IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE ROHE O TĀMAKI MAKAURAU

In the matter of: A representative proceeding

under: The Fair Trading Act 1986 and the Consumer Guarantees Act 1993

between: **Theresa Gielen**, midwife from Rotorua, New Zealand, suing as a representative under High Court Rule 4.24

First Plaintiff

Patrick Wyatt, teacher from Christchurch, New Zealand, suing as a representative under High Court Rule 4.24

Second Plaintiff

and: **Johnson & Johnson (New Zealand) Limited**, a duly incorporated company having its registered office at 507 Mt Wellington Highway, Mt Wellington, Auckland, 1060, New Zealand

First Defendant **(continued over)**

Amended Statement of claim

Dated: ~~13 February 2025~~ 27 June 2025

Solicitor:
Rebecca Jancauskas
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Counsel:
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Level 22, 88 Shortland Street,
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and: **JNTL Consumer Health (New Zealand) Limited**, a duly incorporated company having its registered office at Level 9, 4 Williamson Avenue, Ponsonby, Auckland, 1021, New Zealand

Second defendant

and: **Johnson & Johnson Pacific Pty Limited**, an entity incorporated under the Corporations Act 2001 (Australia) with registration number ACN 001 121 446

Third defendant

The plaintiffs, by ~~her~~ their solicitor, say~~s~~:

Parties

Plaintiffs

1. The first plaintiff is Theresa Gielen.

2. The second plaintiff is Patrick Wyatt.

(together, the **plaintiffs**)

3. The plaintiffs bring~~s~~ this proceeding against the first, second and third defendants as a representative proceeding under rule 4.24 of the High Court Rules 2016 on behalf of all persons who:

(a) Purchased in New Zealand the products listed in **Schedule 1** to this amended statement of claim (**Products**) at any time between 31 March 2005 and 13 February 2025; and

(b) Are not:

(i) A defendant or a related company (as defined in s 2 of the Companies Act 1993) of a defendant;

(ii) A Chief Justice, Justice or Associate Judge of the High Court of New Zealand; or

(iii) A person who purchased the Products for the purpose of re-selling or re-supplying them in trade.

(together, **Class Members**).

Defendants

~~3.~~4. The first defendant is Johnson & Johnson (New Zealand) Limited (**J&J (NZ)**), a duly incorporated company having its registered office at 507 Mt Wellington Highway, Mt Wellington, Auckland, 1060, New Zealand and carrying on business as a healthcare company.

~~4.~~5. J&J (NZ) is ultimately wholly owned by Johnson & Johnson Inc, a company carrying on business in New Jersey, USA.

~~5.~~6. The second defendant is JNTL Consumer Health (New Zealand) Limited (**JNTL**), a duly incorporated company having its registered office at Level 9, 4 Williamson Avenue, Ponsonby, Auckland, 1021, New Zealand and carrying on business as a pharmaceutical and/or healthcare company.

~~6.~~7. JNTL is ultimately wholly owned by Kenvue Inc, a company carrying on business in New Jersey, USA.

~~7.~~8. The third defendant is Johnson & Johnson Pacific Pty Ltd, an entity incorporated under the Corporations Act 2001 (Australia) with registration number ACN 001 121 446 (**J&J Pacific**).

~~8.~~9. J&J Pacific is wholly owned by Johnson & Johnson Pty Ltd, an entity incorporated under the Corporations Act 2001 (Australia) with ACN 000 023 709.

~~9.~~10. J&J Pacific is a consumer healthcare company operating within New Zealand.

Particulars

The packaging for the Products:

(a) Lists J&J Pacific as operating in Australia and "Auckland New Zealand";

(b) Lists J&J Pacific as having contact details in New Zealand and Australia, including a consumer care centre available in "New Zealand: 0800 446 147"; and

(c) Refers to a website address as "our website".

~~10.~~11. J&J (NZ), JNTL and J&J Pacific will be referred to together as the **Defendants**.

The Defendants' activities in relation to the Products

~~11.~~12. At various times from 31 March 2005, the Defendants were involved in the manufacture and/or importation, supply, distribution, and/or (at least in part) marketing of the Products.

Particulars

(a) JNTL holds the Marketing Authorisation (defined below) for the:

(i) Codral Products;

(ii) Sudafed Products; and

(iii) Benadryl Products

(each of which are defined in Schedule 1 to this amended statement of claim).

(b) JNTL publishes the websites for:

(i) the Sudafed Products (www.kenvuebrands.com/nz/sudafed) which states in part:

This site is published by JNTL Consumer Health (New Zealand) Ltd which is solely responsible for its contents.

(ii) the Codral Products (www.codral.co.nz) which states in part:

This site is published by JNTL Consumer Health (New Zealand) Ltd which is solely responsible for its contents.

(iii) the Benadryl Products (www.kenvuebrands.com/nz/benadryl) which states in part:

This site is published by JNTL Consumer Health (New Zealand) Ltd which is solely responsible for its contents.

(c) J&J (NZ) held the Marketing Authorisation (defined below) for the Historic Products (defined in Schedule 1 to this amended statement of claim).

(d) J&J (NZ) may have also held Marketing Authorisations (defined below) for certain of the Codral Products, Sudafed Products and Benadryl Products at times currently unknown to the plaintiffs.

(e) J&J Pacific has attached its brand or mark (in the form of its name) or permitted its brand or mark, to be attached to the Products.

(f) J&J Pacific, by attaching its name to the Products or permitting its name to be attached to the Products, has held itself out as the manufacturer of the Products.

