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

15 VALERIE MORRISON, on behalf of herself,
 16 all others similarly situated, and the general
 17 public,

Plaintiff,

v.

19 JOHNSON & JOHNSON CONSUMER
 20 INC.,

Defendant.

Case No: '22CV1276 BEN RBB

CLASS ACTION COMPLAINT

**COMPLAINT FOR FRAUD,
 CONSUMER FRAUD, BREACH
 OF WARRANTY, AND UNJUST
 ENRICHMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Valerie Morrison, on behalf of herself, all others similarly situated, and the
2 general public, by and through her undersigned counsel, hereby sues Defendant Johnson &
3 Johnson Consumer Inc. (“J&J”), and alleges the following upon her own knowledge, or where
4 she lacks personal knowledge, upon information and belief, including the investigation of her
5 counsel.

6 **INTRODUCTION**

7 1. For decades, J&J has sold the ubiquitous, over-the-counter analgesic, Tylenol,
8 designed to relieve pain. Many varieties, however, contain titanium dioxide (TiO₂), a heavy
9 metal and artificial colorant that is harmful upon accumulation in the human body, including
10 in the liver, spleen, kidney, brain, and lungs. Because J&J omits from the labeling of these
11 Tylenol products material information regarding the safety concerns associated with
12 consuming this toxin, its behavior is likely to deceive reasonable consumers.

13 2. Plaintiff brings this action against J&J on behalf of herself, similarly-situated
14 Class Members, and the general public, to enjoin its practice of deceptively omitting material
15 information about safety concerns associated with the TiO₂ in certain Tylenol products, and
16 to recover compensation for injured Class Members.

17 **JURISDICTION & VENUE**

18 3. This Court has original jurisdiction over this action under 28 U.S.C. §
19 1332(d)(2), the Class Action Fairness Act, because the matter in controversy exceeds the sum
20 or value of \$5,000,000, exclusive of interest and costs, and at least one member of the class
21 of plaintiffs is a citizen of a State different from J&J.

22 4. The Court has personal jurisdiction over J&J because it has purposely availed
23 itself of the benefits and privileges of conducting business activities within California,
24 specifically through distributing and selling Tylenol in California, and transactions giving
25 rise to this action occurred in California.

26 5. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c), because J&J resides
27 (*i.e.*, is subject to personal jurisdiction) in this district, and a substantial part of the events or
28 omissions giving rise to the claims occurred in this district.

PARTIES

6. Plaintiff Valerie Morrison is a resident of San Diego, California.

7. Defendant Johnson & Johnson Consumer Inc. is a New Jersey corporation with its principal place of business in Skillman, New Jersey.

FACTS

I. J&J MARKETS TYLENOL CONTAINING TITANIUM DIOXIDE

8. In 1955, McNeil Laboratories introduced TYLENOL ® Elixir for children, the first aspirin-free pain reliever.¹ The active ingredient in Tylenol is acetaminophen. Originally, Tylenol Elixir was available by prescription only. In 1959, however, J&J acquired McNeil Laboratories, and the following year, Tylenol was approved for sale without a prescription.

9. Today, Tylenol products are ubiquitous, available for purchase at nearly any brick-and-mortar or online retail outlet, not just pharmacies and grocery stores.

10. Many varieties of Tylenol that J&J markets contain titanium dioxide (TiO₂), a substance that, due to its opacity and light-reflecting characteristics, is used to enhance the whiteness of paint, plastics, paper products—and certain foods and drugs.

11. J&J markets a wide variety of Tylenol-branded products. At least the following varieties contain TiO₂ as an ingredient.²

- a. Tylenol Extra Strength
- b. Tylenol Extended Release
- c. Tylenol Cold + Flu Multi-Action
- d. Tylenol Cold + Flu Severe
- e. Tylenol PM
- f. Tylenol Rapid Release Gels
- g. Tylenol Regular Strength Liquid Gels

¹ See <https://www.tylenol.com/news/about-us>

² To the extent there are additional Tylenol varieties containing TiO₂ as an ingredient, they should be read to be a part of this Complaint.

1 **II. TITANIUM DIOXIDE PRESENTS A SAFETY RISK TO CONSUMERS**

2 12. The FDA last examined the risks of TiO₂ more than 50 years ago, in 1966,
3 finding that it may be safely used as a color additive in foods in quantities up to 1% by weight.
4 The consumer advocacy nonprofit Environmental Working Group, however, has called on
5 the FDA to consider banning TiO₂ use in food, citing more recent concerns.³

6 13. Studies have shown that TiO₂ exposure can cause pathological lesions of the
7 liver, spleen, kidneys, and brain; lung tumors; and inflammation, cell necrosis, and
8 dysfunction in the kidneys.⁴ In light of this, the Center for Food Safety has challenged major
9 corporations to remove TiO₂ from their foods.⁵

10 14. In May 2019, France announced a ban on TiO₂ as a food additive, based on an
11 opinion of France's food safety government agency (ANSES), recommending reducing the
12 exposure of consumers, workers, and the environment to TiO₂. ANSES found there was
13 insufficient evidence demonstrating TiO₂ is safe for human consumption.⁶

14 15. In May 2021, the European Food Safety Authority (EFSA) similarly held that
15 TiO₂ is no longer considered safe as a food additive.⁷ The assessment was conducted
16 following a rigorous methodology and taking into consideration many thousands of studies

17
18 ³ Graddy, S., "Study: Additive found in Skittles and Starburst no longer considered safe,"
(May 12, 2021), *available at* <https://tinyurl.com/2s35frdf>.

19
20 ⁴ Center for Food Safety, "Top Candy Company MARS Commits to Phasing Out Harmful
21 Nanoparticles from Food Products" (Oct. 27, 2016) (citation omitted), *available at*
<https://tinyurl.com/mtf6hwbj>.

