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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

THOMAS BAILEY on behalf of himself
and all others similarly situated,

Plaintiff,

v.

RITE AID CORPORATION,

Defendant.

Case No.: 3:18-cv-6926

CLASS ACTION COMPLAINT

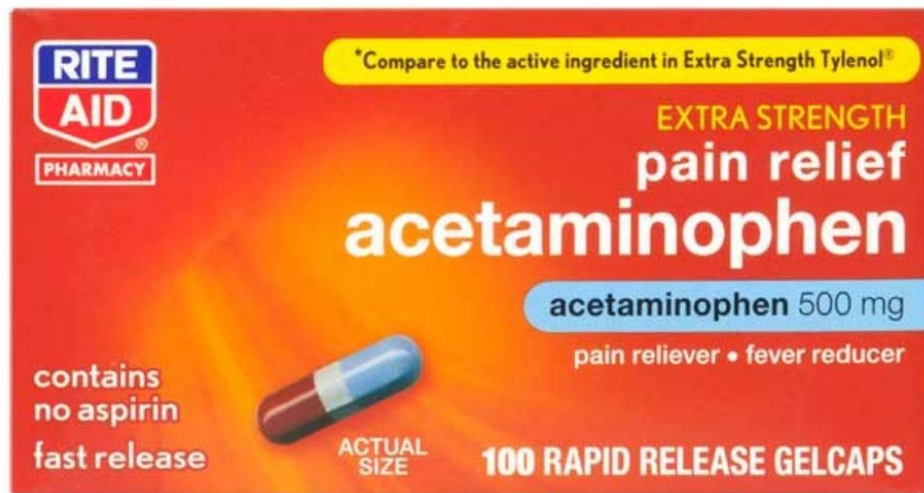
DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Thomas Bailey individually and on behalf of all others similarly situated, brings this action against Defendant Rite Aid (“Rite Aid”). The following allegations are based upon personal knowledge as to Plaintiff’s own conduct, the investigation of counsel, and upon information and belief as to the acts of others.

INTRODUCTION

1. Defendant Rite Aid is the third largest drugstore chain in the United States.
2. It sells a variety of health and wellness products, including over-the-counter pharmaceuticals.
3. In addition to selling brand name over-the-counter drugs, it also produces, manufactures, markets, distributes, and sells a generic version of certain over-the-counter drugs under the Rite Aid brand to families, children, and other consumers, including analgesic or pain-relieving medicines using acetaminophen.
4. In 2005, Johnson & Johnson Consumer Inc. introduced the name brand Tylenol[®] Extra Strength Rapid Release Gels to the American public as “specially designed” gelcaps “with holes to allow [for] the release of powerful medicine *even faster than before*.”¹ Three years later, Tylenol[®] PM Rapid Release Gels were launched with the same promises.²
5. Rite Aid then introduced its own version of the Tylenol[®] Extra Strength Rapid Release Gels called Rite Aid Acetaminophen Rapid Release Gelcaps.



¹ <https://www.tylenol.com/news/about-us> (last accessed 11.15.2018) (emphasis added).

² *Id.*

³ <https://www.riteaid.com/shop/rite-aid-extra-strength-acetaminophen-rapid-release-gelcaps-100-ct-0304125> (last accessed 11.15.2018).

6. Rite Aid also introduced its own version of the Tylenol® Extra Strength PM Rapid Release Gels called Rite Aid Acetaminophen PM Rapid Release Gelcaps.



4

7. Since the release of its generic versions of the rapid release gelcaps, Defendant Rite Aid has misled and continues to mislead consumers about the nature, quality, and effectiveness of its so-called rapid release Rite Aid products through its advertising and labeling.

8. In particular, the Rite Aid brand rapid release gelcaps ("Class Rapid Release Gelcaps") are marketed as comparable to Tylenol® Extra Strength Rapid Release Gels even though, on information and belief, they do not contain the unique laser drilled holes of Tylenol® Extra Strength Rapid Release Gels. The Rite Aid version of the rapid release gels are nonetheless labeled and advertised as a "rapid release" product.

9. Despite the technology used for the Class Rapid Relief Gelcaps and despite what Rite Aid's labeling and advertising would have consumers believe, the term "rapid release" does not actually mean that the drug works faster for consumers than non-rapid release products. This is also true of the brand name Tylenol® rapid release products.

⁴https://www.google.com/search?q=rite+aid+acetaminophen+rapid+release+pm&source=lnms&tbn=isch&sa=X&ved=0ahUKewiR_c2q1tTeAhVmxYMKHRyeCkIQ_AUIEygB&biw=1368&bih=795#imgrc=gwVpAnvheTnp3M (last accessed 11.15.2018).

1 10. Rite Aid has long known or should have known that traditional, non-rapid release
2 acetaminophen products can be equally effective in the same, if not faster, time period than its
3 Rite Aid rapid release products.

4 11. In fact, a new study demonstrates that Rite Aid Acetaminophen Rapid Release
5 Gelcaps dissolve *slower* than the Rite Aid non-rapid release products.⁵

6 12. Yet, Rite Aid charges a premium for its rapid release gelcaps.

7 13. Rite Aid sells its rapid release gelcaps with false, misleading, unfair, deceptive
8 labeling and marketing in an effort to dupe consumers into purchasing these gelcaps for prices
9 that exceed their true value. Rite Aid has pursued and continues to pursue this course of conduct
10 in order to profit off of unassuming, unwitting consumers looking for the fastest pain-relief
11 possible from an over-the-counter acetaminophen product.

12 14. Plaintiff and Class Members are consumers who were misled or deceived by Rite
13 Aid's false, misleading, unfair, and deceiving representations and as a result purchased the Rite
14 Aid brand rapid release gelcaps.

15 15. Plaintiff and Class Members would not have purchased the Class Rapid Release
16 Gelcaps had Rite Aid disclosed accurate information about the products and not misled them into
17 believing that the Class Rapid Release Gelcaps would provide faster relief than other, cheaper
18 acetaminophen products, such as the traditional Rite Aid tablets.

19 16. Plaintiff and Class Members, thus, bring this class action against Rite Aid on
20 behalf of themselves and on behalf of all individuals who purchased the Class Rapid Release
21 Gelcaps (the "Class") seeking damages and appropriate equitable relief given that Rite Aid's
22 conduct violated well-established contract, tort, and consumer protection laws of California and
23 the United States.

24 _____
25 ⁵ Kucera, Jessop, Alvarez, Gortler, Light, *Rapid and Fast-Release Acetaminophen Gelcaps*
26 *Dissolve Slower Than Acetaminophen Tablets*, Adv Inv Pha The Medic, 1:63-71 (Nov. 12, 2018)
27 accessible at [http://www.kenkyugroup.org/article/8/173/Rapid-and-Fast-Release-](http://www.kenkyugroup.org/article/8/173/Rapid-and-Fast-Release-Acetaminophen-Gelcaps-Dissolve-Slower-Than-Acetaminophen-Tablets)
[Acetaminophen-Gelcaps-Dissolve-Slower-Than-Acetaminophen-Tablets](http://www.kenkyugroup.org/article/8/173/Rapid-and-Fast-Release-Acetaminophen-Gelcaps-Dissolve-Slower-Than-Acetaminophen-Tablets) (last accessed
28 11.15.2018).

