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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

22 SARAH BROWN, on behalf of herself and
23 all others similarly situated,

24 Plaintiff,

25 v.

26 PLUM, PBC,

27 Defendant.

CASE NO.

CLASS ACTION

COMPLAINT FOR DAMAGES FOR:

1. Violation of the Florida Deceptive and Unfair Trade Practices Act, §501.201 *et seq.*;
2. Unjust Enrichment;

JURY TRIAL DEMANDED

1 Plaintiff SARAH BROWN, on behalf of herself and all others similarly situated (“Plaintiff”),
2 by and through her undersigned attorneys, brings this Class Action Complaint (the “Action”) against
3 Defendant PLUM, PBC (“Plum” or “Defendant”) based upon personal knowledge as to herself and
4 her own acts, and as to all other matters upon information, investigation, and belief of counsel.

5 INTRODUCTION

6 1. Defendant Plum sells baby food products under the brand name “Plum Organics,”
7 which come in a variety of forms including pouches, snacks (including “Cereal Super Puffs,”
8 Teether/Wafers, Snack Bars, and Fruit Snacks) and milk-based powders for produced, marketed,
9 and sold for consumption by infants and young children (collectively, the “Products”).¹ These
10 Products are marketed to parents to give to their young children to consume; and contrary to the fact
11 that these Products are intended for young children, the Products contain contaminants: including
12 inorganic arsenic (“arsenic”), lead, cadmium, and mercury (collectively, the “Heavy Metals”), that
13 public health authorities and child-safety organizations unanimously agree pose serious risks to
14 children’s health and well-being.²

15 2. Defendant knows that food safety is of primary concern to parents. Defendant
16 conceals the existence of these Heavy Metals in the Products’ listed ingredients. The omitted
17 information is wholly inconsistent with the Products’ label representations, which are intended to—
18 and do, in fact—persuade reasonable consumers that the Products are fit for consumption by
19 children.

20 3. Defendant uses consistent messaging across different Product formulations, different
21 media, and marketing touchpoints, meaning that messaging for any one Product formulation
22 reinforces Defendant’s inaccurate and misleading claims for other and all formulations.

23
24 _____
25 ¹ This is by no means an exhaustive list of Defendant’s Products at issue in this Complaint, but
merely a representative sample.

26 ² “*Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury,*”
27 House of Representatives Subcommittee on Economic and Consumer Policy (Committee on
28 Oversight and Reform), Staff Report (Feb. 4, 2021), 2021-02-04 ECP Baby Food Staff Report.pdf
(house.gov) (“Congressional Report”).

1 4. The Heavy Metals contained in Defendant’s Products are not nutritious, and no
2 reasonable parent would feed a child meals and snacks containing elevated and unacceptable levels
3 of arsenic, lead, cadmium, or mercury.

4 5. The Congressional Report by the United States House of Representatives Committee
5 on Economic and Consumer Policy (Committee on Oversight and Reform), examines misconduct
6 concerning prominent brands of baby foods. It states: “Even low levels of exposure can cause
7 serious and often irreversible damage to brain development.”³ Defendant’s Products not only
8 contain these Heavy Metals but contain levels of the Heavy Metals that are unacceptable by virtually
9 any public health standard, and certainly are unacceptable to reasonable parents.

10 6. By virtue of this conduct, and all of the conduct alleged herein, Plaintiff and all
11 members of the Class have been injured by Defendant’s actions.

12 **JURISDICTION AND VENUE**

13 7. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction pursuant to
14 the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy, exclusive of
15 costs and interest, exceeds the sum of \$5 million in the aggregate. In total, there are well over 100
16 members of the proposed Classes that are known to exist, and this is a class action in which complete
17 diversity exists between one Plaintiff and one Defendant – namely, that Plaintiff is a citizen of
18 Florida, while Defendant is headquartered in, and therefore is a citizen of, California.

19 8. **General Personal Jurisdiction.** This Court has general personal jurisdiction over
20 Defendant because Defendant purposefully availed itself of the privilege of doing business within
21 the state, including within this District; had continuous and systematic general business contacts
22 within the state, including within this District; and Defendant can be said to have reasonably
23 anticipated being haled into court in this forum.

24 9. **Specific Personal Jurisdiction.** This Court has specific personal jurisdiction over
25 Defendant because this action arises out of and relates to Defendant’s contacts with this forum.
26 Specifically, Defendant is headquartered in this District and Defendant knowingly directed the

27
28 ³ Congressional Report at 2.

