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8 Attorneys for Defendants
 9 STANDARD HOMEOPATHIC COMPANY,
 HYLAND'S INC., AND STANDARD
 HOMEOPATHIC LABORATORIES, INC.,

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12

13 ENZO FORCELLATI and LISA
 14 ROEMMICH, on Behalf of Themselves
 and all Others Similarly Situated,

15 Plaintiff,

16 v.

17 HYLAND'S INC., STANDARD
 18 HOMEOPATHIC LABORATORIES,
 INC., AND STANDARD
 19 HOMEOPATHIC COMPANY,

20 Defendant.

Case No.: 12-CV-1983-GHK (MEWx)

**DEFENDANTS HYLAND'S INC.,
 STANDARD HOMEOPATHIC
 LABORATORIES, INC., AND
 STANDARD HOMEOPATHIC
 COMPANY'S ANSWER TO
 CONSOLIDATED AMENDED
 CLASS ACTION COMPLAINT**

[DEMAND FOR JURY TRIAL]

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1 Defendants Hyland’s Inc., Standard Homeopathic Laboratories, Inc., and
2 Standard Homeopathic Company (collectively “Defendants”) hereby answer
3 Plaintiffs Enzo Forcellati and Lisa Roemmich’s (“Plaintiffs”) Consolidated
4 Amended Class Action Complaint (“Consolidated Complaint”) as follows:

5 1. The allegations in paragraph 1 contain a statement of the case to which
6 no response is required. The term “Cold and Flu Remedies,” as defined in
7 paragraph 1, is unclear as to whether it is limited to the specific products identified
8 in paragraph 1 or is intended to include other products not identified in paragraph 1.
9 For purposes of this Answer, Defendants understand the term “Cold and Flu
10 Remedies” to be limited to the specific products identified in paragraph 1.

11 2. Defendants deny the allegations in the first sentence of paragraph 2 to
12 the extent it implies that each of the “Cold and Flu Remedies” contain all such
13 representations. Defendants deny the remaining allegations in paragraph 2.

14 3. Defendants deny the allegations in paragraph 3.

15 4. Defendants admit the allegations in paragraph 4.

16 5. Defendants lack knowledge or information sufficient to form a belief
17 as to the truth of the allegations in paragraph 5 and on that basis deny the
18 allegations in paragraph 5.

19 6. Defendants lack knowledge or information sufficient to form a belief
20 as to the truth of the allegations in paragraph 6 and on that basis deny the
21 allegations in paragraph 6.

22 7. Defendants deny that Hyland’s is engaged in the business of
23 manufacturing homeopathic formulas. Defendants admit the remaining allegations
24 in paragraph 7.

25 8. Defendants admit the allegations in paragraph 8 except that, to the
26 extent Plaintiffs allege the contents of the referenced website, that website speaks
27 for itself, and Defendants deny the allegations in paragraph 8 to the extent that they
28 are inconsistent with the contents of such website.

1 9. Defendants admit the allegations in the first sentence of paragraph 9.
2 Defendants admit that Standard Homeopathic Company has three wholly owned
3 subsidiaries: Hyland’s Inc., Walker Laboratories, Inc., and Standard Homeopathic
4 Laboratories. Except as specifically admitted herein, Defendants deny each and
5 every remaining allegation in paragraph 9.

6 10. Defendants deny that they produce homeopathic products throughout
7 the United States because Defendants manufacturing facilities are located in
8 California. Defendants admit the remaining allegations in the first sentence of
9 paragraph 10. Defendants admit that they maintain manufacturing, distribution,
10 marketing and warehousing operations in Los Angeles, California, but lack
11 knowledge or information sufficient to form a belief as to Plaintiffs’ intended
12 meaning of the terms “long” and “substantial” in the second sentence of paragraph
13 10 and on that basis deny such characterization of their operations.

14 11. Defendants lack knowledge or information sufficient to form a belief
15 as to the truth of the allegations in the first sentence of paragraph 11, and on that
16 basis deny the allegations in the first sentence of paragraph 11. Defendants deny
17 the allegations in the second sentence of paragraph 11.

18 12. Paragraph 12 contains legal conclusions to which no response is
19 required.

20 13. Defendants deny the allegations in paragraph 13.

21 14. The allegations in the first sentence of paragraph 14 are legal
22 conclusions to which no response is required. Defendants admit the second
23 sentence of paragraph 14.

24 15. Defendants admit the allegations in paragraph 15.

25 16. Defendants admit the allegations in paragraph 16 except, to the extent
26 Plaintiffs allege the contents of the document cited, that document speaks for itself,
27 and Defendants deny the allegations in paragraph 16 to the extent that they are
28 inconsistent with the contents of such document.

