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8 JOHNSON & JOHNSON

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 JOANN MARTINELLI, individually and on) Case No. 2:15-cv-01733-JAM-DAD
12 behalf of all others similarly situated,)
13 Plaintiff,) **DEFENDANTS MCNEIL NUTRITIONALS,**
14 v.) **LLC AND JOHNSON & JOHNSON'S**
15 JOHNSON & JOHNSON and McNEIL) **ANSWER TO PLAINTIFF'S COMPLAINT**
NUTRITIONALS, LLC,) **AND REQUEST FOR TRIAL BY JURY**
16 Defendants.)
17)

18
19 Defendants Johnson & Johnson and McNeil Nutritionals, LLC (collectively, "Defendants") by
20 and through counsel, state as follows for their Answer to Plaintiff's Complaint:

21 **JURISDICTION**

22 1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
23 allegations in Paragraph 1 of Plaintiff's Complaint, and, therefore, deny the same.

24 2. Defendants admit that Benecol® Spread and Benecol® Light Spread were distributed,
25 advertised and sold in this District. Defendants lack knowledge or information sufficient to form a
26 belief as to the truth of the remaining allegations in Paragraph 2 of Plaintiff's Complaint, and, therefore,
27 deny the same.
28

NATURE OF ACTION

3. Defendants admit that Benecol® Spread and Benecol® Light Spread contain a small amount of partially hydrogenated oils as stated on their labels pursuant to 21 C.F.R. § 101.9(c)(2)(ii). Defendants deny the remaining allegations in Paragraph 3 of Plaintiff’s Complaint, specifically denying that that labels on Benecol® Spread and Benecol® Light Spread are false and misleading.

4. Defendants admit that the Food and Drug Administration published its Final Determination Regarding Partially Hydrogenated Oils in the Federal Register on June 17, 2015, which goes into effect on June 18, 2018. The document speaks for itself and, on that basis, Defendants deny the remaining allegations in Paragraph 4 of Plaintiff’s Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of Plaintiff’s Complaint, specifically denying that the labels on Benecol® Spread and Benecol® Light Spread are false and misleading.

6. Defendants admit that Plaintiff purports to bring the claims contained in Paragraph 6 on behalf of herself and a proposed Class of purchasers. To the extent not expressly admitted, Defendants deny the allegations in Paragraph 6 of Plaintiff’s Complaint.

PARTIES

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of Plaintiff’s Complaint, and, therefore, deny the same.

8. Defendants admit that Johnson & Johnson is incorporated in the state of New Jersey and has its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey. Defendants further admit that Johnson & Johnson is a component of the Dow Jones Industrial Average and is a Fortune 500 Company. Defendants deny the remaining allegations in Paragraph 8 of Plaintiff’s Complaint.

9. Defendants admit that McNeil Nutritionals, LLC is incorporated in the state of Delaware, has its principal place of business in Pennsylvania and is a wholly-owned subsidiary of Johnson & Johnson. Defendants further admit that McNeil Nutritionals, LLC markets Splenda® Sweetener Products, Viactiv® Dietary Supplements and Lactaid® Milk Dietary Supplements. Defendants further admit that McNeil Nutritionals, LLC manufactures, markets and sells Benecol® Spread and Benecol®

1 Light Spread in California and other states. Defendants deny the remaining allegations in Paragraph 9
2 of Plaintiff's Complaint.

3 10. The allegations in Paragraph 10 of Plaintiff's Complaint require no answer from
4 Defendants. To the extent an answer is required, Defendants deny the allegations for want of knowledge
5 and lack of information.

6 11. The allegations in Paragraph 11 of Plaintiff's Complaint require no answer from
7 Defendants. To the extent an answer is required, Defendants deny the allegations for want of knowledge
8 and lack of information.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 **Benecol® Spreads Are Labeled As Having "No Trans Fats" and "No Trans Fatty Acids," Despite**
11 **Containing Partially Hydrogenated Soybean Oil**

12 12. Defendants admit that McNeil Nutritionals, LLC sells Benecol® Spread and Benecol®
13 Light Spread. Defendants further admit that Benecol® Spread and Benecol® Light Spread contain a
14 small amount of partially hydrogenated oils. Defendants deny the remaining allegations in Paragraph 12
15 of Plaintiff's Complaint, specifically denying that the labels on Benecol® Spread and Benecol® Light
16 Spread are false.