1 Products through the stream of commerce into this District. Defendant advertised and marketed
2 within this District through the wires and mails and via e-commerce websites through which
3 residents of this state and District can purchase the Products. Defendant knowingly directs electronic
4 activity into this state and District with the intent to engage in business interactions and has, in fact,
5 engaged in such interactions. Defendant cultivated a market for the Products in this state and District
6 and systematically served a market for the very Products causing the harms alleged in this
7 Complaint. Thus, there is an affiliation between this forum and the underlying controversy and there
8 is a strong relationship among Defendant, the forum, and the litigation.

9 10. **Venue.** Venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2) because a
10 substantial part of the events or omissions giving rise to this action occurred in this District. Venue
11 also is proper pursuant to 28 U.S.C. 1391(b)(1) and 1391(c)(2) because Defendant is deemed to be
12 a resident of this District by virtue of the Court’s personal jurisdiction over Defendant with respect
13 to this action.

14 **PARTIES**

15 11. Plaintiff Sarah Brown is a citizen of the State of Florida and is a member of the Class
16 as a purchaser of Defendant Plum’s Products. Plaintiff purchased the Products – namely, Plum’s
17 “Plum Organics” Mighty Morning Apple Bars (Apple Cinnamon) and Plum’s “Plum Organics”
18 Mighty Snack Bars (Blueberry) – at retail during the applicable Class Period, specifically during the
19 year 2021. Plaintiff relied on Defendant’s representations (and omissions) as described herein, and
20 Plaintiff was harmed by way of Defendant’s representations (and omissions).

21 12. Defendant Plum, PBC is a citizen of the State of California, as it maintains its
22 headquarters here, and is incorporated in the State of Delaware. Plum’s Products are produced by
23 the same company which makes Campbell’s Soup.

24 **FACTUAL ALLEGATIONS**

25 **I. DEFENDANT MARKETS AND LABELS ITS PRODUCTS AS BEING FIT FOR
26 CONSUMPTION BY CHILDREN AND REASONABLE CONSUMERS RELIED ON
27 DEFENDANT’S MISREPRESENTATIONS AND OMISSIONS**

28 13. The demand for wholesome baby food products is constant as parents continuously
seek to protect their children, as best they can, from all unreasonable risks of harm. Defendant
understands this demand and therefore promotes its Products as organic; Defendant also markets its

1 Products as being fit for consumption by children. Indeed, the Products all contain the following
2 substantially similar material statements that represent that the Products are wholesome, safe, and
3 nutritious for children.

4 14. Examples of these material statements on the Defendant’s website are:

- 5 • “As an organic food company, we strongly believe in the advantages organic
6 food brings to our families and to Mother Nature. We know there’s a debate
7 as to whether organic is more nutritious or safer than conventional, but when
8 it comes to making products for your littlest ones, we believe the simpler the
9 better. As parents ourselves, we wouldn’t have it any other way.”⁴
- “Little ones deserve the very best food from the very first bite.”⁵
- “Plum products are always made without genetically modified ingredients.”⁶

10 15. After the release of the Congressional Report, Defendant released the following
11 statement on its website:

12 As parents who feed Plum to our own kids every day, we understand
13 you may have questions about some of the news you’re reading. We’re
14 here to address concerns as clearly, honestly and immediately as
15 possible.

16 The House of Representatives Committee on Oversight and Reform
17 recently released a report about heavy metals in baby and toddler food
18 products, including Plum Organics.

19 Plum Organics has always and will always place the safety of our
20 consumers, especially our youngest consumers, above all else. That is
21 why we cooperated with the Committee’s baby food review. We
22 responded quickly to their questions and never refused anything
23 requested of us. We are surprised that the Committee would suggest
24 that we were less than full partners in this mission. We welcomed the
25 opportunity to work with the Committee in 2019—and continue to do
26 so today.

27 We are confident in the safety and quality of our products. Our top
28 priority is to serve children healthy, nutritious food made from the
best ingredients. We want to assure you that Plum’s products are safe
(and delicious) to eat! If we didn’t feel good about our products, we
wouldn’t serve them to our children or yours.⁷

24 ⁴ <https://www.plumorganics.com/food-philosophy/> (last accessed May 28, 2021).

25 ⁵ *Id.*

26 ⁶ *Id.*

27 ⁷ <https://www.plumorganics.com/faqs/> (last accessed May 28, 2021) (emphasis added).

1 16. Additionally, Defendant includes the following misrepresentations on the labels and
 2 packaging for its Products,⁸ which it manufactures, markets, and sells:



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 13 17. On Amazon, which is a popular distribution channel for Defendant’s Products, the
 14 products are advertised as “*Organic, Non-GMO Snack Bar[s]: Plum uses only organic, non-GMO*
 15 *ingredients.*”¹⁰

16 18. All of the aforementioned statements in this section – from the statements on the
 17 Defendant’s website, to their statement after the release of the Congressional Report, to the
 18 representations that are made on packaging and on Amazon – are demonstrably false.