1 17. Defendants lack knowledge or information sufficient to form a belief
2 as to whether 1796 was the year in which Samuel Hahnemann first stated the “Like-
3 Cure-Like” principle of homeopathy and on that basis deny that allegation in the
4 first sentence of paragraph 17. Defendants admit the remaining allegations in the
5 first two sentences of paragraph 17. To the extent Plaintiffs allege the contents of
6 the document cited in the third sentence of paragraph 17, the document speaks for
7 itself, and Defendants deny the allegations in the third sentence of paragraph 17 to
8 the extent that they are inconsistent with the contents of such document.

9 18. Defendants deny the allegations in the first sentence in paragraph 18.
10 Defendants deny that “coffee” is listed on the label of Hyland’s Nighttime Cold ‘n
11 Cough as alleged in the second sentence of paragraph 18. To the extent the
12 remaining allegations in paragraph 18 allege the contents of the document cited,
13 that document speaks for itself, and Defendants deny the remaining allegations in
14 paragraph 18 to the extent they are inconsistent with the contents of such document.

15 19. To the extent Plaintiffs allege the contents of the document cited, that
16 document speaks for itself, and Defendants deny the allegations in paragraph 19 to
17 the extent that they are inconsistent with the contents of such document. Except as
18 specifically admitted herein, Defendants deny each and every remaining allegation
19 in paragraph 19.

20 20. Defendants admit the allegations in the first sentence in paragraph 20.
21 Defendants deny the remaining allegations in paragraph 20.

22 21. To the extent Plaintiffs allege the contents of the document cited, that
23 document speaks for itself, and Defendants deny the allegations in paragraph 21 to
24 the extent that they are inconsistent with the contents of such document. Except as
25 specifically admitted herein, Defendants deny each and every remaining allegation
26 in paragraph 21.

27 22. Defendants deny the implication in the first sentence that any of their
28 homeopathic remedies are “poisonous.” Defendants admit the allegation in the

1 third sentence of paragraph 22 that some of Defendants' homeopathic products for
2 children list belladonna as an ingredient but deny the remaining allegations in that
3 sentence. Defendants deny that Hyland's Cold and Flu Remedies contain potash or
4 soda ash. Defendants admit the remaining allegations in paragraph 22.

5 23. Defendants admit the allegations in paragraph 23.

6 24. Defendants admit the first two sentences of paragraph 24. Defendants
7 deny the third sentence of paragraph 24. Defendants lack knowledge or
8 information sufficient to form a belief as to the truth of the remaining allegations in
9 paragraph 24 and on that basis deny the remaining allegations in paragraph 24.

10 25. Defendants deny that the homeopathic procedure described in
11 paragraph 25 is called "succession." Defendants admit the remaining allegations in
12 paragraph 25.

13 26. To the extent Plaintiffs allege the contents of the document cited, that
14 document speaks for itself, and Defendants deny the allegations in paragraph 26 to
15 the extent that they are inconsistent with the contents of such document. Except as
16 specifically admitted herein, Defendants deny each and every remaining allegation
17 in paragraph 26.

18 27. To the extent Plaintiffs allege the contents of the document cited, that
19 document speaks for itself, and Defendants deny the allegations in paragraph 27 to
20 the extent that they are inconsistent with the contents of such document. Except as
21 specifically admitted herein, Defendants deny each and every remaining allegation
22 in paragraph 27.

23 28. To the extent Plaintiffs allege the contents of the document cited, that
24 document speaks for itself, and Defendants deny the allegations in paragraph 28 to
25 the extent that they are inconsistent with the contents of such document and deny
26 the characterization and conclusions Plaintiffs draw therefrom. Except as
27 specifically admitted herein, Defendants deny each and every remaining allegation
28 in paragraph 28.

1 29. Defendants admit the allegations in the first sentence of paragraph 29.
2 Defendants admit that the results were published in The Lancet but deny the
3 remaining allegations of the second sentence of paragraph 29. To the extent the
4 remaining allegations in paragraph 29 allege the contents of the document cited,
5 that document speaks for itself, and Defendants deny the remaining allegations in
6 paragraph 29 to the extent that they are inconsistent with the contents of such
7 document. Except as specifically admitted herein, Defendants deny each and every
8 remaining allegation in paragraph 29.

9 30. To the extent Plaintiffs allege the contents of the document cited, that
10 document speaks for itself, and Defendants deny the allegations in paragraph 30 to
11 the extent that they are inconsistent with the contents of such document. Except as
12 specifically admitted herein, Defendants deny each and every remaining allegation
13 in paragraph 30.