Further particulars will be provided following discovery.

The Products

~~12.~~13. Each of the Products contains phenylephrine hydrochloride (**PE**) as an active ingredient, either on its own or in combination with other ingredients such as paracetamol, chlorpheniramine maleate, dextromethorphan, guaiphenesin, or ibuprofen.

~~13.~~14. Each of the Products are over-the-counter (**OTC**) medication, to be taken or administered orally.

~~14.~~15. To the plaintiff~~'~~s' knowledge, New Zealand Medicines and Medical Devices Safety Authority (**Medsafe**) has classified the Products as medicines that are either for general sale or pharmacy-only medicines.

~~15~~.16. Each of the Products are medicines to be taken in accordance with a prescribed dosage, including a maximum dosage.

~~16~~.17. To the best of the plaintiff~~'s~~' knowledge, the Products (other than the Historic Products, as defined below) are currently available for purchase within New Zealand in pharmacies, supermarkets and other retailers, including online stores.

~~17~~.18. To the best of the plaintiff~~'s~~' knowledge, there are other OTC orally-administered, PE-containing products that were previously sold in New Zealand (**Historic Products**).

Particulars

(a) As provided in Schedule 1.

(b) Further particulars will be provided following discovery.

~~18~~.19. In general terms, the Products purport to treat nasal congestion, a commonly understood symptom of cold and flu and/or allergies.

~~19~~.20. In this claim, the term "nasal congestion" means any and all symptoms of nasal congestion including a blocked and/or runny nose, sinus congestion, sinus pressure and/or swollen nasal passages.

Marketing Authorisation of the Products

~~20~~.21. In New Zealand, approval from the Minister of Health in accordance with s 20 of the Medicines Act 1981 is required to sell, distribute and/or market any medicine (a **Marketing Authorisation**).

~~21~~.22. A Marketing Authorisation is granted by the Minister of Health, on the recommendation of Medsafe.

~~22~~.23. To obtain a Marketing Authorisation for a particular medicine, the person seeking the Marketing Authorisation must provide information that demonstrates the medicine meets standards of quality, safety and efficacy.

~~23~~.24. Between 31 March 2005 and 7 December 2017, Medsafe approved the Products for sale in New Zealand, and granted a Marketing Authorisation for each of the Products.

Particulars

(a) The Marketing Authorisations relevant to each Product, and the dates that those Marketing Authorisations were provided to either the First or Second Defendant are particularised in Schedule 1 to this amended statement of claim.

~~24~~.25. Each of the Products have, at some time, been sold in New Zealand following their approval by Medsafe.

Particulars

(a) Further particulars will be provided following discovery.

PE

~~25~~.26. All of the Products describe PE as an "active ingredient" included in the product.

Particulars

(a) The active ingredients listed in each of the Products are particularised in Schedule 1 to this amended statement of claim.

~~26~~.27. The oral consumption of up to 10mg of PE, or up to 60mg in a 24-hour period taken in accordance with the instructions provided with the Products, has never been effective in relieving nasal congestion.

~~27~~.28. The oral consumption of up to 10mg of PE, or up to 60mg in a 24-hour period taken in combination with other active ingredients present in the Products, has never been effective in relieving nasal congestion.

~~28~~.29. None of the other active ingredients in the Products have ever been effective in relieving nasal congestion.

Purchases

~~29~~.30. Over the period of 19~~8~~ years, the first plaintiff purchased the following Products:

(a) Sudafed PE Nasal Decongestant t~~T~~ablet;

(b) Sudafed PE Sinus + Pain Relief Day & Night t~~T~~ablet;

(c) Sudafed PE Sinus + Pain Relief t~~T~~ablet;

(d) Sudafed PE Sinus + Allergy & Pain Relief t~~T~~ablet;

(e) Codral Cold & Flu + Mucus Cough c~~C~~apsule;

(f) Codral Cold & Flu t~~T~~ablet;

(g) ~~Codral Cold & Flu + Cough~~ Day & Night Cold & Flu + Cough Combination ~~capsule~~ tablet;

(h) Codral Day & Night ~~Film coated~~ tablet;

(i) Codral Night t~~T~~ablet;

(j) Codral Cold & Flu Powder for oral solution;

(k) Codral Cold & Flu + Mucus Cough Powder for oral solution;

~~(l) Codral Cold & Flu Night Time Tablet;~~

~~(m)~~(l) Codral Decongestant t~~T~~ablet;

~~(n)~~(m) Codral Mucus Cough & Cold o~~O~~ral solution; and

~~(o)~~(n) Benadryl PE Chesty Cough & Nasal Congestion s~~S~~yrup.