19 19. Plaintiff purchased the Products, which contain materially similar representations to
 20 all Products at issue in this Complaint. Plaintiff and all members of the Class viewed the
 21 representations on the labeling of the Products at the point of purchase. These representations are
 22

23
 24 _____
 25 ⁸ The selected misrepresentations appeared on the packaging for the same types of Products
 purchased by Plaintiff.

26 ⁹ <https://www.amazon.com/Plum-Organics-Organic-Toddler-Strawberry/dp/B00J3I6CXO> (last
 27 accessed May 28, 2021).

28 ¹⁰ *Id.*

1 intended to impact, and do in fact impact, every reasonable parent’s decision regarding which foods
2 to purchase for their young children.

3 20. Plaintiff the Class relied on these representations, specifically the representations
4 conveying the organic and wholesome nature of the product, when making their purchases.

5 21. Other Products in the Product family have substantively similar label.

6 22. Critically, Defendant promotes the Products as safe and health for children yet
7 conceals the presence and elevated levels of the Heavy Metals because no reasonable parent would
8 purchase the Products at the price offered, or on the same terms, or as frequently, or would not
9 purchase the Products at all if this information were disclosed.

10 23. As the retailer, manufacturer, and seller of the Products, Defendant is responsible for
11 the accuracy of information conveyed on the Product labels.

12 24. Plaintiff reasonably believed that the Products she purchased were free of concerning
13 levels of Heavy Metals that, in fact, were present at levels that would gravely concern any reasonable
14 consumer.

15 25. Defendant knew or, in the exercise of reasonable care, should have known that the
16 Products’ labels were false or misleading.

17 26. Defendant intended for consumers to rely upon its representations and omissions
18 concerning the Products’ nature and quality.

19 27. It would be reasonable for consumers to rely—as Plaintiff did—upon Defendant’s
20 representations and omissions concerning the Products.

21 28. Defendant’s misrepresentations and omissions were made with the intent to generate
22 and increase sales of the Products.

23 29. Defendant’s misrepresentations and omissions were deceptive and misleading for the
24 reasons set forth in this Complaint; and they are ongoing.

25 30. By representing the Products as wholesome and organic, Defendant implicitly
26 represented the Products’ value to Plaintiff and other consumers.

27 31. As a consequence of Defendant’s unfair and deceptive practices, Plaintiff and other
28 similarly-situated consumers purchased a product of different and substantially lesser value—one

1 with a higher effective cost—than Defendant represented, under the false impression that the
2 Products were safe, high-quality, premium Products free of elevated levels of Heavy Metals.

3 32. In fact, because the Products contained elevated levels or had a high risk of
4 containing unsafe levels of Heavy Metals, they should not have been on the market in the first place,
5 and thus the Products were of less value or even valueless—*i.e.*, the threat of exposure to high levels
6 of Heavy Metals would render the Products of no value to reasonable consumers because no
7 reasonable consumer would willingly administer repeated, elevated doses of Heavy Metals to his or
8 her child.

9 33. Defendant’s omission of all reference to the Heavy Metals deprived Plaintiff and
10 other consumers the opportunity to make an informed choice whether to purchase the Products.

11 34. Accordingly, Plaintiff and the Class did not realize the benefit of the bargain and
12 their expectations were not met.

13 35. Plaintiff and the Classes effectively paid more than the market value represented by
14 the price bargained for. Plaintiff and the Class bargained with Defendant on a particular market
15 value for a Product purporting to be a high-quality, premium food—one that would not contain
16 unacceptable levels of Heavy Metals.

17 36. However, unbeknownst to consumers, the Products do contain or have a high risk of
18 containing unacceptable levels of Heavy Metals; Plaintiff and the Classes thus effectively paid for
19 Products that were worth less than they were led to reasonably believe, *i.e.*, Plaintiff and the Classes
20 overpaid for the Products.

21 37. Thus, through the use of misleading representations and omissions, Defendant
22 obtained enhanced negotiating leverage allowing it to command a price Plaintiff and the Class would
23 not have paid had they been fully informed.

24 38. By use of misleading marketing and labeling claims and omissions, Defendant
25 created increased market demand for the Products and increased its market share relative to what its
26 demand and share would have been had it marketed and labeled the Products truthfully.

27 39. Plaintiff and the Class lost money as a result of Defendant’s misrepresentations and
28 omissions in that they did not receive what they reasonably believed they were paying for based

1 upon the misrepresentations and omissions. Plaintiff and the class detrimentally altered their
2 position and suffered damages as a result of Defendant's misrepresentations and omissions.