14 31. Paragraph 31 contains legal conclusions to which no response is
15 required. To the extent Plaintiffs allege the contents of the Federal Food, Drug, and
16 Cosmetic Act (“FDCA”) and *Wyeth v. Levine*, 129 S. Ct. 1187, 1198-99 (2009), the
17 statutes and the *Wyeth* opinion speak for themselves, and Defendants deny the
18 allegations of Plaintiffs to the extent they are inconsistent with the contents of those
19 statutes and the *Wyeth* opinion. Except as expressly admitted herein, Defendants
20 deny each and every allegation contained in paragraph 31.

21 32. Paragraph 32 contains legal conclusions to which no response is
22 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes
23 or regulations, the statutes and regulations speak for themselves, and Defendants
24 deny the allegations of Plaintiffs to the extent they are inconsistent with the
25 contents of those statutes and regulations. Except as expressly admitted herein,
26 Defendants deny each and every allegation contained in paragraph 32.

27 33. Paragraph 33 contains legal conclusions to which no response is
28 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes

1 or regulations, the statutes and regulations speak for themselves, and Defendants
2 deny the allegations of Plaintiffs to the extent they are inconsistent with the
3 contents of those statutes and regulations. Except as expressly admitted herein,
4 Defendants deny each and every allegation contained in paragraph 33.

5 34. Paragraph 34 contains legal conclusions to which no response is
6 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes
7 or regulations, the statutes and regulations speak for themselves, and Defendants
8 deny the allegations of Plaintiffs to the extent they are inconsistent with the
9 contents of those statutes and regulations. Except as expressly admitted herein,
10 Defendants deny each and every allegation contained in paragraph 34.

11 35. To the extent Plaintiffs allege the contents of the document from which
12 they quote, that document speaks for itself, and Defendants deny the allegations in
13 paragraph 35 to the extent that they are inconsistent with the contents of such
14 document. Except as specifically admitted herein, Defendants deny each and every
15 remaining allegation in paragraph 35.

16 36. Paragraph 36 contains legal conclusions to which no response is
17 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes,
18 regulations, or documents, the statutes, regulations, and documents speak for
19 themselves, and Defendants deny the allegations of Plaintiffs to the extent they are
20 inconsistent with the contents of those statutes, regulations, and documents. Except
21 as expressly admitted herein, Defendants deny each and every allegation contained
22 in paragraph 36.

23 37. The first sentence of paragraph 37 contains legal conclusions to which
24 no response is required. To the extent Plaintiffs allege the contents of the FDCA or
25 other statutes, regulations, or documents, the statutes, regulations, and documents
26 speak for themselves, and Defendants deny the allegations of Plaintiffs to the extent
27 they are inconsistent with the contents of those statutes, regulations, and documents.
28

1 Except as expressly admitted herein, Defendants deny each and every allegation
2 contained in paragraph 37.

3 38. Defendants admit that certain homeopathic drug substances are
4 included in the HPUS after having been subjected to provings. Defendants deny
5 the remaining allegations in paragraph 38.

6 39. To the extent Plaintiffs allege the contents of the FDCA or other
7 statutes, regulations, or documents, the statutes, regulations, and documents speak
8 for themselves, and Defendants deny the allegations of Plaintiffs to the extent they
9 are inconsistent with the contents of those statutes, regulations, and documents.
10 Except as expressly admitted herein, Defendants deny each and every allegation
11 contained in paragraph 39.

12 40. Paragraph 40 contains legal conclusions to which no response is
13 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes,
14 regulations, or documents, the statutes, regulations, and documents speak for
15 themselves, and Defendants deny the allegations of Plaintiffs to the extent they are
16 inconsistent with the contents of those statutes, regulations, and documents. Except
17 as expressly admitted herein, Defendants deny each and every allegation contained
18 in paragraph 40.

19 41. Paragraph 41 contains legal conclusions to which no response is
20 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes,
21 regulations, or documents, the statutes, regulations, and documents speak for
22 themselves, and Defendants deny the allegations of Plaintiffs to the extent they are
23 inconsistent with the contents of those statutes, regulations, and documents. Except
24 as expressly admitted herein, Defendants deny each and every allegation contained
25 in paragraph 41.

26 42. Defendants admit the first sentence of paragraph 42. Defendants deny
27 the remaining allegations of paragraph 42 to the extent it implies the Defendants
28

1 developed “combination” homeopathic medicines in response to conventional
2 medicines.

3 43. Defendants admit the allegations in paragraph 43 except denies that it
4 engaged in “aggressive marketing to take advantage of the increasing demand for
5 medicines that are perceived as effective without carrying negative side effects.”

