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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NEIL HAMMAN and MICHAEL  
STEWART, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

CAVA GROUP, INC.,

Defendant.

Case No. '22CV0593 MMAMSB

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Neil Hamman and Michael Stewart (“Plaintiffs”) bring this action on  
2 behalf of themselves, and all others similarly situated against Defendant Cava Group,  
3 Inc. (“Defendant”). Plaintiffs make the following allegations pursuant to the  
4 investigation of their counsel and based upon information and belief, except as to the  
5 allegations specifically pertaining to themselves, which are based on personal  
6 knowledge.

### 7 NATURE OF ACTION

8 1. Plaintiffs bring this Class action lawsuit on behalf of themselves and  
9 similarly situated consumers (“Class Members”) who purchased for personal, family,  
10 or household use, Defendant’s grain and salad bowls (the “Products”), which are  
11 unfit for human consumption because the packaging in which they are contained—  
12 and is essential and integral to delivering the Products to the consuming public<sup>1</sup>—  
13 contains heightened levels of fluorine which is independently unsafe and which is an  
14 indicator of further unsafe per- and polyfluoralkyl substances (“PFAS”).<sup>2</sup>

15 2. PFAS are a group of synthetic chemicals known to be harmful to both  
16 the environment and humans. Because PFAS persist and accumulate over time, they  
17 are harmful even at very low levels. Indeed, “PFAS have been shown to have a  
18 number of toxicological effects in laboratory studies and have been associated with  
19 thyroid disorders, immunotoxic effects, and various cancers in epidemiology  
20 studies.”<sup>3</sup>

21 3. In fact, scientists are studying—and are extremely concerned about—  
22 how PFAS affect human health. Consequently, the CDC outlined “a host of health  
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24 <sup>1</sup> Due to the integral and essential nature of the packaging, the term “Product” is used  
25 herein to denote both the Product and the Product’s packaging.

26 <sup>2</sup> Discovery may reveal that additional Cava products are within the scope of this  
27 Complaint. Accordingly, Plaintiff reserves the right to include additional food  
28 products identified throughout the course of discovery.

<sup>3</sup> Nicholas J. Heckert, et al. “Characterization of Per- and Polyfluorinated Alkyl  
Substances Present in Commercial Anti-fog Products and Their In Vitro Adipogenic  
Activity,” *Environ. Sci. Technol.* 2022, 56, 1162-1173, 1162.

1 effects associated with PFAS exposure, including cancer, liver damage, decreased  
2 fertility, and increased risk of asthma and thyroid disease.”<sup>4</sup>

3 4. Despite Defendant’s representations to consumers that its products are  
4 “healthy,” and “sustainable,” including on its website and in-store signage,  
5 independent research conducted by Consumer Reports<sup>5</sup> determined that the Products  
6 packaging contains **508.3 parts per million (ppm) of total organic fluorine**, which  
7 is an indicator that the Product contains PFAS<sup>6</sup>

8 5. Thus, based on Defendant’s representations, a reasonable consumer  
9 would expect that the Products can be safely purchased and healthily consumed as  
10 marketed and sold. However, the Products are not safe or healthy, posing a  
11 significant health risk to unsuspecting consumers. Nor are the Products sustainable.  
12 Yet, neither before nor at the time of purchase does Defendant notify consumers like  
13 Plaintiffs that their Products are unsafe, unhealthy, or harmful to the environment,  
14 contains heightened levels of fluorine indicating the presence of PFAS, or should  
15 otherwise be approached with caution.

16 6. Accordingly, Plaintiffs bring their claims against Defendant individually  
17 and on behalf of a class of all other similarly situated for (1) violation of California’s  
18 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.; (2) violation of  
19 the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq.; (3) breach of the  
20 Implied Warranty under Song-Beverly Consumer Warranty Act, Cal. Civ. Code §

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22 <sup>4</sup> Harvard T.H. Chan Sch. Of Pub. Health, Health Risks of widely used chemicals  
23 may be underestimated (June 27, 2018), <https://www.hsph.harvard.edu/news/hsph-in-the-news/pfas-health-risks-underestimated/> (last visited Apr. 26, 2022).

24 <sup>5</sup> Kevin Loria, “Dangerous PFAS Chemicals Are in Your Food Packaging,”  
25 *Consumer Reports*, <https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/>  
(last visited Mar. 30, 2022).

26 <sup>6</sup> According to Toxin Free USA, “organic fluorine results identify a quantity of  
27 organofluorine compounds (e.g., PFAS) and excludes the possibility that fluorine  
28 may be present from other or natural sources.” *See GMO Free v. CoverGirl Cosmetics, et al.*, Case No. 2021-CV-0046786B (D.C. Super. Dec. 20, 2021), Docket No. 1, ¶¶ 30-31.

1 1792, et seq. and California Commercial Code § 2314; (4) violation of California's  
2 False Advertising Law, Cal. Bus. & Prof. Code § 17200, et seq.; (5) Fraud; (6)  
3 Constructive Fraud; (7) Fraudulent Inducement; (8) Money Had And Received; (9)  
4 Fraudulent Omission or Concealment; (10) Fraudulent Misrepresentation; (11)  
5 Negligent Misrepresentation; (12) Quasi-Contract / Unjust Enrichment; (13) Breach  
6 of Express Warranty; and (14) Negligent Failure to Warn.

### 7 THE PARTIES

8 7. Plaintiff Neil Hamman is a natural person and citizen of California who  
9 resides in Ramona, California. Plaintiff Hamman has purchased the Products from  
10 Defendant at numerous points over the past few years, including as recently as  
11 March 2022 from a Cava located in La Jolla, California. Prior to his purchase, Mr.  
12 Hamman reviewed Defendant's marketing materials and in-store signage related to  
13 his Products, including those set out herein, including that the Products were healthy  
14 and sustainable. Mr. Hamman understood that based on Defendant's claims, that  
15 Products were healthy, safe for consumption, and otherwise a sustainable product.  
16 Mr. Hamman reasonably relied on these representations and warranties in deciding  
17 to purchase the Products, and these representations and warranties were part of the  
18 basis of the bargain in that he would not have purchased the Products, or would not  
19 have purchased them on the same terms, if the true facts had been known. As a  
20 direct result of Defendant's material misrepresentations and omissions, Mr. Hamman  
21 suffered and continues to suffer, economic injuries.

22 8. Mr. Hamman continues to desire to purchase the Products from  
23 Defendant. However, Mr. Hamman is unable to determine if the Products are  
24 actually healthy, safe and sustainable. Mr. Hamman understands that the  
25 composition of the Products may change over time. But as long as Defendant  
26 continues to market its products as "healthy" and "sustainable," he will be unable to  
27 make informed decisions about whether to purchase Defendant's Products and will  
28 be unable to evaluate the different prices between Defendant's Products and

1 competitor's Products. Mr. Hamman is further likely to be repeatedly misled by  
2 Defendant's conduct, unless and until Defendant is compelled to ensure that the  
3 Products are marketed, labeled, packaged, and advertised as safe and sustainable, are  
4 in fact safe and sustainable.

5 9. Plaintiff Michael Stewart is a natural person and citizen of California  
6 who resides in San Diego, California. Plaintiff Stewart has purchased the Products  
7 from Defendant at numerous points over the past few years, including as recently as  
8 January 2022 from a Cava located in San Diego, California. Prior to his purchase,  
9 Mr. Stewart reviewed marketing materials and in-store signage related to his  
10 Products, including those set out herein, including that the Products were healthy,  
11 safe, and sustainable. Mr. Stewart understood that based on Defendant's claims, that  
12 Products were safe for consumption, and otherwise a sustainable product. Mr.  
13 Stewart reasonably relied on these representations and warranties in deciding to  
14 purchase the Products, and these representations and warranties were part of the  
15 basis of the bargain in that he would not have purchased the Products, or would not  
16 have purchased them on the same terms, if the true facts had been known. As a  
17 direct result of Defendant's material misrepresentations and omissions, Mr. Stewart  
18 suffered and continues to suffer, economic injuries.