3 40. If Plaintiff had been aware that the Products contained unacceptable levels of any
4 Heavy Metal, Plaintiff would have purchased a different product or no product at all. In other words,
5 Plaintiff would not have purchased Defendant's Product but for Defendant's misrepresentations and
6 omissions.

7 41. Plaintiff and the Class were exposed to and justifiably relied upon the same material
8 misrepresentations and omissions made on the Products' labels.

9 **II. THE TRUTH IS REVEALED**

10 42. The recent Congressional Report released by the United States House of
11 Representatives revealed that prominent brands of baby food Products contains "concerning levels"
12 of the Heavy Metals at-issue.

13 43. Public health authorities have expressed concern regarding consumption of the
14 Heavy Metals. For example, according to the Congressional Report, the FDA has expressed concern
15 regarding arsenic levels above 100 ppb in infant rice cereals, arsenic above 10 ppb in drinking water,
16 lead above 5 ppb in drinking water, lead above 50 ppb in juice products, and cadmium above 5 ppb
17 in drinking water.

18 44. Defendant's Products routinely tested at levels exceeding these limits.

19 45. Even more concerning, the Congressional Report states: "[Plum] refused to
20 cooperate with the Subcommittee's investigation. The Subcommittee is greatly concerned that their
21 lack of cooperation might be obscuring the presence of even higher levels of toxic heavy metals in
22 their baby food products than their competitors' products."¹¹

23 46. The Congressional Report continues, "[t]he Subcommittee has grave concerns about
24 baby food products manufactured by ... Campbell (Plum Organics). Th[is] company[y] refused to
25 cooperate with the Subcommittee's investigation. The Subcommittee is greatly concerned that their
26
27

28 ¹¹ Congressional Report at 2.

1 lack of cooperation might obscure the presence of even higher levels of toxic heavy metals in their
 2 baby food products, compared to their competitors’ products.”¹²

3 47. Specific to Plum, the report states:

4 Campbell refused to produce its testing standards and specific testing
 5 results to the Subcommittee. Campbell has hidden its policies and the
 6 actual level of toxic heavy metals in its products. Instead of producing
 any substantive information, Campbell provided a spreadsheet self
 declaring that every one of its products “meets criteria.”

7 Campbell declined to state what those criteria are... Campbell’s
 8 testing summary hides more than it reveals, since it does not show the
 9 levels of heavy metals that the testing found or the levels of heavy
 10 metals that would “meet criteria.” The Subcommittee was disturbed
 that, for mercury, which is a powerful neurotoxin, Campbell notes
 with asterisks that it has no criterion whatsoever, stating: “No specific
 threshold established because no high-risk ingredients are used.”

11 However, despite Campbell having no mercury threshold, Campbell
 12 still marked every food as “meets criteria” for mercury. This
 misleading framing—of meeting criteria that do not exist—raises
 questions about what Campbell’s other thresholds actually are, and
 whether they exist.

13 Campbell’s evasion is concerning, as even limited independent testing
 14 has revealed the presence of toxic heavy metals in its baby food.¹³

15 48. However, both testing by Congress’ House Oversight Committee in 2019 and
 16 additional testing by the Plaintiff (and her counsel) recently found the presence of Heavy Metals in
 17 Defendant’s Products.¹⁴

18 **III. THE DANGER OF HEAVY METALS FOUND IN DEFENDANT’S PRODUCTS
 AND DEFENDANT’S SALE OF SAID PRODUCTS**

19 49. The Congressional Report emphasized the dangers posed by the Heavy Metals in
 20 Defendant’s Products:

21 Children’s exposure to toxic heavy metals causes permanent
 22 decreases in IQ, diminished future economic productivity, and
 23 increased risk of future criminal and antisocial behavior. Babies’
 24 developing brains are “exceptionally sensitive to injury caused by
 toxic chemicals, and several developmental processes have been
 shown to be highly vulnerable to chemical toxicity.” The fact that
 babies are small, have other developing organ systems, and absorb

25 ¹² *Id.* at 5.

26 ¹³ *Id.* at 44-45.

27 ¹⁴ Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019),
 28 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>.