6 44. Defendants admit that it was mentioned in the article entitled “Savvy
7 labeling and container design can ensure a sale at first sight.” To the extent
8 Plaintiffs allege the contents of the document cited, that document speaks for itself,
9 and Defendants deny the allegations in paragraph 44 to the extent that they are
10 inconsistent with the contents of such document. Except as specifically admitted
11 herein, Defendants deny each and every remaining allegation in paragraph 44.

12 45. Paragraph 45 contains legal conclusions to which no response is
13 required. To the extent Plaintiffs allege the contents of the FDCA or other statutes
14 or regulations, the statutes and regulations speak for themselves, and Defendants
15 deny the allegations of Plaintiffs to the extent they are inconsistent with the
16 contents of those statutes and regulations. Except as expressly admitted herein,
17 Defendants deny each and every allegation contained in paragraph 45.

18 46. Defendants deny the allegations in paragraph 46.

19 47. Defendants admit the allegations in paragraph 47.

20 48. Defendants deny the allegations in paragraph 48.

21 49. Defendants admit the allegations in paragraph 49 except denies that
22 the phrase “quick relief” appears on the product packaging.

23 50. Defendants admit the allegations in paragraph 50.

24 51. Defendants admit the allegations in paragraph 51 except deny as to the
25 terms “runny nose” and “multi-symptom.”

26 52. Defendants lack knowledge or information sufficient to form a belief
27 as to what is intended by the phrase “similar representations” and on that basis deny
28 the allegations in the first sentence of paragraph 52. Defendants admit the

1 allegations in the second sentence of paragraph 52, except deny that the packaging
2 and labels of each of the “Cold and Flu Remedies” contains the phrase “safe and
3 effective.” To the extent Plaintiffs allege the contents of the document cited, that
4 document speaks for itself, and Defendants deny the allegations in paragraph 52 to
5 the extent that they are inconsistent with the contents of such document. Except as
6 specifically admitted herein, Defendants deny each and every remaining allegation
7 in paragraph 52.

8 53. Defendants deny the allegations in paragraph 53.

9 54. To the extent Plaintiffs allege the contents of the document cited, that
10 document speaks for itself, and Defendants deny the allegations in paragraph 54 to
11 the extent that they are inconsistent with the contents of such document. Except as
12 specifically admitted herein, Defendants deny each and every remaining allegation
13 in paragraph 54.

14 55. To the extent Plaintiffs alleges the contents of the document cited, that
15 document speaks for itself, and Defendants deny the allegations in paragraph 55 to
16 the extent that they are inconsistent with the contents of such document. Except as
17 specifically admitted herein, Defendants deny each and every remaining allegation
18 in paragraph 55.

19 56. Defendants deny the allegations in paragraph 56.

20 57. Defendants deny the allegations in paragraph 57.

21 58. Defendants admit that the quote in paragraph 58 appears on their
22 website. To the extent Plaintiffs allege the contents of the document cited, that
23 document speaks for itself, and Defendants deny the allegations in paragraph 58 to
24 the extent that they are inconsistent with the contents of such document. Except as
25 specifically admitted herein, Defendants deny each and every remaining allegation
26 in paragraph 58.

27 59. Defendants admit that the quote in paragraph 59 appears on their
28 website. To the extent Plaintiffs allege the contents of the document cited, that

1 document speaks for itself, and Defendants deny the allegations in paragraph 59 to
2 the extent that they are inconsistent with the contents of such document. Except as
3 specifically admitted herein, Defendants deny each and every remaining allegation
4 in paragraph 59.

5 60. Defendants admit that the quote in paragraph 60 appears on their
6 website. To the extent Plaintiffs allege the contents of the document cited, that
7 document speaks for itself, and Defendants deny the allegations in paragraph 60 to
8 the extent that they are inconsistent with the contents of such document. Except as
9 specifically admitted herein, Defendants deny each and every remaining allegation
10 in paragraph 60.

11 61. Defendants admit that the quote in paragraph 61 appears on their
12 website. To the extent Plaintiffs allege the contents of the document cited, that
13 document speaks for itself, and Defendants deny the allegations in paragraph 61 to
14 the extent that they are inconsistent with the contents of such document. Except as
15 specifically admitted herein, Defendants deny each and every remaining allegation
16 in paragraph 61.

17 62. To the extent Plaintiffs allege the contents of the document cited, that
18 document speaks for itself, and Defendants deny the allegations in paragraph 62 to
19 the extent that they are inconsistent with the contents of such document. Except as
20 specifically admitted herein, Defendants deny each and every remaining allegation
21 in paragraph 62.