PARTIES

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2 17. Plaintiff Thomas Bailey is a citizen and resident of Fremont, Alameda County,
3 California.

4 18. Defendant Rite Aid Corporation is a Delaware corporation that maintains its
5 headquarters at 30 Hunter Lane, Cumberland County, Camp Hill, Pennsylvania 17011.

6 **JURISDICTION AND VENUE**

7 19. This Court has original jurisdiction pursuant to the Class Action Fairness Act, 28
8 U.S.C. §1332(d), because at least one member of the proposed class is a citizen of a state different
9 from Rite Aid; the amount in controversy exceeds \$5,000,000, exclusive of interests and costs;
10 the proposed class consists of more than 100 members; and none of the exceptions under the
11 subsection apply to this action.

12 20. This Court has jurisdiction over Rite Aid because it has sufficient minimum
13 contacts in California and otherwise intentionally avails itself of the markets within California
14 through the operation of several Rite Aid stores within the state as well as the promotion, sale,
15 marketing, and distribution of its products, such that exercise of jurisdiction by this Court is proper
16 and necessary.

17 21. Venue is proper in this District under 28 U.S.C. § 1391 because Rite Aid conducts
18 substantial business in this District and a substantial part of Plaintiff's claims occurred in this
19 District.

20 **FACTUAL ALLEGATIONS**

21 **ACETAMINOPHEN GENERALLY**

22 22. Acetaminophen, also called paracetamol or N-acetyl-para-aminophenol (APAP),
23 is an over-the-counter pain reliever and fever reducer that comes in a variety of forms: liquid
24 suspension, tablets, capsules, and gels.⁶

25
26 _____
27 ⁶ *Id.*

1 23. In any form, acetaminophen is used to treat a variety of common conditions
2 including headaches, muscle aches, arthritis, backaches, toothaches, colds, fevers, acute pain,⁷
3 chronic pain,⁸ etc.

4 24. Typically, it is the first treatment recommended for *any* mild to moderate pain.⁹
5 Therefore, acetaminophen is one of the most commonly used drugs in the world when it comes
6 to pain mitigation representing an estimated global market value of over \$350 million annually.¹⁰
7 It is even included on the World Health Organization List of Essential Medicines.¹¹

8 25. Given the wide-spread use of acetaminophen, both the *quality* and *value* of
9 acetaminophen products present important public health, consumer safety, and economic
10 concerns.¹²

11 **RITE AID SEEKS TO CAPITALIZE OFF OF JOHNSON & JOHNSON'S SUCCESS OF**
12 **TYLENOL® NAME BRAND ACETAMINOPHIN PRODUCTS BY CREATING GENERICS**

13 26. Tylenol® is the well-recognized brand name of acetaminophen¹³ produced,
14 manufactured, and distributed by Johnson & Johnson.

15 27. Johnson & Johnson currently lists 27 Tylenol® products on its Tylenol® website,
16 including: 5 oral suspension products, 6 liquid products, 1 chewable product, 1 tablet product, 1
17 coated tablet product, 11 caplet products, and 2 gelcap products.¹⁴ All but one of the 27 products
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19 ⁷ <https://www.drugs.com/acetaminophen.html> (last accessed 11.15.2018).

20 ⁸ <https://www.mayoclinic.org/chronic-pain-medication-decisions/art-20360371> (last accessed
21 11.15.2018).

22 ⁹ *Id.*

23 ¹⁰ Kucera, Jessop, Alvarez, Gortler, Light, *supra* n.5.

24 ¹¹ WHO. World Health Organization Model List of Essential Medicines. August 2017 ed.
<http://www.who.int/medicines/publications/essentialmedicines/en/2017> (last accessed
25 11.15.2018).

26 ¹² Kucera, Jessop, Alvarez, Gortler, Light, *supra* n.5.

27 ¹³ <https://www.mayoclinic.org/chronic-pain-medication-decisions/art-20360371> (last accessed
28 11.15.2018).

¹⁴ <https://www.tylenol.com/products> (last accessed 11.15.2018).

1 contain acetaminophen.¹⁵ Johnson & Johnson has profited and continues to profit greatly from
2 this Tylenol® product line.

3 28. Generic brands, like Rite Aid, thus, seek to mimic the product offerings of Johnson
4 & Johnson selling the generic version of the Tylenol® products for a price less than the name
5 brand equivalent.

6 29. Rite Aid has done this with several Tylenol® products, including Tylenol® Extra
7 Strength Rapid Release gels and the generic versions are profitable for Rite Aid.

8 30. But the profitability on the Class Rapid Release Gelcaps comes at much too high
9 a price, both figuratively and literally: consumer deception about the true nature, quality, and
10 value of the product.

11 **THE DECEPTIVE MARKETING OF RAPID RELEASE TYLENOL®**

12 31. Johnson & Johnson introduced Tylenol® Extra Strength Rapid Release Gels in
13 2005 claiming that these rapid release gelcaps are “specially designed...to allow the release of
14 powerful medicine *even faster than before*.”¹⁶ In 2008, Tylenol® PM Rapid Release Gels
15 launched utilizing the same “rapid release” technology and the same or similar advertising.

16 32. This claim – that these rapid release gelcaps worked even faster than before –
17 became associated with the regular and PM versions of Tylenol® Extra Strength Rapid Release
18 Gels.

19 33. In 2009, the rapid release gels were recalled and were not re-released until 2017.¹⁷

20 34. The national return to the market of the rapid release gels represented Tylenol’s
21 “biggest product launch in years” and, thus, the marketing campaign “involved triple the
22
23

24 _____
25 ¹⁵ *Id.* Tylenol® PM Simply Sleep Nighttime Sleep Aid does not contain acetaminophen.

26 ¹⁶ <https://www.tylenol.com/news/about-us> (last accessed 11.15.2018) (emphasis added).

27 ¹⁷ <https://shoppermarketingmag.com/headache-sufferers-directed-walgreens> (last accessed
28 11.15.2018).

1 investment” that Johnson & Johnson would normally spend all to encourage consumers to find
2 “fast working pain relief.”¹⁸

3 35. “In the first month, [the campaign] reached over 25 million shoppers on their
4 mobile device across five key markets, resulting in both category and Tylenol share growth at
5 Walgreens.”¹⁹ Consumers were inundated with the campaign messaging in stores and online.²⁰

6 36. With its marketing, product labeling, and affirmative representations, Johnson &
7 Johnson sought and continues to seek to further the falsehood: that rapid release Tylenol® actually
8 provides faster relief than other cheaper acetaminophen products.

9 37. It did this not only by explicitly making the claim, but also by using buzz words
10 that emphasized the speed, fast-acting nature, and unique laser-drilled holes of the rapid release
11 gelcaps.

