and are  
5 misleading and/or false.  
6

7           78. CVS knew or should have known, through the exercise of reasonable  
8 care, that its "MAXIMUM STRENGTH" Representations were false and misleading  
9 and likely to deceive consumers and cause them to purchase CVS's Lidocaine  
10 Products.  
11

12           79. Defendant's wrongful conduct is ongoing and part of a general practice  
13 that is still being perpetuated and repeated throughout the State of California and  
14 nationwide.  
15

16           80. Plaintiff suffered injury in fact as a result of CVS's actions as set forth  
17 herein because she purchased the Products in reliance on CVS's false and misleading  
18 "MAXIMUM STRENGTH" Representations.  
19

20           81. CVS's business practices as alleged herein constitute deceptive, untrue,  
21 and misleading advertising pursuant to the FAL because CVS has advertised the  
22 Products in a manner that is untrue and misleading, which CVS knew or reasonably  
23 should have known, and omitted material information from its advertising.  
24  
25  
26  
27  
28

1 82. CVS profited from its sale of the falsely and deceptively advertised  
2 Products to unwary consumers.

3 83. As a result, Plaintiff, the California Sub-Class members, and the general  
4 public are entitled to injunctive and equitable relief, restitution, and an order for the  
5 disgorgement of the funds by which Defendant was unjustly enriched.  
6

7 84. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of  
8 herself and the California Sub-Class, seeks an order enjoining Defendant from  
9 continuing to engage in deceptive business practices, false advertising, and any other  
10 act prohibited by law, including those set forth in this Complaint.  
11

12  
13 **COUNT III**  
14 **California’s Consumer Legal Remedies Act**  
15 **Cal. Civ. Code § 1750 et seq. (“CLRA”)**  
16 **(On Behalf of the California Sub-Class)**

17 85. Plaintiff repeats and realleges the allegations in the previous paragraphs  
18 as if fully set forth herein.

19 86. The CLRA prohibits deceptive practices in connection with the conduct  
20 of a business that provides goods, property, or services primarily for personal,  
21 family, or household purposes.  
22

23 87. CVS’s false and misleading labeling and other policies, acts, and  
24 practices were designed to, and did, induce the purchase and use of the Products for  
25 personal, family, or household purposes by Plaintiff and Class Members, and  
26 violated and continue to violate the following sections of the CLRA:  
27

1 a. § 1770(a)(5): representing that goods have characteristics, uses, or  
2 benefits which they do not have;

3 b. § 1770(a)(7): representing that goods are of a particular standard,  
4 quality, or grade if they are of another;

5 c. § 1770(a)(9): advertising goods with intent not to sell them as  
6 advertised; and  
7

8 d. § 1770(a)(16): representing the subject of a transaction has been  
9 supplied in accordance with a previous representation when it has not.  
10

11 88. Defendant profited from the sale of the falsely, deceptively, and  
12 unlawfully advertised Products to unwary consumers.  
13

14 89. Defendant's wrongful business practices constituted, and constitute, a  
15 continuing course of conduct in violation of the CLRA.  
16

17 90. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will  
18 provide a letter to Defendant concurrently with the filing of this Class Action  
19 Complaint or shortly thereafter with notice of its alleged violations of the CLRA,  
20 demanding that Defendant correct such violations, and providing it with the  
21 opportunity to correct its business practices. If Defendant does not thereafter correct  
22 its business practices, Plaintiff will amend (or seek leave to amend) the complaint to  
23 add claims for monetary relief, including restitution and actual damages under the  
24 Consumers Legal Remedies Act.  
25  
26  
27

1 91. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive  
2 relief, her reasonable attorney fees and costs, and any other relief that the Court  
3 deems proper.  
4

5 **COUNT IV**  
6 **Fraud**  
7 **(On Behalf of the Nationwide and/or**  
8 **California Sub-Class)**

9 92. Plaintiff repeats and realleges the allegations in the previous paragraphs  
10 as if fully set forth herein.

11 93. Plaintiff brings this cause of action on behalf of herself, the Nationwide  
12 Class and/or the California Class against Defendant CVS.

13 94. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n  
14 alleging fraud or mistake, a party must state with particularity the circumstances  
15 constituting fraud or mistake.” To the extent necessary, as detailed in the  
16 paragraphs above and below, Plaintiff has satisfied the requirements of Rule 9(b)  
17 by establishing the following elements with sufficient particularity.  
18  
19

- 20
- 21 a. **WHO:** Defendant, CVS Pharmacy, Inc., made material  
22 misrepresentations and/or omissions of fact in its labeling and  
23 marketing of the Products by representing that the Products are  
24 “Maximum Strength” lidocaine products.  
25  
26  
27

1           b. **WHAT:** Defendant’s conduct here was and continues to be fraudulent  
2           because it has the effect of deceiving consumers into believing that  
3           the Products are “Maximum Strength” lidocaine products. Defendant  
4           omitted from Plaintiff and Class Members that the Products are not  
5           “Maximum Strength” lidocaine products because other lidocaine  
6           products exist in the market that contain a higher amount (i.e. 5%) of  
7           lidocaine. Defendant knew or should have known this information is  
8           material to all reasonable consumers and impacts consumers’  
9           purchasing decisions. Yet, Defendant has and continues to represent  
10          that the Products are “Maximum Strength” lidocaine products when  
11          they are not, and has omitted from the Products’ labeling the fact that  
12          there are other prescription products available in the market that  
13          contain a higher percentage of lidocaine (i.e. 5%).