19 10. Mr. Stewart continues to desire to purchase the Products from  
20 Defendant. However, Mr. Stewart is unable to determine if the Products are actually  
21 healthy, safe, and sustainable. Mr. Stewart understands that the composition of the  
22 Products may change over time. But as long as Defendant continues to market its  
23 products as "healthy" and "sustainable," he will be unable to make informed  
24 decisions about whether to purchase Defendant's Products and will be unable to  
25 evaluate the different prices between Defendant's Products and competitor's  
26 Products. Mr. Stewart is further likely to be repeatedly misled by Defendant's  
27 conduct, unless and until Defendant is compelled to ensure that the Products are  
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1 marketed, labeled, packaged, and advertised as safe and sustainable, are in fact safe  
2 and sustainable.

3 11. Defendant Cava Group, Inc. (“Defendant”) is a foreign corporation with  
4 its principal place of business located in Washington, D.C..

5 **JURISDICTION AND VENUE**

6 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
7 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005 (“CAFA”),  
8 because this case is a class action where the aggregate claims of all members of the  
9 proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there  
10 are over 100 members of the putative class, and Plaintiffs, as well as most members  
11 of the proposed class, are citizens of different states than Defendant.

12 13. This Court has personal jurisdiction over Defendant transacts substantial  
13 business in this District, has substantial aggregate contacts with this District, engaged  
14 in conduct that has and had a direct, substantial, reasonably foreseeable, and intended  
15 effect of causing injury to persons throughout this District, and purposefully availed  
16 itself of the laws of the State of California in this District, because the acts and  
17 transactions giving rise to this action occurred in this District.

18 14. This Court is the proper venue for this action pursuant to pursuant to 28  
19 U.S.C. § 1391 because a substantial part of the events, omissions, and acts giving  
20 rise to Plaintiffs’ claims herein occurred in this District.

21 **FACTUAL ALLEGATIONS**

22 **A. Food and Consumer Preferences**

23 15. According to a recent survey, chemicals in food (including carcinogens  
24 or cancer-causing chemicals) represents the most important food safety issue to  
25 consumers.<sup>7</sup> Consumers ranked this concern more highly than any other concern,  
26 including foodborne illness from bacteria and use of pesticides.<sup>8</sup>

27 \_\_\_\_\_  
28 <sup>7</sup> Tom Neltner, “Chemicals in food continue to be a top food safety concern among consumers,” (Sept. 16, 2021), <https://blogs.edf.org/health/2021/09/16/chemicals-in->

1           16. At the same time, awareness of, and an inclination toward, safer  
2 products is guiding consumer choices. One survey, for instance, found that “when  
3 asked to choose the top three factors they prioritize when deciding between products,  
4 the majority of consumers surveyed said they prioritize the health/safety of products  
5 (71%) and products free of certain toxic chemicals (70%).”<sup>9</sup>

6           17. These findings extend to the packaging of products, with 82% of  
7 consumers agreeing that “it is important for brands to balance safety and concern for  
8 the environment when designing product packaging.”<sup>10</sup>

9           18. Additionally, “[t]he majority of shoppers . . . are willing to spend more  
10 for a product they know is safer, with 42% willing to spend 5-15% more, 36%  
11 willing to spend 16-25% more, and 17% willing to spend 1-5% more.”<sup>11</sup>

12           19. Thus, there is enormous incentive for companies such as Defendant to  
13 market their products as safe, healthy, and sustainable. Indeed, Defendant has  
14 repeatedly and pervasively touted these considerations as reasons to purchase the  
15 Product over competitors, creating a context for consumers to believe that the  
16 Products are indeed safe, healthy, and sustainable. Examples of these  
17 representations are included below.

18           20. These include statements made directly on Defendant’s website such as  
19 “We believe you shouldn’t have to choose healthy over satisfying . . . And we work  
20 hard every single day to make sure that promise stands.”<sup>12</sup>

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food-continue-to-be-a-top-food-safety-concern-among-consumers/ (last visited Mar.  
30, 2021).

23 <sup>8</sup> *Id.*

24 <sup>9</sup> Made Safe, “What Shoppers Want: Safe & Healthy Products,”  
<https://www.madesafe.org/wp-content/uploads/2017/07/What-Shoppers-Want.pdf>  
(last visited Mar. 22, 2022).

25 <sup>10</sup> Gray, “New Consumer Packaging Trends Are Changing the Game for Food &  
26 Beverage Processors,” <https://www.gray.com/insights/new-consumer-packaging-trends-are-changing-the-game-for-food-beverage-processors/> (last visited Mar. 22,  
27 2022).

28 <sup>11</sup> Made Safe, “What Shoppers Want,” at 3.

<sup>12</sup> Cava, “Cava Culture,” <https://cava.com/culture> (last accessed Apr. 26, 2022).

21. Defendant states on its website that “At Cava, we are about our impact on our communities and the world. As a part of our ongoing environmental and social responsibility efforts we are actively working to ensure our sustainable packaging continues to be responsibly sourced, compostable, functional, and now PFAS free.”<sup>13</sup> An image of this is included below:

August 5, 2020

## Eliminating PFAS From Our Food Packaging

At CAVA, we care about our impact on our communities and on the world at large. As part of our ongoing environmental and social responsibility efforts we are actively working to ensure our sustainable packaging continues to be responsibly sourced, compostable, functional, and now PFAS free. We will eliminate PFAS from our food packaging by mid-2021, and will publicly share progress on our commitment in the year ahead.

22. Defendant furthers its image as a go-to restaurant for healthy foods, stating directly on its website that it only uses “Simple Ingredients.” An example is included below:



<sup>13</sup> Cava, “Newsroom,” <https://web.archive.org/web/20220324103526/https://cava.com/newsroom> (last accessed Apr. 26, 2022).



23. Defendant also highlights these attributes in its in-store signage, stating that “Food . . . cannot be artificial” and that “Cava Grill is evolved to be smarter, healthier, and more transparent.” An example of this representation is set out below:



24. To this point, Defendant also partnered with the marketing firm, Homestead, to “[d]evelop[] visuals” that convey its sentiment to consumers. As Homestead tells it, “[l]ively colors and honest foods led to a series of in-store posters the promote the brand’s mission,” including those such as the following:

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1           25. Indeed, Cava’s CEO, Brett Schulmann, also echoes Defendant’s  
2 approach to food, noting that “[p]eople are eating out more, and they’re seeking  
3 higher-quality ingredients. When we take these naturally health nutritional profiles,  
4 great flavors, and fulfilling foods to a reasonable price point, we’re solving a  
5 problem for a variety of consumers on the go.”<sup>14</sup>

6           26. Mr. Schulmann further remarked that a part of this requires “an  
7 atmosphere of transparency[.]”<sup>15</sup>

8           27. Mr. Schulmann has also noted that Cava’s “better for your body” and  
9 that “consumers are mindful about what they’re ingesting[.]”<sup>16</sup>

10           28. Mr. Schulmann has also stated that “At Cava . . . We want to show  
11 consumers that sustainable behavior can be the norm, easy, enjoyable and cost  
12 less.”<sup>17</sup>

13           29. Any doubt about Cava’s attempt to boost its health and sustainable bona  
14 fides is dispelled by the in-depth profile of Cava written by Menus of Change, run by  
15 the Culinary Institute of America. The organization wrote that “Cava Grill . . .  
16 targets health-conscious consumers,” and “emphasizes local sourcing and the quality  
17 of what it sources. The chain sells diners on transparency, simplicity, and purity.”<sup>18</sup>

18           30. Plaintiffs saw and relied on Defendant’s marketing, including its in-  
19 store signage and website material outlined above in making their purchases.  
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21 <sup>14</sup> QSR, “What Inspires Cava CEO Brtt Schulman,” (Oct. 2017),  
22 <https://www.qsrmagazine.com/start-finish-what-inspires-execs/what-inspires-cava-ceo-brett-schulman> (last accessed Apr. 26, 2022).

23 <sup>15</sup> *Id.*

24 <sup>16</sup> Gary Stern, “Cava: Healthy Mediterranean Chain Expanding And Acquiring,”  
25 *Forbes* (Nov. 15, 2019), <https://www.forbes.com/sites/garystern/2019/11/15/cava-healthy-mediterranean-chain-expanding-and-acquiring/?sh=3987bf901434> (last  
26 accessed Apr. 26, 2022).

27 <sup>17</sup> Suzanna Blake, “How Some Operators are Striving for Better Sustainability  
28 Standards,” (Jan. 2022), <https://www.qsrmagazine.com/content/how-some-operators-are-striving-better-sustainability-standards> (last accessed Apr. 26, 2022).

<sup>18</sup> Menus of Change, “Cava Grill,” <https://www.menusofchange.org/case-studies/cavagrill> (last accessed Apr. 26, 2022).

1 Plaintiffs believed that Defendant genuinely prioritized health, sustainability, and  
 2 transparency, and did not expect that Defendant, who proudly touted these qualities,  
 3 to hide the biggest secret of all: the existence of unsafe levels of fluorine which is  
 4 indicative of cancer causing PFAS in its packaging.

5 **B. PFAS In Food Packaging Is Harmful To Humans And The**  
 6 **Environment**

7 31. On March 24, 2022, Consumer Reports released its study, “Dangerous  
 8 PFAS Chemicals Are in Your Food Packaging.”<sup>19</sup>

9 32. Consumer Reports noted that “[t]o see how often PFAS are still found  
 10 in food containers, Consumer Reports tested more than 100 food packaging products  
 11 from restaurants and grocery chains.”<sup>20</sup>

12 33. Consumer Reports wrote that “Chains that promote healthier fare such  
 13 as Cava . . . also had some packaging that contained PFAS[.]”<sup>21</sup>

14 34. Consumer Reports noted that it “tested products for their total organic  
 15 fluorine content, which is the simplest way to assess a material’s total PFAS content.  
 16 That’s because all PFAS contain organic fluorine, and there are few other sources of  
 17 the compound.”<sup>22</sup>

18 35. Indeed, this approach “is exactly what the food packaging industry does  
 19 to determine whether PFAS w[ere] ‘intentionally added’ and can be composted or  
 20 not.”<sup>23</sup>

22 <sup>19</sup> Kevin Loria, “Dangerous PFAS Chemicals Are in Your Food Packaging,”  
 23 *Consumer Reports* (Mar. 24, 2022), [https://www.consumerreports.org/pfas-food-  
 24 packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/](https://www.consumerreports.org/pfas-food-packaging/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/)  
 (last accessed Apr. 26, 2022).

25 <sup>20</sup> *Id.*

26 <sup>21</sup> *Id.*

27 <sup>22</sup> *Id.*

28 <sup>23</sup> Ketura Persellin, “Study: PFAS Exposure Through Skin Causes Harm Similar to  
 Ingestion,” Environmental Working Group (Jan. 13, 2022),  
[https://www.ewg.org/news-insights/news/study-pfas-exposure-through-skin-causes-  
 harm-similar-ingestion](https://www.ewg.org/news-insights/news/study-pfas-exposure-through-skin-causes-harm-similar-ingestion) (last accessed Apr. 26, 2022).



1           39. These results are significant. Because even if Defendant’s Products did  
2 not contain PFAS, fluorine is independently worrisome. According to the Technical  
3 University of Munich, “Fluorine is the most reactive chemical element and highly  
4 toxic.”<sup>27</sup>

5           40. Live Science confirms this, stating that “[w]hile small amounts of  
6 fluorine are essential for maintaining the strength of our bones and teeth, too much  
7 can have the reverse effect of causing osteoporosis or tooth decay, as well as  
8 potentially harming the kidneys, nerves, and muscles.”<sup>28</sup>

9           41. And Science Notes describes the effects of fluorine in more detail,  
10 noting that they are “comparable to those of pure chlorine, irritating eyes and  
11 mucous membranes and damaging the liver and kidneys.”<sup>29</sup>

12           42. A report published by Toxicology Mechanisms and Methods also notes  
13 that “[d]ue to its insatiable appetite for calcium, fluorine . . . likely represents a form  
14 of chemistry that is incompatible with biological tissues and organ system functions.  
15 Based on an analysis of the effects of fluorine demonstrated consistently in the  
16 literature, safe levels have not been determined nor standardized” but that “the  
17 National Research Counsel (NRC), offer[s] strong support for an immediate  
18 reconsideration concerning risk vs. benefit.”<sup>30</sup>

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20 <sup>27</sup> Technical University of Munich (TUM). "Fluorine: Toxic and aggressive, but  
21 widely used: Investigations with neutrons settle scientific dispute about the structure  
22 of solid fluorine." ScienceDaily. ScienceDaily, 27 March 2019.  
23 [www.sciencedaily.com/releases/2019/03/190327112637.htm](http://www.sciencedaily.com/releases/2019/03/190327112637.htm) (last accessed Apr. 26,  
24 2022).

25 <sup>28</sup> Rachel Ross, “Facts About Fluorine,” Live Science (Aug. 21, 2018),  
26 <https://www.livescience.com/28779-fluorine.html> (last accessed Apr. 26, 2022).

27 <sup>29</sup> Ann Hemenstine, “What Is Fluoride? Fluoride vs. Fluorine” Science Notes (Sept.  
28 30, 2021), <https://sciencenotes.org/what-is-fluoride-fluoride-vs-fluorine/> (last  
accessed Apr. 26, 2022).

<sup>30</sup> Jeff Prystupa, “Fluorine – A Current Literature review. An NRC and ATSDR  
based review of safety standards for exposure to fluorine and fluorides,” *Toxicology  
Mechanisms and Methods*, Vol. 21, Iss. 2 (2011),  
<https://www.tandfonline.com/doi/abs/10.3109/15376516.2010.542931> (last visited  
Apr. 26, 2022).

1           43. One source of measurement for safe levels is the U.S. Environmental  
2 Protection Agency’s maximum limit of 4ppm for drinking water, noting that above  
3 that *fluoride* becomes problematic to human health once that level is surpassed.”<sup>31</sup>

4           44. The U.S. Public Health Service recommends a maximum of only  
5 0.7ppm.<sup>32</sup>

6           45. These are useful benchmarks as fluoride and fluorine have significant  
7 overlaps in their chemical properties, with the latter exposing humans and the  
8 environment to greater toxicity.<sup>33</sup>

9           46. But, as noted, this is not the only concern with Defendant’s Products.  
10 The dangers in the presence of fluorine does not end there as fluorine indicates the  
11 existence of PFAS, and it is beyond dispute that PFAS are harmful to the human  
12 body. In a 2019 study, for example, the U.S. Department of Health and Human  
13 Services’ National Toxicology Program found that PFAS have adverse effects on  
14 human organ systems, with the greatest impact seen in the liver and thyroid  
15 hormone.<sup>34</sup>

16           47. The following figure from the European Environmental Agency  
17 (“EEA”) shows the “[e]ffects of PFAS on human health:”<sup>35</sup>

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22 <sup>31</sup> Association of State and Territorial Dental Directors, “Natural Fluoride in  
23 Drinking Water,” <https://www.astdd.org/docs/natural-fluoride-fact-sheet-9-14-2016.pdf> (last visited Apr. 6, 2022).

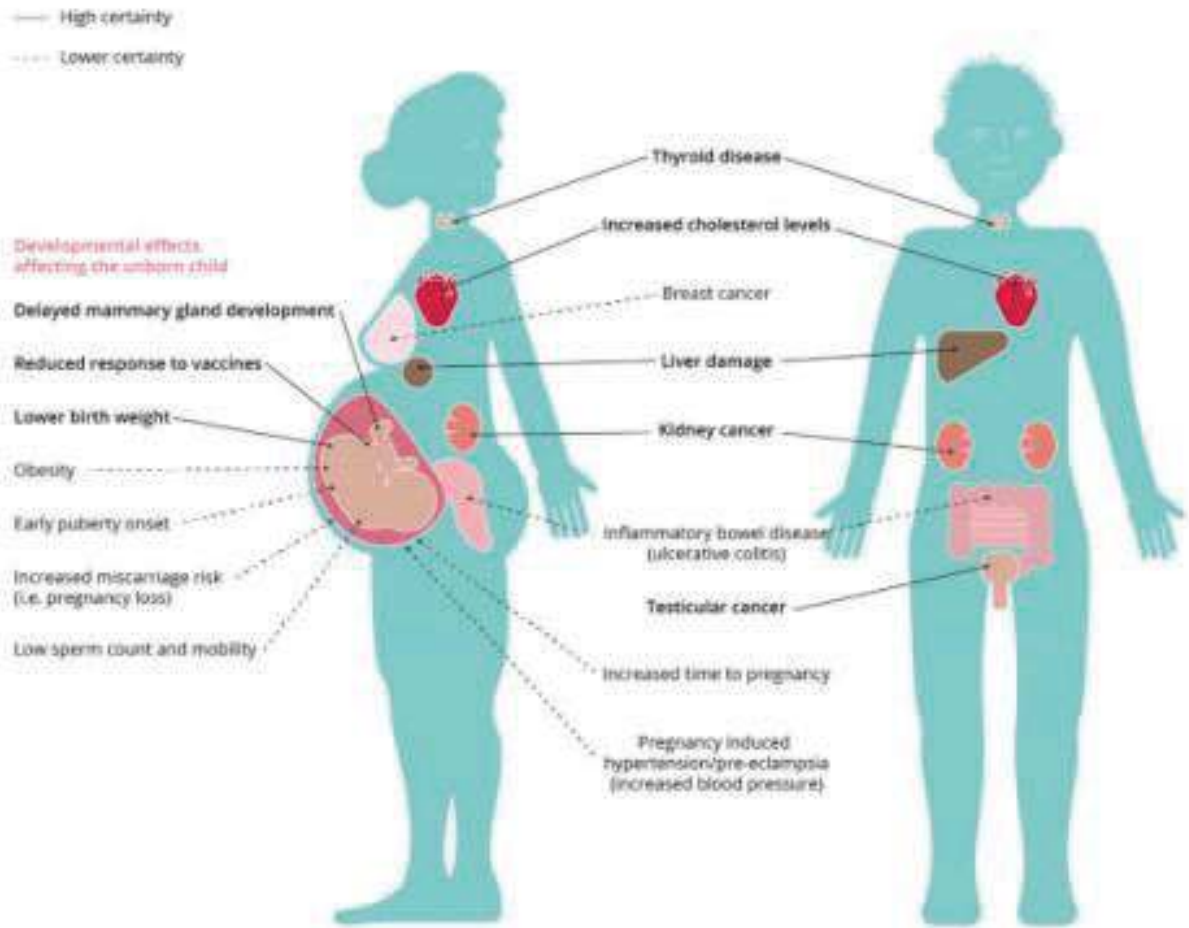
24 <sup>32</sup> *Id.*

25 <sup>33</sup> Royal Society of Chemistry, “Fluorine,” <https://www.rsc.org/periodic-table/element/9/fluorine> (last visited Apr. 6, 2022).

26 <sup>34</sup> Environmental Protection Agency, PFAS Explained, <https://www.epa.gov/pfas/pfas-explained> (last visited Mar. 30, 2022).

27 <sup>35</sup> European Environment Agency, “Emerging Chemical Risks in Europe – ‘PFAS’”  
28 (Dec. 12, 2019), <https://www.eea.europa.eu/publications/emerging-chemicals-risks-in-europe> (last accessed Apr. 26, 2022).

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48. The Center for Disease Control’s Agency for Toxic Substances and Disease Registry has also recognized that exposure to high levels of PFAS may impact the immune system and reduce antibody responses to vaccines.<sup>36</sup>

49. In total, this research demonstrates that the risk of severe health complications arising from exposure to PFAS is both credible and substantial.

50. As noted, the harmful risks also extend to the environment where, once introduced, they quickly spread around the globe through multiple pathways, as demonstrated by the figure below.<sup>37</sup>

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<sup>36</sup> Agency for Toxic Substances and Disease Registry, “What are the health effects of PFAS” <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (June 24, 2020) (last accessed Apr. 26, 2022).

<sup>37</sup> PFAS Free, “What are PFAS?” <https://www.pfasfree.org.uk/about-pfas> (last accessed Apr. 26, 2022).





13           51. And, following their introduction, PFAS cause many of the same  
 14 problems for other animals as they do for humans, including harm to the immune  
 15 system, kidney and liver function of several animals from dolphins to sea otters to  
 16 polar bears, often making their way to dinner tables of people who did not even  
 17 purchase the Product.<sup>38</sup>

18           52. All of these harms outweigh the simple reason PFAS are used in food  
 19 packaging in the first place which is simply to act “as a barrier to keep grease from  
 20 escaping” and “from leaking into people’s hands.”<sup>39</sup>

21           53. But PFAS are not necessary for this intended outcome. Indeed,  
 22 numerous of Defendant’s competitors’ products have been tested by researchers and  
 23 found to contain no levels of organic fluorine.<sup>40</sup> Accordingly, Defendant would have  
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25 <sup>38</sup> *Id.*

26 <sup>39</sup> Iowa State University, “New study calls for mitigation, monitoring of common  
 27 grease-proofing food packaging chemicals,” *News Service* (Oct. 19, 2021),  
 28 <https://www.news.iastate.edu/news/2021/10/19/pfas2021> (last accessed Apr. 26,  
 2022).

<sup>40</sup> *See supra* n. 5.

1 had knowledge that it could produce the Product packaging without the heightened  
2 levels of fluorine and PFAS inherent in its current composition.

3 54. Yet, Defendant chose not to, and instead concealed and affirmatively  
4 misrepresented this information to consumers, to increase revenues by the cost  
5 savings associated with the use of these chemicals.

6 55. This has not been without consequence to consumers, as fluorine and  
7 PFAS in food packaging migrates<sup>41</sup> onto the food, exposing consumers to both of  
8 these via ingestion.<sup>42</sup>

9 56. Thus, Defendant's conduct has been substantially injurious to  
10 consumers, and is actionable.

11 **C. Defendant's Misrepresentation and Omissions Are Actionable**

12 57. Plaintiffs and the Class were injured by the full purchase price of the  
13 Products because the Products are worthless, as they are marketed as safe and  
14 sustainable when they are not in fact safe and sustainable.

15 58. Plaintiffs and Class Members bargained for products that are safe for  
16 consumption and sustainable, and were deprived of the basis of their bargain when  
17 Defendant sold them a product in packaging containing dangerous substances with  
18 well-known health and environmental consequences.

19 59. No reasonable consumer would expect that a product marketed as safe  
20 and sustainable would pose a risk to their health, safety, and wellbeing, or that it  
21 would contain dangerous levels of fluorine and PFAS, which are indisputably linked  
22 to harmful health effects in humans and the environment. Accordingly, Plaintiffs  
23

24 \_\_\_\_\_  
25 <sup>41</sup> T.H. Begley, "Migration of fluorochemical paper additives from food-contact  
26 paper into foods and food simulants," *Food Additives & Contaminants: Part A*, 25:3,  
284-390, <https://www.tandfonline.com/doi/abs/10.1080/02652030701513784> (last  
accessed Apr. 26, 2022).

27 <sup>42</sup> See Nat'l Toxicology Program, Per- and Polyfluoroalkyl Substances (PFAS),  
28 <https://ntp.niehs.gov/whatwestudy/topics/pfas/index/html> (Aug. 3, 2021) (last  
accessed Apr. 26, 2022).

1 and Class Members suffered economic injuries as a result of purchasing the  
2 Products.

3 60. As the Products expose consumers to fluorine and PFAS that pose a  
4 risk to consumers' health, the Products are not fit for consumption by humans.  
5 Plaintiff and the Class are further entitled to damages for the injury sustained in  
6 being exposed to high levels of fluorine and toxic PFAS, damages related to  
7 Defendant's conduct, and injunctive relief.

8 61. Moreover, because these facts relate to a critical safety-related  
9 deficiency in the Products, Defendant was under a continuous duty to disclose to  
10 Plaintiffs and Class Members the true standard, quality, and grade of the Products  
11 and to disclose that the Products contained substances known to have adverse health  
12 effects. Nonetheless, Defendant concealed and affirmatively misrepresented the  
13 Product, as discussed herein.

14 62. Although Defendant is in the best position to know what content it  
15 placed on its website and in marketing materials during the relevant timeframe, and  
16 the knowledge that Defendant had regarding the fluorine and PFAS and its failure to  
17 disclose the existence of fluorine and PFAS in the Product to consumers, to the  
18 extent necessary, Plaintiffs satisfy the requirements of Rule 9(b) by alleging the  
19 following facts with particularity:

20 63. **WHO:** Defendant made material misrepresentations and/or omissions  
21 of fact about the Product through in-store, website representations, and marketing  
22 statements, which include the statements that the Products are healthy, safe and  
23 sustainable. These representations constitute omitted material information regarding  
24 harmful chemicals in the Products packaging which is essential and integral to  
25 delivering the Products to the consumer.

26 64. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent  
27 because they omitted and concealed that the Product contains substances—fluorine  
28 and PFAS—that are widely known to have significant health repercussions. Thus,

1 Defendant's conduct deceived Plaintiff and Class Members into believing that the  
2 Products are healthy, safe, and sustainable, when they are not. Defendant knew or  
3 should have known that this information is material to reasonable consumers,  
4 including Plaintiffs and Class Members in making their purchasing decisions, yet  
5 they continued to pervasively market the Product in this manner.

6 65. **WHEN:** Defendant made material misrepresentations and/or omissions  
7 during the putative class periods, including prior to and at the time Plaintiffs and  
8 Class Members purchased the Products, despite its knowledge that the Products  
9 packaging contained harmful substances.

10 66. **WHERE:** Defendant's marketing message was uniform and pervasive,  
11 carried through material misrepresentations and/or omissions in in-store, website  
12 representations, and marketing statements.

13 67. **HOW:** Defendant made material misrepresentations and/or failed to  
14 disclose material facts regarding the Product, including the presence of heightened  
15 levels of fluorine and PFAS.

16 68. **WHY:** Defendant made the material misrepresentations and/or  
17 omissions detailed herein for the express purpose of inducing Plaintiffs, Class  
18 Members, and all reasonable consumers to purchase and/or pay for the Products, the  
19 effect of which was that Defendant profited by selling the Products to hundreds of  
20 thousands of consumers.

21 69. **INJURY:** Plaintiffs and Class Members purchased, paid a premium, or  
22 otherwise paid more for the Product when they otherwise would not have absent  
23 Defendant's misrepresentations and/or omissions.

24 **TOLLING AND ESTOPPEL OF THE STATUTE OF LIMITATIONS**

25 70. Defendant would have had actual knowledge for years that the Products  
26 packaging contains harmful chemicals such as fluorine and PFAS.

27 71. Although Defendant was aware of the deception in its marketing and  
28 advertising given the inclusion of fluorine and PFAS in the Product despite claims of

1 the Product's healthiness, safety and sustainability, they took no steps to warn  
2 Plaintiff or Class Members of risks related to fluorine or PFAS in the Products.

3 72. Despite its knowledge, Defendant has fraudulently misrepresented the  
4 risks of the Products. Defendant had a duty to disclose the true nature and quality of  
5 the Product and to disclose the health and safety risks associated with the Product.

6 73. Defendant made, and continue to make, affirmative misrepresentations  
7 to consumers, to promote sales of the Product, including that the Products are  
8 healthy, safe and sustainable.

9 74. Defendant concealed material facts that would have been important to  
10 Plaintiffs and Class Members in deciding whether to purchase the Products.  
11 Defendant's concealment was knowing, and it intended to, and did, deceive  
12 reasonable consumers, including Plaintiffs and Class Members. Accordingly,  
13 Plaintiffs and Class Members reasonably relied upon Defendant's concealment of  
14 these material facts and suffered injury as a proximate result of that justifiable  
15 reliance.

16 75. The fluorine and PFAS included in the formulation, design and/or  
17 manufacture of the Product packaging were not reasonably detectible to Plaintiffs  
18 and Class Members.

19 76. At all times, Defendant actively and intentionally concealed the  
20 existence of the fluorine and PFAS and failed to inform Plaintiffs or Class Members  
21 of the existence of the PFAS. Accordingly, Plaintiffs and Class Members' lack of  
22 awareness was not attributable to a lack of diligence on their part.

23 77. Defendant's statements, words, and acts were made for the purpose of  
24 suppressing the truth that the Product packaging contained harmful chemicals.

25 78. Defendant concealed or misrepresented the fluorine and PFAS for the  
26 purpose of delaying Plaintiffs and Class Members from filing a complaint on their  
27 causes of action.

28



1           84. At this time, Plaintiffs do not know the exact number of members of the  
2           aforementioned Class and Subclasses (“Class Members” or “Subclass Members”).  
3           However, given the nature of the claims and the number Defendant’s restaurants in  
4           the United States selling Defendant’s Product, Plaintiffs believe that Class and  
5           Subclass Members are so numerous that joinder of all members is impracticable.

6           85. There is a well-defined community of interest in the questions of law  
7           and facts involved in this case. Questions of law and facts common to Class  
8           Members predominate over questions that may affect individual Class Members  
9           include:

- 10                   (a) whether Defendant misrepresented and/or failed to disclose  
11                   material facts concerning the Product;
- 12                   (b) whether Defendant’s conduct was unfair and/or deceptive;
- 13                   (c) whether Defendant has been unjustly enriched as a result of the  
14                   unlawful conduct alleged in this Complaint such that it would be  
15                   inequitable for Defendant to retain the benefits conferred upon it  
16                   by Plaintiffs and the Class;
- 17                   (d) whether Plaintiffs and the Class sustained damages with respect  
18                   to the common law claims asserted, and if so, the proper measure  
19                   for their damages.

20           86. With respect to the California Subclass, additional questions of law and  
21           fact common to the members include whether Defendant violated the California  
22           Consumers Legal Remedies Act as well as the California Unfair Competition Law.

23           87. Plaintiffs’ claims are typical of those of the Class because Plaintiffs, like  
24           all Class Members, purchased, in a typical consumer setting, Defendant’s Product,  
25           and Plaintiffs sustained damages from Defendant’s wrongful conduct.

26           88. Plaintiffs are adequate representative of the Class and Subclass because  
27           their interests do not conflict with the interests of the Class Members they seek to  
28           represent, have retained competent counsel experienced in prosecuting class actions,

1 and intend to prosecute this action vigorously. The interests of the Class Members  
2 will be fairly and adequately protected by Plaintiffs and their counsel.

3 89. The class mechanism is superior to other available means for the fair  
4 and efficient adjudication of the claims of Class Members. Each individual Class  
5 Member may lack the resources to undergo the burden and expense of individual  
6 prosecution of the complex and extensive litigation necessary to establish  
7 Defendant’s liability. Individualized litigation increases the delay and expense to all  
8 parties and multiplies the burden on the judicial system presented by the complex  
9 legal and factual issues of this case. Individualized litigation also presents a  
10 potential for inconsistent or contradictory judgments. In contrast, the class action  
11 device presents far fewer management difficulties and provides the benefits of single  
12 adjudication, economy of scale, and comprehensive supervision by a single court on  
13 the issue of Defendant’s liability. Class treatment of the liability issues will ensure  
14 that all claims and claimants are before this Court for consistent adjudication of  
15 liability issues.

16 **COUNT I**  
17 **(Violation of California’s Unfair Competition Law,**  
18 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

19 90. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
20 above.

21 91. Plaintiffs bring this claim individually and on behalf of the California  
22 Subclass against Defendant.

23 92. California Business and Professions Code § 17200 prohibits “any  
24 unlawful, unfair, or fraudulent business act or practice.” For the reasons discussed  
25 above, Defendant has engaged in unlawful, unfair, and fraudulent business acts or  
26 practices in violation of California Business & Professions Code § 17200.

27 93. By committing the acts and practices alleged herein, Defendant has  
28 violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§



1 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and  
2 unfair conduct.

3 94. Defendant has violated the UCL’s proscription against engaging in  
4 **Unlawful Business Practices** as a result of its violations of the CLRA, Cal. Civ.  
5 Code § 1770(a)(5), (a)(7), and (a)(9) as alleged below, violations of California’s  
6 Song-Beverly Act, and violations of California’s False Advertising Law, in addition  
7 to breaches of warranty and violations of common law.

8 95. As more fully described above, Defendant’s misleading marketing,  
9 advertising, packaging, and labeling of the Product is likely to deceive reasonable  
10 consumers. In addition, Defendant have committed unlawful business practices by,  
11 inter alia, making the representations and omissions of material facts, as set forth  
12 more fully herein, and violating the common law.

13 96. Plaintiffs and the California Subclass Members reserve the right to  
14 allege other violations of law which constitute other unlawful business acts or  
15 practices.

16 97. Defendant has also violated the UCL’s proscription against engaging in  
17 **Unfair Business Practices**. Defendant’s acts, omissions, misrepresentations,  
18 practices and non-disclosures as alleged herein also constitute “unfair” business acts  
19 and practices within the meaning of Business & Professions Code § 17200 *et seq.* in  
20 that its conduct is substantially injurious to consumers, offends public policy, and is  
21 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct  
22 outweighs any alleged benefits attributable to such conduct.

23 98. There were reasonably available alternatives to further Defendant’s  
24 legitimate business interests, other than the conduct described herein as noted above.

25 99. Defendant has further violated the UCL’s proscription against engaging  
26 in **Fraudulent Business Practices**. Defendant’s claims, nondisclosures and  
27 misleading statements with respect to the Product, as more fully set forth above,  
28

1 were false, misleading and/or likely to deceive the consuming public within the  
2 meaning of Business & Professions Code § 17200.

3 100. Plaintiffs and the other California Subclass Members suffered a  
4 substantial injury by virtue of buying the Products that they would not have  
5 purchased absent Defendant's unlawful, fraudulent, and unfair marketing,  
6 advertising, packaging, and omission about the defective nature of the Products.

7 101. There is no benefit to consumers or competition from deceptively  
8 marketing and omitting material facts about the true nature of the Product.

9 102. Plaintiffs and the other California Subclass Members had no way of  
10 reasonably knowing that the Products they purchased were not as marketed,  
11 advertised, packaged, or labeled. Thus, they could not have reasonably avoided the  
12 injury each of them suffered.

13 103. The gravity of the consequences of Defendant's conduct as described  
14 outweighs any justification, motive, or reason therefore, particularly considering the  
15 available legal alternatives which exist in the marketplace, and such conduct is  
16 immoral, unethical, unscrupulous, offends established public policy, or is  
17 substantially injurious to Plaintiffs and the other California Subclass Members.

18 104. Pursuant to California Business and Professional Code § 17203,  
19 Plaintiffs and the California Subclass seek an order of this Court that includes, but is  
20 not limited to, an order requiring Defendant to (a) provide restitution to Plaintiffs and  
21 the other California Subclass Members; (b) disgorge all revenues obtained as a result  
22 of violations of the UCL; and (c) pay Plaintiff's and the California Subclass'  
23 attorneys' fees and costs.

24 **COUNT II**  
25 **(Violation of California's Consumers Legal Remedies Act ("CLRA"),**  
26 **California Civil Code § 1750, *et seq.*)**  
27 **(Injunctive Relief Only)**

28 105. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
above.

1           106. Plaintiffs bring this claim individually and on behalf of the California  
2 Subclass against Defendant.

3           107. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services  
4 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities  
5 which they do not have or that a person has a sponsorship, approval, status,  
6 affiliation, or connection which he or she does not have.”

7           108. Civil § 1770(a)(7) prohibits “[r]epresenting that goods or services are of  
8 a particular standard, quality, or grade, or that goods are of a particular style or  
9 model, if they are of another.”

10           109. Civil § 1770(a)(9) prohibits “advertising goods or services with intent  
11 not to sell them as advertised.”

12           110. Defendant violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by  
13 holding out the Product as healthy, safe and sustainable, when in fact the Products  
14 are not healthy, safe, and sustainable and are instead, dangerous, and useless.

15           111. The Products are not safe because they contain an extraordinary level of  
16 fluorine and PFAS in the packaging which is essential and integral to the delivery of  
17 the Products to consumers that subject unsuspecting consumers to significant health  
18 risks.

19           112. Defendant has exclusive knowledge of the Product’s composition,  
20 which was not known to Plaintiffs or California Subclass Members.

21           113. Defendant made partial representations to Plaintiffs and California  
22 Subclass Members, while suppressing the true nature of the Products. Specifically,  
23 by displaying the Products and describing the Products as healthy, safe and  
24 sustainable, including on the product packaging, on its website, and in its marketing,  
25 without disclosing that the Products were unsafe and detrimental to human health  
26 and the environment. Moreover, Defendant affirmatively misrepresented the Product  
27 despite its knowledge that the Product was not as advertised.

28



1 goods in the State of California is accompanied by both a manufacturer’s and retailer  
2 seller’s implied warranty that the goods are merchantable, as defined in that Act. In  
3 addition, every sale of consumer goods in California is accompanied by both a  
4 manufacturer’s and retail seller’s implied warranty of fitness when the manufacturer  
5 or retailer has reason to know that the goods as represented have a particular purpose  
6 and that the buyer is relying on the manufacturer’s or retailer’s skill or judgment to  
7 furnish suitable goods consistent with that represented purpose.

8 120. The Product at issue here is a “consumer good[]” within the meaning of  
9 Cal. Civ. Code § 1791(a).

10 121. Plaintiffs and the Class Members who purchased the Product are “retail  
11 buyers” within the meaning of Cal. Civ. Code § 1791.

12 122. Defendant is in the business of manufacturing, assembling, and/or  
13 producing the Product and/or selling the Products to retail buyers, and therefore are a  
14 “manufacturer” and “seller” within the meaning of Cal. Civ. Code § 1791.

15 123. Defendant impliedly warranted to retailer buyers that the Product was  
16 merchantable in that they would: (a) pass without objection in the trade or industry  
17 under the contract description, and (b) were fit for the ordinary purposes for which  
18 the Product is used. For a consumer good to be “merchantable” under the Act, it  
19 must satisfy both of these elements. Defendant breached these implied warranties  
20 because the Product was unsafe for consumption. Therefore, the Products would not  
21 pass without objection in the trade or industry and were not fit for the ordinary  
22 purpose for which they are used.

23 124. Plaintiffs and California Subclass Members purchased the Products in  
24 reliance upon Defendant’s skill and judgment in properly packaging and labeling the  
25 Product.

26 125. The Products were not altered by Plaintiffs or the California Subclass  
27 Members.



1           133. Defendant’s acts and practices, as described herein, have deceived  
2 and/or are likely to continue to deceive Class Members and the public. As described  
3 above, and throughout this Complaint, Defendant misrepresented the Product as  
4 healthy, safe and sustainable when, in fact, the Product was not healthy, safe or  
5 sustainable.

6           134. By its actions, Defendant disseminated uniform advertising regarding  
7 the Product to and across California. The advertising was, by its very nature, unfair,  
8 deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code §  
9 17500, *et seq.* Such advertisements were intended to and likely did deceive the  
10 consuming public for the reasons detailed herein.

11           135. The above-described false, misleading, and deceptive advertising  
12 Defendant disseminated continues to have a likelihood to deceive in that Defendant  
13 failed to disclose that the Products contain substances that pose a significant risk to  
14 the health and wellbeing of Plaintiffs and the Subclass Members as well as to the  
15 environment.

16           136. Defendant continues to misrepresent to consumers that the Products was  
17 safe and sustainable. However, as described, this is not the case.

18           137. In making and disseminating these statements, Defendant knew, or  
19 should have known, its advertisements were untrue and misleading in violation of  
20 California law. Plaintiffs and other Class Members based their purchasing decisions  
21 on Defendant’s omitted material facts. The revenue attributable to the Product sold  
22 in those false and misleading advertisements likely amounts to tens of millions of  
23 dollars. Plaintiffs and Class Members were injured in fact and lost money and  
24 property as a result.

25           138. The misrepresentations and non-disclosures by Defendant of the  
26 material facts described and detailed herein constitute false and misleading  
27 advertising and, therefore, constitutes a violation of Cal. Bus. & Prof. Code § 17500,  
28 *et seq.*

1 139. As a result of Defendant’s wrongful conduct, Plaintiffs and Class  
2 Members lost money in an amount to be proven at trial. Plaintiffs and Class  
3 Members are therefore entitled to restitution as appropriate for this cause of action.

4 140. Plaintiffs and Class Members seek all monetary and non-monetary relief  
5 allowed by law, including restitution of all profits stemming from Defendant’s  
6 unfair, unlawful, and fraudulent business practices; declaratory relief; reasonable  
7 attorneys’ fees and costs under California Code of Civil Procedure § 1021.5;  
8 injunctive relief; and other appropriate equitable relief.

9 **COUNT V**  
10 **(Fraud)**

11 141. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
12 above.

13 142. Plaintiffs bring this claim individually and on behalf of the Class.

14 143. At the time Plaintiff and Class Members purchased the Products,  
15 Defendant did not disclose, but instead concealed and misrepresented, the Products  
16 as healthy, safe and sustainable.

17 144. Defendant affirmatively misrepresented the Products, giving the Product  
18 the appearance of a product that is indeed safe for use.

19 145. Defendant also knew that its omissions and misrepresentations  
20 regarding the Product were material, and that a reasonable consumer would rely  
21 upon Defendant’s representations (and corresponding omissions) in making  
22 purchasing decisions.

23 146. Plaintiffs and Class Members did not know—nor could they have  
24 known through reasonable diligence—about the true nature of the Products.

25 147. Plaintiffs and Class Members would have been reasonable in relying on  
26 Defendant’s misrepresentations (and corresponding omissions) in making their  
27 purchasing decisions.  
28



1 148. Plaintiffs and Class Members had a right to reply upon Defendant’s  
2 representations (and corresponding omissions) as Defendant maintained  
3 monopolistic control over knowledge of the true quality of the Products.

4 149. Plaintiffs and Class Members sustained damages as a result of their  
5 reliance on Defendant’s omissions and misrepresentations, thus causing Plaintiffs  
6 and Class Members to sustain actual losses and damages in a sum to be determined  
7 at trial, including punitive damages.

8 **COUNT VI**  
9 **(Constructive Fraud)**

10 150. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
11 above.

12 151. Plaintiffs bring this claim individually and on behalf of the Class.

13 152. At the time Plaintiffs and Class Members purchased the Products,  
14 Defendant did not disclose, but instead concealed and misrepresented, the Products  
15 as discussed herein.

16 153. Defendant affirmatively misrepresented the Products, giving the  
17 Products the appearance of a product that is indeed safe for consumption and  
18 otherwise sustainable.

19 154. Defendant also knew that its omissions and misrepresentations  
20 regarding the Products were material, and that a reasonable consumer would rely  
21 upon its representations (and corresponding omissions) in making purchasing  
22 decisions.

23 155. Defendant had an obligation not to omit or misrepresent the Products  
24 because in addition to the fact that the Products pertained to matters of safety: (a) it  
25 was in the sole possession of such information; (b) it made partial representations  
26 regarding the quality of the Products; (c) Plaintiffs and the Class Members relied  
27 upon Defendant to make full disclosures based upon the relationship between  
28 Plaintiffs and Class Members, who relied on Defendant’s representations and

1 omissions, and were reasonable in doing so, with the full knowledge of Defendant  
2 that it did and would have been reasonable in doing so.

3 156. Plaintiffs and Class Members did not know—nor could they have  
4 known through reasonable diligence—about the true quality of the Products.

5 157. Plaintiffs and Class Members would have been reasonable in relying on  
6 Defendant’s misrepresentations (and corresponding omissions) in making their  
7 purchasing decisions.

8 158. Plaintiffs and Class Members had a right to rely upon Defendant’s  
9 representations (and corresponding omissions) as, in addition to the fact that the  
10 issue pertained to safety, Defendant maintained monopolistic control over  
11 knowledge of the true quality of the Products, and what information was available  
12 regarding the Products.

13 159. Defendant breached its duty to Plaintiffs and Class Members to make  
14 full disclosures of the safety of their Product.

15 160. Plaintiff and Class Members sustained damages as a result of their  
16 reliance on Defendant’s omissions and misrepresentations, and Defendant’s breach  
17 of its duty, thus causing Plaintiff and Class Members to sustain actual losses and  
18 damages in a sum to be determined at trial.

19 **COUNT VII**  
20 **(Fraudulent Inducement)**

21 161. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
22 above.

23 162. Plaintiffs bring this claim individually and on behalf of the Class.

24 163. Defendant did not disclose, but instead concealed and misrepresented,  
25 the Product as discussed herein.

26 164. Defendant knew, or should have known, that the Products were falsely  
27 portrayed and that knowledge of the safety-related issues discussed throughout was  
28 withheld from the consumer public.

1 165. Defendant also knew that its omissions and misrepresentations  
2 regarding the Product was material, and that a reasonable consumer would rely on  
3 Defendant’s representations (and corresponding omissions) in making purchasing  
4 decision.

5 166. Plaintiffs and Class Members did not know—nor could they have  
6 known through reasonable diligence—about the true quality of the Products.

7 167. Plaintiffs and Class Members would have been reasonable in relying on  
8 Defendant’s misrepresentations (and corresponding omissions) in making their  
9 purchasing decisions.

10 168. Plaintiffs and Class Members had a right to rely on Defendant’s  
11 representations (and corresponding omissions) as Defendant maintained a  
12 monopolistic control over the Product, and what information was available regarding  
13 the Product.

14 169. Defendant intended to induce—and did, indeed, induce—Plaintiffs and  
15 Class Members into purchasing the Products based upon its affirmative  
16 representations and omissions.

17 170. Plaintiffs and Class Members sustained damages as a result of their  
18 reliance on Defendant’s omission and misrepresentations, thus causing Plaintiffs and  
19 Class Members to sustain actual losses and damages in a sum to be determined at  
20 trial.

21 **COUNT VIII**  
22 **(Money Had and Received)**

23 171. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
24 above.

25 172. Plaintiffs bring this claim individually and on behalf of the Class.

26 173. As a result of the Plaintiffs’ and Class Members’ purchase of the  
27 Products, Defendant obtained money for its own use and benefit, and, as a result of  
28 its breaches of contract and breaches of the covenant of good faith and fair dealing

1 implied in those agreements, became indebted to the Plaintiffs and Class Members in  
2 an amount to be determined at trial.

3 174. No part of any of the monies due and owing to Plaintiffs and Class  
4 Members has been repaid, although Plaintiffs and Class Members demand  
5 repayment, leaving the balance due, owing, and unpaid in an amount to be  
6 determined at trial plus interest.

7 **COUNT IX**  
8 **(Fraudulent Concealment or Omission)**

9 175. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
10 above.

11 176. Plaintiffs bring this claim individually and on behalf of the Class.

12 177. At all relevant times, Defendant was engaged in the business of  
13 designing, manufacturing, distributing, and selling the Products.

14 178. Defendant, acting through its representatives or agents, delivered the  
15 Product to its own distributors and various other distribution channels.

16 179. Defendant willfully, falsely, and knowingly omitted various material  
17 facts regarding the quality and character of the Products as discussed throughout.

18 180. Rather than inform consumers of the truth regarding the Products,  
19 Defendant misrepresented the quality of the Products as discussed herein at the time  
20 of purchase.

21 181. Defendant made these material misrepresentations to boost or maintain  
22 sales of the Products, and to falsely assure purchasers of the Products that Defendant  
23 is a reputable company and that its Products are healthy, safe for use, and otherwise  
24 sustainable. The false representations were material to consumers because the  
25 representations played a significant role in the value of the Products purchased.

26 182. Plaintiffs and Class Members accepted the terms of use, which were  
27 silent on the true nature of the Products, as discussed throughout. Plaintiffs and  
28 Class Members had no way of knowing that Defendant's misrepresentations as to the

1 Products, and had no way of knowing that Defendant’s misrepresentations were  
2 misleading.

3 183. Although Defendant had a duty to ensure the accuracy of the  
4 information regarding the Products, it did not fulfill these duties.

5 184. Defendant misrepresented material facts partly to pad and protect its  
6 profits, as it saw that profits and sales of the Products were essential for its continued  
7 growth and to maintain and grow its reputation as a premier designer and vendor of  
8 the Products. Such benefits came at the expense of Plaintiffs and Class Members.

9 185. Plaintiffs and Class Members were unaware of these material  
10 misrepresentations, and they would not have acted as they did had they known the  
11 truth. Plaintiffs’ and class members’ actions were justified given Defendant’s  
12 misrepresentations. Defendant was in the exclusive control of material facts, and  
13 such facts were not known to the public.

14 186. Due to Defendant’s misrepresentations, Plaintiffs and Class Members  
15 sustained injury due to the purchase of the Products that did not live up to their  
16 advertised representations. Plaintiffs and Class Members are entitled to recover full  
17 refunds for the Products they purchased due to Defendant’s misrepresentations.

18 187. Defendant’s acts were done maliciously, oppressively, deliberately, and  
19 with intent to defraud, and in reckless disregard of Plaintiffs, and Class Members’  
20 rights and well-being, and in part to enrich itself at the expense of consumers.  
21 Defendant’s acts were done to gain commercial advantage over competitors, and to  
22 drive consumers away from consideration of competing products. Defendant’s  
23 conduct warrants an assessment of punitive damages in an amount sufficient to deter  
24 such conduct in the future.

25 **COUNT X**  
26 **(Fraudulent Misrepresentation)**

27 188. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
28 above.

1 189. Plaintiffs bring this claim individually and on behalf of the Class.

2 190. Defendant falsely represented to Plaintiffs and the Class that the  
3 Products were health, safe for use and otherwise sustainable.

4 191. Defendant intentionally, knowingly, and recklessly made these  
5 misrepresentations to induce Plaintiffs and the Class to purchase the Products.

6 192. Defendant knew or should have known that its representations about the  
7 Products were false in that the Products are not healthy, not safe for consumption,  
8 and not sustainable as discussed throughout. Defendant knowingly allowed its  
9 packaging, labels, advertisements, promotional materials, and websites to  
10 intentionally mislead consumers, such as Plaintiffs and the Class.

11 193. Plaintiffs and the Class did in fact rely on these misrepresentations and  
12 purchased the Product to their detriment. Given the deceptive manner in which  
13 Defendant advertised, marketed, represented, and otherwise promoted the Products,  
14 Plaintiffs' and the Class' reliance on Defendant's misrepresentations was justifiable.

15 194. As a direct and proximate result of Defendant's conduct, Plaintiffs and  
16 the Class have suffered actual damages in that they would not have purchased the  
17 Products at all had they known of the safety risks associated with the Products and  
18 that they do not conform to Defendant's advertising and marketing.

19 195. Plaintiffs and the Class seek actual damages, attorney's fees, costs, and  
20 other such relief the Court deems proper.

21 **COUNT XI**  
22 **(Negligent Misrepresentation)**

23 196. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
24 above.

25 197. Plaintiffs bring this claim individually and on behalf of the Class.

26 198. Defendant had a duty to Plaintiffs and the Class to exercise reasonable  
27 and ordinary care in the developing, testing, manufacture, marketing, detailing,  
28 distribution, and sale of the Products.



1 under these circumstances is unjust and inequitable because Defendant failed to  
2 disclose that the Product was unfit for its intended purpose as it was unsafe for use.  
3 These omissions caused injuries to Plaintiffs and Class Members because they would  
4 not have purchased the Product if the true facts were known.

5 208. Because Defendant's retention of the non-gratuitous benefits conferred  
6 on them by Plaintiffs and Class Members is unjust and inequitable, Defendant has  
7 been unjustly enriched in an amount to be determined at trial.

8 **COUNT XIII**  
9 **(Breach of Express Warranty)**

10 209. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
11 above.

12 210. Plaintiffs bring this claim individually and on behalf of the Class.

13 211. Plaintiffs and Class Members formed a contract with Defendant at the  
14 time Plaintiffs and Class Members purchased the Product.

15 212. The terms of the contract include the promises and affirmations of fact  
16 made by Defendant on the Products packaging and through marketing and  
17 advertising, as described above.

18 213. This labeling, marketing, and advertising constitute express warranties  
19 and became part of the basis of the bargain and are part of the standardized contract  
20 between Plaintiffs and Class Members.

21 214. As set forth above, Defendant purport through its advertising, labeling,  
22 marketing, and packaging, to create an express warranty that the Product is safe for  
23 consumption and is otherwise sustainable.

24 215. Plaintiffs and Class Members performed all conditions precedent to  
25 Defendant's liability under this contract when they purchased the Products.

26 216. Defendant breached express warranties about the Products and its  
27 qualities because despite Defendant's warranties that the Products are safe for  
28 consumption and is otherwise sustainable the Product is objectively not in fact safe



1 for use and not sustainable. Thus, the Product did not confirm to Defendant's  
2 affirmations and promises described above.

3 217. Plaintiffs and each Class Member would not have purchased the Product  
4 had they known the true nature of the Products.

5 218. On April 8, 2022, prior to the filing of this Complaint, Plaintiffs'  
6 counsel sent Defendant a notice letter, apprising Defendant of its breach of  
7 warranties. The letter was sent via certified mail, return receipt requested, advising  
8 Defendant that it was in breach of its warranties and demanding that they cease and  
9 desist from such violations. The letter stated that it was sent on behalf of all other  
10 similarly situated purchasers. Because of the gravity of the harm alleged, Plaintiffs  
11 has chosen not to wait for Defendant's response. Plaintiff has also chosen not to  
12 wait for Defendant's response because Defendant has long known about its conduct  
13 as described herein. Accordingly, Plaintiff's letter would not have served the  
14 purpose of the letter.

15 219. As a result of Defendant's breach of warranty, Plaintiffs and each Class  
16 Member suffered and continues to suffer financial damage and injury, and are  
17 entitled to all damages, in addition to costs, interest and fees, including attorney's  
18 fees, as allowed by law.

19 **COUNT XIV**  
20 **(Negligent Failure to Warn)**

21 220. Plaintiffs reallege and reincorporate by reference all paragraphs alleged  
22 above.

23 221. Plaintiffs bring this claim individually and on behalf of the Class.

24 222. At all relevant times, Defendant were responsible for designing,  
25 constructing, testing, manufacturing, inspecting, distributing, labeling, marketing,  
26 advertising, and/or selling the Products and its packaging. At all relevant times, it  
27 was reasonably foreseeable by Defendant that the use of the Products in its intended  
28

1 manner involved substantial risk of injury and was unreasonably dangerous to  
2 Plaintiff and the Class as the ultimate users of the Product.

3 223. At all relevant times, Defendant knew or had reason to know of the risk  
4 of injury and the resultant harm that the Product posed to Plaintiffs and Class  
5 Members, as the Defect existed at the time of its design, construction, manufacture,  
6 inspection, distribution, labeling, marketing, advertising, and/or sale, as described  
7 herein.

8 224. Defendant as the designer, manufacturer, tester, distributor, marketer,  
9 advertiser, and/or seller of the Product, had a duty to warn Plaintiffs and the Class of  
10 all dangers associated with the intended use of the Products.

11 225. At minimum, the duty arose for Defendant to warn consumers that use  
12 of the Products could result in injury and was unreasonably dangerous.

13 226. Defendant was negligent and breached its duty of care by negligently  
14 failing to provide warnings to purchasers and users of the Products, including  
15 Plaintiffs and the Class, regarding the true nature of the Products, their risks, and  
16 potential dangers.

17 227. Defendant was negligent and breached its duty of care by concealing the  
18 risks of and failing to warn consumers that the Products contains ingredients known  
19 to cause adverse health effects in humans.

20 228. Defendant knew, or through the exercise of reasonable care, should  
21 have known of the inherent Defect and resulting dangers associated with using the  
22 Products as described herein, and knew that Plaintiff and Class Members could not  
23 reasonably be aware of those risks. Defendant failed to exercise reasonable care in  
24 providing Plaintiffs and the Class with adequate warnings.

25 229. As a direct and proximate result of Defendant's failure to adequately  
26 warn consumers that the use of the Products, including its intended use, could cause  
27 and has caused injuries and other damages, Plaintiffs and the Class have suffered  
28

1 damages, as described herein. Plaintiffs also requests medical monitoring as a means  
2 to safeguard their health and mitigate any damages for future medical treatment.

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
5 situated, seeks judgment against Defendant, as follows:

- 6 (a) For an order certifying the Class under Fed. R. Civ. P. 23 and  
7 naming Plaintiffs as representatives of the Class and the  
8 California Subclass and Plaintiffs’ attorneys as Class Counsel;
- 9 (b) For an order declaring the Defendant’s conduct violates the  
10 statutes referenced herein;
- 11 (c) For an order finding in favor of Plaintiffs, the Class, and the  
12 California Subclass on all counts asserted herein;
- 13 (d) For compensatory, statutory, and punitive damages in amounts to  
14 be determined by the Court and/or jury;
- 15 (e) For prejudgment interest on all amounts awarded;
- 16 (f) For an order of restitution and all other forms of equitable  
17 monetary relief;
- 18 (g) For injunctive relief as pleaded or as the Court may deem proper;
- 19 (h) For medical monitoring as a means to safeguard Plaintiffs’ and  
20 Class Members’ health and to mitigate any damages for future  
21 medical treatment; and
- 22 (i) For an order awarding Plaintiffs and the Class and California  
23 Subclass their reasonable attorneys’ fees and expenses and costs  
24 of suit.

25 **DEMAND FOR TRIAL BY JURY**

26 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by  
27 jury of any and all issues in this action so triable of right.  
28

1 Dated: April 27, 2022

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3  
4 By:  /s/ L. Timothy Fisher

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