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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRUSHTI DAVE, ARLENE BERGUM,
EMILY DEPOL, KEYA JOHNIGAN,
and BRIANNA MCKAY, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

ABBOTT LABORATORIES,
ALERE, PROCTER & GAMBLE
MANUFACTURING COMPANY, SPD
SWISS PRECISION DIAGNOSTICS
GMBH, CHURCH & DWIGHT CO.,
INC., TARGET CORPORATION, and
WALGREEN CO.,

Defendants.

Case No. 3:22-cv-5191

COMPLAINT FOR VIOLATIONS
OF CALIFORNIA'S CONSUMERS
LEGAL REMEDIES ACT, CAL.
CIV. CODE §§ 1750-1785, UNFAIR
COMPETITION LAW, CAL. BUS. &
PROF. CODE §17200, AND FALSE
ADVERTISING LAW, CAL. BUS. &
PROF. CODE § 17500, ET SEQ.

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Prushti Dave, Arlene Bergum, Emily DePol, Keya Johnigan, and
2 Brianna Mckay (collectively “Plaintiffs”), by and through their undersigned
3 attorneys, bring this class action complaint on behalf of themselves and all others
4 similarly situated as defined below (the “Class”), alleging facts related to their own
5 purchases based on personal knowledge and all other facts based upon the
6 investigation of counsel.

7 **PRELIMINARY STATEMENT**

8 1. Defendants Abbott Laboratories (“Abbott”), Alere (“Alere”), Procter
9 & Gamble Manufacturing Company (“Procter & Gamble”), SPD Swiss Precision
10 Diagnostics GmbH (“SPD”), Church & Dwight Co., Inc. (“Church & Dwight”),
11 Target Corporation (“Target”), and Walgreen Co. (“Walgreens”) (collectively,
12 “Defendants”) produce, market, label and sell various ovulation test kits (the
13 “Ovulation Test Kits” or “Defendants’ Kits”) in the state of California and
14 throughout the United States.

15 2. Millions of people buy and rely upon the Ovulation Test Kits for
16 family planning purposes. Defendants’ Kits are advertised as being able to tell
17 women with 99% or greater accuracy when they will ovulate, and thus when they
18 are the most fertile and most likely to be able to become pregnant.

19 3. However, the Ovulation Test Kits do not predict ovulation with 99%
20 or greater accuracy. The Kits merely test levels of Luteinizing Hormone (“LH”),
21 which may or may not indicate ovulation will occur. LH is made by a person’s
22 pituitary gland and is present in varying levels for people of all genders. LH levels
23 generally rise quickly just before ovulation in women, but LH levels can spike at
24 varying times in the menstrual cycle for a variety of other reasons unrelated to
25 ovulation. Defendants’ Kits identify when a person has a spike in LH—not when
26 ovulation will occur.

27 4. Defendants intentionally mislabel their Kits as ovulation test kits.

1 Defendants know that their Kits test LH and not ovulation, but marketing their
2 products as “Luteinizing Hormone Test Kits,” which may or may not predict
3 ovulation, would be far less attractive to women seeking to get pregnant. False
4 promises such as these allow Defendants to capitalize on reproductive anxiety and
5 reap massive profits, well in excess of \$5,000,000 each year from unwitting
6 consumers.

7 5. This action arises out of deceptive and otherwise improper business
8 practices that Defendants engaged in with respect to the packaging of certain
9 ovulation test kits, detailed below, which are packaged in boxes and regularly sold
10 in major supermarkets, grocery stores, convenience stores, and pharmacies
11 throughout the United States, as well as on Amazon and other online retailers.

12 **JURISDICTION AND VENUE**

13 6. Diversity subject matter jurisdiction exists over this class action
14 pursuant to the Class Action Fairness Act of 2005, conferring federal jurisdiction
15 over class actions involving: (a) 100 or more members in the proposed class; (b)
16 where at least some members of the proposed class have different citizenship from
17 some defendants; and (c) where the claims of the proposed class members exceed
18 the sum or value of five million dollars (\$5,000,000) in the aggregate. 28 U.S.C.
19 § 1332(d)(2) and (6).