17 13. The Benecol® Spread label speaks for itself, and, on that basis, Defendants deny the
18 allegations in Paragraph 13 of Plaintiff's Complaint.

19 14. The Benecol® Spread label speaks for itself, and, on that basis, Defendants deny the
20 allegations in Paragraph 14 of Plaintiff's Complaint.

21 15. The Benecol® Light Spread label speaks for itself, and, on that basis, Defendants deny
22 the allegations in Paragraph 15 of Plaintiff's Complaint.

23 16. The Benecol® Light Spread label speaks for itself, and, on that basis, Defendants deny
24 the allegations in Paragraph 16 of Plaintiff's Complaint.

25 **The Manufacturing And Nature of Partially Hydrogenated Oils**

26 17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
27 allegations in Paragraph 17 of Plaintiff's Complaint, and, therefore, deny the same.
28

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1 18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 18 of Plaintiff’s Complaint, and, therefore, deny the same.

3 19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 19 of Plaintiff’s Complaint, and, therefore, deny the same.

5 20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 20 of Plaintiff’s Complaint, and, therefore, deny the same.

7 **PHOs Always Contain Trans Fats**

8 21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
9 allegations in Paragraph 21 of Plaintiff’s Complaint, and, therefore, deny the same.

10 22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
11 allegations in Paragraph 22 of Plaintiff’s Complaint, and, therefore, deny the same.

12 23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 23 of Plaintiff’s Complaint, and, therefore, deny the same.

14 **Trans Fats Are Harmful**

15 24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
16 allegations in Paragraph 24 of Plaintiff’s Complaint, and, therefore, deny the same.

17 25. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 25 of Plaintiff’s Complaint, and, therefore, deny the same.

19 26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
20 allegations in Paragraph 26 of Plaintiff’s Complaint, and, therefore, deny the same.

21 27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
22 allegations in Paragraph 27 of Plaintiff’s Complaint, and, therefore, deny the same.

23 28. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
24 allegations in Paragraph 28 of Plaintiff’s Complaint, and, therefore, deny the same.

25 29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 29 of Plaintiff’s Complaint, and, therefore, deny the same.

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PHOs Are No Longer Generally Recognized As Safe For Human Consumption By The FDA

30. Defendants admit that the Food and Drug Administration published its Final Determination Regarding Partially Hydrogenated Oils in the Federal Register on June 17, 2015, which goes into effect on June 18, 2018. The document speaks for itself and, on that basis, Defendants deny the remaining allegations in Paragraph 30 of Plaintiff's Complaint.

31. Defendants admit that the Federal Food and Drug Administration published its Final Determination Regarding Partially Hydrogenated Oils in the Federal Register on June 17, 2015, which goes into effect on June 18, 2018. The document speaks for itself and, on that basis, Defendants deny the allegations in Paragraph 31 of Plaintiff's Complaint.

32. Defendants admit that the Federal Food and Drug Administration published its Final Determination Regarding Partially Hydrogenated Oils in the Federal Register on June 17, 2015, which goes into effect on June 18, 2018. The document speaks for itself and, on that basis, Defendants deny the allegations in Paragraph 32 of Plaintiff's Complaint.

33. Defendants admit that the Federal Food and Drug Administration published its Final Determination Regarding Partially Hydrogenated Oils in the Federal Register on June 17, 2015, which goes into effect on June 18, 2018. The document speaks for itself and, on that basis, Defendants deny the remaining allegations in Paragraph 33 of Plaintiff's Complaint.

CLASS REPRESENTATIONS ALLEGATIONS

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of Plaintiff's Complaint, and, therefore, deny the same.

35. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of Plaintiff's Complaint, and, therefore, deny the same.