22 ⁵ *See id.*

23 ⁶ *See* [https://www.fas.usda.gov/data/france-france-bans-titanium-dioxide-food-products-](https://www.fas.usda.gov/data/france-france-bans-titanium-dioxide-food-products-january-2020)
24 [january-2020](https://www.fas.usda.gov/data/france-france-bans-titanium-dioxide-food-products-january-2020) (last visited Aug. 26, 2022); *see also* de La Hamaide, S. "France to ban titanium
25 dioxide whitener in food from 2020" *Reuters* (Apr. 17, 2019) *available at*
<https://tinyurl.com/3uwtxkku>.

26 ⁷ *See* European Food Safety Authority, "Titanium dioxide: E171 no longer considered safe
27 when used as a food additive" (May 6, 2021), *available at* <https://tinyurl.com/mr34zpf5>; *see*
28 *also* EFSA Panel on Food Additives and Flavourings, "Safety assessment of titanium dioxide
(E171) as a food additive," *EFSA Journal*, Vol. 19 No. 5 (Mar. 25, 2021).

1 that became available following EFSA’s previous assessment of TiO₂ in 2016, including new
2 scientific evidence and data on nanoparticles.⁸ Based on its review, the EFSA could not
3 establish a safe level for daily intake of TiO₂ in food.⁹ The ban is now fully in effect as of
4 summer 2022, following a six-month transition period.

5 16. The concerns of TiO₂ relate to its accumulation in and toxicity to the human
6 body, particularly in small, nanoparticle sizes. After oral ingestion, the body absorbs TiO₂
7 nanoparticles, and they begin to accumulate. Research has shown these particles are
8 genotoxic, meaning they are able to damage DNA, the genetic material of cells, which can
9 lead to carcinogenic effects.¹⁰

10 17. Nanoparticles of TiO₂ are also recognized and taken up by immune cells and can
11 trigger an inflammatory response.¹¹ Solid particles, once in the sub-mucosal tissue, are able
12 to enter both the lymphatic and blood circulation.¹²

13 18. Size distribution analyses of food grade TiO₂ have shown that batches used in
14 foods *always* include a fraction of nano-sized particles as an inevitable byproduct of the
15 manufacturing processes.¹³ Thus, there will *always* be nanoparticles of TiO₂ available for
16 absorption in foodstuffs that use the ingredient (including OTC medicines like Tylenol).

17 19. EWG’s 2020 “Food Additives State of the Science” suggested avoiding TiO₂
18 because it can increase the risk of cancer, harm the nervous system, change the body’s
19

20 ⁸ *Id.*

21 ⁹ *Id.*

22 ¹⁰ See Shi, H., et al., “Titanium dioxide nanoparticles: a review of current toxicological data,”
23 *Part. Fibre Toxicol.*, Vol. 10, No. 15 (2013), available at <https://tinyurl.com/bddatxyk>;
24 Skocaj M., et al., “Titanium dioxide in our everyday life; is it safe?,” *Radiol. Oncol.*, Vol. 45,
25 No. 4 (Dec. 2011) [hereinafter “Skocaj (2011)”], available at <https://tinyurl.com/ywyhydvn>.

26 ¹¹ Skocaj (2011), *supra* n.10.

27 ¹² *Id.*

28 ¹³ Winkler, H., et al., “Critical review of the safety assessment of titanium dioxide additives
in food,” *J. Nanobiotechnology*, Vol. 16, No. 51 (June 1, 2018).

1 hormonal balance, and affect the immune system.¹⁴ EWG stated, “We’re publishing the guide
2 because the Food and Drug Administration’s regulatory approach to food additives does not
3 consider the latest science on the health harms caused by additives that may be legally added
4 to processed foods manufactured in the U.S.”¹⁵

5 20. In sum, TiO₂ particles are “without doubt” associated with the hazardous
6 properties of cell damage, genotoxic effects, inflammatory responses, and changes in cell
7 signaling.¹⁶ Researchers have thus cautioned that TiO₂ should be used with great care,
8 particularly in food and cosmetics: **“The least that should be done for the consumer is that
9 a declaration of nano-sized TiO₂ in [] products is obligatory, so that we will have the
10 choice whether to use it or not.”**¹⁷

11 21. As a global corporation in the business of manufacturing and marketing
12 consumer health products, J&J is aware of the safety concerns posed by TiO₂. In fact, as early
13 as 2013, a “Medical Professional at Johnson & Johnson,”¹⁸ Jieqiong Hu, co-authored and
14 published a study that examined the inhalation toxicology of nano-TiO₂ in ApoE knockout
15 mice.¹⁹ The study found that after six weeks of treatment, there was significant difference
16 between the high dose TiO₂ group and control group, showing that “nano-TiO₂ particles
17 induced considerable systemic inflammation, endothelial dysfunction and lipid metabolism
18 dysfunction, contributing to the progression of atherosclerosis.”²⁰

20 ¹⁴ See <https://www.ewg.org/research/food-additive-science>

21 ¹⁵ *Id.*

22 ¹⁶ Skocaj (2011), *supra* n.10.

23 ¹⁷ *Id.*

24 ¹⁸ See <https://www.researchgate.net/profile/Jieqiong-Hu-2>

25 ¹⁹ See Hu, J., “Cardiovascular Effects of Pulmonary Exposure to Titanium Dioxide
26 Nanoparticles in ApoE Knockout Mice,” *J. Nanoscience & Nanotechnology*, Vol. 13, No. 5
27 (May 2013).