12 38. For example, Johnson & Johnson advertised the rapid release gelcaps claiming it:

13 **WORKS AT THE**
14 **SPEED OF LIFE**

15 **Only TYLENOL® Rapid Release Gels**

16 HAVE LASER-DRILLED HOLES. THEY RELEASE MEDICINE FAST FOR FAST PAIN RELIEF²¹

17 39. Other marketing statements include, but are not limited to, the following:

18 (a) “Tylenol® Rapid Release Gels start to dissolve in seconds and effectively
19 relieve pain at rapid speed”²²

20 (b) “Rapid release. Rapid relief.”²³

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23 ¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

24 ²¹ <https://www.ebay.com/itm/Tylenol-Extra-Strength-290-Rapid-Release-Liquid-Gels-FAST-SHIPPING-/232796445534> (last accessed 11.15.2018).

25 ²² <https://www.youtube.com/watch?v=bZcPNyYu1o> (last accessed 11.15.2018).

26 ²³ <https://cargocollective.com/jeremybernstein/The-Feel-Better-Fast-Show> (last accessed
27 11.15.2018).

1 (c) “Only Tylenol® Rapid Release Gels have laser drilled holes. They release
2 medicine fast for fast pain relief. Fast enough to keep up with you, so you can keep up with
3 life.”²⁴

4 (d) “Fast Working Pain Relief”²⁵

5 (e) “New Tylenol® Rapid Release Gels. Gelcaps with specially designed holes to
6 release powerful medicine even faster than before.”²⁶

7 (f) “When you have pain from a pounding headache and you need relief, trust
8 Tylenol® Rapid Release... Tylenol® Rapid Release Gelcaps dissolve quickly and relieve
9 your headache pain fast.”²⁷

10 40. Johnson & Johnson’s marketing campaign has been successful in getting the public
11 to believe that the rapid release gelcaps are faster acting than other Tylenol® products, when in fact
12 they are *slower*.

13 41. Consumer reviews and comments indicate that consumers have been deceived and
14 confused by Johnson & Johnson’s representations; and some even notice after purchase that
15 Tylenol® Rapid Release Gelcaps do not work faster than regular, non-rapid release, acetaminophen
16 Tylenol® products that are cheaper.²⁸

17 42. Despite the fact that the “rapid release” gels are not rapid release and do not work
18 faster than other, traditional acetaminophen products, Johnson & Johnson sells its rapid release

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20 ²⁴ <https://www.youtube.com/watch?v=DzczfGN0NB4> (last accessed 11.15.2018).

²⁵ https://www.effie.org/case_database/case/SME_2018_E-375-981 (last accessed 11.15.2018).

21 ²⁶ <https://www.youtube.com/watch?v=cKp4xPNTrPY> (last accessed 11.15.2018).

²⁷ <https://www.youtube.com/watch?v=LN0GeRuMouk> (last accessed 11.15.2018).

22 ²⁸ See e.g., <http://www.paininthehead.org/2006/04/13/rapid-release-does-not-equal-rapid-relief/comment-page-1/> (last accessed 11.15.2018); <https://www.tylenol.com/products/tylenol-rapid-release-gels#bv-product-reviews> (last accessed
23 11.15.2018); <https://www.tylenol.com/products/tylenol-rapid-release-gels> (last accessed
24 11.15.2018); <https://answers.yahoo.com/question/index?qid=1006050815308&page=1> (last
25 accessed 11.15.2018); <https://answers.yahoo.com/question/index?qid=1006050815308&page=2>
26 (last accessed 11.15.2018); <https://www.reviewstream.com/reviews/?p=46385> (last accessed
27 11.15.2018); <https://prawntail.com/do-tylenol-rapid-release-gelcaps-really-work-faster-than-regular-tylenol/> (last accessed 11.15.2018).

1 gelcap products at a higher price than its other equally effective and equally fast-acting
2 acetaminophen products that are not classified as “rapid release.”

3 **RITE AID’S FALSE, MISLEADING, UNFAIR AND DECEPTIVE MARKETING AND**
4 **LABELING OF THE CLASS RAPID RELEASE GELCAPS**

5 43. Other companies followed Johnson & Johnson’s labeling, marketing, advertising,
6 and pricing lead and now, in general, acetaminophen products labeled, advertised, or marketed as
7 “rapid release” or “fast-release” are sold on average at a price 23% higher than those
8 acetaminophen products not making these rapid or fast-release representations.²⁹

9 44. Rite Aid is one of the companies that has followed Johnson & Johnson’s lead.

10 45. Rite Aid sells its Class Rapid Release Gelcaps at a higher price than its other
11 equally effective and equally fast-acting acetaminophen products that are not classified as “rapid
12 release.”

13 46. Rite Aid currently lists 5 Class Rapid Release Gelcap products on its website,
14 including: Rite Aid Extra Strength Acetaminophem Rapid Release Gelcaps in quantities of 50,
15 100, 150, and 225 gelcaps; and Rite Aid Sinus & Congestion Pain Relief, Day time, Rapid Release
16 Gelcaps in a quantity of 24 gelcaps.³⁰

17 47. Not all caplets and tablets are offered in the same quantities as the Class Rapid
18 Release Gelcaps. However, a comparison of the prices of the Class Rapid Release Gelcaps to the
19 equivalent caplets and tablets in the same counts demonstrates that Rite Aid does charge more for
20 the Class Rapid Release Gelcaps than their equivalent non-rapid release acetaminophen products.

21 48. Currently at Rite Aid, a regularly priced 100 count bottle of Rite Aid Extra
22 Strength Acetaminophen Rapid Release Gelcaps costs \$8.99, while a regularly priced 100 count
23 bottle of Rite Aid Extra Strength Acetaminophen caplets costs \$6.99 and a regularly priced 100
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25 ²⁹ Kucera, Jessop, Alvarez, Gortler, Light, *supra* n.5.

26 ³⁰ <https://www.riteaid.com/shop/catalogsearch/result/?q=rite+aid+rapid+release> (last accessed
27 11.15.2018).

1 count bottle of Rite Aid Extra Strength Acetaminophen tablets costs \$6.99.³¹ There is a \$2 price
2 difference between the Class Rapid Release Gelcaps and the non-rapid release Rite Aid products
3 in this count.

4 49. The 50 count bottles have a \$1 price difference. A regularly priced 50 count bottle
5 of Rite Aid Extra Strength Acetaminophen Rapid Release Gelcaps costs \$6.79, while regularly
6 priced 50 count bottles of both Rite Aid Extra Strength Acetaminophen caplets and Rite Aid Extra
7 Strength Acetaminophen tablets cost only \$5.79.³² There is a \$1 price difference between the
8 Class Rapid Release Gelcaps and the non-rapid release Rite Aid products in this count.

9 50. Consumers have been willing to and continue to pay this premium because, as a
10 result of false, misleading, unfair, and/or deceptive labeling and other advertising, they believe
11 the Class Rapid Release Gelcaps work faster than other, cheaper acetaminophen products when
12 in fact, they do not.