22 63. Defendants deny the allegations in paragraph 63.

23 64. Defendants deny the allegations in paragraph 64.

24 65. Defendants deny the allegations in paragraph 65.

25 66. Defendants admit the first sentence of paragraph 66. Defendants deny
26 the remaining allegations in paragraph 66.

27 67. To the extent Plaintiffs allege the contents of the document cited, that
28 document speaks for itself, and Defendants deny the allegations in paragraph 67 to

1 the extent that they are inconsistent with the contents of such document. Except as
2 specifically admitted herein, Defendants deny each and every remaining allegation
3 in paragraph 67.

4 68. To the extent Plaintiffs allege the contents of the document cited, that
5 document speaks for itself, and Defendants deny the allegations in paragraph 68 to
6 the extent that they are inconsistent with the contents of such document. Except as
7 specifically admitted herein, Defendants deny each and every remaining allegation
8 in paragraph 68.

9 69. To the extent Plaintiffs allege the contents of the document cited, that
10 document speaks for itself, and Defendants deny the allegations in paragraph 69 to
11 the extent that they are inconsistent with the contents of such document. Except as
12 specifically admitted herein, Defendants deny each and every remaining allegation
13 in paragraph 69.

14 70. Defendants deny the allegations in paragraph 70.

15 71. Defendants deny the allegations in paragraph 71.

16 72. Defendants deny the allegations in paragraph 72.

17 73. Defendants deny the allegations in paragraph 73.

18 74. Defendants deny the allegations in paragraph 74.

19 75. Defendants deny the allegations in paragraph 75.

20 76. Defendants lack knowledge or information sufficient to form a belief
21 as to the truth of the allegations in paragraph 76 and on that basis deny the
22 allegations in paragraph 76.

23 77. Defendants deny the allegations in paragraph 77 to the extent they
24 imply that Hyland's Cold n' Cough is not an effective treatment. Defendants lack
25 knowledge or information sufficient to form a belief as to the truth of the remaining
26 allegations in paragraph 77 and on that basis deny the remaining allegations in
27 paragraph 77.

28

1 78. Defendants lack knowledge or information sufficient to form a belief
2 as to the truth of the allegations in paragraph 78 and on that basis deny the
3 allegations in paragraph 78.

4 79. Defendants lack knowledge or information sufficient to form a belief
5 as to the truth of the allegations in paragraph 79 and on that basis deny the
6 allegations in paragraph 79.

7 80. Defendants lack knowledge or information sufficient to form a belief
8 as to the truth of the allegations in paragraph 80 and on that basis deny the
9 allegations in paragraph 80.

10 81. Defendants deny the implication in paragraph 81 that they made
11 “misstatements” regarding Cold n’ Cough 4 Kids. Defendants lack knowledge or
12 information sufficient to form a belief as to the truth of the remaining allegations in
13 paragraph 81 and on that basis deny the remaining allegations in paragraph 81.

14 82. The allegations in paragraph 82 contain a statement of the case to
15 which no response is required.

16 83. The allegations in paragraph 83 contain a statement of the case to
17 which no response is required.

18 84. The allegations in paragraph 84 contain a statement of the case to
19 which no response is required.

20 85. The allegations in paragraph 85 contain a statement of the case to
21 which no response is required.

22 86. The allegations in paragraph 86 contain a statement of the case to
23 which no response is required.

24 87. The allegations in paragraph 87 contain a statement of the case to
25 which no response is required.

26 88. Defendants lack knowledge or information sufficient to form a belief
27 as to the truth of the allegations in paragraph 88 and on that basis deny the
28 allegations in paragraph 88.

1 89. To the extent Plaintiffs allege the contents of the document cited, that
2 document speaks for itself, and Defendants deny the allegations in paragraph 89 to
3 the extent that they are inconsistent with the contents of such document. Except as
4 specifically admitted herein, Defendants deny each and every remaining allegation
5 in paragraph 89.

6 90. Defendants deny the allegations in paragraph 90.

7 91. Defendants deny the allegations in paragraph 91.

8 92. Defendants deny the allegations in paragraph 92.

9 93. Defendants deny the allegations in paragraph 93.

10 94. Defendants reallege and incorporate herein by reference paragraphs 1
11 through 93 of their Answer.

12 95. Defendants admit that Plaintiffs purport to bring this action on behalf
13 of themselves and members of the Class, the New Jersey Subclass and the Missouri
14 Subclass. Except as expressly admitted herein, Defendants deny each and every
15 allegation contained in paragraph 95.

16 96. Paragraph 96 contains legal conclusions to which no response is
17 required.