28 ²⁰ *Id.*

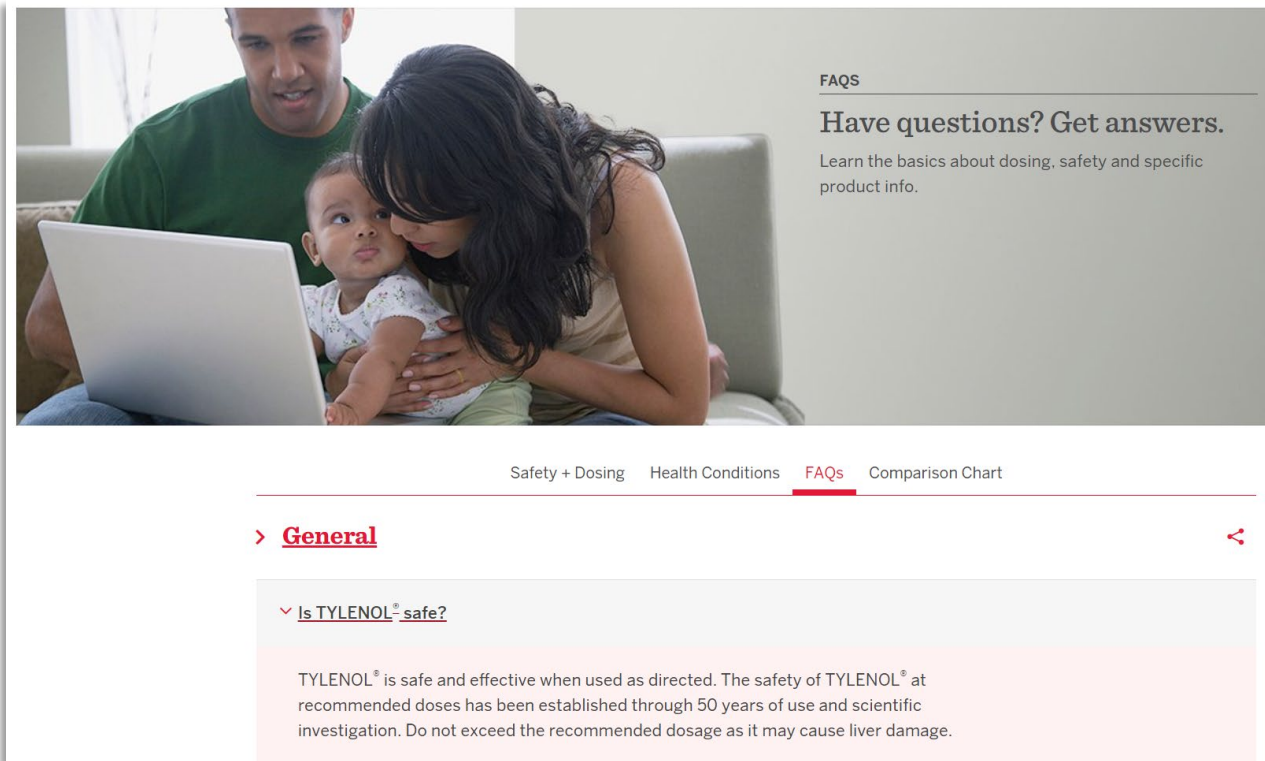
1 **III. J&J’S TYLENOL LABELING VIOLATES CALIFORNIA & FEDERAL LAW**

2 **A. J&J’s Marketing of Tylenol Containing TiO₂ is Likely to Mislead**
3 **Reasonable Consumers**

4 22. Consumers are increasingly seeking products with non-toxic ingredients. For
5 example, a July 2017 consumer survey of over 1,600 consumers, conducted by “Made Safe”
6 and “Safer Chemicals, Healthy Families,” found that 70% prioritize “free of certain toxic
7 chemicals” and “health/safety of the product” when shopping.²¹

8 23. Despite knowing that safety concerns with additives are material to reasonable
9 consumers, J&J regularly and intentionally omitted, and continues to omit, material
10 information regarding safety concerns associated with consuming the TiO₂ in Tylenol.
11 Nowhere on the label of Tylenol containing TiO₂ does J&J disclose those safety concerns.

12 24. To the contrary, J&J’s labeling and public statements suggest Tylenol containing
13 TiO₂ is “safe and effective when used as directed,” as in the following “FAQ” on J&J’s
14 website:



25
26
27
28 ²¹ See <https://www.madesafe.org/what-shoppers-want>

1 25. Publicly, J&J claims that “Nothing is more important to us than the health and
2 safety of the people we love. We’re like you in that way. And we’re relentless about it. That’s
3 why we make sure our products meet or exceed applicable regulations wherever they are sold.
4 We’re all about earning the trust of millions of consumers around the world. And we’ve been
5 doing it for over 100 years.”²²

6 26. J&J further claims to have “A tireless passion for product safety,” with “experts
7 [] continuously monitoring and adjusting the process based on the latest research, guidance,
8 regulations, and customer and consumer feedback.”²³ J&J acknowledges “Safety starts with
9 ingredients,” and claims “Our ingredients are screened for quality, manufacturing process,
10 government regulations, published research, and our own internal ingredient safety
11 databases.”²⁴ J&J further reassures consumers that “Everything we do is driven by the safety
12 of consumers, the well-being of animals and the health of our planet,” and promises them
13 “confidence and peace of mind about the products they choose for themselves and their
14 families”²⁵

15 27. Also on its website, J&J has a page dedicated to discussing its “Ingredients,”
16 where it again reassures consumers of the safety of its products. J&J states “When selecting
17 ingredients, we use only the amounts that are determined to be safe and well tolerated, and
18 the final products are formulated and tested to minimize risk. Additionally, when we select
19 our ingredients, we find and use the best that nature has to offer and also create in the lab
20 ingredients that are designed to be pure and reliable.”²⁶

21 28. J&J’s website also has an “Ingredient Glossary” allowing consumers to “browse
22 some of the ingredients we commonly use in our cosmetics and personal care products,”

23 _____
24 ²² <https://www.jnjconsumerhealth.com/our-commitment>

25 ²³ *Id.*

26 ²⁴ *Id.*

27 ²⁵ *Id.*

28 ²⁶ <https://www.jnjconsumerhealth.com/our-commitment/ingredients>

1 stating that “These ingredients[] [are] always used at safe levels”²⁷ The ingredient
 2 glossary lists Titanium Dioxide being used as an “Opacifying Agent” that “Helps give our
 3 products an opaque appearance”²⁸ But J&J does not disclose in this glossary that TiO₂
 4 is used to color certain Tylenol products bright white.