Particulars

(a) *The first plaintiff purchased each of the Products listed in paragraph 30(a) – (n) on at least one occasion in the past 19 years to treat her symptoms of sinus congestion.*

(b) *Between 2020 and 2022 and again in March 2024, in order to treat the symptoms of sinus congestion that resulted from Covid-19 the first plaintiff purchased the following Products:*

(i) *Sudafed PE Nasal Decongestant tablet;*

(ii) *Sudafed PE Sinus + Pain Relief Day & Night tablet;*

(iii) *Sudafed PE Sinus + Pain Relief tablet;*

(iv) *Sudafed PE Sinus + Allergy & Pain Relief tablet; and*

(v) *Codral Cold & Flu tablet.*

(c) *The first plaintiff purchased Benadryl PE Chesty Cough & Nasal Congestion syrup when her children developed symptoms of nasal congestion caused by colds or flu. When her children were old enough to swallow a tablet she purchased Codral Decongestant tablets for them.*

(d) *The first plaintiff purchased a packet of these products approximately every six weeks. The first plaintiff purchased these producgts from pharmacies, including Lakes Prime Care Pharmacy in Rotorua.*

31. Over a period of 19 years, the second plaintiff purchased the following Products:

(a) Codral Cold & Flu tablet;

(b) Codral Cold & Flu powder;

(c) Codral Day & Night tablet;

(d) Codral Cold & Flu Sore Throat tablet;

(e) Codral Cold & Flu + Mucous Cough powder;

(f) Codral Decongestant tablet;

(g) Sudafed PE Nasal Decongestant tablet;

(h) Sudafed PE Sinus + Allergy & Pain Relief tablet;

(i) Sudafed PE Sinus + Anti Inflammatory Pain Relief tablet;

(j) Sudafed PE Sinus + Pain Relief tablet;

(k) Sudafed PE Sinus + Pain Relief Day & Night tablet;

(l) Benadryl PE Chesty Cough & Nasal Congestion syrup; and

(m) Benadryl Mucus Relief Plus Decongestant liquid.

Particulars

(a) The second plaintiff purchased each of the Products listed at paragraphs (a)-(m) above on at least one occasion in the past 19 years to treat symptoms of nasal congestion.

(b) The second plaintiff purchased these Products as part of his weekly grocery shop, including from Woolworths, New World and retail pharmacies in Christchurch, such as Unichem Pharmacy Rolleston, Chemist Warehouse, and Life Pharmacy.

(c) During the Covid-19 pandemic, the second plaintiff also purchased some of the Products from online retailers, such as Bargain Chemist.

(d) During the winter months, the second plaintiff would buy approximately ten to twelve packets of these products. During the summer months, the second plaintiff would buy around four to five packets.

~~30.~~32. The purchases in paragraphs ~~29~~ 30-31 and this paragraph are referred to together as the **Purchases**.

Loss

~~31.~~33. The plaintiff<u>s</u> and each Class Member ha<u>ve</u>~~s~~ suffered loss and damage (**Loss**).

Particulars

(a) The plaintiff<u>s</u> and each Class Member paid for Products which were ineffective for relieving nasal congestion.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS – BREACH OF SECTION 9 OF THE FAIR TRADING ACT 1986 (FTA)

The plaintiff<u>s</u> repeat~~s~~ paragraphs 1 to ~~31~~<u>33</u> above and say~~s~~ by way of a first cause of action:

~~32.~~34. The Defendants were, from 31 March 2005, in trade.

~~33.~~35. At various times between 31 March 2005 and 13 February 2025, the Defendants made representations that:

(a) The Products are effective in the relief of nasal congestion;

(b) The consumption of PE, in the dosages contained in the Products, is effective in the relief of nasal congestion,

(together, the **Representations**).

Particulars

(a) Schedule 1 to this amended statement of claim.

(b) Whether the Products (or PE itself) is effective refers to whether the medicine actively works to treat, alleviate and/or relieve the symptom(s) the product is marketed for.

~~(b)~~(c) There are likely further statements made by the Defendants of which the plaintiffs currently haves ~~s~~ no knowledge, through the following mediums:

(i) historic packaging of the Products;

(ii) previous iterations of ~~the Defendants'~~ JNTL's websites;

(iii) online advertisements;

(iv) television, broadcast, print, and other media advertisements; and

(v) in-store marketing and advertising.

Further particulars will be provided following discovery.

~~34~~.36. The Representations were:

(a) Made in connection with the promotion and/or supply of the Products;

(b) Made to the public at large;

(c) Made to the plaintiffs and Class Members;

(d) Relied on directly and/or indirectly by the plaintiffs; and

(e) Relied on directly and/or indirectly by Class Members.

~~35~~.37. Since a time to be particularised following discovery, but not after 13 February 2025, the Defendants have continued to engage and/or re-engaged in making the Representations.

~~36~~.38. The Representations were false, misleading and/or deceptive and/or likely to mislead or deceive in breach of s 9 of the FTA, because:

(a) The Products were not effective in providing relief from nasal congestion; and/or

(b) The oral consumption of PE, in the quantities available in the Products, was not effective in providing relief from nasal congestion.

Particulars

(a) There was not a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the products, when used under adequate directions for use and warnings against unsafe use, would provide clinically significant relief for nasal congestion.

(b) FDA Scientific Review Supporting Proposed Administrative Order, 4 November 2024.

(c) As per the FDA definition, effectiveness "means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed".

~~37.~~39. The Representations were not, and have never been, corrected or qualified by any of the Defendants.

~~38.~~40. The false, misleading and/or deceptive conduct by the Defendants has caused the plaintiffs and each Class Member to suffer the Loss.

Wherefore the plaintiffs claim~~s~~ individually and on behalf of Class Members:

A) An order for damages under s 43 of the FTA and rule 4.24 of the High Court Rules 2016, being:

a. An order directing the Defendants to refund the purchase price of the Products under s 43(3)(e) of the FTA; and/or

b. An order directing the Defendants to pay damages reflecting the Loss in an amount to be quantified prior to trial under s 43(3)(f) of the FTA;

B) That such damages be ordered in the aggregate to apply to the class;

C) Interest under s 10 of the Interest on Money Claims Act 2016;

D) Costs; or

E) In the alternative, such other relief as the Court considers appropriate, including under s 43 of the FTA.