1 more of the heavy metals than adults, exacerbates their risk from
2 exposure to heavy metals. Exposure to heavy metals at this
3 developmental stage can lead to “untreatable and frequently
4 permanent” brain damage, which may result in “reduced intelligence,
5 as expressed in terms of lost IQ points, or disruption in behavior.” For
6 example, a recent study estimates that exposure to environmental
7 chemicals, including lead, are associated with 40,131,518 total IQ
8 points loss in 25.5 million children (or roughly 1.57 lost IQ points per
9 child)—more than the total IQ losses associated with preterm birth
10 (34,031,025), brain tumors (37,288), and traumatic brain injury
11 (5,827,300) combined. For every one IQ point lost, it is estimated that
12 a child’s lifetime earning capacity will be decreased by \$18,000. Well-
13 known vectors of child exposure to toxic heavy metals include lead
14 paint in old housing and water pollution from landfills. Over the
15 decades, a range of federal and state laws and regulations have been
16 passed to protect child health through emissions standards, among
17 other things. The Food and Drug Administration (FDA) has declared
18 that inorganic arsenic, lead, cadmium, and mercury are dangerous,
19 particularly to infants and children. They have “no established health
20 benefit” and “lead to illness, impairment, and in high doses, death.”
21 According to FDA, “even low levels of harmful metals from
22 individual food sources, can sometimes add up to a level of concern.”
23 FDA cautions that infants and children are at the greatest risk of harm
24 from toxic heavy metal exposure. The Subcommittee on Economic
25 and Consumer Policy’s investigation has found another source of
26 exposure: baby foods. According to documents obtained from baby
27 food manufacturers, toxic heavy metals, such as arsenic, cadmium,
28 lead, and mercury are present at substantial levels in both organic and
conventional baby foods. Currently, there is no federal standard on, or
warning to parents and caregivers about, these toxins.¹⁵

50. With respect to arsenic, the Congressional Report states:

Arsenic is ranked number one among substances present in the environment that pose the most significant potential threat to human health, according to the Department of Health and Human Services’ Agency for Toxic Substances and Disease Registry (ATSDR). The known health risks of arsenic exposure include “respiratory, gastrointestinal, haematological, hepatic, renal, skin, neurological and immunological effects, as well as damaging effects on the central nervous system and cognitive development in children.” Studies have concluded that arsenic exposure has a “significant negative effect on neurodevelopment in children.” This negative effect is most pronounced in Full Scale IQ, and more specifically, in verbal and performance domains as well as memory. For every 50% increase in arsenic levels, there is an approximately “0.4 decrease in the IQ of children.” A study of Maine schoolchildren exposed to arsenic in drinking water found that children exposed to water with an arsenic concentration level greater than 5 parts per billion (ppb) “showed significant reductions in Full Scale IQ, Working Memory, Perceptual Reasoning and Verbal Comprehension scores.” The authors pegged 5 ppb as an important threshold. Likewise, a study of children in Spain found that increasing arsenic exposure led to a decrease in the

¹⁵ Congressional Report at 9-10 (internal citations omitted).

1 children's global motor, gross motor, and fine motor function scores.
2 Boys in particular were more susceptible to arsenic's neurotoxicity.¹⁶

3 51. With respect to lead, the Congressional Report states:
4 Lead is number two on ATSDR's list of substances present in the
5 environment that pose the most significant potential threat to human
6 health. Even small doses of lead exposure are hazardous, particularly
7 to children. Lead is associated with a range of bad health outcomes,
8 including behavioral problems, decreased cognitive performance,
9 delayed puberty, and reduced postnatal growth. According to FDA,
10 lead is especially dangerous to "infants" and "young children." FDA
11 acknowledges that: High levels of lead exposure can seriously harm
12 children's health and development, specifically the brain and nervous
13 system. Neurological effects from high levels of lead exposure during
14 early childhood include learning disabilities, behavior difficulties, and
15 lowered IQ. Because lead can accumulate in the body, even low level
16 chronic exposure can be hazardous over time. Lead exposure severely
17 affects academic achievement in children. Even at low levels, early
18 childhood lead exposure has a negative impact on school
19 performance. Two separate studies of schoolchildren in Detroit and
20 Chicago public schools found a strong inverse relationship between
21 lead exposure and test scores. In the Detroit study, there was a
22 "significant association" between early childhood lead exposure and
23 decreased standardized test performance, with lead exposure strongly
24 linked to an adverse effect on academic achievement. The Chicago
25 study found that higher blood lead concentrations were associated
26 with lower reading and math scores in 3rd grade children. Increased
27 blood lead concentrations correlated with a 32% increase in the risk
28 of failing reading and math. The cognitive effects of early childhood
lead exposure appear to be permanent. In one study, adults who
previously had lead-associated developmental delays continued to
show persisting cognitive deficits, demonstrating the long-lasting
damage of lead exposure.¹⁷

52. With respect to cadmium, the Congressional Report states:

Cadmium is number seven on ATSDR's list of substances present in
the environment that pose the most significant potential threat to
human health. Cadmium is associated with decreases in IQ, as well as
the development of ADHD. A 2018 study found that cadmium
exposure negatively affected children's Full Scale IQ, particularly
among boys. Boys exhibiting higher amounts of cadmium exposure
had seven fewer IQ points than those exhibiting less cadmium
exposure. A 2015 study similarly found a significant inverse
relationship between early cadmium exposure and IQ. A 2018 study
linked cadmium exposure to ADHD, finding that the disorder was
more common among children with the highest levels of cadmium
exposure as compared to a control group.¹⁸

16 *Id.*

17 *Id.* at 11.