13 51. As a generic brand, Rite Aid prices are still lower than their Tylenol[®] counterparts
14 because Rite Aid did not have the expense of researching, developing, marketing, and promoting
15 the drugs when they were new.

16 52. Instead, Rite Aid introduces its counter parts to Tylenol[®] products after the public
17 is familiar with the Tylenol[®] product.

18 53. In the case of the Class Rapid Release Gelcaps, Rite Aid relied on Johnson &
19 Johnson's massive marketing campaign and the success of its rapid release products before
20 entering the market.

21 54. Then Rite Aid produced the Class Rapid Release Gelcaps to look the same as or
22 similar to the Tylenol[®] rapid release products.

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25 ³¹ <https://www.riteaid.com/shop/catalogsearch/result/?q=rite%20aid%20acetaminophen> (last
26 accessed 11.15.2018).

27 ³² <https://www.riteaid.com/shop/catalogsearch/result/?q=rite%20aid%20acetaminophen> (last
28 accessed 11.15.2018).

1 55. For the regular, non-PM, product, Rite Aid's gelcaps are approximately the same
2 size and shape as the Tylenol® product and they utilize the same distinct color pattern – red on one
3 end, blue on the other end, and a bit of white in the middle.
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25 ³³ <https://www.riteaid.com/shop/rite-aid-acetaminophen-rapid-release-gelcaps-150ct-0351132>
26 (last accessed 11.15.2018).

27 ³⁴ <https://adexchanger.com/advertiser/tylenol-feeling-good-mobile-strategy/> (last accessed
28 11.15.2018).

1 56. The same is true for the PM product, Rite Aid’s gelcaps are approximately the same
2 size and shape as the Tylenol® product and they utilize the same distinct color pattern – darker blue
3 on one end, a lighter blue on the other end, and a bit of white in the middle.



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9 57. Consumers were already accustomed to the look of the Tylenol® rapid release
10 products and familiar with the claims that they were fast-acting.

11 58. Rite Aid did nothing to correct the thinking that “rapid release” gelcaps worked
12 faster than other, cheaper acetaminophen products.

13 59. Instead, Rite Aid capitalized on that thinking and sought to further consumer deceit
14 with its own false, misleading, unfair, and/or deceptive labeling and marketing.

15 60. For example, on the packaging for the Class Rapid Release Gelcaps, Rite Aid
16 associates its products with the Tylenol® products.³⁷

17 61. Rite Aid also advertises its Class Rapid Release Gelcaps as “rapid release”
18 products.³⁸

19 62. Consumers try the Rite Aid Class Rapid Release Gelcaps because they are labeled
20 “rapid release” and because they are cheaper than the Tylenol® rapid release products.

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23 ³⁵https://www.google.com/search?q=rite+aid+acetaminophen+rapid+release+pm&source=lnms&tbm=isch&sa=X&ved=0ahUKEwiR_c2q1tTeAhVmXmYMKHRyeCkIQ_AUIEygB&biw=1368&bih=795#imgsrc=gvVpAnvheTnp3M: (last accessed 11.15.2018).

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25 ³⁶<https://www.amazon.com/Tylenol-Reliever-Nighttime-Strength-80-count/dp/B000XYIJP6>
(last accessed 11.15.2018).

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27 ³⁷<https://www.riteaid.com/shop/catalogsearch/result/?q=rite+aid+rapid+release> (last accessed
11.15.2018).

28 ³⁸ *Id.*

THE SCIENCE BEHIND RAPID RELEASE PRODUCTS DEMONSTRATES THE LABELING AND MARKETING OF THE CLASS RAPID RELEASE GELCAPS ARE FALSE, MISLEADING, UNFAIR, AND/OR DECEPTIVE

63. Despite what Rite Aid represents to the public about the Class Rapid Release Gelcaps, they do not work faster than other, cheaper Rite Aid acetaminophen products.

64. A 2018 study of the “rapid release” or “fast release” claims of acetaminophen products, including Rite Aid Acetaminophen Rapid Release Gelcaps, revealed that these products not only fail to work faster, they actually work *slower* than their traditional acetaminophen counterparts, such as tablets.³⁹

65. Thus, the science demonstrates that Rite Aid’s representations and advertising are false, misleading, deceptive, and unfair on their face.

66. The level of deception and unfairness is elevated given that Rite Aid has long known or should have known that there is scant or conflicting evidence about the correlation of the speed and efficacy of its acetaminophen products to its rapid release gelcap design.

67. Rite Aid knew or should have known of the existence of “contradictory claims for rapid or fast-release [acetaminophen] products.”⁴⁰

68. There is no proven significant efficacy difference between Rite Aid’s rapid release gelcaps and its non-rapid release products to warrant Rite Aid’s representations that the Class Rapid Release Gelcaps work faster than its non-rapid release products.

69. Rite Aid knew or should have known that its representations about the Class Rapid Release Gelcaps were false, misleading, unfair, and/or deceptive. Even though Rite Aid capitalizes and relies upon information put in the marketplace by Johnson & Johnson, it is still responsible for its representations pertaining to the Class Rapid Release Gelcaps and investigating the truth or falsity of the same before presenting it to the American public.

70. Rite Aid should have had a basis for the representations it made on and in its labeling, packaging, advertising, and other marketing more than Johnson & Johnson did it.

³⁹ Kucera, Jessop, Alvarez, Gortler, Light, *supra* n.5.

⁴⁰ *Id.*

1 71. Despite that Rite Aid knew or should have known that the Class Rapid Release
2 Gelcaps did not work faster than its other products, Rite Aid falsely marketed the Class Rapid
3 Release Gelcaps as rapid release, suggesting to consumers that the Class Rapid Release Gelcaps
4 worked faster than its other, cheaper, non-rapid release, acetaminophen products.

5 72. Rite Aid's conduct induced and continues to induce unwitting consumers to buy
6 the Class Rapid Release Gelcaps for a premium price – a price that exceeds the actual value of the
7 product.

8 **PLAINTIFF'S EXPERIENCE**

9 **Plaintiff Thomas Bailey**

10 73. Plaintiff Thomas Bailey purchased a bottle of Rite Aid Acetaminophen Rapid
11 Release Gelcaps, 100 count, approximately six months ago at a Rite Aid store in Alameda County,
12 California for a price more than the brand's cheaper non-rapid release acetaminophen products in
13 the same count.

14 74. Pictures of Plaintiff Bailey's bottle of Class Rapid Release Gelcaps appear below:



26 75. He sought an acetaminophen product to treat general body aches and pains.
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1 83. At the class certification stage, in response to discovery and pursuant to any
2 instruction by the Court, Plaintiff reserves the right to modify these class definitions.

3 84. “Class Rapid Release Gelcaps” include Rite Aid Acetaminophen Rapid Release
4 Gelcaps, Rite Aid Acetaminophen PM Rapid Release Gelcaps, and any Rite Aid acetaminophen
5 products labeled and/or marketed as “rapid release.”