18 97. Paragraph 97 contains legal conclusions to which no response is
19 required.

20 98. Paragraph 98 contains legal conclusions to which no response is
21 required.

22 99. Defendants deny the allegations in paragraph 99.

23 100. Defendants deny the allegations in paragraph 100.

24 101. Defendants deny the allegations in paragraph 101.

25 102. Defendants admit the allegations in paragraph 102.

26 103. As Plaintiffs' unjust enrichment claim was dismissed, with prejudice,
27 no response is required to this paragraph.
28

1 104. As Plaintiffs’ unjust enrichment claim was dismissed, with prejudice,
2 no response is required to this paragraph.

3 105. As Plaintiffs’ unjust enrichment claim was dismissed, with prejudice,
4 no response is required to this paragraph.

5 106. As Plaintiffs’ unjust enrichment claim was dismissed, with prejudice,
6 no response is required to this paragraph.

7 107. As Plaintiffs’ unjust enrichment claim was dismissed, with prejudice,
8 no response is required to this paragraph.

9 108. As Plaintiffs’ unjust enrichment claim was dismissed, with prejudice,
10 no response is required to this paragraph.

11 109. Defendants reallege and incorporate herein by reference paragraphs 1
12 through 108 of their Answer.

13 110. Defendants admit that Plaintiffs purport to bring this action on behalf
14 of themselves and members of the Class, the New Jersey Subclass and the Missouri
15 Subclass. Except as expressly admitted herein, Defendants deny each and every
16 allegation contained in paragraph 110.

17 111. Defendants deny the allegations in paragraph 111.

18 112. Defendants deny the allegations in paragraph 112.

19 113. Defendants deny the allegations in paragraph 113.

20 114. Defendants reallege and incorporate herein by reference paragraphs 1
21 through 113 of their Answer.

22 115. Defendants admit that Plaintiffs purport to bring this action on behalf
23 of themselves and members of the Class, the New Jersey Subclass and the Missouri
24 Subclass. Except as expressly admitted herein, Defendants deny each and every
25 allegation contained in paragraph 115.

26 116. Defendants deny the allegations in paragraph 116.

27 117. Defendants deny the allegations in paragraph 117.

28 118. Defendants deny the allegations in paragraph 118.

1 119. Defendants reallege and incorporate herein by reference paragraphs 1
2 through 118 of their Answer.

3 120. Defendants admit that Plaintiff Forcellati purports to bring this action
4 on behalf of the New Jersey Subclass under New Jersey law. Except as expressly
5 admitted herein, Defendants deny each and every allegation contained in paragraph
6 120.

7 121. Defendants deny the allegations in paragraph 121.

8 122. Defendants deny the allegations in paragraph 122.

9 123. Defendants reallege and incorporate herein by reference paragraphs 1
10 through 122 of their Answer.

11 124. Defendants admit that Plaintiffs purport to bring this action on behalf
12 of the Class. Plaintiffs' statement that "Hyland's Cold and Flu Remedies
13 constituted 'goods,' as that term is defined in Civ. Code § 1761(a)" is a legal
14 conclusion to which no response is required. Except as expressly admitted herein,
15 Defendants deny each and every allegation contained in paragraph 124.

16 125. Paragraph 125 contains legal conclusions to which no response is
17 required.

18 126. Paragraph 126 contains legal conclusions to which no response is
19 required.

20 127. Defendants deny the allegations in paragraph 127.

21 128. Defendants deny the allegations in paragraph 128.

22 129. Defendants deny the allegations in paragraph 129.

23 130. Defendants deny the allegations in paragraph 130.

24 131. Defendants deny the allegations in paragraph 131.

25 132. Defendants admit that a CLRA notice letter was served on Defendants
26 on February 29, 2012 purporting to be sent by Plaintiff Forcellati. Defendants
27 admit that a CLRA notice letter was served on Defendants on June 27, 2012
28 purporting to be sent by Plaintiff Roemmich. To the extent Plaintiffs allege the

1 contents of the documents cited, those documents speaks for themselves, and
2 Defendants deny the allegations in paragraph 132 to the extent that they are
3 inconsistent with the contents of each document. Defendants admit that Plaintiffs
4 seek damages, restitution, and injunctive relief for the alleged violation of the
5 CLRA. Except as specifically admitted herein, Defendants deny each and every
6 remaining allegation in paragraph 132.

7 133. Defendants reallege and incorporate herein by reference paragraphs 1
8 through 132 of their Answer.

9 134. Defendants admit that Plaintiffs purport to bring this action on behalf
10 of the Class under California law. Except as expressly admitted herein, Defendants
11 deny each and every allegation contained in paragraph 134.

