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40. CVS made material misrepresentations and/or omissions detailed herein, including that the CVS PE Products are “MAXIMUM STRENGTH” oral nasal decongestant and pain reliever products, continuously throughout the applicable class period(s).

41. CVS’s material misrepresentations and omissions, that the CVS PE Products are “MAXIMUM STRENGTH” oral nasal decongestant and pain reliever products, were located on the front label of the CVS PE Products in capitalized, bold yellow, red, or blue lettering that contrasts with the background of the packaging, which instantly catches the eye of all reasonable consumers, including Plaintiff and class members, at the point of sale in every transaction. The CVS PE Products are sold in CVS’s brick and mortar stores and online stores in Illinois and nationwide.

42. CVS made written misrepresentations of fact on the front label of the CVS PE Products, that the CVS PE Products were “MAXIMUM STRENGTH” oral nasal decongestant products, even though other stronger decongestant products are allowable over the counter. As such, CVS’s “MAXIMUM STRENGTH” representations are false and misleading. Moreover, CVS omitted from the CVS PE Products’ labeling the fact that there are other non-prescription products available that are stronger decongestants and pain relievers. And as alleged in detail throughout this Complaint, Plaintiff and class members read and relied on CVS’s “MAXIMUM STRENGTH” representations and omissions before purchasing the CVS PE Products.

43. CVS misrepresented its CVS PE Products as being “MAXIMUM STRENGTH” decongestant products and omitted from the CVS PE Products’ labeling the fact that there are other, non-prescription products available in the market that are stronger decongestants and pain relievers, for the express purpose of inducing Plaintiff and class members to purchase the inferior

phenylephrine hydrochloride and acetaminophen products at a price premium. As such, CVS profited by selling the misrepresented products to at least thousands of consumers throughout the nation.

### **CLASS ACTION ALLEGATIONS**

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

**National Class:** All persons in the United States who purchased the CVS PE Products in the United States for personal use and not for resale during the applicable statute of limitations period.

**Multi-State Consumer Protection Class:** All persons who purchased the CVS PE Products in the State of Illinois or any state with similar laws<sup>1</sup> for personal use and not for resale during the applicable statute of limitations period.

**Illinois Subclass:** All persons in the State of Illinois who purchased the CVS PE Products in the State of Illinois for personal use and not for resale during the applicable statute of limitations period.

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

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<sup>1</sup> While discovery may alter the following, Plaintiff asserts that the other states with similar consumer fraud laws under the facts of this case include, but are not limited to: California (Cal. Bus. & Prof. Code § 17200, et seq.); Florida (Fla. Stat. §§ 501.201, et seq.); Illinois (815 ICLS §§ 505/1, et seq.); Massachusetts (Mass. Gen. Laws Ch. 93A, et seq.); Michigan (Mich. Comp. Laws §§ 445.901, et seq.); Minnesota (Minn. Stat. §§ 325F.67, et seq.); New Jersey (N.J. Stat. §§ 56:8-1, et seq.); New York (N.Y. Gen. Bus. Law §§ 349, et seq.); Washington (Wash. Rev. Code §§ 19.86.010, et seq.). *See Mullins v. Direct Digital, LLC*, No. 13-cv-1829, 2014 WL 5461903 (N.D. Ill. Sept. 30, 2014), *aff’d*, 795 F.3d 654 (7th Cir. 2015).