5 29. Thus, J&J goes out of its way to reassure consumers of the safety of its products,
 6 including the Tylenol products, despite knowing the dangers of consuming the TiO₂
 7 contained therein.

8 30. J&J is under a duty to disclose this information to consumers because (a) J&J is
 9 revealing some information about its Tylenol products—enough to suggest they are safe—
 10 without revealing additional material information regarding safety concerns with the
 11 products’ TiO₂; (b) J&J’s deceptive omissions concern human health, and specifically the
 12 detrimental health consequences of consuming its Tylenol containing TiO₂; (c) J&J was in a
 13 superior position to know of the dangers presented by the TiO₂ in its Tylenol, as it is a leading
 14 worldwide pharmaceutical and consumer goods company; and (d) J&J actively concealed
 15 material facts not known to Plaintiff and the Class.

16 **B. Tylenol Containing TiO₂ is Unlawfully Misbranded**

17 31. The Tylenol labeling at issue violates the Federal Food, Drug and Cosmetic Act
 18 (FDCA), 21 U.S.C. §§ 301 *et seq.*, for example, because its “label is false or misleading in
 19 any particular,” *see id.* § 352(a)(1) (“Any drug or device shall be deemed to be misbranded—
 20 if its label is false or misleading in any particular.”).

21 32. By omitting material information regarding safety concerns associated with
 22 consuming TiO₂, J&J also “fail[ed] to reveal facts that are material in light of other
 23 representations made or suggested by the statement[s], word[s], design[s], device[s], or any
 24 combination thereof,” in violation of 21 C.F.R. § 1.21(a)(1). Specifically, J&J represented
 25

26 _____
 27 ²⁷ <https://www.jnjconsumerhealth.com/commitment/ingredients/ingredient-glossary> (last
 28 visited Aug. 29, 2022).

²⁸ *Id.* TiO₂ is also used by J&J “as a Sun Filter in some products,” *i.e.* as a sunscreen. *Id.*

1 through omission that Tylenol is safe when used as directed, while failing to disclose that
2 consuming one of its ingredients, TiO_2 , can have detrimental health consequences by causing
3 pathological lesions of the liver, spleen, kidneys, and brain; lung tumors; and inflammation,
4 cell necrosis, and dysfunction in the kidney.

5 33. Further, J&J failed to reveal facts that were “[m]aterial with respect to the
6 consequences which may result from use of the article under” both “[t]he conditions
7 prescribed in such labeling,” and “such conditions of use as are customary or usual,” in
8 violation of 21 C.F.R. § 1.21(a)(2). Namely, J&J failed to disclose the harm to the body’s
9 immune system, digestive system, nervous system, respiratory system, and urinary system
10 that is likely to result from the consumption of Tylenol in the customary and prescribed
11 manners.

12 34. The Tylenol labeling at issue further violates California Health and Safety Code
13 §§ 109875, *et. seq.* (the “Sherman Law”), which has expressly adopted the federal food, drug
14 and cosmetic labeling requirements as its own. *See e.g., id.* § 111330 (“Any drug or device is
15 misbranded if its labeling is false or misleading in any particular.”); *id.* § 110390 (“It is
16 unlawful for any person to disseminate any false advertisement of any food, drug, device, or
17 cosmetic. An advertisement is false if it is false or misleading in any particular.”); *id.* §
18 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
19 food, drug, device, or cosmetic that is falsely advertised.”).

20 **IV. PLAINTIFF’S PURCHASE, RELIANCE, AND INJURY**

21 35. As best she can recall, Plaintiff has been purchasing and regularly using Tylenol
22 products for many years, since at least 2012, typically purchasing the product at least a few
23 times each year. This specifically includes Tylenol Extra Strength, Tylenol Cold and Flu, and
24 Tylenol Rapid Release Gels, typically in 100- or 225- gelcap counts. She recalls purchasing
25 the product at stores including the CVS Pharmacy located at 1792 Garnet Ave., San Diego,
26 CA 92109; the Rite Aid located at 1670 Garnet Ave., San Diego, CA 92109; the Vons located
27 at 1702 Garnet Ave., San Diego, CA 92109; and the MCAS Miramar Commissary located at
28 2661 Moore Ave., San Diego, CA 92126.

1 36. When purchasing Tylenol Extra Strength, Plaintiff was seeking an over-the-
2 counter pain reliever that was safe to consume, that is, whose regular consumption in the
3 manner prescribed, *i.e.*, when used as directed, would not harm her bodily health or increase
4 her risk of disease.

5 37. In purchasing Tylenol Extra Strength, Plaintiff had no reason to believe the
6 product contained a chemical that presents such a danger to safety it has been banned as a
7 food additive in Europe, and which can cause or contribute to genotoxicity and its various
8 implications, including cancer.

9 38. J&J's omissions of safety concerns associated with the TiO₂ in certain Tylenol
10 products were misleading, and had the capacity, tendency, and likelihood to confuse or
11 confound Plaintiff and other consumers acting reasonably. That is because, as described in
12 detail herein, Tylenol containing TiO₂ is not safe when consumed regularly, but rather can
13 harm bodily health by causing pathological lesions of the liver, spleen, kidneys, and brain;
14 lung tumors; and inflammation, cell necrosis, and dysfunction in the kidney.