36. Defendants deny the allegations in Paragraph 36 of Plaintiff's Complaint.

37. Defendants deny the allegations in Paragraph 37 of Plaintiff's Complaint.

38. Defendants deny the allegations in Paragraph 38 of Plaintiff's Complaint.

39. Defendants deny the allegations in Paragraph 39 of Plaintiff's Complaint.

40. Defendants deny the allegations in Paragraph 40 of Plaintiff's Complaint.

COUNT I

Breach of Express Warranty

41. In response to Paragraph 41 of Plaintiff's Complaint, Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 40 of Plaintiff's Complaint, as if fully set forth herein.

42. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a proposed Class of purchasers.

43. Defendants deny the allegations in Paragraph 43 of Plaintiff's Complaint, specifically denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members of the proposed Class regarding Benecol® Spread and Benecol® Light Spread.

44. Defendants deny the allegations in Paragraph 44 of Plaintiff's Complaint, specifically denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members of the proposed Class regarding Benecol® Spread and Benecol® Light Spread.

45. Defendants deny the allegations in Paragraph 45 of Plaintiff's Complaint, specifically denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members of the proposed Class regarding Benecol® Spread and Benecol® Light Spread. Defendants further deny that any alleged breach on the part of Defendants was the direct or proximate cause of injury or harm to Plaintiff or members of the proposed Class.

COUNT II

Breach of Implied Warranty of Merchantability

46. In response to Paragraph 46 of Plaintiff's Complaint, Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 45 of Plaintiff's Complaint, as if fully set forth herein.

47. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a proposed Class of purchasers.

48. Defendants deny the allegations in Paragraph 48 of Plaintiff's Complaint, specifically denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members of the proposed Class regarding Benecol® Spread and Benecol® Light Spread.

1 49. Defendants deny the allegations in Paragraph 49 of Plaintiff's Complaint, specifically
2 denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members
3 of the proposed Class regarding Benecol® Spread and Benecol® Light Spread.

4 50. Defendants deny the allegations in Paragraph 50 of Plaintiff's Complaint, specifically
5 denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members
6 of the proposed Class regarding Benecol® Spread and Benecol® Light Spread.

7 51. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 51 of Plaintiff's Complaint, and, therefore, deny the same.

9 52. Defendants deny the allegations in Paragraph 52 of Plaintiff's Complaint.

10 53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
11 allegations in Paragraph 53 of Plaintiff's Complaint, and, therefore, deny the same.

12 54. Defendants deny the allegations in Paragraph 54 of Plaintiff's Complaint.

13 55. Defendants deny the allegations in Paragraph 55 of Plaintiff's Complaint, specifically
14 denying the existence or breach of any warranties in favor of, or representations to, Plaintiff or members
15 of the proposed Class regarding Benecol® Spread and Benecol® Light Spread. Defendants further deny
16 that any alleged breach on the part of Defendants was the direct or proximate cause of injury or harm to
17 Plaintiff or members of the proposed Class.

18 **COUNT III**

19 **Unjust Enrichment**

20 56. In response to Paragraph 56 of Plaintiff's Complaint, Defendants reallege and incorporate
21 by reference their answers to Paragraphs 1 through 55 of Plaintiff's Complaint, as if fully set forth
22 herein.

23 57. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a
24 proposed Class of purchasers.

25 58. Defendants deny the allegations in Paragraph 58 of Plaintiff's Complaint.

26 59. Defendants deny the allegations in Paragraph 59 of Plaintiff's Complaint, specifically
27 denying that Defendants made any misrepresentations to Plaintiff or members of the proposed Class.
28

1 Defendants further deny that any alleged misrepresentations caused injury to Plaintiff or members of the
2 proposed Class.

3 60. Defendants deny the allegations in Paragraph 60 of Plaintiff's Complaint.

4 **COUNT IV**

5 **Violation Of California's Consumer Legal Remedies Act,**

6 **California Civil Code §§ 1750, et seq.**

7 **(Injunctive Relief Only)**

8 61. In response to Paragraph 61 of Plaintiff's Complaint, Defendants reallege and incorporate
9 by reference their answers to Paragraphs 1 through 60 of Plaintiff's Complaint, as if fully set forth
10 herein.