12 135. To the extent Plaintiffs allege the contents of the California's FAL,
13 (Bus. & Prof. Code § 17500, *et seq.*), or other statutes or regulations, the statutes
14 and regulations speak for themselves, and Defendants deny the allegations of
15 Plaintiffs to the extent they are inconsistent with the contents of those statues and
16 regulations. Except as expressly admitted herein, Defendants deny each and every
17 allegation contained in paragraph 135.

18 136. Defendants deny the allegations in paragraph 136.

19 137. Defendants deny the allegations in paragraph 137.

20 138. Defendants deny the allegations in paragraph 138.

21 139. Defendants deny the allegations in the first sentence of paragraph 139.
22 The remaining allegations in paragraph 139 contain legal conclusions to which no
23 response is required.

24 140. Defendants reallege and incorporate herein by reference paragraphs 1
25 through 139 of their Answer.

26 141. Defendants admit that Plaintiffs purport to bring this action on behalf
27 of the Class. To the extent Plaintiffs allege the contents of the UCL or other
28 statutes or regulations, the statutes speak for themselves, and Defendants deny the

1 allegations of Plaintiffs to the extent they are inconsistent with the contents of those
2 statutes. Except as expressly admitted herein, Defendants deny each and every
3 allegation contained in paragraph 141.

4 142. Defendants deny the allegations in paragraph 142.

5 143. Defendants deny the allegations in paragraph 143.

6 144. Defendants deny the allegations in paragraph 144.

7 145. Defendants deny the allegations in paragraph 145.

8 146. Defendants deny the allegations in paragraph 146.

9 147. Defendants reallege and incorporate herein by reference paragraphs 1
10 through 146 of their Answer.

11 148. Defendants admit that Plaintiff Roemmich purports to bring this action
12 on behalf of the Missouri Subclass under Missouri law. Except as expressly
13 admitted herein, Defendants deny each and every allegation contained in paragraph
14 148.

15 149. To the extent Plaintiffs allege the contents of the Missouri
16 Merchandising Practice Act, (Mo. Ann. Stat. §§ 407.010, *et seq.*) (“MMPA”), or
17 other statutes or regulations, the statutes and regulations speak for themselves, and
18 Defendants deny the allegations of Plaintiffs to the extent they are inconsistent with
19 the contents of those statutes and regulations. Except as expressly admitted herein,
20 Defendants deny each and every allegation contained in paragraph 149.

21 150. To the extent Plaintiffs allege the contents of the MMPA, or other
22 statutes or regulations, the statutes and regulations speak for themselves, and
23 Defendants deny the allegations of Plaintiffs to the extent they are inconsistent with
24 the contents of those statutes and regulations. Except as expressly admitted herein,
25 Defendants deny each and every allegation contained in paragraph 150.

26 151. Paragraph 151 contains legal conclusions to which no response is
27 required.

28

1 152. Paragraph 152 contains legal conclusions to which no response is
2 required.

3 153. Paragraph 153 contains legal conclusions to which no response is
4 required. To the extent Plaintiffs allege the contents of the MMPA and *State ex rel.*
5 *Nixon v. Estes*, 108 S.W.3d 795 (Mo. App. W. D. 2003), the statutes and the *Estes*
6 opinion speak for themselves, and Defendants deny the allegations of Plaintiffs to
7 the extent they are inconsistent with the contents of those statutes and the *Estes*
8 opinion. Except as expressly admitted herein, Defendants deny each and every
9 allegation contained in paragraph 153.

10 154. Paragraph 154 contains legal conclusions to which no response is
11 required.

12 155. Defendants admit that they advertise that Cold n' Cough 4 Kids
13 "provides quick relief for the symptoms of the common cold" and relieves
14 "Sneezing & Runny Nose," "Nasal Congestion," "Sore Throat," and "Cough," and
15 deny the remaining allegations in the first sentence of paragraph 155 to the extent
16 they are inconsistent with the statements on the packaging for Cold n' Cough 4
17 Kids. Except as expressly admitted herein, Defendants deny each and every
18 allegation contained in paragraph 155.

19 156. Defendants deny the allegations in paragraph 156.

20 157. Defendants admit that Plaintiffs seek injunctive relief for the alleged
21 violation of the MMPA with respect to Cold n' Cough 4 Kids. Except as
22 specifically admitted herein, Defendants deny each and every remaining allegation
23 in paragraph 157.

24 158. Defendants admit that Plaintiffs seek damages, punitive damages, and
25 reasonable attorneys' fees for the alleged violation of the MMPA with respect to
26 Cold n' Cough 4 Kids. Defendants expressly deny that Plaintiffs are entitled to
27 recover punitive damages in connection with their MMPA cause of action. Except
28

1 as specifically admitted herein, Defendants deny each and every remaining
2 allegation in paragraph 158.