15 39. Plaintiff is not a nutritionist, toxicologist, or chemical expert, but rather a lay
16 consumer who did not have the specialized knowledge that J&J had regarding the TiO₂
17 present in certain Tylenol products. At the time of purchase, Plaintiff, like other average and
18 reasonable consumers, was unaware of the extent to which consuming TiO₂, present in
19 Tylenol Extra Strength, can adversely affect bodily health.

20 40. Plaintiff acted reasonably in relying on J&J's omissions, which J&J intentionally
21 made to induce average consumers into purchasing the products, knowing they might be
22 unwilling to purchase, or unwilling to pay as much if they knew the safety concerns associated
23 with the TiO₂ in the products.

24 41. Plaintiff would not have purchased Tylenol Extra Strength or would not have
25 been willing to pay as much for it, if she knew that its labeling was false and misleading in
26 that it was not as safe as represented by virtue of J&J's omissions.

27 42. Tylenol products containing TiO₂ would have cost less absent J&J's deceptive
28 omissions.

1 43. Through these omissions, J&J was able to gain a greater share of the over-the-
2 counter pain medication market than it would have otherwise, and also increased the size of
3 the market.

4 44. For these reasons, Tylenol products containing TiO₂ were worth less than what
5 Plaintiff and the Class paid for them.

6 45. Plaintiff and the Class lost money as a result of J&J's deceptive omissions and
7 practices in that they did not receive what they paid for when purchasing Tylenol containing
8 TiO₂.

9 46. Plaintiff would purchase Tylenol products in the future if she could trust that the
10 labeling was not false or misleading, but absent an injunction, Plaintiff will be unable to trust
11 the labeling on Tylenol when she encounters it in the marketplace.

12 47. Plaintiff's substantive right to a marketplace free of fraud, where she is entitled
13 to rely on representations such as those made by J&J with confidence, continues to be violated
14 every time she is exposed to the misleading labeling.

15 48. Plaintiff's legal remedies are inadequate to prevent these future injuries, for
16 which prospective injunctive relief is necessary.

17 **CLASS ACTION ALLEGATIONS**

18 49. While reserving the right to redefine or amend the class definition prior to or as
19 part of a motion seeking class certification, pursuant to Federal Rule of Civil Procedure 23,
20 Plaintiff seeks to represent a class of all persons in the United States who, at any time from
21 four years preceding the date of the filing of this Complaint to the time a class is notified (the
22 "Class Period"), purchased, for personal or household use, and not for resale or distribution,
23 any of the Tylenol products (the "Class").

24 50. Plaintiff also seeks to represent a subclass of all Class Members who, at any time
25 from four years preceding the date of the filing of this Complaint to the time a class is notified,
26 purchased for personal or household use, and not for resale or distribution, any of the Tylenol
27 products in California (the "Subclass").
28

1 51. The members in the proposed Class are so numerous that individual joinder of
2 all members is impracticable, and the disposition of the claims of all Class Members in a
3 single action will provide substantial benefits to the parties and Court.

4 52. Questions of law and fact common to Plaintiff and the Class include:

5 a. Whether J&J omitted information about the TiO₂ in certain Tylenol
6 products;

7 b. Whether that omission was material, or likely to be material, to a
8 reasonable consumer;

9 c. Whether the omission was deceptive;

10 d. Whether J&J's conduct violates public policy;

11 e. Whether J&J's conduct violates state or federal food or drug statutes or
12 regulations;

13 f. Whether J&J warranted the products as safe for human consumption;

14 g. Whether the Tylenol products pass without objection in the trade or
15 industry;

16 h. Whether the Tylenol products are fit for the ordinary purpose for which
17 they are used;

18 i. Whether J&J knew or should have known that its representations and
19 omissions were false;

20 j. Whether J&J intended to induce reliance on its representations and
21 omissions;

22 k. Whether J&J was unjustly enriched by Plaintiff's and Class Members'
23 purchases of the Tylenol products;

24 l. Whether Plaintiff and Class Members are entitled to declaratory and
25 injunctive relief;

26 m. The proper amount of damages, including punitive damages;

27 n. The proper amount of restitution; and

28 o. The proper amount of attorneys' fees.

1 53. These common questions of law and fact predominate over questions that affect
2 only individual Class Members.

3 54. Plaintiff's claims are typical of Class Members' claims because they are based
4 on the same underlying facts, events, and circumstances relating to J&J's conduct.
5 Specifically, all Class Members, including Plaintiff, were subjected to the same misleading
6 and deceptive conduct when they purchased Tylenol containing TiO₂ and suffered economic
7 injury because the products are misrepresented. Absent J&J's practice of deceptively and
8 unlawfully labeling the Tylenol, Plaintiff and Class Members would not have purchased the
9 products.

10 55. Plaintiff will fairly and adequately represent and protect the interests of the
11 Class, has no interests incompatible with the interests of the Class, and has retained counsel
12 competent and experienced in class action litigation, and specifically in litigation involving
13 the false and misleading advertising of foods.

14 56. Class treatment is superior to other options for resolution of the controversy
15 because the relief sought for each Class Member is small, such that, absent representative
16 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

17 57. J&J has acted on grounds applicable to the Class, thereby making appropriate
18 final injunctive and declaratory relief concerning the Class as a whole.

19 58. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
20 23.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.***

24 59. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
25 as if set forth in full herein.

26 60. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."
27 Cal. Bus. & Prof. Code § 17200.
28

1 61. The acts, omissions, misrepresentations, practices, and non-disclosures of J&J
2 as alleged herein constitute business acts and practices.