18 *Id.* at 12.

1 53. With respect to mercury, the Congressional Report states:

2 Mercury is number three on ATSDR’s list of substances present in the
3 environment that pose the most significant potential threat to human
4 health. Studies of mercury’s effect on childhood development have
5 primarily been conducted by considering the mother’s exposure to
6 mercury while pregnant. In these instances, “pre-natal mercury
7 exposure has been consistently associated with adverse subsequent
8 neuro-development.” And pre-natal mercury exposure is also related
9 to poorer estimated IQ. Beyond prenatal exposure, higher blood
10 mercury levels at “2 and 3 years of age were positively associated with
11 autistic behaviors among preschool-age children.¹⁹

12 54. Defendant has shown no concern for the health risks faced by the end-users of its
13 Products: namely, vulnerable young children. In fact, to date, Defendant continues selling these
14 Products without any indication to consumers that the Products may contain alarming levels of
15 Heavy Metals.

16 55. Not only did Defendant knowingly mislead parents into believing the Products were
17 safe, but Defendant charged a premium for them. Plaintiff and the Class would not have purchased
18 the Products if they were aware of the elevated presence of the Heavy Metals or, alternatively, they
19 would not have purchased at the Products’ offered price and terms.

20 **IV. DUE TO THE DEFENDANT’S MISCONDUCT, PLAINTIFF AND THE CLASS**
21 **SUFFERED ECONOMIC INJURY**

22 56. Plaintiff and the Classes were injured economically when they purchased the
23 Products. As alleged herein, Plaintiff and the Class received something worth less than what they
24 paid for and did not receive the benefit of their bargain. They paid for Products which were supposed
25 to be wholesome, but were not. No reasonable consumer would have purchased or paid as much or
26 as frequently for the Products had they known the Products contained elevated levels of Heavy
27 Metals. Defendant knew of the Heavy Metals and the levels at which they occur in the Products, but
28 chose not to disclose this material information to their consumers in an effort to persuade them they
 were buying wholesome Products rather than Products with elevated levels of Heavy Metals.

¹⁹ *Id.* at 12-13.

CLASS ACTION ALLEGATIONS

1
2 57. Plaintiff brings this action on behalf of herself and as a class action pursuant to Rule
3 23 of the Federal Rules of Civil Procedure on behalf of members of the following proposed Class:

4 All persons within the United States who purchased one or more of
5 the Products from the beginning of the applicable statutory period
6 through present.

7 58. Excluded from the Class are Defendant, any of their respective members, affiliates,
8 subsidiaries, officers, directors, employees, successors or assigns, the judicial officers, and their
9 immediate family members; as well as the Court staff assigned to this Action.

10 59. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff also seeks to
11 represent the following Florida subclass:

12 All persons within the Florida who purchased one or more of the
13 Products from the beginning of the applicable statutory period
14 through present.

15 60. Excluded from the Florida Subclass are Defendant, any of their respective members,
16 affiliates, subsidiaries, officers, directors, employees, successors or assigns, the judicial officers,
17 and their immediate family members; as well as the Court staff assigned to this Action.

18 61. Plaintiff reserves the right to modify or amend Class definitions as appropriate during
19 the pendency of this Action.

20 62. Certification of Plaintiff's claims for class-wide treatment is appropriate because
21 Plaintiff can prove the elements of the claims on a class-wide basis using the same evidence as
22 individual Class members would use to prove those elements in individual actions alleging the same
23 claims.

24 63. This action has been brought and may be properly maintained as a class action under
25 the criteria of Rule 23:

26 **Numerosity – Rule 23(a)(1)**. The members of each of the Classes are so numerous and
27 geographically dispersed that individual joinder of all Class members is impracticable. The precise
28 number of Class numbers is unknown to Plaintiff but is likely to be ascertained by Defendant's
records. At a minimum, there likely are tens of thousands of Class Members.

Commonality and Predominance – Rule 23(a)(2), (b)(3). This action involves questions

1 of law and fact common to the Classes, which predominate over any individual questions, including:

- 2 a. whether Defendant engaged in the conduct alleged herein;
- 3 b. whether Defendant's course of conduct alleged herein violates the Florida
4 Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*;
- 5 c. whether Defendant knew or should have known its representations and
6 omissions were false or misleading;
- 7 d. whether reasonable consumers were misled by Defendant's labeling,
8 marketing and advertising of the Products;
- 9 e. whether Defendant was unjustly enriched by retaining monies from the sale
10 of the Products at issue;
- 11 f. whether certification of the Class is appropriate under Fed Rule 23;
- 12 g. whether Plaintiff and the Class are entitled to declaratory, equitable, or
13 injunctive relief, and/or other relief, and the scope of such relief; and
- 14 h. the amount and nature of the relief to be awarded to Plaintiff and the Class,
15 including whether Plaintiff and the Class are entitled to punitive damages.

16 **Typicality – Rule(a)(3)**. Plaintiff's claims are typical of the other Class members because
17 the Plaintiff, as well as the members of the Class, paid for Defendant's contaminated Products at
18 retail. Plaintiff and the members of the Class relied on the representations and omissions made by
19 the Defendant prior to making their purchase of the Products at issue. Plaintiff and the Class paid
20 for Defendant's products at retail and would not have purchased them (or would have paid
21 substantially less for them) had they known that the Defendant's representations were untrue and/or
22 had they possessed the information Defendant omitted from the labels regarding the Heavy Metals.

23 **Adequacy of Representation – Rule 23(a)(4)**. Plaintiff is an adequate Class representative
24 because Plaintiff's interests do not conflict with the interests of the other Class members whom she
25 seeks to represent, Plaintiff have retained counsel competent and experienced in complex class
26 action litigation, and Plaintiff intend to prosecute this action vigorously. Class members' interests
27 will be fairly and adequately protected by Plaintiff and her counsel.

28 **Superiority of Adjudication as a Class Action – Rule 23(b)(3)**. To preserve judicial

1 economy, this case will be best maintained as a class action, which is superior to other methods of
 2 individual adjudication of these claims. This Action is best maintained as a class action because of
 3 the large number of consumers affected by the alleged violations of law as well as the relatively
 4 smaller-purchase economic damages being sought by Plaintiff and the Class. The damages
 5 individual Class members suffered are small compared to the burden and expense of individual
 6 prosecution of the complex and extensive litigation needed to address Defendant's conduct, such
 7 that it would be virtually impossible for the Class to redress the wrongs done to them and they would
 8 have little incentive to do so given the amount of damage each Class member has suffered when
 9 weighed against the costs and burdens of litigation. The class procedure presents fewer management
 10 difficulties than individual litigation and provides the benefits of single adjudication, economies of
 11 scale, and supervision by a single court.

12 **Certification of Specific Issues – Rule 23(c)(4)**. To the extent that a Class does not meet
 13 the requirements of Rules 23(b)(2) or (b)(3), Plaintiff seek certification of issues that will drive this
 14 litigation toward resolution. Declaratory and Injunctive Relief – Rule 23(b)(2). Defendant has acted
 15 or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby
 16 making appropriate final injunctive relief and declaratory relief, as described below, with respect to
 17 the Class members as a whole. Unless a class-wide injunction is issued, Defendant will continue to,
 18 or allow their resellers to, advertise, market, promote, and sell the Products in an unlawful and
 19 misleading manner, as described throughout this Complaint, and members of the Class will continue
 20 to be misled, harmed, and denied their rights under the law.

21 64. Plaintiff is unaware of any difficulties that are likely to be encountered in the
 22 management of this action that would preclude its maintenance as a class action.

23 **CLAIMS FOR RELIEF**

24 **COUNT I**

25 **Violations of the Florida Deceptive and Unfair Trade Practices Act, § 501.201, *et seq.* (on behalf of Plaintiff individually and the Florida Subclass)**

26 65. Plaintiff realleges and incorporates the foregoing paragraphs.

27 66. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade
 28 Practices Act, Fla. Stat. § 501.201, *et seq.* (“FDUTPA”). The stated purpose of the FDUTPA is to

1 “protect the consuming public . . . from those who engage in unfair methods of competition, or
2 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla.
3 Stat. § 501.202(2).

4 67. FDUTPA declares unlawful “[u]nfair methods of competition, unconscionable acts
5 or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla.
6 Stat. § 501.204(1). The FDUTPA also prohibits false and misleading advertising.

7 68. Plaintiff and all Class members are “consumers” and Defendant has engaged in
8 “trade or commerce” as defined by FDUTPA. Fla. Stat. § 501.203(7)-(8).

9 69. Defendant manufactures, distributes, markets, advertises and sells the Products. The
10 Products are “goods” within the meaning of FDUTPA.

11 70. For the reasons discussed herein, Defendant violated and continues to violate
12 FDUTPA by engaging in the herein described unconscionable, deceptive, unfair acts or practices
13 proscribed by Florida Statute §501.201, *et seq.*

14 71. Defendant engaged in unconscionable, unfair or deceptive acts and practices by,
15 among other things, representing that the Products are healthy, nutritious, organic, made from the
16 best ingredients, and safe for consumption, and by failing to make any mention of Heavy Metals, or
17 other undesirable toxins or contaminants in the Baby Foods.