3 **GENERAL DENIAL**

4 159. Defendants deny any allegations of the Consolidated Complaint,
5 whether express or implied, that are not expressly admitted, denied, or qualified
6 herein.

7 **AFFIRMATIVE DEFENSES**

8 160. In further answer to the Consolidated Complaint, and as separate and
9 distinct affirmative defenses, Defendants allege as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim)**

12 161. Defendants allege that the Consolidated Complaint, and each of the
13 purported causes of action therein, fails to state facts sufficient to constitute a cause
14 of action against them.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Laches)**

17 162. Defendants allege that Plaintiffs are barred by the doctrine of laches
18 from asserting all of the claims in the Consolidated Complaint in that Plaintiffs
19 have unreasonably delayed bringing this action, and such delay has caused
20 prejudice to Defendants.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Standing)**

23 163. Defendants allege that Plaintiffs lack standing to assert the causes of
24 action in the Consolidated Complaint.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Estoppel)**

27 164. Defendants allege that Plaintiffs' claims in the Consolidated
28 Complaint are barred by the doctrines of collateral and/or equitable estoppel.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

165. Defendants allege that the claims in the Consolidated Complaint are barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Consent)

166. Each purported cause of action in the Consolidated Complaint is barred because Plaintiffs acknowledged, consented to, or acquiesced in the alleged acts or omissions, if any, of Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

167. Defendants allege that Plaintiffs’ claims asserted in the Consolidated Complaint are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE ACTION

(Injunctive Relief Improper)

168. Plaintiffs’ claims for injunctive relief are barred because Plaintiffs have an adequate and complete remedy at law, and/or Plaintiffs cannot make the requisite showings to obtain injunctive relief, including that the alleged conduct which Plaintiffs seek to enjoin is neither actively occurring nor threatened.

NINTH AFFIRMATIVE DEFENSE

(Comparative Fault of Plaintiffs)

169. Negligence, breach of contract, or other fault or misconduct of Plaintiffs or their agents directly and proximately contributed to Plaintiffs’ alleged damages, which conduct either bars or reduces the recovery sought by Plaintiffs.

TENTH AFFIRMATIVE DEFENSE

(Contributory Fault of Third Parties)

170. The damages suffered by Plaintiffs, if any, proximately resulted from the negligence, breach of contract, or other fault or misconduct of parties, persons,

1 and/or entities other than Defendants, and the liability of Defendants, if any, must
2 be limited in direct proportion to the percentage of fault actually attributable to
3 Defendants.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 **(Allocation/Contribution)**

6 171. The damages suffered by Plaintiffs, if any, proximately resulted from
7 the negligence, tortious, and/or wrongful conduct of parties, persons, and/or entities
8 other than Defendants. Defendants are therefore entitled to an allocation and/or
9 contribution of damages according to the percentage of fault of each other such
10 party.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate)**

13 172. Plaintiffs failed to act with reasonable diligence to avoid the losses
14 claimed in the Consolidated Complaint and to mitigate damages, and, therefore, any
15 recovery against Defendants should be barred or reduced accordingly.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 **(Statutes of Limitation)**

18 173. Defendants allege Plaintiffs' claims are barred in whole or in part by
19 the applicable statute of limitations, including but not limited to, California Code of
20 Civil Procedure sections 338(a) and/or 340(a), Civil Code section 1783, California
21 Business and Professions Code section 17208, New Jersey Statues section 2A:14-1
22 and/or Missouri Statutes section 516.120.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Justification)**

25 174. Defendants allege that Plaintiffs' claims are barred by the doctrine of
26 justification.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Join Necessary and/or Indispensable Parties)

175. Defendants allege that the Consolidated Complaint fails to name or join all necessary parties pursuant to Federal Rule of Civil Procedure 19.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Class Action)

176. Defendants allege that Plaintiffs have failed to allege and cannot prove the facts and prerequisites necessary to the maintenance of a class action.

NINETEENTH AFFIRMATIVE DEFENSE

(Abstention)

177. Defendants allege that Plaintiffs' claims should be denied under the doctrine of equitable abstention.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Federal Preemption)

178. Defendants allege that the Consolidated Complaint and each claims for relief therein, is barred by the Supremacy Clause of the United States Constitution.

TWENTIETH AFFIRMATIVE DEFENSE

(Reservation of Rights to Assert Additional Defenses)

179. Defendants presently have insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates such defenses may be appropriate.

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