Further particulars will be provided following disclosure and/or evidence.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS – BREACH OF SECTION 10 OF THE FTA

The plaintiffs repeats paragraphs 1 to 31 33 above and says by way of a second cause of action:

39.41. The Defendants were, from 31 March 2005, in trade.

40.42. At various times between 31 March 2005 and 13 February 2025, the Defendants made the Representations pleaded at paragraph 350 above.

41.43. These were Representations as to the nature, characteristics and suitability for a purpose of the Products in terms of s 10 of the FTA.

42.44. The Representations were:

(a) Made in connection with the promotion and/or supply of the Products;

(b) Made to the public at large;

(c) Made to the plaintiffs and Class Members;

(d) Relied on directly and/or indirectly by the plaintiffs; and

(e) Relied on directly and/or indirectly by Class Members.

Particulars

The particulars of paragraph 35 are repeated.

43.45. Since a time to be particularised following discovery, but not after 13 February 2025, the Defendants have continued to engage and/or re-engaged in making the Representations.

44.46. The Representations were liable to mislead the public as to the nature, characteristics and/or suitability for a purpose of the Products, and in particular:

(a) The Products were not effective in the relief of nasal congestion; and/or

(b) The consumption of PE, in the dosages contained in the Products, was not effective in the relief of nasal congestion.

45.47. The Representations were not, and have never been, corrected or qualified by any of the Defendants.

46.48. The Defendants' conduct has caused the plaintiffs and each Class Member to suffer the Loss.

Wherefore the plaintiffs claims:

A) An order for damages under s 43 of the FTA and rule 4.24 of the High Court Rules 2016, being:

a. An order directing the Defendants to refund money to the Class Members under s 43(3)(e) of the FTA; and/or

b. An order directing the Defendants to pay the Class Members damages reflecting their loss or damage in an amount to be quantified prior to trial (and following discovery) under s 43(3)(f) of the FTA;

B) That such damages be ordered in the aggregate to apply to the class;

C) Interest under s 10 of the Interest on Money Claims Act 2016; and

D) Costs; or

E) In the alternative, such other relief as the Court sees fit, including under s 43 of the FTA.

Further particulars will be provided following disclosure and/or evidence.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS – BREACH OF SECTIONS 13(a) AND 13(e) OF THE FTA

The plaintiffs repeats paragraphs 1 to ~~31~~33 above and says by way of a third cause of action:

~~47.~~49. The Defendants were, from 31 March 2005, in trade.

~~48.~~50. At various times between 31 March 2005 and 13 February 2025, the Defendants made the Representations pleaded at paragraph ~~33~~ 35 above.

~~49.~~51. These were Representations that:

(a) The Products were of a particular kind, standard, quality, composition and/or grade in terms of s 13(a) of the FTA; and/or

(b) The Products had particular performance characteristics, uses or benefits in terms of s 13(e) of the FTA.

~~50.~~52. Since a time to be particularised following discovery, but not after 13 February 2025, the Defendants have continued to engage and/or re-engaged in making the Representations.

~~51.~~53. The Representations were not, and have never been, corrected or qualified by any of the Defendants.

~~52.~~54. The Representations were false and misleading representations about the particular kind, standard, quality, composition, grade, performance characteristics, uses and/or benefits of the Products because:

(a) The Products were not effective in the relief of nasal congestion;

(b) The consumption of PE, in the dosages contained in the Products, was not effective in the relief of nasal congestion.

Particulars

The particulars of paragraph 35 are repeated.

~~53.~~55. The Representations were:

(a) Made in connection with the promotion and/or supply of the Products;

(b) Made to the public at large;

(c) Made to the plaintiffs and Class Members;

(d) Relied on directly and/or indirectly by the plaintiffs; and

(e) Relied on directly and/or indirectly by Class Members.

~~54.~~56. The Representations induced the plaintiffs to make the Purchases.

~~55.~~57. Because of the Defendants' false or misleading Representations about the particular kind, standard, quality, composition, grade, performance characteristics, uses, and/or benefits of the Products, the plaintiffs have~~s~~ suffered the Loss.

Wherefore the plaintiffs claim~~s~~:

A) An order for damages under s 43 of the FTA and rule 4.24 of the High Court Rules 2016, being:

a. An order directing the Defendants to refund money to the Class Members under s 43(3)(e) of the FTA; and/or

b. An order directing the Defendants to pay the Class Members damages reflecting their loss or damage in an amount to be quantified prior to trial (and following discovery) under s 43(3)(f) of the FTA;

B) That such damages be ordered in the aggregate to apply to the class;

C) Interest under s 10 of the Interest on Money Claims Act 2016; and

D) Costs; or

E) In the alternative, such other relief as the Court sees fit, including under s 43 of the FTA.

Further particulars will be provided following disclosure and/or evidence.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS – BREACH OF SECTION 6 OF THE CONSUMER GUARANTEES ACT 1993 (CGA)

The plaintiffs repeats paragraphs 1 to 33 31 above and says by way of a fourth cause of action:

56.58. At various times between 14 February 2010 and 13 February 2025, the Defendants were manufacturers of the Products in terms of s 2(1) of the CGA, and in particular:

(a) J&J (NZ) previously manufactured the Products, on dates which will be particularised following discovery;

(b) JNTL presently manufactures the Products;

(c) J&J Pacific held itself out to the public as the manufacturer of the Products by attaching, causing or permitting its brand to be attached to the goods on dates which will be particularised following discovery.