11 62. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a
12 proposed Subclass of California purchasers.

13 63. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5) speaks for
14 itself, and, on that basis, Defendants deny the allegations in Paragraph 63 of Plaintiff's Complaint.

15 64. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(7) speaks for
16 itself, and, on that basis, Defendants deny the allegations in Paragraph 64 of Plaintiff's Complaint.

17 65. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9) speaks for
18 itself, and, on that basis, Defendants deny the allegations in Paragraph 65 of Plaintiff's Complaint.

19 66. Defendants deny the allegations in Paragraph 66 of Plaintiff's Complaint, specifically
20 denying that Defendants made any misrepresentations regarding Benecol® Spread or Benecol® Light
21 Spread.

22 67. Defendants deny the allegations in Paragraph 67 of Plaintiff's Complaint.

23 68. Defendants admit that Plaintiff sent Defendants a letter via certified mail on August 6,
24 2015 regarding alleged violation of the CLRA. Defendants deny the remaining allegations in Paragraph
25 68 of Plaintiff's Complaint.

26 69. The allegations in Paragraph 69 of Plaintiff's Complaint require no answer from
27 Defendants. To the extent an answer is required, Defendants deny the allegations for want of knowledge
28 and lack of information.

COUNT V

**Violation of California’s Unfair Competition Law,
California Business & Professions Code §§ 17200, *et seq.***

70. In response to Paragraph 70 of Plaintiff’s Complaint, Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 69 of Plaintiff’s Complaint, as if fully set forth herein.

71. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a proposed Subclass of California purchasers.

72. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* speaks for itself, and, on that basis, Defendants deny the allegations in Paragraph 72 of Plaintiff’s Complaint.

73. Defendants deny the allegations in Paragraph 73 of Plaintiff’s Complaint.

74. Defendants deny the allegations in Paragraph 74 of Plaintiff’s Complaint.

75. Defendants deny the allegations in Paragraph 75 of Plaintiff’s Complaint.

76. Defendants deny the allegations in Paragraph 76 of Plaintiff’s Complaint, specifically denying that Defendants violated the UCL.

COUNT VI

**Violation of California’s False Advertising Law,
California Business & Professions Code §§ 17500, *et seq.***

77. In response to Paragraph 77 of Plaintiff’s Complaint, Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 76 of Plaintiff’s Complaint, as if fully set forth herein.

78. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a proposed Subclass of California purchasers.

79. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* speaks for itself, and, on that basis, Defendants deny the allegations in Paragraph 79 of Plaintiff’s Complaint.

80. Defendants deny the allegations in Paragraph 80 of Plaintiff’s Complaint.

81. Defendants deny the allegations in Paragraph 81 of Plaintiff’s Complaint.

82. Defendants deny the allegations in Paragraph 82 of Plaintiff’s Complaint.

1 83. Defendants deny the allegations in Paragraph 83 of Plaintiff's Complaint, specifically
2 denying that Defendants violated the FAL.

3 **COUNT VII**

4 **Negligent Misrepresentation**

5 84. In response to Paragraph 84 of Plaintiff's Complaint, Defendants reallege and incorporate
6 by reference their answers to Paragraphs 1 through 83 of Plaintiff's Complaint, as if fully set forth
7 herein.

8 85. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a
9 proposed Class of purchasers.

10 86. Defendants deny the allegations in Paragraph 86 of Plaintiff's Complaint.

11 87. Defendants deny the allegations in Paragraph 87 of Plaintiff's Complaint.

12 88. Defendants deny the allegations in Paragraph 88 of Plaintiff's Complaint.

13 89. Defendants deny the allegations in Paragraph 89 of Plaintiff's Complaint.

14 90. Defendants deny the allegations in Paragraph 90 of Plaintiff's Complaint.

15 91. Defendants deny the allegation in Paragraph 91 of Plaintiff's Complaint, specifically
16 denying that Defendants acted negligently. Defendants further deny that any alleged negligence on the
17 part of Defendants caused damage to Plaintiff or members of the proposed Class.