14          c. **WHEN:** Defendant made material misrepresentations and/or  
15          omissions detailed herein, including that the Products are “Maximum  
16          Strength” lidocaine products, continuously throughout the applicable  
17          Class period(s).

18          d. **WHERE:** Defendant’s material misrepresentations and omissions,  
19          that the Products are “Maximum Strength” lidocaine products, were  
20          located on the top of the front label of the Products in bold, yellow  
21          located on the top of the front label of the Products in bold, yellow  
22          located on the top of the front label of the Products in bold, yellow  
23          located on the top of the front label of the Products in bold, yellow  
24          located on the top of the front label of the Products in bold, yellow  
25          located on the top of the front label of the Products in bold, yellow  
26          located on the top of the front label of the Products in bold, yellow  
27          located on the top of the front label of the Products in bold, yellow  
28          located on the top of the front label of the Products in bold, yellow

1 lettering that contrasts with the background of the packaging, which  
2 instantly catches the eye of all reasonable consumers, including  
3 Plaintiff and Class Members, at the point of sale in every transaction.  
4  
5 The Products are sold in Defendant's brick and mortar stores and  
6 online store nationwide.

7  
8 e. **HOW:** Defendant made written misrepresentations right on the front  
9 label of the Products that the Products were "Maximum Strength"  
10 lidocaine products even though other stronger lidocaine products are  
11 available in the market. As such, Defendant's "Maximum Strength"  
12 representations are false and misleading. Moreover, Defendant  
13 omitted from the Products' labeling the fact that there are other  
14 prescription products available in the market that contain a higher  
15 percentage of lidocaine (i.e. 5%). And as discussed in detail  
16 throughout this Complaint, Plaintiff and Class Members read and  
17 relied on Defendant's "Maximum Strength" representations and  
18 omissions before purchasing the Products.  
19  
20

21  
22 f. **WHY:** Defendant misrepresented its Products as being "Maximum  
23 Strength" lidocaine products and omitted from the Products' labeling  
24 the fact that there are other prescription products available in the  
25 market that contain a higher percentage of lidocaine (i.e. 5%) for the  
26  
27  
28

1 express purpose of inducing Plaintiff and Class Members to purchase  
2 the Products at a substantial price premium. As such, Defendant  
3 profited by selling the misrepresented Products to at least thousands  
4 of consumers throughout the nation.  
5

6 95. As alleged herein, CVS knowingly made material misrepresentations  
7 and omissions regarding the Products on the Products' labeling and packaging in the  
8 Products' advertisements, and/or on its website, specifically the "MAXIMUM  
9 STRENGTH" Representations alleged more fully herein.  
10

11 96. Defendant, CVS, made these material "MAXIMUM STRENGTH"  
12 Representations and omissions in order to induce Plaintiff and putative Class  
13 Members to purchase the Products.  
14

15 97. Defendant, CVS, knew the "MAXIMUM STRENGTH"  
16 Representations regarding the Products were false and misleading but nevertheless  
17 made such representations through the marketing, advertising and on the Products'  
18 labeling. In reliance on these "MAXIMUM STRENGTH" Representations, Plaintiff  
19 and putative Class Members were induced to, and did, pay monies to purchase the  
20 Products.  
21  
22

23 98. Had Plaintiff and the Class known the truth about the Products, they  
24 would not have purchased the Products.  
25  
26  
27  
28



1 99. As a proximate result of the fraudulent conduct of Defendant, CVS,  
2 Plaintiff and the putative Class paid monies to Defendant, through its regular retail  
3 sales channels, to which Defendant is not entitled, and have been damaged in an  
4 amount to be proven at trial.  
5

6 **COUNT V**  
7 **Unjust Enrichment**  
8 **(In the Alternative, and on Behalf of the**  
9 **Nationwide and/or California Sub-Class)**

10 100. Plaintiff repeats and realleges the allegations in the previous paragraphs  
11 as if fully set forth herein.