57.59. Between 14 February 2010 and 13 February 2025, the plaintiffs and each Class Member purchased the Products as consumers in terms of s 2(1) of the CGA.

58.60. The Defendants breached s 6 of the CGA by manufacturing (and in the case of J&J Pacific, holding itself out as manufacturing) Products that were not of an acceptable quality.

Particulars

(a) Goods of the type in question were commonly supplied as nasal decongestants.

(b) The Products were not fit for this purpose because they were not effective in the relief of nasal congestion and/or the consumption of PE, in the dosages contained in the Products, was not effective in the relief of nasal congestion.

(c) A reasonable consumer fully acquainted with this state of the Products would not have regarded the Products as being acceptable.

(d) The particulars of paragraph 35 are repeated

59.61 As a result of the breach, the plaintiffs and each Class Member haves suffered the Loss.

Wherefore the plaintiffs individually and on behalf of each Class Member claims:

A) Damages under s 27 of the CGA, in an amount to be quantified;

B) That such damages be awarded in the aggregate, to apply to the class;

C) Interest under s 10 of the Interest on Money Claims Act 2016; and

D) Costs; or

E) Such alternative relief as the Court considers appropriate.

Further particulars will be provided following disclosure and/or evidence.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS – BREACH OF SECTION 9 OF THE CGA

The plaintiffs repeat~~s~~ paragraphs 1 to 3331 above and say~~s~~ by way of a fifth cause of action:

~~60.~~62. Between 14 February 2010 and 13 February 2025, the Products were supplied with the description that they would be effective in relieving nasal congestion.

Particulars

(a) The particulars provided in respect of paragraph 35 are repeated.

~~61.~~63. This description was applied to the Products by or on behalf of the Defendants, or with their express or implied consent.

~~62.~~64. The Products failed to correspond with the description because:

(a) The Products were not effective in the relief of nasal congestion; and

(b) The consumption of PE, in the dosages contained in the Products, was not effective in the relief of nasal congestion.

Particulars

The particulars of paragraph 35 are repeated.

~~63.~~65. As a result of the breach, the plaintiffs and each Class Member have~~s~~ suffered the Loss.

Wherefore the plaintiffs individually and on behalf of Class Members claim~~s~~:

A) Damages under s 27 of the CGA, in an amount to be quantified;

B) That such damages be awarded in the aggregate, to apply to the class;

C) Interest under s 10 of the Interest on Money Claims Act 2016; and

D) Costs; or

E) Such alternative relief as the Court considers appropriate.

Further particulars will be provided following disclosure and/or evidence.

Dated: ~~13 February 2025~~ 27 June 2025

This document is filed by the Rebecca Jancauskas, solicitor for the plaintiffs, of the firm JGA Saddler (NZ). The address for service on~~f~~ the plaintiffs is C/O BDO Auckland, Level 10, 19 Como Street, Takapuna, Auckland, 0622 , New Zealand.

Documents for service on the filing party may be left at that address for service, or may be emailed to the solicitor at rebecca.jancauskas@jgasaddler.com.au, in any event with a copy by email to counsel at jkg@jasongoodall.co.nz, lauren.lindsay@bankside.co.nz and josh.suyker@bankside.co.nz.

SCHEDULE 1 – PARTICULARS OF THE REPRESENTATIONS MADE BY THE DEFENDANTS IN RELATION TO PE-CONTAINING ORALLY ADMINISTERED PRODUCTS AVAILABLE FOR PURCHASE IN NEW ZEALAND FROM 2005

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
Sudafed branded products – Collectively referred to as the **Sudafed Products**						
1	Sudafed PE Nasal Decongestant *Tablet form*	31 March 2005 (general sale products) 25 May 2006 (pharmacy only products)	Phenylephrine Hydrochloride 10mg	Statements made on packaging: • Uses: "For the temporary relief of ✓ blocked or runny noses" • "Whenever you see the PE logo on our products the main active is phenylephrine" • The product is described as a "Nasal Decongestant" Statements made on the Sudafed website: • "Get relief from sinus pressure and congestion by reducing swollen nasal passages." • Under Uses and Directions: "✓Use to relieve blocked and runny noses." • "Active Ingredients Phenylephrine Hydrochloride 10mg per tablet" • "How It Works Phenylephrine Hydrochloride is a decongestant that reduces the swelling (blocked nose) and secretions (runny nose) in the nasal passages and sinuses allowing the passages behind the nose and above the eyes to clear" Referring to phenylephrine as an "active ingredient" Using the phrase "Sudafed" in respect of the product Further historic and current statements to be particularised following discovery.	JNTL	Sudafed PE Nasal Decongestant 10mg (general sale) Sudafed PE Nasal Decongestant 10mg (Pharmacy Only) Sudafed PE Phenylephrine Nasal Decongestant (general sale) Sudafed PE Phenylephrine Nasal Decongestant (pharmacy only)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
2	Sudafed PE Sinus + Pain Relief Day & Night *Tablet form*	1 December 2005 (Sudafed PE Sinus + Pain Relief Day & Night) 8 May 2014 (Sudafed PE Phenylephrine Night Film coated tablet).	**Day Tablets** Phenylephrine Hydrochloride 5mg Paracetamol 500mg **Night Tablets** Phenylephrine Hydrochloride 5mg Paracetamol 500mg Chlorpheniramine Maleate 2mg	Statements made on packaging: • Uses: "✓ 24 hour sinus pain & headache relief ✓ blocked or runny noses ✓ non-drowsy day tablets ✓ night tablets allow rest and also relieves itchy, watery eyes and sneezing." • "Whenever you see the PE logo on our products the main active is phenylephrine" • Description in the name as a "Sinus Relief" product Statements made on the Sudafed website: • "24 Hour relief from nasal congestion, sinus pressure and headaches when taken as directed. Day tablets – Fast relief from sinus congestion and pressure, plus headaches Night tablets – relief from sinus congestion, pressure and runny nose so you can get the rest you need." • "✓ Use this product for 24 hour sinus relief" • Phenylephrine Hydrochloride is a decongestant that reduces the swelling (blocked nose) and secretions (runny nose) in the nasal passages and sinuses allowing the passages behind the nose and above the eyes to clear. Referring to phenylephrine as an "active ingredient" Using the phrase "Sudafed" in respect of the product Further historic and current statements to be particularised following discovery.	JNTL	Sudafed PE Phenylephrine Sinus + Pain Relief Day & Night (pharmacy only) Sudafed PE Phenylephrine Night Film Coated Tablet (pharmacy only) (The Sudafed PE Phenylephrine Night Film Coated Tablet (pharmacy only) contains only night tablets, but other than that is the same as Sudafed PE Phenylephrine Sinus + Pain Relief Day & Night (pharmacy only).