3 **Fraudulent**

4 62. A statement or practice is fraudulent under the UCL if it is likely to deceive a
5 significant portion of the public, applying an objective reasonable consumer test.

6 63. As set forth herein, J&J's omissions relating to Tylenol containing TiO₂ are
7 likely to deceive reasonable consumers and the public.

8 **Unlawful**

9 64. The acts alleged herein are "unlawful" under the UCL in that they violate at least
10 the following laws:

- 11 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;
- 12 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;
- 13 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*; and
- 14 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety
15 Code §§ 110100 *et seq.*

16 **Unfair**

17 65. J&J's conduct with respect to the labeling, advertising, and sale of the Tylenol
18 was unfair because J&J's conduct was immoral, unethical, unscrupulous, or substantially
19 injurious to consumers, and the utility of its conduct, if any, does not outweigh the gravity of
20 the harm to its consumers.

21 66. J&J's conduct with respect to the labeling, advertising, and sale of the Tylenol
22 was and is also unfair because it violates public policy as declared by specific constitutional,
23 statutory or regulatory provisions, including but not necessarily limited to the Consumers
24 Legal Remedies Act, False Advertising Law, FDCA, and Sherman Law.

25 67. J&J's conduct with respect to the labeling, advertising, and sale of the Tylenol
26 was and is also unfair because the consumer injury was substantial, not outweighed by
27 benefits to consumers or competition, and not one consumers themselves could reasonably
28 have avoided. Specifically, the benefit of using TiO₂—a brighter white coloration—does not

1 outweigh the harm to Class Members who were deceived into purchasing Tylenol products
2 containing TiO₂ unaware of related safety concerns.

3 68. J&J profited from the sale of the falsely, deceptively, and unlawfully advertised
4 Tylenol containing TiO₂ to unwary consumers.

5 69. Plaintiff and Class Members are likely to continue to be damaged by J&J's
6 deceptive trade practices, because J&J continues to disseminate misleading information.
7 Thus, injunctive relief enjoining J&J's deceptive practices is proper.

8 70. Plaintiff has suffered injury in fact as a result of J&J's unlawful conduct.

9 71. Plaintiff and the Class also seek an order for the restitution of all monies from
10 the sale of the Tylenol, which were unjustly acquired through acts of unlawful competition.

11 72. Because Plaintiff's claims under the "unlawful" and "unfair" prongs of the UCL
12 sweep more broadly than her claims under the FAL, CLRA, or UCL's "fraudulent" prong,
13 Plaintiff's legal remedies are inadequate to fully compensate Plaintiff for all of J&J's
14 challenged behavior.

15 SECOND CAUSE OF ACTION

16 Violations of the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*

17 73. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
18 as if set forth in full herein.

19 74. The FAL provides that "[i]t is unlawful for any person, firm, corporation or
20 association, or any employee thereof with intent directly or indirectly to dispose of real or
21 personal property or to perform services" to disseminate any statement "which is untrue or
22 misleading, and which is known, or which by the exercise of reasonable care should be
23 known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

24 75. It is also unlawful under the FAL to disseminate statements concerning property
25 or services that are "untrue or misleading, and which is known, or which by the exercise of
26 reasonable care should be known, to be untrue or misleading." *Id.*

1 76. As alleged herein, the advertisements, labeling, policies, acts, and practices of
2 J&J relating to Tylenol containing TiO₂ misled consumers acting reasonably as to the safety
3 of the products.

4 77. Plaintiff suffered injury in fact as a result of J&J's actions as set forth herein
5 because she purchased the Tylenol in reliance on J&J's false and misleading marketing
6 claims stating or suggesting that the products, among other things, are safe.

7 78. J&J's business practices as alleged herein constitute unfair, deceptive, untrue,
8 and misleading advertising pursuant to the FAL because J&J has advertised Tylenol
9 containing TiO₂ in a manner that is untrue and misleading, which J&J knew or reasonably
10 should have known, by omitting material information regarding safety concerns from
11 Tylenol's labeling.

12 79. J&J profited from the sale of the falsely and deceptively advertised Tylenol to
13 unwary consumers.

14 80. As a result, Plaintiff, the Class, and the general public are entitled to injunctive
15 and equitable relief, restitution and an order for the disgorgement of the funds by which J&J
16 was unjustly enriched.

17 81. Because the Court has broad discretion to award restitution under the FAL and
18 could, when assessing restitution under the FAL, apply a standard different than that applied
19 to assessing damages under the CLRA, commercial code (for Plaintiff's breach of warranty
20 claims), and for Plaintiff's fraud claims, and restitution is not limited to returning to Plaintiff
21 and class members monies in which they have an interest, but more broadly serves to deter
22 the offender and others from future violations, the legal remedies available under the CLRA
23 and commercial code are more limited than the equitable remedies available under the FAL,
24 and are therefore inadequate.

25 **THIRD CAUSE OF ACTION**

26 **Violations of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.***

27 82. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
28 as if set forth in full herein.

1 83. The CLRA prohibits deceptive practices in connection with the conduct of a
2 business that provides goods, property, or services primarily for personal, family, or
3 household purposes.

4 84. J&J's false and misleading labeling and other policies, acts, and practices were
5 designed to, and did, induce the purchase and use of Tylenol containing TiO₂ for personal,
6 family, or household purposes by Plaintiff and Class Members, and violated and continue to
7 violate the following sections of the CLRA:

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

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

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

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

16 85. J&J profited from the sale of the falsely, deceptively, and unlawfully advertised
17 Tylenol containing TiO₂ to unwary consumers.

18 86. J&J's wrongful business practices constituted, and constitute, a continuing
19 course of conduct in violation of the CLRA.

