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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

<p>Ingrid Moran, Individually and as) Guardian Ad Litem to M.B., a minor,) and I.B., a minor,) Plaintiffs,) v.) CVS Pharmacy, Inc.,) Defendant)</p>	<p>Civil Action No.: ORIGINAL COMPLAINT <u>DEMAND FOR JURY TRIAL</u></p>
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PLAINTIFFS' ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff Ingrid Moran and Plaintiff M.B., a minor, and Plaintiff I.B., a minor, pursuant to Fed. R. Civ. P. 17(c)(1)(A), by and through their undersigned counsel, bring this Complaint for damages against Defendant CVS Pharmacy, Inc. (hereinafter, "Defendant") and in support, state the following:

1. This is an action brought on behalf of Plaintiffs, Ingrid Moran (hereinafter, "Plaintiff Mother"), the natural and general guardian and mother of M.B., a minor, and I.B., a minor (hereinafter, "Plaintiff Child" or "Plaintiff Children"), arising out of the failure of

1 Defendant to warn about the dangers of prenatal exposure to Paracetamol, also known as
2 Acetaminophen (hereinafter “APAP”). As a result, Plaintiffs have suffered permanent injuries
3 and significant pain and suffering, emotional distress, lost wages and earning capacity, and
4 diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally
5 entitled.

6 2. Defendant entirely failed its duty to adequately warn of the hazards of prenatal
7 exposure to APAP, which was a direct and proximate cause of Plaintiffs’ injuries and associated
8 damages.

9 **STATEMENT OF PARTIES**

10 3. At all material times Plaintiffs have been citizens and residents of Alameda
11 County, California, and the United States.

12 4. CVS Pharmacy, Inc. is incorporated in Delaware with its principal place of
13 business in Woonsocket, Rhode Island.

14 5. CVS Pharmacy, Inc. is involved in the research, development, testing,
15 manufacture, labeling, production, marketing, promotion, and/or sale of APAP through its over-
16 the-counter store brand, acetaminophen (hereinafter, the “APAP Products”).

17 6. CVS Pharmacy, Inc. is individually, and jointly and severally liable to Plaintiffs
18 for damages they suffered, arising from Each Defendant’s design, manufacture, marketing,
19 labeling, distribution, sale, and placement of the defective APAP Products into the market,
20 effectuated directly and indirectly through its agents, servants, employees, and/or owners, all
21 acting within the course and scope of its agencies, services, employments, and/or ownership.

22 7. CVS Pharmacy, Inc. is vicariously liable for the acts and/or omissions of its
23 employees and/or agents, who were at all material times acting on behalf of CVS Pharmacy,
24 Inc. and within the scope of its employment or agency.

25 **VENUE, JURISDICTION, and DIVISIONAL ASSIGNMENT**

26 8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a), based on
27 complete diversity of citizenship between Plaintiffs and Defendant. *See supra* ¶¶ 3–4.

28 9. The amount in controversy exceeds \$75,000.

1 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or
2 omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

3 11. Divisional Assignment: this case should be assigned to the Oakland division of
4 this district pursuant to Local Rule 3-2(c) because a substantial part of the events or omissions
5 giving rise to this action occurred in Alameda, California.

6 12. Defendant has and continues to conduct substantial business in the State of
7 California and in this District, distributes the APAP Products in this District, receives
8 substantial compensation and profits from sales of the APAP Products in this District, and has
9 made material omissions and misrepresentations and breaches of warranties in this District and
10 caused injuries in this District to Plaintiffs, among others, so as to subject Defendant to in
11 personam jurisdiction in this District. It was foreseeable at all times that Defendant could be
12 haled into court in the State of California for its conduct that caused injuries to citizens of
13 California, like Plaintiffs in this action. An exercise of in personam jurisdiction by this Court
14 over Defendant comports fully with due process and does not offend traditional notions of fair
15 play and substantial justice.

16 13. Defendant is registered to transact business in California.

17 **FACTS COMMON TO ALL COUNTS**

18 **APAP Is Marketed as the Safe Pain Reliever**

19 **for Pregnant Women, but APAP Can Cause ASD/ADHD in Children**

20 14. APAP is widely used by pregnant women to relieve pain or discomfort during
21 the term of their pregnancy.