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
3	Sudafed PE Sinus + Pain Relief *Tablet form*	1 December 2005 (pharmacy only products) 4 November 2010 (general sale products)	Phenylephrine Hydrochloride 5mg Paracetamol 500mg	Statements made on packaging: • Uses: "✓ sinus pain relief ✓ sinus headaches ✓ blocked or runny nose • Whenever you see the PE logo on our products the main active is phenylephrine • Description in the name as a "Sinus Relief" product Statements made on the Sudafed website: • Under Overview: "Get relief from sinus congestion and pressure, plus headaches" • Under Uses and Directions: "This product: ✓Relieves Sinus Pain ✓Relieves Sinus Headaches ✓Relieves Blocked and runny noses" • Under Ingredients: "Active Ingredients Phenylephrine Hydrochloride 5mg per tablet • How It Works Phenylephrine Hydrochloride is a decongestant that reduces the swelling (blocked nose) and secretions (runny nose) in the nasal passages and sinuses allowing the passages behind the nose and above the eyes to clear. Referring to phenylephrine as an "active ingredient" Using the phrase "Sudafed" in respect of the product Further historic and current statements to be particularised following discovery.	JNTL	Sudafed PE Phenylephrine Sinus + Pain Relief (Pharmacy Only) Sudafed PE Phenylephrine Sinus + Pain Relief Tablet, 5mg/500mg (General sale) Sudafed PE Phenylephrine Sinus + Pain Relief (pharmacy only) Sudafed PE Sinus + Pain Relief (general sale)
4	Sudafed PE Sinus + Allergy & Pain Relief	1 December 2005	Phenylephrine Hydrochloride 5mg	Statements made on the packaging: • Uses: "✓ allergy and hayfever symptoms ✓ sinus pain & headache relief ✓ blocked or runny nose ✓ allows rest"	JNTL	Sudafed PE Sinus + Allergy & Pain relief (pharmacy only)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
	Tablet form		Paracetamol 500mg Chlorphenamine Maleate 2mg	• "Whenever you see the PE logo on our products the main active is phenylephrine" • Description in the name as a "Sinus Relief" product Statements made on the Sudafed website: • "SUDAFED® Sinus + Allergy & Pain Relief relieves 5 symptoms including * Sinus pain * Headaches * Blocked/runny nose * Itchy watery eyes * Sneezing" • Under Uses and Directions: This product: ✓Relieves: Blocked and runny noses ✓Relieves: Sinus pain ✓Relieves: Allergy and hayfever symptoms" • Under Ingredients: "Active Ingredients Phenylephrine Hydrochloride 5mg per tablet Paracetamol 500mg per tablet Chlorpheniramine Maleate 2mg per tablet" • How It Works Phenylephrine Hydrochloride is a decongestant that reduces the swelling (blocked nose) and secretions (runny nose) in the nasal passages and sinuses allowing the passages behind the nose and above the eyes to clear. Referring to phenylephrine as an "active ingredient" Using the phrase "Sudafed" in respect of the product Further historic and current statements to be particularised following discovery.		Sudafed PE Phenylephrine Sinus + Allergy & Pain Relief (pharmacy only)
5	SUDAFED PE Sinus + anti-	23 June 2011	Ibuprofen 200mg	Statements made on the packaging:	JNTL	Sudafed PE Phenylephrine sinus