6 85. Excluded from the proposed Class is: (a) any Judge or Magistrate presiding over
7 this action and members of their families; (b) Rite Aid and any entity in which it has a controlling
8 interest or which has a controlling interest in it; (c) the officers and directors of Rite Aid; (e) Rite
9 Aid’s legal representatives, assigns, and successors; and (f) all persons who properly execute and
10 file a timely request for exclusion from the Class.

11 86. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on behalf of the
12 California Class.

13 87. **Numerosity:** While the exact number of class members cannot yet be determined,
14 the Class consists at a minimum of hundreds of people dispersed throughout the State of
15 California, such that joinder of all members (the “Class Members”) is impracticable. The exact
16 number of Class Members can readily be determined by review of information maintained by
17 Rite Aid.

18 88. **Commonality:** Common questions of law and fact exist as to all members of the
19 Class. Among the questions of law and fact common to the Class are:

- 20 a. Whether Rite Aid knew, or reasonably should have known, that the Class
21 Rapid Release Gelcaps it placed into the stream of commerce would not
22 function as advertised;
- 23 b. Whether the advertised “rapid release” feature of the Class Rapid Release
24 Gelcaps is a material fact that reasonable purchasers would have
25 considered in deciding whether to purchase the Class Rapid Release
26 Gelcaps;
- 27

- c. Whether the Class Rapid Release Gelcaps are of the quality and character Rite Aid promised to consumers;
- d. Whether Rite Aid breached implied warranties relating to the Class Rapid Release Gelcaps;
- e. Whether Rite Aid misrepresented the characteristics, qualities, and capabilities of the Class Rapid Release Gelcaps;
- f. Whether Rite Aid made fraudulent, false, deceptive, misleading and/or otherwise unfair statements in connection with the sale of the Class Rapid Release Gelcaps on its labeling, in its advertising, and on its website;
- g. Whether Rite Aid engaged in unfair and deceptive trade practices pertaining to the Class Rapid Release Gelcaps;
- h. Whether Rite Aid was unjustly enriched as a result of selling the Class Rapid Release Gelcaps;
- i. Whether Rite Aid should be ordered to disgorge all or part of the profits it received from the sale of the Class Rapid Release Gelcaps;
- j. Whether Plaintiff and Class Members are entitled to damages including compensatory, exemplary, and statutory damages, and the amount of such damages;
- k. Whether Plaintiff and Class Members are entitled to equitable relief, including an injunction and requiring that Rite Aid engage in a corrective notice campaign and/or a recall of the Class Rapid Release Gelcaps to address misrepresentations and misleading statements on the packaging; and
- l. Whether Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees and pre-judgment interest, post-judgment interest, and costs.

89. **Typicality:** Plaintiff has substantially the same interest in this matter as all other proposed Class Members and their claims arise out of the same set of facts and conduct as all other Class Members. Plaintiff and all Class Members purchased the Class Rapid Release Gelcaps. All of the claims of Plaintiff and Class Members arise out of Rite Aid's false, misleading, deceptive, and unfair conduct. Common to Plaintiff and Class Members' claims is Rite Aid's conduct in marketing, advertising, warranting, and/or selling the Class Rapid Release Gelcaps and Plaintiff and Class Members' purchase of the Class Rapid Release Gelcaps.

90. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has retained competent counsel experienced in products liability, deceptive trade practices, and

1 class action litigation. Accordingly, Plaintiff and his counsel will fairly and adequately protect
2 the interests of Class Members. Plaintiff's claims are coincident with, and not antagonistic to,
3 those of the other Class Members they seek to represent. Plaintiff has no disabling conflicts with
4 Class Members and will fairly and adequately represent the interests of Class Members.

5 91. The elements of Rule 23(b)(2) are met. Rite Aid will continue to commit the
6 violations alleged, and Plaintiff, Class Members and the general public will be subject to and
7 continue to suffer from the same or substantially similar deceitful marketing. Rite Aid has acted
8 on grounds that apply generally to Class Members so that final injunctive relief and corresponding
9 declaratory relief is appropriate respecting the Class as a whole.

10 92. The elements of Rule 23(b)(3) are met. Here, the common questions of law and
11 fact enumerated above predominate over the questions affecting only the individual Class
12 Members and a class action is the superior method for fair and efficient adjudication of the
13 controversy. Although many other Class Members have claims against Rite Aid, the likelihood
14 that individual Class Members will prosecute separate actions is remote due to the time and
15 expense necessary to conduct such litigation. Serial adjudication in numerous venues is not
16 efficient, timely, or proper. Judicial resources would be unnecessarily depleted by prosecution of
17 individual claims. Joinder on an individual basis of thousands of claimants in one suit would be
18 impractical or impossible. Individualized rulings and judgments could result in inconsistent relief
19 for similarly situated Plaintiff. Plaintiff's counsel, highly experienced in class action litigation,
20 foresee little difficulty in the management of this case as a class action.

21 **TOLLING AND ESTOPPEL OF STATUTES OF LIMITATIONS**

22 93. Any applicable statutes of limitations have been tolled by Rite Aid's knowledge,
23 actual misrepresentations, and/or denial of the facts as alleged herein.

24 94. Alternatively, the facts alleged herein give rise to estoppel. Rite Aid was and is
25 under a continuous duty to disclose to Plaintiff and Class Members the true character, quality,
26 and nature of the Class Rapid Release Gelcaps. At all relevant times and continuing to this day,
27

1 Rite Aid misrepresented the true character, quality, and nature of the Class Rapid Release
2 Gelcaps. Representations which it knew or should have known were false, misleading, unfair,
3 and/or deceptive. Plaintiff and Class Members reasonably relied on Rite Aid’s misrepresentations
4 of material facts. Based on the allegations contained herein, Rite Aid is estopped from prevailing
5 on any statute of limitations defense in this action.

6 95. Additionally, Rite Aid is estopped from raising any defense of laches due to its
7 own unclean hands.

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW (“FAL”)**
11 **BUSINESS AND PROFESSIONAL CODE § 17500**

12 **(Plaintiff Individually and on Behalf of the California Class)**

13 96. Plaintiff incorporates by reference all allegations of the preceding paragraphs as
14 though fully set forth herein.

15 97. California Business & Professions Code § 17500 states:

16 “It is unlawful for any . . . corporation . . . with intent directly or indirectly
17 to dispose of real or personal property . . . to induce the public to enter into
18 any obligation relating thereto, to make or disseminate or cause to be made
19 or disseminated . . . from this state before the public in any state, in any
20 newspaper or other publication, or any advertising device, . . . or in any
21 other manner or means whatever, including over the Internet, any statement
22 . . . which is untrue or misleading, and which is known, or which by the
23 exercise of reasonable care should be known, to be untrue or misleading.”

24 98. California’s FAL prohibits not only false advertising, but also advertising which
25 is misleading, even if true, and advertising that has a capacity, likelihood, or tendency to deceive
26 of confuse the public.