18 **COUNT VIII**

19 **Fraud**

20 92. In response to Paragraph 92 of Plaintiff's Complaint, Defendants reallege and incorporate
21 by reference their answers to Paragraphs 1 through 91 of Plaintiff's Complaint, as if fully set forth
22 herein.

23 93. Defendants admit that Plaintiff purports to bring claims on behalf of herself and a
24 proposed Class of purchasers.

25 94. Defendants deny the allegations in Paragraph 94 of Plaintiff's Complaint, specifically
26 denying that Defendants made any misrepresentations or omissions to Plaintiff or members of the
27 proposed Class.
28

1 95. Defendants deny the allegations in Paragraph 95 of Plaintiff's Complaint, specifically
2 denying that Defendants made any misrepresentations or omissions to Plaintiff or members of the
3 proposed Class.

4 96. Defendants deny the allegation in Paragraph 96 of Plaintiff's Complaint, specifically
5 denying that Defendants acted fraudulently. Defendants further deny that any alleged fraudulent actions
6 on the part of Defendants caused damage to Plaintiff or members of the proposed Class.

7 **PRAYER FOR RELIEF**

8 The allegations in Paragraphs (a) to (h) require no answer from Defendants. To the extent an
9 answer is required, Defendants deny the allegations for want of knowledge and lack of information.

10
11 **DEMAND FOR TRIAL BY JURY**

12 The allegations in Plaintiff's unnumbered Demand for Trial By Jury require no answer from
13 Defendants. To the extent an answer is required, Defendants deny the allegations for want of knowledge
14 and lack of information.

15
16 **AFFIRMATIVE DEFENSES**

17 Further answering, Defendants interpose the following additional defenses:

18 **FIRST SEPARATE DEFENSE**

19 Plaintiff's Complaint fails to state a claim upon which relief can be granted as to some or all of
20 Plaintiff's claims.

21 **SECOND SEPARATE DEFENSE**

22 Plaintiff's claims are barred by the applicable statute of limitations, statute of repose, and/or the
23 equitable doctrines of laches and estoppel.

24 **THIRD SEPARATE DEFENSE**

25 Defendants hereby raise, assert and preserve their defense of lack of personal jurisdiction.

26 **FOURTH SEPARATE DEFENSE**

27 Defendants hereby raise, assert and preserve their defense of insufficiency of service of process.
28

1 **FIFTH SEPARATE DEFENSE**

2 Plaintiff's Complaint has failed to name necessary and indispensable parties.

3 **SIXTH SEPARATE DEFENSE**

4 Plaintiff's claims are barred by the doctrines of informed consent, release and waiver.

5 **SEVENTH SEPARATE DEFENSE**

6 The injuries and damages allegedly suffered in this action, which are denied, may have been
7 caused in whole or in part by the own culpable conduct, intentional acts, contributory negligence,
8 assumption of the risk and want of care of Plaintiff.

9 **EIGHTH SEPARATE DEFENSE**

10 Some or all of Plaintiff's claims are barred because Plaintiff's alleged injuries were actually or
11 proximately caused, in whole or in part, by the intervening, superseding, or illegal conduct of Plaintiff,
12 independent third parties, or events that were extraordinary under the circumstances, not foreseeable in
13 the normal course of events, or independent of or far removed from Defendants' conduct or control.

14 **NINTH SEPARATE DEFENSE**

15 Plaintiff's claims are barred to the extent that any injuries were caused by a misuse, abuse,
16 alteration, and/or failure to properly maintain or care for the subject product by persons other than
17 Defendants.

18 **TENTH SEPARATE DEFENSE**

19 Plaintiff's claims are barred by the "state of the art" and "state of scientific knowledge" defense.

20 **ELEVENTH SEPARATE DEFENSE**

21 Plaintiff's claims against Defendants are expressly and/or impliedly preempted by federal law,
22 including but not limited to, the regulations promulgated by the U.S. Food and Drug Administration.