22 15. APAP was initially discovered in the late 1800’s.

23 16. APAP was introduced to the US market in 1955 as the first aspirin-free pain
24 reliever. APAP was originally marketed and sold as a product to reduce fever in children,
25 packaged like a red fire truck with the slogan, “for little hotheads.”

26 17. Billions of units of APAP are sold annually in North America alone.

27 18. APAP has long been marketed as the safest, and the *only* appropriate, over-the-
28 counter pain relief drug on the market for pregnant women.

1 19. Forty to 65% of pregnant women in the United States use APAP during
2 pregnancy.

3 20. Based upon information and belief, a majority of women who use APAP during
4 pregnancy do so electively for the treatment of headaches, muscle pain, back pain, and
5 discomfort.

6 21. These pregnant women electively choose to take APAP because Defendant has
7 marketed APAP as a safe pain reliever for pregnant women.

8 22. However, scientific and epidemiological research shows that prenatal exposure
9 to APAP alters fetal development significantly increasing the risks of neurodevelopmental
10 disorders, including but not limited to, autism spectrum disorder (“ASD”) and attention-
11 deficit/hyperactivity disorder (“ADHD”).

12 23. Undisturbed development of the human brain in utero is vital to the health and
13 wellness of a child’s development. The human brain is vulnerable and extremely sensitive in
14 utero. During this sensitive time-period in utero, certain chemicals have been found to cause
15 permanent brain injury at low exposure levels.

16 24. Once ingested by the mother, APAP is known to readily cross the placenta and
17 blood-brain barrier.

18 25. ASD is a serious neurological and developmental disorder that affects how
19 people interact with others, communicate, learn, and behave.

20 26. There are three functional levels of ASD, with Level 1 requiring support with
21 activities of daily living, Level 2 requiring substantial support with activities of daily living, and
22 Level 3 requiring very substantial support with activities of daily living.

23 27. Treatments for ASD include behavioral management therapy, cognitive behavior
24 therapy, joint attention therapies, medications, occupational therapy, physical therapy, social
25 skill training, and speech-language therapy. Treatment for ASD lasts a lifetime, as there is no
26 cure.

27 28. ADHD is a chronic neurodevelopmental disorder resulting in attention difficulty,
28 hyperactivity, and impulsiveness.

1 29. ADHD begins in childhood and persists through adulthood. ADHD contributes
2 to low self-esteem, troubled relationships, and difficulty with school, work, and familial
3 relationships.

4 30. Treatments for ADHD, include, but are not limited to, chronic medication usage
5 and various therapies. Treatment for ADHD lasts a lifetime, as there is no cure.

6 31. In or around 2018, the Center for Disease Control and Prevention (“CDC”)
7 found that 1 in 44 (2.3%) 8-year-old children have been diagnosed with ASD.

8 32. This represents an increase from a prior CDC finding that 1 in 68 U.S. children
9 born in 2002 have ASD, which already represented a more than a 100% increase compared with
10 children born a decade prior.

11 33. As of 2019, 8.8% of children had been diagnosed with ADHD, or roughly
12 325,000 children per year.

13 34. Parental awareness and changes in diagnoses do not account for the rapid rise in
14 these diagnoses.

15 35. Rather, neurotoxic exposures, such as prenatal APAP exposure, explain a
16 trending increase in diagnosis.

17 36. For years, the scientific community has published studies showing that prenatal
18 ingestion of APAP can cause ASD and ADHD.

19 37. For instance, since 2013, there have been six European birth cohort studies,
20 examining over 70,000 mother-child pairs, showing the association between prenatal use of
21 APAP and ASD and ADHD.

22 38. The overall body of scientific evidence has shown that prenatal use of APAP can
23 cause ASD and ADHD in the child.

24 39. During all relevant times herein, Defendant was engaged in the business of
25 manufacturing and selling the APAP Products in the United States, and the weight of the
26 scientific evidence available showed prenatal exposure to APAP significantly increases the risk
27 of neurodevelopmental disorders in children exposed to APAP prenatally, including but not
28 limited to ASD and ADHD.

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