27 99. Rite Aid caused to be made or disseminated throughout California and the United
28 States, through advertising, marketing and other publications, statements that were untrue or
misleading, and which were known, or which by the exercise of reasonable care should have been

1 known to Rite Aid, to be untrue and misleading to consumers, including Plaintiff and the other
2 Class Members.

3 100. Rite Aid has violated § 17500 because the misrepresentations and omissions
4 regarding the speed and capability of its Class Rapid Release Gelcaps as set forth in this
5 Complaint were material and likely to deceive a reasonable consumer.

6 101. Plaintiff and the other Class Members have suffered an injury in fact, including
7 the loss of money or property, as a result of Rite Aid's false, unlawful, misleading, unfair, and/or
8 deceptive practices. In purchasing their Class Rapid Release Gelcaps, Plaintiff and the other Class
9 Members relied on the misrepresentations and/or omissions of Rite Aid with respect to the speed
10 and capability of the Class Rapid Release Gelcaps. Rite Aid's representations were untrue because
11 the Class Rapid Release Gelcaps were manufactured and sold with the same acetaminophen
12 medicine used in its other Rite Aid products and the Class Rapid Release Gelcaps worked slower,
13 rather than faster, than the other non-rapid release acetaminophen Rite Aid products. Had Plaintiff
14 and the other Class Members known this, they would not have purchased their Class Rapid
15 Release Gelcaps and/or paid as much for them. Accordingly, Plaintiff and Class Members
16 overpaid for their Class Rapid Release Gelcaps and did not receive the benefit of their bargain.

17 102. All of Rite Aid's wrongful conduct alleged herein occurred in the course of Rite
18 Aid's business.

19 103. Plaintiff, individually and on behalf of the other Class Members, request that this
20 Court enter such orders or judgments as may be necessary to restore to Plaintiff and Class
21 Members any money Rite Aid acquired by unfair competition, including restitution and/or
22 restitutionary disgorgement, and for such other relief the Court deems necessary.

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COUNT II

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)
BUSINESS AND PROFESSIONAL CODE § 17200

(Plaintiff individually and on behalf of California Class)

1
2
3
4 104. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
5 paragraphs as though fully set forth herein.

6 105. The California UCL prohibits acts of “unfair competition,” including any
7 “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or
8 misleading advertising.” Cal. Bus. & Prof. Code § 17200.

9 106. Rite Aid has engaged in unfair competition and unfair, unlawful, or fraudulent
10 business practices by the conduct, statements, and omissions described above, and by knowingly
11 and intentionally concealing from Plaintiff and Class Members that the Class Rapid Release
12 Gelcaps work slower than its other non-rapid release acetaminophen Rite Aid products. Rite Aid
13 should have disclosed this information or at least not misrepresented the Class Rapid Release
14 Gelcaps as rapid release suggesting that they worked faster than its other products because that
15 was untrue and Rite Aid was in a superior position to know the true facts, and Plaintiff and Class
16 Members could not reasonably be expected to learn or discover that true fact.

17 107. These acts and practices have deceived Plaintiff and Class Members, and are likely
18 to deceive the public. By misrepresenting the true quality and nature of the Class Rapid Release
19 Gelcaps to Plaintiff and the Class Members, Rite Aid violated the UCL, and caused injuries to
20 Plaintiff and Class Members. The misrepresentations and omissions by Rite Aid pertained to
21 information that was material to Plaintiff and Class Members’ purchase decisions, as it would be
22 material to all reasonable consumers.

23 108. The injuries suffered by Plaintiff and the Class Members are greatly outweighed
24 by any potential countervailing benefit to consumers or to competition. The injuries that Plaintiff
25 and the Class Members suffered should have reasonably been avoided.

1 109. Rite Aid’s acts and practices are unlawful because they violate California Civil
2 Code §§ 1668, 1709, 1710, and 1750 et seq., and California Commercial Code § 2313.

3 110. Plaintiff and Class Members seek to enjoin further unlawful, misleading,
4 deceptive, unfair, and/or fraudulent acts or practices by Rite Aid, obtain restitutionary
5 disgorgement of all monies and revenues generated as a result of such practices, and obtain all
6 other relief allowed under California Business & Professions Code § 17200.

7 **COUNT III**

8 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT (“CLRA”)**
9 **CALIFORNIA CIVIL CODE § 1761**

10 **(Plaintiff individually and on behalf of the California Class)**

11 111. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
12 paragraphs as though fully set forth herein.

13 112. Plaintiff and Class Members are “consumers” within the meaning of California
14 Civil Code § 1761(d). Plaintiff and Class Members purchased one or more Class Rapid Release
15 Gelcaps.

16 113. Rite Aid is a “person” within the meaning of California Civil Code § 1761(c).

17 114. In the course of Rite Aid’s business, Rite Aid engaged in unfair and deceptive acts
18 in violation of the CLRA by the practices described above. These acts and practices violate, at a
19 minimum, the following sections of the CLRA:

20 (a)(5) Representing that goods or services have sponsorships, characteristics,
21 uses, benefits or quantities which they do not have, or that a person has a
22 sponsorship, approval, status, affiliation or connection which he or she
23 does not have;

24 (a)(7) Representing that goods or services are of a particular standard, quality, or
25 grade, or that goods are of a particular style or model, if they are of another;
26 and

27 (a)(9) Advertising goods and services with the intent not to sell them as
28 advertised.

1 115. Rite Aid's unfair or deceptive acts or practices occurred repeatedly in Rite Aid's
2 trade or business and were capable of deceiving a substantial portion of the purchasing public.

3 116. Rite Aid knew or should have known that the Class Rapid Release Gelcaps were
4 not more effective or faster-acting than its other, cheaper non-acetaminophen Rite Aid products.

5 117. Rite Aid was under a duty to Plaintiff and the Class Members to disclose the true
6 nature and quality of the Class Rapid Release Gelcaps because:

- 7 a. Rite Aid was in a superior position to know the true state of facts about
8 the Class Rapid Release Gelcaps;
- 9 b. Plaintiff and Class Members could not reasonably have been expected to
10 learn or discover that the Class Rapid Release Gelcaps did not conform to
11 Rite Aid's representations;
- 12 c. Rite Aid knew that Plaintiff and Class Members could not reasonably have
13 been expected to learn or discover the true quality and nature of the Class
14 Rapid Release Gelcaps; and
- 15 d. Rite Aid failed to disclose the truth about the Class Rapid Release
16 Gelcaps to Plaintiff and Class Members.

17 118. In misrepresenting the speed and capability of the Class Rapid Release Gelcaps as
18 well as failing to disclose the true quality and nature of the Class Rapid Release Gelcaps, Rite
19 Aid has misrepresented and/or concealed material facts and breached its duty not to do so.

20 119. The facts misrepresented and/or not disclosed by Rite Aid to Plaintiff and Class
21 Members are material in that a reasonable consumer would have considered them to be important
22 in deciding whether to purchase the Class Rapid Release Gelcaps or pay a lesser price for the
23 Class Rapid Release Gelcaps. Had Plaintiff and Class Members known this information, they
24 would not have purchased the Class Rapid Release Gelcaps or would have paid less for them.