20 87. Plaintiff, on behalf of herself and the Class, seeks injunctive relief under Civil
21 Code § 1782(d).

22 88. In compliance with Cal. Civ. Code § 1782, Plaintiff sent written notice to J&J
23 of her claims. Although Plaintiff does not currently seek damages for her claims under the
24 CLRA, if J&J refuses to remedy the violation within 30 days of receiving the notice letter,
25 Plaintiff may thereafter amend this Complaint to seek damages.

26 89. Additionally, in compliance with Cal. Civ. Code § 1780(d), Plaintiff has filed an
27 affidavit of venue concurrently herewith.
28

FOURTH CAUSE OF ACTION

Breach of Implied Warranty under Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, et seq., and California Commercial Code § 2314

90. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein. Plaintiff brings these causes of action on behalf of a California Subclass.

91. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790 et seq., and California Commercial Code § 2314, every sale of consumer goods in the State of California is accompanied by both a manufacturer’s and retailer seller’s implied warranty that the goods are merchantable, as defined in that Act. In addition, every sale of consumer goods in California is accompanied by both a manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer or retailer has reason to know that the goods as represented have a particular purpose and that the buyer is relying on the manufacturer’s or retailer’s skill or judgment to furnish suitable goods consistent with that represented purpose.

92. The Tylenol products at issue here are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

93. Plaintiff and the Subclass Members who purchased the products are “retail buyers” within the meaning of Cal. Civ. Code § 1791.

94. J&J is in the business of manufacturing, assembling, and/or producing the products and/or selling the products to retail buyers, and therefore is a “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

95. Defendant impliedly warranted to retailer buyers that the Tylenol at issue was merchantable in that the products would: (a) pass without objection in the trade or industry under the contract description, and (b) were fit for the ordinary purposes for which the products are used.

96. For a consumer good to be “merchantable” under the Act, it must satisfy both of these elements. J&J breached these implied warranties because the Tylenol products at issue were unsafe for human consumption. Therefore, the products would not pass without

1 objection in the trade or industry and were not fit for the ordinary purpose for which they are
2 used.

3 97. Plaintiff and Subclass Members purchased the Tylenol products at issue in
4 reliance upon J&J's skill and judgment in properly packaging and labeling the products.

5 98. The products were not altered by Plaintiff or the Subclass Members.

6 99. The products were defective at the time of sale when they were in the exclusive
7 control of J&J. The issue as described in this Complaint was latent in the product and not
8 reasonably discoverable at the time of sale.

9 100. J&J knew that the Tylenol products at issue would be purchased and consumed
10 without additional testing by Plaintiff and Subclass Members

11 101. As a direct and proximate cause of J&J's breach of the implied warranty,
12 Plaintiff and Subclass Members have been injured and harmed because they would not have
13 purchased the products if they knew the truth, namely, that they were unfit for use and posed
14 a significant safety risk.

15 102. Plaintiff and the Subclass seek compensatory damages, attorneys' fees, costs,
16 and any other just and proper relief available under law.

17 **FIFTH CAUSE OF ACTION**

18 **Fraud**

19 103. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
20 as if set forth in full herein.

21 104. At the time Plaintiff and Class Members purchased the Tylenol products at issue,
22 J&J did not disclose the dangers associated with consuming TiO₂, but instead concealed them
23 and misrepresented the products as safe for human consumption.

24 105. J&J knew that its omissions and misrepresentations regarding the products were
25 material, and that a reasonable consumer would rely upon its omissions and
26 misrepresentations in making purchasing decisions.

27 106. Plaintiff and Class Members did not know—nor could they have known through
28 reasonable diligence—about the true nature of the products.

1 107. Plaintiff and Class Members were reasonable in relying on J&J's omissions in
2 making their purchasing decisions.

3 108. Plaintiff and Class Members had a right to rely upon J&J's omissions as it
4 maintained exclusive or superior control over knowledge of the true nature and quality of the
5 Tylenol products at issue.

6 109. Plaintiff and Class Members sustained damages as a result of their reliance on
7 J&J's omissions, thus causing Plaintiff and Class Members to sustain actual losses and
8 damages in a sum to be determined at trial, including punitive damages.

9 **SIXTH CAUSE OF ACTION**

10 **Fraudulent Inducement**

11 110. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
12 as if set forth in full herein.

13 111. J&J did not disclose, but instead concealed material information about the
14 Tylenol products at issue, as discussed herein.

15 112. J&J knew, or should have known, that the products were falsely and
16 misleadingly portrayed and that knowledge of the safety-related issues discussed throughout
17 was withheld from the consumer public.

18 113. J&J also knew that its omissions regarding the products were material, and that
19 a reasonable consumer would rely on its omissions in making a purchasing decision.

20 114. Plaintiff and Class Members did not know—nor could they have known through
21 reasonable diligence—about the true nature and quality of the products.

22 115. Plaintiff and Class Members were reasonable in relying on J&J's omissions in
23 making their purchasing decisions.

24 116. Plaintiff and Class Members had a right to rely on J&J's omissions as it
25 maintained exclusive or superior control over the products, and what information was
26 available regarding the products.

27 117. Defendant intended to induce—and did, indeed, induce—Plaintiff and Class
28 Members into purchasing the products based upon its omissions.

1 118. Plaintiff and Class Members sustained damages as a result of their reliance on
2 J&J's omission, thus causing Plaintiff and Class Members to sustain actual losses and
3 damages in a sum to be determined at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **Fraudulent Omission or Concealment**

6 119. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
7 as if set forth in full herein.

8 120. At all relevant times, J&J was engaged in the business of designing,
9 manufacturing, distributing, and selling the Tylenol products at issue.

10 121. J&J, acting through its representatives or agents, delivered the products to its
11 distributors and various other distribution channels.