20 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because
21 a substantial part of the events giving rise to Plaintiffs’ claims occurred in this
22 district, and Defendants are subject to personal jurisdiction in this district.
23 Defendants marketed and sold the products at issue in this action within this judicial
24 district and do business within this judicial district.

PARTIES

A. Plaintiffs

8. Plaintiff Prushti Dave is a citizen of the state of California and at all relevant times has resided in Alameda County.

9. Between December 2020 and January 2021, Plaintiff Dave purchased, for her own use, Procter & Gamble's, Abbott's, Alere's, and SPD's (collectively, the "Clearblue Defendants") ovulation test kits marketed and sold under their brand name Clearblue, in Alameda County, California. Plaintiff Dave reasonably expected that these products would test, with over 99% accuracy, whether she would ovulate in the next 24-36 hours, and not merely whether she was having an LH surge that may or may not be connected to ovulation. As a result of the Clearblue Defendants' deceptive packaging, Plaintiff Dave was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket losses. Plaintiff Dave expects to continue to purchase ovulation test kits, including the Clearblue Defendants' kits, in the future.

10. Plaintiff Arlene Bergum is a citizen of the state of California and at all relevant times has resided in San Diego County.

11. In or about April 2019, Plaintiff Bergum purchased, for her own use, Church & Dwight's ovulation test kits, marketed and sold under its brand name First Response, in San Diego County, California, from a Target retail store. Plaintiff Bergum reasonably expected that this product would test, with over 99% accuracy, whether she would ovulate in the next 24-36 hours, and not merely whether she was having an LH surge that may or may not be connected to ovulation. As a result of Church & Dwight's deceptive packaging, Plaintiff Bergum was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket losses. Plaintiff Bergum expects to continue to purchase ovulation test kits, including Church & Dwight's, in the future.

1 12. Plaintiff Emily DePol is a citizen of the state of California and at all
2 relevant times has resided in Alameda County.

3 13. Between September and December 2020, Plaintiff DePol purchased,
4 for her own use, Target's ovulation test kits, marketed and sold under its trademark
5 up & up, in Sacramento County, California. Plaintiff DePol reasonably expected
6 that these products would test, with an accuracy of 99%, whether she would ovulate
7 in the next 24-36 hours, and not merely whether she was having an LH surge that
8 may or may not be connected to ovulation. As a result of Target's deceptive
9 packaging, Plaintiff DePol was overcharged, did not receive the benefit of the
10 bargain, and/or suffered out-of-pocket losses. Plaintiff DePol expects to continue
11 to purchase ovulation test kits, including Target's kits, in the future.

12 14. Plaintiff Keya Johnigan is a citizen of the state of California and at all
13 relevant times has resided in Los Angeles County.

14 15. In or about March 2021, Plaintiff Johnigan purchased, for her own use,
15 Walgreens's ovulation test kits in Los Angeles County, California. Plaintiff
16 Johnigan reasonably expected that these products would test, with over 99%
17 accuracy, whether she would ovulate in the next 24-48 hours, and not merely
18 whether she was having an LH surge that may or may not be connected to ovulation.
19 As a result of Walgreens's deceptive packaging, Plaintiff Johnigan was
20 overcharged, did not receive the benefit of the bargain, and/or suffered out-of-
21 pocket losses. Plaintiff Johnigan expects to continue to purchase ovulation test kits,
22 including Walgreens' kits, in the future.

23 16. Plaintiff Brianna McKay is a citizen of the state of California and at
24 all relevant times has resided in Los Angeles County.

25 17. In or about September 2021, Plaintiff McKay purchased, for her own
26 use, Walgreens's ovulation test kits from a Walgreens store in Los Angeles County,
27 California. Plaintiff McKay reasonably expected that these products would test,

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