25 120. Plaintiff will provide Rite Aid with notice of its violations of the CLRA pursuant
26 to California Civil Code § 1782(a) and currently seeks injunctive relief. After the 30-day notice
27 period expires, Plaintiff will amend this complaint to seek monetary damages under the CLRA.
28

1 121. Plaintiff and Class Members' injuries were proximately caused by Rite Aid's
2 unfair and deceptive business practices.

3 122. Therefore, Plaintiff and Class Members are entitled to equitable relief under the
4 CLRA.

5 **COUNT IV**
6 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**
7 **CAL. CIV. CODE § 1790 *et seq.***

8 **(Plaintiff individually and on behalf of the California Class)**

9 123. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
10 paragraphs as though fully set forth herein.

11 124. The Class Rapid Release Gelcaps are "consumer goods" within the meaning of
12 Cal. Civ. Code § 1791.

13 125. Plaintiff and Class Members are "buyers" within the meaning of Cal. Civ. Code §
14 1791.

15 126. Rite Aid is a "manufacturer," "distributor," or "retail seller" within the meaning
16 of Cal. Civ. Code § 1791.

17 127. The implied warranty of merchantability included with the sale of each Class
18 Rapid Release Gelcap means that Rite Aid warranted that each Class Rapid Release Gelcap:

- 19 (a) would pass without objection in trade under the description;
20 (b) was fit for the ordinary purposes for which the Class Rapid Release Gelcaps
21 would be used; and
22 (c) conformed to the promises or affirmations of fact made about the Class Rapid
23 Release Gelcaps.

24 128. At a minimum, the Class Rapid Release Gelcaps do not conform to the promises
25 or affirmations of fact made on the label or in the advertising and marketing of the product, in
26 that the Class Rapid Release Gelcaps do not provide rapid release or provide rapid relief faster
27 than cheaper, non-rapid release acetaminophen Rite Aid products.

28 129. The Class Rapid Release Gelcaps are not adequately labeled.

1 130. The labeling, packaging, advertising, and marketing pertaining to the Class Rapid
2 Release Gelcaps is false, misleading, and/or deceptive.

3 131. These misrepresentations by Rite Aid have deprived Plaintiff and Class Members
4 of the benefit of their bargains.

5 132. The Class Rapid Release Gelcaps are worth less than what Plaintiff and Class
6 Members paid for them.

7 133. As a direct and proximate result of Rite Aid's conduct as described herein, Plaintiff
8 and Class Members purchased goods at a premium price that are actually worth substantially less
9 in value to consumers.

10 134. At a minimum, Plaintiff and Class Members have been damaged by the
11 overpayment for the Class Rapid Release Gelcaps.

12 135. Plaintiff and Class Members are entitled to damages and other legal and equitable
13 relief, including, the overpayment in value for their Class Rapid Release Gelcaps.

14 136. Plaintiff and Class Members are also entitled to all incidental and consequential
15 damages resulting from Rite Aid's conduct, as well as reasonable attorneys' fees and costs.

16 **COUNT V**

17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY UNDER UCC §2-314**

18 **(Plaintiff individually and on behalf of the California Class)**

19 137. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
20 paragraphs as though fully set forth herein.

21 138. The implied warranty of merchantability included with the sale of each Class
22 Rapid Release Gelcap means that Rite Aid warranted that each Class Rapid Release Gelcap, *inter*
alia:

- 23 (a) would pass without objection in trade under the description;
24 (b) was fit for the ordinary purposes for which the Class Rapid Release Gelcaps
25 would be used;
26 (c) was adequately contained, packaged, and labeled; and
27 (d) conformed to the promises or affirmations of fact made about the Class Rapid
28 Release Gelcaps.

1 139. At a minimum, the Class Rapid Release Gelcaps do not conform to the promises
2 or affirmations of fact made on the label or in the advertising and marketing of the product, in
3 that the Class Rapid Release Gelcaps do not rapid release or provide rapid relief faster than
4 cheaper, non-rapid release acetaminophen Rite Aid products.

5 140. The Class Rapid Release Gelcaps are not adequately labeled.

6 141. The labeling, packaging, advertising, and marketing pertaining to the Class Rapid
7 Release Gelcaps is false, misleading, and/or deceptive.

8 142. These misrepresentations by Rite Aid have deprived Plaintiff and Class Members
9 of the benefit of their bargains.

10 143. The Class Rapid Release Gelcaps are worth less than what Plaintiff and Class
11 Members paid for them.

12 144. As a direct and proximate result of Rite Aid's conduct as described herein, Plaintiff
13 and Class Members purchased goods at a premium price that are actually worth substantially less
14 in value to consumers.

15 145. At a minimum, Plaintiff and Class Members have been damaged by the
16 overpayment for the Class Rapid Release Gelcaps.

17 146. Plaintiff and Class Members are entitled to damages and other legal and equitable
18 relief, including, the overpayment in value for their Class Rapid Release Gelcaps.

19 147. Plaintiff and Class Members are also entitled to all incidental and consequential
20 damages resulting from Rite Aid's conduct, as well as reasonable attorneys' fees and costs.

21 **COUNT VI**

22 **BREACH OF EXPRESS WARRANTY UNDER UCC §2-313**

23 **(Plaintiff individually and on behalf of the California Class)**

24 148. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
25 paragraphs as though fully set forth herein.

26 149. As described herein, Rite Aid made statements, promises, affirmations about the
27 Class Rapid Release Gelcaps as to the nature, quality, and capability of the goods that became
28

1 part of the bargain between the parties to create an express warranty that the Class Rapid Release
2 Gelcaps would in fact conform to those representations.

3 150. Rite Aid breached its express warranty when its Class Rapid Release Gelcaps did
4 not conform to the representations and descriptions Rite Aid made to consumers.

5 151. Plaintiff and Class Members reasonably relied on Rite Aid's misrepresentations.

6 152. The misrepresentations by Rite Aid have deprived Plaintiff and Class Members of
7 the benefit of their bargains.

8 153. The Class Rapid Release Gelcaps are worth less than what Plaintiff and Class
9 Members paid for them.

10 154. As a direct and proximate result of Rite Aid's conduct as described herein, Plaintiff
11 and Class Members purchased goods at a premium price that are actually worth substantially less
12 in value to consumers.

13 155. At a minimum, Plaintiff and Class Members have been damaged by the
14 overpayment for the Class Rapid Release Gelcaps.

15 156. Plaintiff and Class Members are entitled to damages and other legal and equitable
16 relief, including, the overpayment in value for their Class Rapid Release Gelcaps.

17 157. Plaintiff and Class Members are also entitled to all incidental and consequential
18 damages resulting from Rite Aid's conduct, as well as reasonable attorneys' fees and costs.

19 158. Plaintiff and Class Members have provided or will provide Rite Aid notice of the
20 alleged breach within a reasonable time after discovering the breach.