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
	inflammatory pain relief *Tablet form*		Phenylephrine Hydrochloride 5mg	• Uses: "For the temporary relief of ✓ sinus pain and headaches ✓cold and flu symptoms ✓blocked or runny noses" • Description in the name as a "sinus relief" product Referring to phenylephrine as an "active ingredient" Using the phrase "Sudafed" in respect of the product Further historic and current statements to be particularised following discovery.		+ anti-inflammatory pain relief (pharmacy only) Sudafed PE Phenylephrine sinus + anti-inflammatory pain relief (general sale)
Codral branded products – Collectively referred to as the **Codral Products**						
6	Codral Cold & Flu +Mucus Cough *Capsule form*	15 December 2011 (general sale product) 13 May 2021 (pharmacy only product)	Paracetamol 500mg Guaiphenesin 100mg Phenylephrine Hydrochloride 6.1mg	Statements made on the packaging: • Uses: "For the temporary relief of ✓ headaches ✓ blocked or runny nose ✓ fever ✓ body aches and pains ✓ sore throat ✓ chesty cough" • Description in the name as a "Cold & Flu" product. Statements made on the Codral website: • "Effectively relieves 6 cold & flu symptoms: *Headaches *Fever *Body Aches and Pain *Blocked Nose & Runny Noses *Sore Throat * Chesty cough" • "Use this product for *Headaches and fever *Body Aches and Pain *Blocked/runny roses *Sore Throat *Chesty cough" • "Phenylephrine Hydrochloride 6.1mg - Phenylephrine helps to relieve blocked and runny noses." Referring to phenylephrine as an "active ingredient".	JNTL	Codral Cold & Flu + Mucus Cough Capsule (general sale) Codral Cold & Flu + Mucus Cough Capsule (pharmacy only) Codral Relief 6 Signs Cold & Flu + Mucus Cough Capsule (general sale)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		
7	Codral Decongestant *Tablet form*	27 May 2010	Phenylephrine Hydrochloride 10mg	Statements made on the packaging: • Uses: "For the temporary relief of ✓ blocked or runny nose" • Description in the name as a "Decongestant" Statements made on the Codral website: • Under Overview: "A non-drowsy formula for relief of: * Blocked Nose * Runny nose" • Under Directions: "Use this product for: blocked or runny noses" • Under Ingredients: "Each tablet contains: Phenylephrine Hydrochloride 10mg - Phenylephrine helps to relieve blocked and runny noses." Referring to phenylephrine as an "active ingredient". Referring to the product as a "decongestant". Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.	JNTL	Codral Decongestant Tablet, 10 mg (general sale) Codral Relief Decongestant Codral Relief Head Cold
8	Codral Day & Night	7 December 2017	**Day tablet** Paracetamol 500mg	Statements made on the packaging: • "For the temporary relief of ✓ headaches and fever ✓ body aches and pains ✓ blocked or	JNTL	Codral Day & Night film coated tablet (pharmacy only)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
	Tablet form		Phenylephrine Hydrochloride 5mg **Night tablet** Paracetamol 500mg Phenylephrine Hydrochloride 5mg Chlorphenirami ne Maleate 2mg	runny noses ✓ sore throat ✓ non drowsy day tablets ✓ night tablets allow rest" Statements made on the Codral Website: • "Day & Night formula to treat multiple cold and flu symptoms: * Headaches * Fever * Blocked and runny nose * Body aches and pains" • "Use this product for: * Headaches and Fever * Blocked and runny nose * Body aches and pains" • "Phenylephrine Hydrochloride 5mg - Phenylephrine helps to relieve blocked and runny noses." Referring to phenylephrine as an "active ingredient" Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		Codral Day & Night Cold & Flu (pharmacy only) Codral Day & Night Cold & Flu tablet blister pack (pharmacy only)
9	Codral Cold & Flu *Tablet form*	3 June 2010 (general sale product)	Paracetamol 500mg Phenylephrine Hydrochloride 5mg	Statements made on the packaging: • "For the temporary relief of ✓ headaches and fever ✓ body aches and pain ✓ blocked or runny noses ✓ sore throat"	JNTL	Codral Cold & Flu film Coated Tablet (pharmacy only) Codral Cold & Flu Tablet (general sale)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
		3 June 2010 (Codral relief products) 7 December 2017 (Codral Cold & Flu pharmacy only products)		Description in the name as a "Cold & Flu" product Statements made on the Codral website: • "Fast, effective, formula for the relief of: * Strong body aches & pain * Sore Throat * Headaches * Fever * Blocked Nose * Runny nose • **"**Usage Advice: Use this product for: * headaches and fever * body aches and pains * blocked/runny noses" • "Each tablet contains … Phenylephrine Hydrochloride 5mg - Phenylephrine helps to relieve blocked and runny noses." Referring to phenylephrine as an "active ingredient". Referring to the product as a "decongestant" (in the case of Codral Relief Cold & Flu + Decongestant). Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		Codral Cold & Flu Tablet Blister Pack (pharmacy only) Codral Relief Cold & Flu (general sale) Codral Relief Cold & Flu + Decongestant (general sale)
10	Codral Night *Tablet form*	13 July 2006	Paracetamol 500mg Phenylephrine Hydrochloride 5mg Chlorpheniramine Maleate 2mg	Statements made on the packaging: • "For the temporary relief of ✓ headaches and fever ✓ body aches and pain ✓ blocked or runny noses ✓ sore throat ✓ allows rest" Statements made on Codral website: • "Fast and effective night time relief of multiple cold & flu symptoms: * Body aches & pain * Sore Throat	JNTL	Codral Night Tablet (pharmacy only) Codral Cold & Flu Night Time (pharmacy only)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				* Headaches * Fever * Blocked Nose * Runny nose * Allows you to rest" • **"**Usage Advice: Use this product for: * headaches and fever * body aches and pains * blocked/runny noses * sneezing/watery eyes" "Phenylephrine Hydrochloride 5mg - Phenylephrine helps to relieve blocked and runny noses." Referring to phenylephrine as an "active ingredient" Using the phrase "Codral" in respect of the product Further historic and current statements to be particularised following discovery.		Codral Nighttime (pharmacy only) Codral Nighttime Cold & Flu (pharmacy only)
11	Codral Mucus Cough +Cold *Liquid form (Oral solution)*	10 March 2011	Guaiphenesin 100mg Phenylephrine Hydrochloride 5mg	Statements made on the packaging: • "✓ Relieves chesty cough✓ Helps to expel mucus more easily✓ clears blocked or runny nose" Statements made on the Codral Website: • "A non-drowsy cough formula to: * Clear blocked or runny nose * Help expel mucus from your chest more easily * Relieve heavy, chesty coughs" • "Phenylephrine Hydrochloride 5mg Phenylephrine helps to relieve blocked and runny noses."	JNTL	Codral Mucus Cough & Cold Oral Solution (general sale) Codral Relief Mucus Cough & Cold (general sale)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				• "Use this product for: To relieve heavy, chesty coughs by helping to clear mucus from your chest more easily To clear a blocked or runny nose. Referring to phenylephrine as an "active ingredient". Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		
12	Codral Cold & Flu +Mucus Cough *Powder form*	1 March 2012	Paracetamol 1000mg Guaiphenesin 200mg Phenylephrine Hydrochloride12.2mg	Statements made on the packaging: • "For the temporary relief of ✓ Headaches ✓ blocked or runny nose ✓ fever ✓ body aches and pain ✓ sore throat ✓ chesty cough" Statements made on the Codral website: • "Lemon flavoured hot drink to provide fast, soothing relief that hits 6 cold & flu symptoms: Headaches Fever Body aches & pain Blocked & runny nose Sore throat Chesty cough"	JNTL	Codral Cold & Flu + Mucus Cough Powder for oral solution (general sale) Codral Relief Max Strength 6 Signs Cold & Flu (general sale)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				• "Phenylephrine Hydrochloride12.2mg Phenylephrine helps to relieve blocked and runny noses." • "Use this product for: Headaches Fever Body aches & pain Blocked & runny nose Sore throat Chesty cough" Referring to phenylephrine as an "active ingredient". Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		
13	Codral Cold & Flu *Powder form*	18 August 2011	Paracetamol 1000mg Phenylephrine Hydrochloride 12.2mg	Statements made on the packaging: • "For the temporary relief of ✓ Headaches and fever ✓ body aches and pain ✓ blocked or runny nose ✓ sore throat" Statements made on the Codral website: • "Fast and effective lemon hot drink, for soothing relief of: Headaches and Fever Body aches & pain Blocked nose Runny nose Sore throat"	JNTL	Codral Cold & Flu Powder for oral solution (general sale) Codral Relief Max Strength Cold & Flu + Decongestant (general sale)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				• "Phenylephrine Hydrochloride 12.2mg Phenylephrine helps to relieve blocked and runny noses." • "Use this product for: headaches & fever body aches & pain blocked nose runny nose sore throat" Referring to phenylephrine as an "active ingredient". Referring to the product as a "decongestant". Using the phrase "Codral" in respect of the product. Further historic and current statements to be particularised following discovery.		
Benadryl branded products – Collectively referred to as the **Benadryl Products**						
14	Bendadryl PE Chesty Cough & Nasal Congestion *Syrup form*	16 December 2009	Guaiphenesin 100 mg Phenylephrine Hydrochloride 5 mg.	Statements made on the packaging: • "✓ Relieves chesty coughs ✓ clears blocked or runny nose" Statements made on Kenvue website: • **"**BENADRYL® Chesty Cough & Nasal Congestion is non-drowsy to relieve chesty coughs and clear blocked or runny noses, fast." • "Use this product: To provide fast relief from chesty coughs by helping to clear phlegm from your chest more easily.	JNTL	Benadryl PE Chesty Cough & Nasal Congestion Cough Syrup (pharmacy only) Benadryl PE for the Family Chesty Cough & Nasal Congestion (pharmacy only)