18 72. Defendant’s acts and practices, including its omissions, described herein, were likely
19 to, and did in fact, deceive and mislead members of the public, including consumers acting
20 reasonably under the circumstances, to their detriment. Consumers, including Plaintiff and Class
21 Members, would not have purchased the Products, or would have paid less for them, had they known
22 that the Products were not healthy, nutritious, organic, made from the best ingredients, and safe for
23 consumption, or that they contained Heavy Metals, or other undesirable toxins or contaminants in
24 the Baby Foods.

25 73. Plaintiff and the Class have been aggrieved by Defendant’s violative
26 representations, omissions, and practices and their rights have been adversely affected and,
27 therefore, Plaintiff and the Class are entitled to injunctive and declaratory relief under FDUTPA.

28

1 74. Defendant's misrepresentations are ongoing such that declaratory or injunctive
2 relief requiring Defendant to make only truthful statements in its marketing and labeling of the
3 Products would correct its ongoing violations of FDUTPA and the ongoing harms caused by those
4 violations.

5 75. As a direct and proximate result of Defendant's unfair or deceptive acts or practices,
6 Plaintiff and Class Members have been damaged, and are entitled to recover actual damages to the
7 extent permitted by law, including class action rules, in an amount to be proven at trial.

8 76. Plaintiff, individually and on behalf of the Class, seeks: (a) a declaration or
9 declaratory judgment that Defendant's acts and practices have violated and continue to violate
10 FDUTPA; (b) an order enjoining Defendant to refrain from the acts and practices that have violated
11 and continue to violate FDUTPA, and an order to undertake an immediate public information
12 campaign to inform members of the proposed class as to their prior practices; (c) actual damages;
13 (d) attorney's fees and court costs; and (e) any other legal or equitable relief to which Plaintiff or
14 the Class members may be entitled.

15 **COUNT II**

16 **Unjust Enrichment**
17 **(on behalf of the Nationwide Class or, alternatively, the Florida Subclass)**

18 77. Plaintiff realleges and incorporate the foregoing paragraphs.

19 78. Plaintiff and the Class have conferred a benefit on Defendant in the form of payment
20 for the Products alleged herein.

21 79. Defendant was aware of this benefit, voluntarily accepted it, and has retained and
22 appreciated this benefit, to which it is not entitled, at the expense of Plaintiff and the Classes.

23 80. By its wrongful acts and omissions described herein, Defendant was unjustly
24 enriched at the expense of Plaintiff and Class Members.

25 81. Plaintiff and Class Members' detriment and Defendant's enrichment were related to
26 and flowed from the wrongful conduct alleged in this Complaint.

27 82. For the reasons set forth in this Complaint, the circumstances are such that it would
28 be inequitable and unfair for Defendant to retain the full amount of the benefit conferred upon it
by Plaintiff and the Class, and fairness demands that Defendant pay for the benefit.

1 83. As a direct and proximate result of Defendants' wrongful conduct and unjust
2 enrichment, Plaintiff and the Class are entitled to restitution of, disgorgement of, and/or imposition
3 of a constructive trust upon all profits, benefits, and other benefits obtained by Defendant for its
4 inequitable and unlawful conduct.

5 **REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against
7 Defendant as follows:

8 1. Certifying this case as a class action representing the Classes as defined
9 herein pursuant to Rule 23, designate Plaintiff as representatives for the Classes, and appoint counsel
10 of record as class counsel;

11 2. Declaring Defendant's conduct unlawful under the statutes and causes of
12 action pled herein;

13 3. Entering an order enjoining Defendant to refrain from the acts and practices
14 cited herein and to undertake an immediate public information campaign to inform members of each
15 of the Classes as to its prior practices;

16 4. Entering an order requiring imposition of a constructive trust and and/or
17 disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of
18 each of the Classes to restore all funds acquired by means of any act or practice declared by this
19 Court to be an unlawful, fraudulent or unfair business act or practice;

20 5. Entering an award of damages, including all available statutory and punitive
21 damages, pursuant to the statutes and the causes of action pled herein;

22 6. Entering an order Defendant to pay for the costs of the proceedings herein as
23 well as reasonable attorney's fees, costs, and expenses as allowable by statute or other law;

24 7. Entering an order requiring Defendant to proffer an equitable plan to refund
25 the Plaintiff's and the Class members' monies; and

26 8. Awarding any other such relief that this Court deems necessary and proper.
27
28

JURY TRIAL DEMAND

Plaintiff and members of the Class hereby demand a trial by jury of all issues so triable.

DATED: June 28, 2021

Respectfully Submitted,

s/ Annick M. Persinger

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