21 **COUNT VII**

22 **UNJUST ENRICHMENT**

23 **(Plaintiff individually and on behalf of the California Class)**

24 159. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
25 paragraphs as though fully set forth herein.

26 160. As described above, Rite Aid sold the Class Rapid Release Gelcaps to Plaintiff
27 and Class Members making false, misleading, and/or deceptive representations about the

1 products' speed and capabilities as compared to Rite Aid's cheaper, non-rapid release
2 acetaminophen products.

3 161. Rite Aid unjustly charged and continues to charge Plaintiff and Class Members a
4 premium to purchase the Class Rapid Release Gelcaps over the non-rapid release acetaminophen
5 Rite Aid products.

6 162. As a result of its false, misleading, unfair, and/or deceptive practices and omission
7 about the true nature and quality about the Class Rapid Release Gelcaps, Rite Aid obtained monies
8 that rightfully belong to Plaintiff and Class Members.

9 163. Rite Aid appreciated, accepted, and retained the non-gratuitous benefits conferred
10 by Plaintiff and Class Members who, without knowledge of the true quality and nature of the
11 Class Rapid Release Gelcaps, paid a higher price for their than what they were worth.

12 164. Rite Aid also received monies for those Class Rapid Release Gelcaps that Plaintiff
13 and Class Members would not have otherwise purchased had they known the true nature and
14 quality of the products.

15 165. Rite Aid's retention of these wrongfully-acquired profits would violate
16 fundamental principles of justice, equity, and good conscience.

17 166. Plaintiff and Class Members seek restitution from Rite Aid and an order of this
18 Court proportionally disgorging all profits, benefits, and other compensation obtained by Rite Aid
19 from its wrongful conduct and establishment of a constructive trust from which Plaintiff and Class
20 Members may seek restitution.

21 **COUNT VIII**

22 **DECLARATORY RELIEF**

23 **(Plaintiff individually and on behalf of the California Class)**

24 167. Plaintiff re-alleges and incorporates by reference all allegations of the preceding
25 paragraphs as though fully set forth herein.
26
27

1 168. There is a controversy between Rite Aid and Plaintiff and the other Class Members
2 concerning the true nature, quality, and capability of the Class Rapid Release Gelcaps and the
3 false, misleading, unfair, and/or deceptive representations that Rite Aid made about the same.

4 169. Pursuant to 28 U.S.C. § 2201, this Court may “declare the rights and legal relations
5 of any interested party seeking such declaration, whether or not further relief is or could be
6 sought.”

7 170. Accordingly, Plaintiff and Class Members seek a declaration that the Class Rapid
8 Release Gelcaps do not release, provide relief, or otherwise work faster than other, cheaper non-
9 rapid release acetaminophen Rite Aid products.

10 171. Additionally, Plaintiff and Class Members seek a declaration that as a result of
11 Rite Aid’s false, misleading, unfair, and/or deceptive representations, consumers and Class
12 Members did not and do not receive the benefit of their bargain.

13 172. On information and belief, Rite Aid designed, manufactured, produced, tested,
14 inspected, marketed, advertised, labeled, packaged, distributed, and sold the Class Rapid Release
15 Gelcaps. Rite Aid continues to do so while using false, misleading, unfair, and/or deceptive
16 representations to ensure sales to consumers.

17 173. On information and belief, Rite Aid has taken no corrective action concerning the
18 false, misleading, unfair, and/or deceptive representations described herein, and has not issued
19 any recalls, warnings, or notices concerning the true nature, quality, and capability of the Class
20 Rapid Release Gelcaps.

21 174. Plaintiff and Class Members have suffered damages or injuries due to Rite Aid’s
22 conduct described herein.

23 175. Rite Aid should be required to take corrective action to prevent further injuries,
24 including: (a) issuing a nationwide recall of the Class Rapid Release Gelcaps to address product
25 labeling and packaging; (b) issuing warnings and/or notices to consumers and the Class
26 concerning the true nature, quality, and capability of the Class Rapid Release Gelcaps; and (c)
27

1 immediately discontinuing any false, misleading, unfair, and/or deceptive advertising, marketing,
2 or other representations described herein.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff asks the Court to enter judgment awarding the following relief:

- 5 A. An order certifying the proposed California Class;
- 6 B. An order awarding Plaintiff and Class Members their actual damages,
7 punitive damages, and/or any other monetary relief provided by law;
- 8 C. An order awarding Plaintiff and Class Members restitution, disgorgement,
9 or other equitable relief as the Court deems proper;
- 10 D. An order requiring Rite Aid to adequately represent the true nature, quality,
11 and capability of the Class Rapid Release Gelcaps;
- 12 E. An order (a) issuing a nationwide recall of the Class Rapid Release Gelcaps
13 to address product labeling and packaging; (b) issuing warnings and/or
14 notices to consumers and the Class concerning the true nature, quality, and
15 capability of the Class Rapid Release Gelcaps; and (c) immediately
16 discontinuing any false, misleading, unfair, and/or deceptive advertising,
17 marketing, or other representations described herein.
- 18 F. An order granting declaratory and/or injunctive relief as allowable under
19 state and federal law;
- 20 G. An order awarding Plaintiff and Class Members pre-judgment and post-
21 judgment interest as allowed by law;
- 22 H. An order awarding Plaintiff and Class Members reasonable attorneys' fees
23 and costs of suit, including expert witness fees; and
- 24 I. An order awarding such other and further relief as this Court may deem
25 just and proper.

26 **JURY DEMAND**

27 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues so triable
28 under the law.

DATED: November 15, 2018

Respectfully submitted,

/s/ Crystal Foley

Crystal Foley (SBN 224627)

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mbreit@simmonsfirm.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2018, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Crystal Foley

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) THOMAS BAILEY on behalf of himself and all others similarly situated,	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) RITE AID CORPORATION
(b) County of Residence of First Listed Plaintiff <u>Alameda</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Cumberland</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Crystal Foley (SBN 224627), SIMMONS HANLY CONROY LLC 100 N. Sepulveda Blvd., Suite 1350, El Segundo, California 90245 Telephone: (310) 322-3555; Facsimile: (310) 322-3655	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:5%;">PTF</td> <td style="width:5%;">DEF</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Foreign Nation</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>
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Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>																				

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multidistrict Litigation - Transfer
 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Class Action Fairness Act, 28 U.S.C. § 1332(d)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern
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QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? check one of the boxes to the right →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.
B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) check one of the boxes to the right →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? check one of the boxes to the right →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.
C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) check one of the boxes to the right →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓
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QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western Division

QUESTION F: Northern Counties?
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?

NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Crystal Foley

DATE: November 15, 2018

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

THOMAS BAILEY on behalf of himself and all others
similarly situated

Plaintiff(s)

v.

RITE AID CORPORATION

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rite Aid Corporation
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Crystal Foley (SBN 224627) SIMMONS HANLY CONROY LLC 100 N. Sepulveda Blvd., Suite 1350 El Segundo, California 90245 Telephone: (310) 322-3555

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/15/2018

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: