IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON *ex rel.* JOHN R. KROGER, Attorney General of Oregon, Plaintiff, v. JOHNSON & JOHNSON, McNEIL-PPC, INC., and McNEIL HEALTHCARE, LLC, Defendants.	Case No. 1101-00494 COMPLAINT (Unlawful Trade Practices Act - ORS 646.605 to ORS 646.656) CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

INTRODUCTION

Plaintiff State of Oregon *ex. rel* John R. Kroger, Attorney General of Oregon ("the State") alleges claims for relief based on violations of Oregon's Unlawful Trade Practices Act ("UTPA"), ORS 646.605 to ORS 646.656. The State alleges that at all times material herein:

ALLEGATIONS COMMON TO ALL CLAIMS

1.

John R. Kroger is the Attorney General for the State of Oregon and sues in his official capacity pursuant to ORS 646.632.

2.

Defendant Johnson & Johnson ("Johnson & Johnson") is now, and at all relevant times has been, a corporation organized under the laws of the state of New Jersey.

3.

Defendant McNeil-PPC, Inc. ("McNeil-PPC") is now, and at all relevant times has been, a corporation organized under the laws of the state of New Jersey.

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4.

Defendant McNeil Healthcare, LLC ("McNeil Healthcare") is now, and at all relevant times has been, a limited liability company organized under the laws of the state of Delaware.

5.

McNeil-PPC and McNeil Healthcare are subsidiaries of Johnson & Johnson. McNeil Consumer Healthcare Division of McNeil-PPC, Inc. ("McNeil Consumer Healthcare") is a Johnson & Johnson company.

6.

Unless individually referred to herein, Johnson & Johnson, McNeil-PPC, McNeil Consumer Healthcare, and McNeil Healthcare, shall hereinafter be referred to collectively as "Defendants."

7.

The Circuit Court for the State of Oregon for Multnomah County has personal jurisdiction over Defendants pursuant to ORCP 4A. Defendants engaged in substantial activities within the State of Oregon by operating a business that provides goods that are primarily for personal, family and household purposes. All transactions took place in the course of Defendants' business.

8.

Defendants were given the Notice required by ORS 646.632(2) and failed to submit to the Attorney General an acceptable Assurance of Voluntary Compliance.

9.

Among other things, the UTPA prohibits a person acting in the course of their business from employing unconscionable tactics, making certain false or misleading representations, or failing to disclose a fact. ORS 646.608(1), (2); ORS 646.607.

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10.

Defendants' conduct, as described in this Complaint, was willful within the meaning of ORS 646.605(10). A "willful" violation occurs when the person committing the violation knew or should have known that the person's conduct was a violation. For purposes of the UTPA, a "person" includes corporations and other legal entities. ORS 646.605(4).

11.

The State is entitled to reasonable attorney fees and costs as prevailing party, pursuant to ORS 646.632(8) and ORCP 68.

12.

Defendants' business consists of manufacturing over-the-counter drugs and advertising, promoting, distributing and selling those drugs throughout the United States, including Oregon.

13.

Defendants manufactured, advertised, promoted, distributed and sold Motrin® IB caplets ("Motrin®") throughout the United States, including Oregon. Motrin® is a brand of ibuprofen sold over-the-counter ("OTC"), without a prescription, in 200 milligram tablets. It is labeled for relief of pain, fever, and inflammation.

14.

Defendants manufactured, advertised, promoted, distributed and sold Motrin® in containers of various sizes, including small vials that contained eight caplets ("Motrin® eight-counts" or "eight-counts") and in 24-count bottles. ("Motrin® 24-counts" or "24-counts").

15.

Motrin® eight-counts were sold at gas station and convenience store counters using a display delivery system that contained twelve individual Motrin® eight-count vials, as well as other products produced by Defendants.

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16.

There were problems with the design of the display delivery system and sales failed to meet expectations. On or about October 23, 2008, Defendants decided to discontinue selling Motrin® eight-counts.

17.

On or about November 20, 2008, during routine stability testing at Defendants' manufacturing plant in Las Piedras, Puerto Rico, Defendants discovered that Motrin® lot SHC003 failed to dissolve at the rate required by specifications for good manufacturing practice.

18.

When marketing, promoting, and selling Motrin®, Defendants represent that the Motrin® was manufactured consistent with good manufacturing practices.

19.

On or about November 26, 2008, Defendants submitted an Initial Field Alert Report ("FAR") to the Food and Drug Administration ("FDA"). In the November 26, 2008 FAR, Defendants documented the dissolution failure and reported that they had placed a hold on Motrin® eight-counts at Defendants' distribution centers. The FAR did not address, confirm or deny whether the defect posed a health risk to consumers.

20.

After submitting the November 26, 2008 FAR to FDA, Defendants made no attempt to notify wholesalers, retailers, or consumers that defective Motrin® eight-counts had entered the stream of commerce. At least one wholesaler, Core-Mark International, Inc., thereafter continued to ship Motrin® eight-counts to retailers in Oregon in December 2008, January 2009 and even into March 2009.

21.

On or about December 16, 2008, Defendants' internal investigation regarding the dissolution failure in Motrin® eight-count lot SHC003 revealed problems with the

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manufacturing drying process for granulation lot SDA0001017. Granulation lot SDA0001017 was used both in the manufacture of Motrin® eight-count lots SHC003 and SHC004 and in Motrin® 24-count bottle lot SDA149.

22.

On or about December 18, 2008, Defendants submitted a Follow-Up FAR to FDA concerning Motrin® eight-count lot SHC003. Again, the FAR did not address, confirm or deny whether the dissolution defect posed a health risk to consumers.

23.

Although Defendants identified a dissolution problem with the Motrin® contained in the 24-counts on or about December 16, 2008, it failed to submit a FAR to FDA or to alert consumers about it.

24.

On or about January 22, 2009, Defendants submitted a Second Follow-Up FAR to FDA. It reported that a medical assessment had concluded that using the defective Motrin® "is not likely to cause an increased risk of serious adverse health consequences," but that consumers "might be receiving less than the expected dose of ibuprofen." Therefore, when used as directed, the defective Motrin® in the eight-counts "may lead to a worsening of pain, fever or inflammation, all of which are very likely to be recognized by the consumer or diagnosed by a healthcare professional . . . ." Defendants later initiated plans to pull the defective Motrin® from the market.

25.

Defendants did not, however, conduct a public recall. Instead, they took steps to remove the defective Motrin® eight-counts from the market surreptitiously. On or about February 6, 2009 and March 13, 2009, Defendants' management received price estimates from two companies that specialize in product recalls, Stericycle and Inmar CLS ("Inmar"). Both

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companies provided bids to retrieve the defective Motrin® openly and inexpensively via UPS or FedEx, but Defendants rejected that approach.

26.

Defendants hired Inmar to surreptitiously "shop" stores for the defective Motrin®. The secret recall consisted of two phases. During Phase I, Inmar employees surreptitiously visited a sampling of 250 stores nationwide in order to determine whether any Motrin® eight-counts remained on store shelves. If sufficient numbers remained, during Phase II, Inmar's secret shoppers would visit each of the 5000 stores that Defendants believed sold Motrin® eight-counts and buy back the remaining defective product.

27.

On or about March 20, 2009, Inmar provided Defendants with a list of the information that Inmar typically collects when conducting site visit recalls.

28.

On or about March 31, 2009, Defendants' management – including Aubrey Martina, an OTC Sales Strategy Manager at Johnson & Johnson, Daniel Figus, a Sales Strategy Director at Johnson & Johnson, and Lily Vandermolen, an Associate Product Director at McNeil Consumer Healthcare – developed instructions to guide Inmar Field Analysts through the retrieval process without alerting store personnel of the recall. In an email dated March 31, 2009, Martina stated that the form "should be very simple **with no reference to why we are auditing.**" (Emphasis added). Vandermolen replied via email, asking, "Should we have a 'script' to provide a quick and approved response vs. have them avoid any response?" She then suggested adding to the form: "**If you are questioned by store personnel simply advise that you have been asked to perform an audit and refer them to XXXX.**" (Emphasis in original.)

29.

On or about April 1, 2009, Inmar's Director of Field Operations and Transportation, Rob Small, received an e-mail from Vandermolen, which contained the final draft of the product

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repurchase form that had been approved by Defendants' legal department. The form instructed Inmar field employees:

> "DO NOT communicate to store personnel any information about this product. Just purchase all available product. If you are questioned by store personnel, simply advise that you have been asked to perform an audit and refer them to Amanda Harper at . . . ."

(Emphasis in original).

30.

By April 21, 2009, Inmar had visited 250 stores nationwide and completed Phase I of the phantom recall. Inmar found and purchased 595 units of Motrin® eight-count vials from four lot numbers including SHC003, SHC004, SHC002 and SHC042. Inmar visited two stores in Oregon during Phase I, but did not find any of the two defective lots of Motrin® eight-counts or of the two other identified lots.

31.

In the meantime, Defendants attempted to avoid a public recall on the basis that they had discontinued Motrin® eight-counts and because they hoped that the initial in-store survey of 250 stores would show that no more remained on store shelves. In an email dated March 12, 2009, Eddie Carrillo, a McNeil Healthcare Site Quality Leader in Las Piedras, Puerto Rico, reported to Defendants' management that he had spoken with the San Juan FDA District Director and that she had agreed to "evaluate[s] the data that reflect that there is no product in the market."

32.

However, Defendants were aware that surreptitiously removing the defective Motrin® from the shelves without conducting a national recall was inconsistent with FDA's expectations. In an email dated March 19, 2009, Carrillo warned that the San Juan FDA District Director "was very clear that we cannot postpone this recall anymore if we find [any product] in the market."

33.

Paul-Michel Di Paulo, McNeil Consumer Healthcare's Senior Director of OTC Quality Assurance in the United States and Puerto Rico, similarly indicated in a March 24, 2009 email

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that FDA "may be willing to negotiate" whether a national recall would be necessary based on data obtained from the initial in-store survey of 250 stores, but Di Paulo acknowledged that "[i]f the data shows a lot of the 2 lots on the shelves then a national recall will be expected by FDA." He continued: "If the data is not favorable, [the Puerto Rico FDA District Director's] supervisors in DC will be all over this and she won't have a choice but to recall."

34.

On March 20, 2009, Carolyn Parziale, McNeil Consumer Healthcare's Director of Quality Assurance, asked Carrillo via email for documents related to the Motrin eight-count recall and copies of correspondence with FDA, explaining: "Although we are taking a newly created prescribed path for the [Motrin eight-counts], which is a bit different than our typical procedures, I would like to create a binder for this process that includes most of our classical documentation, in case there are any concerns at a later date." Carrillo responded on March 30, 2009 that he had no other documents than the Field Alert Reports, and explained that "all [of] my conversation[s] with the FDA Director here in PR have been off the record, since I can not quote her." He continued: "[W]e are doing something very different" because of "my good relationship" with [the San Juan District FDA Director]."

35.

Carrillo's emails also repeatedly state that his conversations with the San Juan District FDA Director were to be kept secret:

(a) "[The San Juan District FDA Director] was very emphatic that the discussion that we had was between her and myself because nobody can state that she is in agreement to/or not to recall the batch. I mentioned [to] her that this will be treated very confidential between her and myself. My only concern will be the new Compliance Officer that she ha[s] in [San Juan]. She comes from Florida, I met already with her and she seems like a person that does not negotiate . . . .";

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(b) "I know that the new [San Juan] Compliance Officer (the person who came from Florida) would like a recall, but [the San Juan District FDA Director] is helping us with the possibility of not recalling the batch"; and

(c) "Please treat my conversation with [the San Juan District FDA Director] [as] very confidential!!!"

36.

On April 20, 2009, Di Paolo stated in an e-mail that the San Juan FDA District Director had agreed to "NOT consider this a National Recall" and that "[a] Field Alert Report will be submitted to FDA within the next day to document this agreement." (Emphasis in original.)

37.

Defendants' management celebrated the decision via e-mail as "good news," "[g]reat news!" and "a major win for us [that will] limit the press that will be seen."

38.

Defendants' April 21, 2009 Final Report to the FAR merely stated, "[v]ists to the remaining retailers will be completed by July 15, 2009 to remove any product from the subject lots that is found." It did not acknowledge that the defective Motrin would be removed surreptitiously, without disclosing to wholesalers, retailers or consumers that the subject Motrin® eight-counts were defective or describing that they were defective because they did not dissolve properly.

39.

On or about June 2009, Inmar hired WIS International ("WIS") to help with Phase II of the recall. In a June 5, 2009 email, Rob Small at Inmar forwarded Defendants' pre-approved repurchase form to WIS Director of Business Development, Phil Bearman, and instructed Bearman not to change the form because it had been approved by McNeil's legal department.

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40.

On or about June 18, 2009, Bearman drafted instructions for WIS field employees, stating:

> "You should simply 'act' like a regular customer while making these purchases. **THERE MUST BE NO MENTION OF THIS BEING A RECALL OF THE PRODUCT!** If asked, simply state that your employer is checking the distribution chain of this product and needs to have some of it purchased for the project."

(Emphasis in original).

41.

On or about June 19, 2009, WIS employee Lee Lafleur reported to WIS Senior Management that "[o]ur friends at [Inmar] have secured WIS to execute a 'silent' recall of Motrin (Johnson & Johnson) in about 5000 C[onvenience]-Stores beginning today."

42.

Using information provided by Defendants, WIS employees searched 27 Oregon stores for Motrin® eight-counts during Phase II. Including the two stores that Inmar had visited during Phase I, a total of 29 Oregon stores were surreptitiously visited to determine whether defective Motrin® eight-counts remained on store shelves.

43.

Wholesale distributor Core-Mark International, Inc. distributed 828 Motrin® eight-count vials to retailers in Oregon. In Oregon stores, WIS employees found and purchased 41 units of Motrin® eight-counts, all of which came from lot SHC002. Therefore, a total of 787 units of Motrin® eight-count vials from unidentified lot numbers remain unaccounted for in Oregon.

44.

At no point during the entire process did Defendants alert Oregon consumers or retailers that it had distributed the defective Motrin® eight-counts.

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45.

On or about July 2009, while conducting Phase II of the phantom recall, a WIS employee in Oregon became concerned about the secrecy of the recall and brought the phantom recall to the attention of the Oregon Board of Pharmacy. The Oregon Board of Pharmacy gave the information to the FDA Seattle District Office, which forwarded the information to the FDA Compliance Officer at FDA's District Office in San Juan, Puerto Rico.

46.

Despite Defendants' efforts to withdraw the defective Motrin from the market without conducting a publicized national recall, by July 16, 2009, Defendants were aware that FDA expected them to conduct a national recall. On July 16, 2009, FDA Investigator and Recall and Emergency Coordinator, Neisa M. Alonso, wrote Parziale:

> "As per our phone conversation on Monday July 13, 2009 (approx 3:10 pm), you are correct FDA does not give a tracking number to a "retrieval" only to Recalls. However it seems that your company is doing a recall even though you are calling it a 'retrieval.' Still the Agency's position is that your company should do a voluntary recall of the product, since it appears to be that you already are doing a recall of the product. According to the initial field alert submitted on November 26, 2008, the Motrin 200mg 8 tablets count vials lot SHC003 with expiration 3/2011 failed dissolution. Typically dissolution failures result in product recall."

47.

Even though it was clear by July 16, 2009 that FDA expected a recall for dissolution failures, Defendants took no action to recall Motrin® 24-count lot SDA149 until February 17, 2010, when it issued "Dear Retailer Customer" and "Dear OTC Warehouse" letters, which publicly notified retailers and wholesalers of an **"URGENT – DRUG RECALL."**

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CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Unlawful Trade Practices Act, ORS 646.608(1)(e) – Misrepresenting Benefits and Qualities

Count I

48.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

49.

The UTPA prohibits a person from representing that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have. ORS 646.608(1)(e).

50.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully represented that the Motrin® caplets contained in the eight-counts were effective for their intended use, when Defendants knew they may not be effective. Each sale of a Motrin® eight-count in Oregon after November 26, 2008 was a separate violation of ORS 646.608(1)(e).

Count II

51.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

52.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully represented that the Motrin® caplets contained in the eight-counts conformed with current good manufacturing

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practices, when Defendants knew they may not. Each sale of a Motrin® eight-count in Oregon after November 26, 2008 was a separate violation of ORS 646.608(1)(e).

Count III

53.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

54.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® 24-counts, Defendants willfully represented that the Motrin® caplets contained in the 24-counts were effective for their intended use, when Defendants knew they may not be effective. Each sale in Oregon of a Motrin® 24-count after December 19, 2009 and before February 9, 2010 was a separate violation of ORS 646.608(1)(e).

Count IV

55.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

56.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® 24-counts, Defendants willfully represented that the Motrin® caplets contained in the 24-counts conformed with current good manufacturing practices, when Defendants knew they may not. Each sale in Oregon of a Motrin® 24-count after December 19, 2009 and before February 9, 2010 was a separate violation of ORS 646.608(1)(e).

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Count VI

57.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

58.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully represented to retailers in Oregon that the Motrin® caplets contained in the eight-counts were effective for their intended use, when Defendants knew that they may not be effective. Each Oregon retailer that sold Motrin® eight-counts and that Defendants failed to notify that the Motrin® eight-counts offered for sale to consumers for personal use may have been ineffective is a separate violation of ORS 646.608(1)(e).

Count VII

59.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

60.

Defendants violated ORS 646.608(1)(e) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully represented to retailers in Oregon that the Motrin® caplets contained in the eight-counts conformed with current good manufacturing practices, when Defendants knew they may not. Each Oregon retailer that sold Motrin® eight-counts and that Defendants failed to notify that the Motrin® eight-counts offered for sale to consumers for personal use may not have conformed with good manufacturing practices is a separate violation of ORS 646.608(1)(e).

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SECOND CLAIM FOR RELIEF

Unlawful Trade Practices Act, ORS 646.608(1)(b) – Creating Likelihood of Misunderstanding

Count I

61.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

62.

The UTPA prohibits a person from causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods. ORS 646.608(1)(b).

63.

Defendants violated ORS 646.608(1)(b) when, in the course of advertising, promoting, offering for sale and selling Motrin® 24-counts, regardless of lot number, Defendants willfully failed to disclose that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each sale of any lot number of Motrin® 24-counts in Oregon after December 19, 2009 and before February 9, 2010 was a separate violation of ORS 646.608(1)(b).

Count II

64.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

65.

Defendants violated ORS 646.608(1)(b) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, regardless of lot number, Defendants willfully failed to disclose that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each sale of any lot number

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of Motrin® eight-counts in Oregon after November 26, 2008 was a separate violation of ORS 646.608(1)(b).

Count III

66.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

67.

Defendants violated ORS 646.608(1)(b) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully failed to disclose to retailers in Oregon that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each Oregon retailer that sold Motrin® eight-counts and that Defendants failed to notify that the Motrin® eight-counts offered for sale to consumers for personal use may not have conformed with good manufacturing practices is a separate violation of ORS 646.608(1)(b).

THIRD CLAIM FOR RELIEF

Unlawful Trade Practices Act, ORS 646.608(1)(g) – Misrepresenting Standard, Quality or Grade

Count I

68.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

69.

The UTPA prohibits a person from misrepresenting that goods are of a particular standard, quality, or grade. ORS 646.608(1)(g).

70.

Defendants violated ORS 646.608(1)(g) when, in the course of advertising, promoting, offering for sale and selling Motrin® 24-counts, regardless of lot number, Defendants failed to

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disclose that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each sale of any lot number of Motrin® 24-counts in Oregon after December 19, 2009 and before February 9, 2010 was a separate violation of ORS 646.608(1)(g).

Count II

71.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

72.

Defendants violated ORS 646.608(1)(g) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully failed to disclose that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each sale of any lot number of Motrin® eight-counts in Oregon after November 26, 2008 was a separate violation of ORS 646.608(1)(g).

Count III

73.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

74.

Defendants violated ORS 646.608(1)(g) when, in the course of advertising, promoting, offering for sale and selling Motrin® eight-counts, Defendants willfully failed to disclose to retailers in Oregon that the Motrin® caplets contained therein may not have been manufactured consistent with current good manufacturing practices. Each Oregon retailer that sold Motrin® eight-counts and that Defendants failed to notify that the Motrin® eight-counts offered for sale to consumers for personal use may not have conformed to good manufacturing practices is a separate violation of ORS 646.608(1)(g).

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FOURTH CLAIM FOR RELIEF

Unlawful Trade Practices Act, ORS 646.607 – Unconscionable Conduct

Count I

75.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

76.

The UTPA prohibits a person from employing any unconscionable tactic in connection with the sale of goods. ORS 646.607.

77.

In violation of ORS 646.607(1), Defendants employed unconscionable tactics in connection with the sale of goods by willfully failing to disclose to consumers that Motrin® eight-counts may have been ineffective for their intended use so that consumers could make an informed decision about using the defective product and seek restitution or replacement if appropriate. Each sale of any lot number of Motrin® eight-counts in Oregon after November 26, 2008 was a separate violation of ORS 646.607(1).

Count II

78.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

79.

In violation of ORS 646.607(1), Defendants employed unconscionable tactics in connection with the sale of goods by willfully failing to disclose to consumers that Motrin® 24-counts may have been ineffective for their intended use so that consumers could make an informed decision about using the defective product and seek restitution or replacement if

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appropriate. Each sale of any lot number of Motrin® 24-counts in Oregon after December 19, 2009 and before February 9, 2010 was a separate violation of ORS 646.607(1).

Count III

80.

The State realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though set forth herein.

81.

In violation of ORS 646.607(1), Defendants employed unconscionable tactics in connection with the sale of goods by willfully failing to disclose to retailers in Oregon that Motrin® eight-counts may have been ineffective for their intended use so that consumers could make an informed decision about using the defective product and seek restitution or replacement if appropriate. Each Oregon retailer that sold Motrin® eight-counts and that Defendants failed to notify that the Motrin® eight-counts offered for sale to consumers for personal use may have been ineffective for their intended use is a separate violation of ORS 646.607(1).

PRAYER FOR RELIEF

82.

Wherefore, the State prays for relief as follows:

(a) On all Claims for Relief:

(i) For judgment against Defendants for civil penalties of up to $25,000 for each willful violation of the Unlawful Trade Practices Act, ORS 646.605 to 646.656;

(ii) For judgment against Defendants for reasonable attorney fees and costs pursuant to ORS 646.632(8) and ORCP 68;

(iii) For judgment requiring Defendants to pay full restitution to all Oregon purchasers of Motrin® eight-counts and Motrin® 24-counts;

(iv) For judgment awarding the following injunctive relief pursuant to ORS 646.632:

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i. Defendants shall comply with good manufacturing practices for all over-the-counter drugs that it advertises, promotes, offers for sale or sells in Oregon; and

ii. Should Defendants recall any product promoted, advertised, offered for sale or sold in Oregon, Defendants shall clearly and conspicuously post the existence of the recall, including a precise description of the product being recalled and the method for consumers to obtain an exchange or refund, on the product's primary website, as well and at any other website where Defendants customarily post recall information about their products; and

(b) For judgment granting any other or further remedial relief that the court deems appropriate pursuant to ORS 646.636.

DATED: January 11, 2011.

Respectfully submitted,
JOHN R. KROGER
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