12 101. Plaintiff brings this cause of action on behalf of herself, and the putative  
13 Classes against Defendant.  
14

15 102. Plaintiff and putative Class Members conferred a benefit on Defendant  
16 when they purchased the Products, of which Defendant had knowledge. By its  
17 wrongful acts and omissions described herein, including selling the Products  
18 containing the “MAXIMUM STRENGTH” Representations and did not otherwise  
19 perform as represented and for the particular purpose for which they were intended,  
20 Defendant was unjustly enriched at the expense of Plaintiff and putative Class  
21 Members.  
22  
23

24 103. Plaintiff’s detriment and Defendant’s enrichment were related to and  
25 flowed from the wrongful conduct challenged in this Complaint.  
26  
27  
28

1 104. Defendant has profited from its unlawful, unfair, misleading, and  
2 deceptive practices at the expense of Plaintiff and putative Class Members under  
3 circumstances in which it would be unjust for Defendant to be permitted to retain  
4 the benefit. It would be inequitable for Defendant to retain the profits, benefits, and  
5 other compensation obtained from their wrongful conduct as described herein in  
6 connection with selling the Products.  
7

8  
9 105. Defendant has been unjustly enriched in retaining the revenues derived  
10 from Class Members' purchases of the Products, which retention of such revenues  
11 under these circumstances is unjust and inequitable because Defendant marketed,  
12 advertised, distributed, and sold the Products, and CVS misrepresented the nature of  
13 the Products, misrepresented their benefits and attributes, and knowingly marketed  
14 and promoted the Products with "MAXIMUM STRENGTH" Representations,  
15 which caused injuries to Plaintiff and the Class because they would not have  
16 purchased the Products based on the same representations if the true facts concerning  
17 the Products had been known.  
18  
19  
20

21 106. Plaintiff and putative Class Members have been damaged as a direct  
22 and proximate result of Defendant's unjust enrichment because they would not have  
23 purchased the Products on the same terms or for the same price had they known the  
24 true nature of the Products and the mis-statements regarding what the Products were  
25 and what they contained.  
26  
27  
28



- 1 A. Declaring that this action is properly maintained as a class action, certifying  
2 the proposed Class(es), appointing Plaintiff as Class Representative and  
3 appointing Plaintiff’s counsel as Class Counsel;
- 4 B. Directing that Defendant bear the costs of any notice sent to the Class(es);
- 5 C. Declaring that Defendant must disgorge, for the benefit of the Class(es), all  
6 or part of the ill-gotten profits they received from the sale of the Products, or  
7 order Defendant to make full restitution to Plaintiff and the members of the  
8 Class(es) except that no monetary relief is presently sought for violations of  
9 the Consumers Legal Remedies Act;
- 10 D. Awarding restitution and other appropriate equitable relief;
- 11 E. Granting an injunction against Defendant to enjoin it from conducting its  
12 business through the unlawful, unfair and fraudulent acts or practices set  
13 forth herein;
- 14 F. Granting an Order requiring Defendant to fully and appropriately recall the  
15 Products and/or to remove the claims on its website and elsewhere, including  
16 ”Maximum Strength” Representations regarding the Products;
- 17 G. Ordering a jury trial and damages according to proof;
- 18 H. Awarding Plaintiff and members of the Class(es) statutory damages, as  
19 provided by the applicable state consumer protection statutes invoked above,  
20 except that no monetary relief is presently sought for violations of the  
21 Consumers Legal Remedies Act;
- 22 I. Enjoining Defendant from continuing to engage in the unlawful and unfair  
23 business acts and practices as alleged herein;
- 24 J. Awarding attorneys’ fees and litigation costs to Plaintiff and members of the  
25 Class(es);
- 26 K. Awarding civil penalties, prejudgment interest and punitive damages as  
27 permitted by law; and
- 28 L. Ordering such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: February 17, 2022

Respectfully submitted,

*/s/ Jonathan Shub*

Jonathan Shub (SBN 237708)

Kevin Laukaitis\*

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*\*Pro Hac Vice Application Forthcoming*

*Attorneys for Plaintiff and Putative Class  
Members*

1 **CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

2 I, Jonathan Shub, declare as follows:

3  
4 1. I am an attorney at law licensed to practice in the State of California  
5 and a member of the bar of this Court. I am an attorney at Shub Law Firm LLC,  
6 counsel of record for Plaintiff in this action. I have personal knowledge of the facts  
7 set forth in this declaration and, if call as a witness, I could and would competently  
8 testify thereto under oath.  
9

10  
11 2. The Complaint filed in this action is filed in the proper place for trial  
12 under Civil Code Section 1780(d) in that a substantial portion of the events alleged  
13 in the Complaint occurred in the Northern District of California.  
14

15 I declare under the penalty of perjury under the laws of the State of California  
16 and the United States that the foregoing is true and correct and that this declaration  
17 was executed at Haddonfield, New Jersey this 17th day of February 2022.  
18

19 /s/ Jonathan Shub  
20 Jonathan Shub  
21  
22  
23  
24  
25  
26  
27  
28