12 122. J&J willfully, falsely, and knowingly omitted various material facts regarding
13 the quality and character of the products as discussed herein.

14 123. Rather than inform consumers of the truth regarding the Tylenol products, J&J
15 misrepresented the quality of the products as discussed herein at the time of purchase.

16 124. J&J made these material misrepresentations to boost or maintain sales of the
17 products, and to falsely assure purchasers of the products that J&J is a reputable company
18 and that its products are safe for consumption. The false representations were material to
19 consumers because the omissions played a significant role in the value of the products
20 purchased.

21 125. Plaintiff and Class Members accepted the terms of use, which were silent on the
22 true nature of the products, as discussed throughout. Plaintiff and Class Members had no way
23 of knowing J&J's omissions as to the products and had no way of knowing that J&J's
24 omissions were misleading.

25 126. Although J&J had a duty to ensure the safety, completeness, and accuracy of the
26 information regarding the products, it did not fulfill this duty.

27 127. J&J omitted or concealed material facts partly to pad and protect its profits, as it
28 saw that profits and sales of the products were essential for its continued growth and to

1 maintain and grow its reputation as a premier designer and vendor of the products. Such
2 benefits came at the expense of Plaintiff and Class Members.

3 128. Plaintiff and Class Members were unaware of these material omissions, and they
4 would not have acted as they did had they known the truth. Plaintiff's and Class Members'
5 actions were justified given J&J's omissions. J&J was in exclusive or superior control of
6 material facts, and such facts were not widely known to the public.

7 129. Due to J&J's omissions and misrepresentations, Plaintiff and Class Members
8 sustained injury due to the purchase of the products that did not live up to their advertised
9 representations. Plaintiff and Class Members are entitled to recover full refunds for the
10 products they purchased due to J&J's omissions.

11 130. J&J's acts were done maliciously, oppressively, deliberately, and with intent to
12 defraud, and in reckless disregard of Plaintiff, and Class Members' rights and well-being, and
13 in part to enrich itself at the expense of consumers. J&J's acts were done to gain commercial
14 advantage over competitors, and to drive consumers away from consideration of competing
15 products. J&J's conduct warrants an assessment of punitive damages in an amount sufficient
16 to deter such conduct in the future.

17 **EIGHTH CAUSE OF ACTION**

18 **Quasi-Contract/Unjust Enrichment**

19 131. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint
20 as if set forth in full herein.

21 132. To the extent required by law, this cause of action is alleged in the alternative to
22 legal claims, as permitted under Fed. R. Civ. P. 8.

23 133. Plaintiff and Class Members conferred benefits on J&J by purchasing the
24 Tylenol products at issue.

25 134. J&J was unjustly enriched in retaining the revenues derived from Plaintiff and
26 Class Members' purchases of the products. Retention of those moneys under these
27 circumstances is unjust and inequitable because J&J failed to disclose that the products were
28 unfit for their intended purpose as they were unsafe for use. These omissions caused injuries

1 to Plaintiff and Class Members because they would not have purchased the products if the
2 true facts were known.

3 135. Because J&J's retention of the non-gratuitous benefits conferred on them by
4 Plaintiff and Class Members is unjust and inequitable, Defendant has been unjustly enriched
5 in an amount to be determined at trial.

6 136. Because the Court has broad discretion to award restitution and could apply a
7 standard different than that applied to assessing damages under the CLRA, or for Plaintiff's
8 breach of warranty and fraud claims, and restitution is not limited to returning to Plaintiff and
9 class members monies in which they have an interest, but more broadly serves to deter the
10 offender and others from future violations, the legal remedies available under the CLRA and
11 for breach of warranty and fraud are more limited than the equitable remedies available for
12 unjust enrichment, and are therefore inadequate.

13 137. Additionally, equitable relief is appropriate because Plaintiff may lack an
14 adequate remedy at law, if, for instance damages resulting from her purchase of the products
15 is determined to be an amount less than the premium price of the products. Without
16 compensation for the full premium price of the products, Plaintiff would be left without the
17 parity in purchasing power to which she is entitled.

18 138. Restitution may also be more certain, prompt, and efficient than other legal
19 remedies requested herein. The return of the full premium price will ensure Plaintiff is in the
20 same place she would have been in had J&J's wrongful conduct not occurred, *i.e.*, a position
21 to make an informed decision about the purchase of the products absent omissions and
22 misrepresentations with the full purchase price at her disposal.

23 **PRAYER FOR RELIEF**

24 139. Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the
25 general public, prays for judgment against J&J as to each and every cause of action, and the
26 following remedies:
27
28

1 a. An Order declaring this action to be a proper class action, appointing
2 Plaintiff as Class Representative, and appointing Plaintiff's undersigned counsel as
3 Class Counsel;

4 b. An Order requiring J&J to bear the cost of Class Notice;

5 c. An Order compelling J&J to conduct a corrective advertising campaign;

6 d. An Order compelling J&J to destroy all misleading and deceptive
7 advertising materials and product labels, and to recall all offending Products;

8 e. An Order requiring J&J to disgorge all monies, revenues, and profits
9 obtained by means of any wrongful act or practice;

10 f. An Order requiring J&J to pay restitution to restore all funds acquired by
11 means of any act or practice declared by this Court to be an unlawful, unfair, or
12 fraudulent business act or practice, or untrue or misleading advertising, plus pre-and
13 post-judgment interest thereon;

14 g. An Order requiring J&J to pay compensatory damages and punitive
15 damages as permitted by law;

16 h. An award of attorneys' fees and costs; and

17 i. Any other and further relief that Court deems necessary, just, or proper.

18 **JURY DEMAND**

19 140. Plaintiff hereby demands a trial by jury on all issues so triable.

20
21 Dated: August 29, 2022

/s/ Jack Fitzgerald

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