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
				To clear a blocked or runny nose." Referring to phenylephrine as an "active ingredient". Using the phrase "Benadryl" in respect of the product. Further historic and current statements to be particularised following discovery.		
Products that have previously been available for purchase in New Zealand but are not currently sold in New Zealand – Collectively referred to as the **Historic Products**						
15	Codral Cold & Flu Sore Throat *Tablet form*	23 June 2011	Ibuprofen Phenylephrine Hydrochloride (in quantities to be particularised following discovery)	To be particularised following discovery.	The historic sponsor was J&J (NZ). There is no current sponsor, approval having lapsed.	Codral Cold & Flu Sore Throat Tablet with Ibuprofen (pharmacy only) Codral Cold & Flu Sore Throat Tablet with Ibuprofen (general sale)
16	Day & Night Cold & Flu + Cough Combination	23 March 2006	Chlorphenamine Dextromethorp	To be particularised following discovery.	The historic sponsor was J&J	Day & Night Cold & Flu + Cough Combination (new formula) (pharmacy

No	Products available for purchase in NZ (the "Products")	Marketing Authorisation approval date	Active ingredients	Statements made	Sponsor	Marketing Authorisations relevant to product
	Tablet form		han Paracetamol Phenylephrine Hydrochloride (in quantities to be particularised following discovery)		(NZ). There is no current sponsor, approval having lapsed.	only)
17	Benadryl Mucus Relief Plus Decongestant *Liquid form*	20 May 2010	Guaiphenesin 100 mg Phenylephrine Hydrochloride 5 mg	To be particularised following discovery.	The historic sponsor was J&J (NZ). There is no current sponsor, approval having lapsed.	Benadryl Mucus Relief Plus Decongestant Cough Liquid