23 **TWELFTH SEPARATE DEFENSE**

24 Plaintiff's claims are barred, in whole or in part, under the doctrine of primary jurisdiction, in
25 that the pertinent conduct of Defendants and all their activities with respect to the subject product have
26 been and are conducted under the supervision of the FDA.

THIRTEENTH SEPARATE DEFENSE

Defendants did not make nor did they breach any express or implied warranties and/or breach any warranties created by law. To the extent that Plaintiff relies on any theory of breach of warranty, such claims are barred by applicable law, by the lack of privity between Plaintiff and Defendants and/or by the failure of Plaintiff to give Defendants timely notice of the alleged breach of warranty. Defendants further specifically plead as to any breach of warranty claim all separate defenses under the Uniform Commercial Code, as enacted in the State of California and any other state whose law is deemed to apply in this case.

FOURTEENTH SEPARATE DEFENSE

Any award of punitive damages in this case against Defendants is barred to the extent that the amount of such an award violates the Constitution of the United States or the Constitution of the State of California and any other state whose law is deemed to apply in this case.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state sufficient facts under any theory or cause of action which would justify imposition of punitive or exemplary damages under any applicable law.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the failure to comply with conditions precedent to Plaintiff's right to recover.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff did not incur any ascertainable loss as a result of Defendants' conduct.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the manufacturing, labeling, packaging and any advertising of the product complied with the applicable codes, standards and regulations established, adopted, promulgated or approved by any applicable regulatory body, including but not limited to the United States, any state, and any agency thereof.

NINETEENTH SEPARATE DEFENSE

Plaintiff has no standing to bring this action or to seek the relief requested in the Complaint.

TWENTIETH SEPARATE DEFENSE

Some or all of Plaintiff's claims are barred by reason of spoliation of evidence.

TWENTY-FIRST SEPARATE DEFENSE

Plaintiff's claims are barred by the doctrine of *forum non conveniens*.

TWENTY-SECOND SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, because some or all of the parties have been improperly joined in this action.

TWENTY-THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to comply with the notice required under California Civil Code § 1782(a).

TWENTY-FOURTH SEPARATE DEFENSE

Plaintiff's fraud claims are barred because Plaintiff has failed to comply with Rule 9(b) of the Federal Rules of Civil Procedure.

TWENTY-FIFTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of res judicata.

TWENTY-SIXTH SEPARATE DEFENSE

Defendants hereby reserve the right to amend their answer to assert any other defenses, separate or otherwise that may become available during discovery proceedings in this case.

DEMAND FOR JURY TRIAL

Defendants specifically request and demand a trial by jury on all facts and issues in this action, made up of the maximum allowable number of jurors.

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1 **WHEREFORE**, Defendants Johnson & Johnson and McNeil Nutritionals, LLC demand
2 judgment dismissing the Complaint with prejudice and granting such other and further relief as this
3 Court may deem just and proper, together with the costs and disbursements of this action.
4

5 DATED: October 30, 2015

TUCKER ELLIS LLP

7 By: /s/ Amanda Villalobos

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CERTIFICATE OF SERVICE


This Certificate of Service is made in compliance with Local Rule 5.1.2 and Civ.R. 5(b). I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 South Flower Street Forty-Second Floor, Los Angeles, CA 90071-2223.

On the date indicated below, a true and correct copy of the foregoing **DEFENDANTS MCNEIL NUTRITIONALS, LLC AND JOHNSON & JOHNSON'S ANSWER TO PLAINTIFF'S COMPLAINT AND REQUEST FOR TRIAL BY JURY** was filed with Court and served electronically and will be available for viewing and downloading from the Court's CM/ECF system:

The Notice of Electronic Case Filing automatically generated by the system and sent to all parties entitled to service under the Federal Rules of Civil Procedure and the Local Rules of the District of California who have consented to electronic service shall constitute service of the filed document to all such parties.

Executed on, October 30, 2015, at Los Angeles, CA.

I declare under penalty of perjury that I am employed in the office of a member admitted to practice before the District Court for the Central District of California and ECF registered in this Court at whose direction the service was made and that the foregoing is true and correct.

By 
Silvia Munoz

TUCKER ELLIS LLP
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