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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

15 ASHA DAVIS, on behalf of herself and all
16 others similarly situated,

17 Plaintiffs,

18 v.

19 WALMART, INC.,

20 Defendant.

CASE NO.

CLASS ACTION

COMPLAINT FOR DAMAGES FOR:

1. Violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
2. Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
3. Violation of California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500;
4. Violation of Various State Consumer Protection Laws; and
5. Unjust Enrichment/Quasi-Contract.

JURY TRIAL DEMANDED

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CLAIMS FOR RELIEF 15

 FIRST CLAIM: VIOLATION OF CALIFORNIA’S CONSUMER LEGAL
 REMEDIES ACT, Cal. Civ. Code §§ 1750, *et seq.* 15

 SECOND CLAIM: VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION
 LAW, Cal. Bus. & Prof. Code §§ 17200, *et seq.* 16

 THIRD CLAIM: VIOLATION OF CALIFORNIA’S FALSE ADVERTISING
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 FOURTH CLAIM: VIOLATIONS OF VARIOUS STATE CONSUMER
 PROTECTION ACTS 18

 FIFTH CLAIM: UNJUST ENRICHMENT/QUASI-CONTRACT/RESTITUTION 21

REQUEST FOR RELIEF 22

JURY TRIAL DEMAND 23

1 Plaintiff ASHA DAVIS, on behalf of herself and all others similarly situated (“Plaintiffs”),
2 by and through her undersigned attorneys, brings this Class Action Complaint based upon personal
3 knowledge as to herself and her own acts, and as to all other matters upon information, investigation
4 and belief of their counsel.

5 **INTRODUCTION**

6 1. Defendant WALMART, INC. (“Walmart” or the “Defendant”) sells baby food
7 products under the brand name “Parent’s Choice,” which come in a variety of forms including
8 snacks (such as yogurt cereal snacks), rice-based treats (called “rice rusks”), as well as others¹
9 (collectively, the “Products”). These Products are marketed to parents to give to their young children
10 to consume; and contrary to the fact that these Products are intended for young children, the Products
11 contain contaminants: including heavy metals, inorganic arsenic (“arsenic”), lead, cadmium, and
12 mercury (collectively, the “Toxicants”), that public health authorities and child-safety organizations
13 unanimously agree pose serious risks to children’s health and well-being.²

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

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22 ¹ Including but not limited to: Parents’ Choice Organic Rice Rusks: Blueberry, Parents’ Choice
23 Organic Rice Rusks: Apple, Parents’ Choice Organic Rice Rusks: Banana, Walmart brand Parent’s
24 Choice: Little Hearts Blueberry, Walmart brand Parent’s Choice: Little Hearts Peach Mango,
25 Walmart brand Parent’s Choice: Little Hearts Strawberry Yogurt, Walmart brand Parent’s Choice:
26 Little Hearts Banana, Walmart brand Parent’s Choice: Organic Strawberry, Organic Infant With
Iron Milk-Based Powder - Stage 1 through 12 months, Carrot - Stage 2, 6+ months, Sweet Potato -
Stage 1, 4-6 months, Organic Butternut Squash Vegetable Puree - Stage 2, 6+ months, Organic
Strawberry Carrot and Quinoa Fruit & Veg Puree - Stage 2, 6+ months.

27 ² “Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury,” House
28 of Representatives Subcommittee on Economic and Consumer Policy (Committee on Oversight and
Reform), Staff Report (Feb. 4. 2021) (“Congressional Report”).

1 members of the proposed Classes that are known to exist, and this is a class action in which complete
2 diversity exists between one Plaintiff and one Defendant – namely, that Plaintiff Davis is a citizen
3 of California, while Defendant Walmart, Inc. is headquartered in, and therefore is a citizen of,
4 Arkansas.

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

10 10. **Specific Personal Jurisdiction.** This Court has specific personal jurisdiction over
11 Defendant because this action arises out of and relates to Defendant’s contacts with this forum.
12 Specifically, Defendant knowingly directed the Products through the stream of commerce into this
13 District. Defendant advertised and marketed within this District through the wires and mails and via
14 e-commerce websites through which residents of this state and District can purchase the Products.
15 Defendant knowingly directs electronic activity into this state and District with the intent to engage
16 in business interactions and has, in fact, engaged in such interactions. Defendant sold the Products
17 in this District, including to Plaintiffs, some who reside in this District, who purchased the Products
18 in this District, and whose losses were incurred here. Defendant cultivated a market for the Products
19 in this state and District and systematically served a market for the very Products causing the harms
20 alleged in this Complaint. Thus, there is an affiliation between this forum and the underlying
21 controversy and there is a strong relationship among Defendant, the forum, and the litigation.

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

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PARTIES

I. Plaintiff

12. Plaintiff Asha Davis is a citizen of the State of California and is a member of the Class as a purchaser of Defendant Walmart’s Products. Plaintiff purchased the Products—specifically including but not limited to Parent’s Choice Rice Rusks Blueberry—at Defendant’s store in the San Francisco Bay Area, and she relied on the Defendant’s representations (and omissions) as described herein. Plaintiff purchased the Products in March of 2020.

II. Defendant

13. Defendant Walmart, Inc., is incorporated in the State of Delaware and maintains its headquarters in the State of Arkansas.

FACTUAL ALLEGATIONS

I. Defendant Markets and Labels Its Products as Being Fit For Consumption by Children and Reasonable Consumers Relied On Defendant’s Misrepresentations and Omissions

14. 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.⁴ Defendant understands this demand and therefore promotes its Products as organic; Defendant also markets its Products as being fit for consumption by children. Indeed, the Products all contain the following substantially similar material statements that represent that the Products are wholesome, safe, and nutritious for children. Examples of these material statements are:

- Made with whole grains and wholesome strawberry yogurt, these yummy puffed morsels make for an enjoyable bite to eat. We offer everything you need from bath time to bed time and every time in between, all with the high quality we know your little one needs.⁵
- Since 1998, Walmart’s Parent’s Choice has been trusted by parents across the country to provide quality, affordable baby products.⁶

⁴ <https://www.walmart.com/ip/48-Pack-Parent-s-Choice-Organic-Stage-2-Banana-Baby-Snack-1-76-oz-Box/46831884> (last accessed Apr. 21, 2021).

⁵ <https://www.walmart.com/ip/Parent-s-Choice-Little-Hearts-Puffed-Grain-Snack-Strawberry-Yogurt-1-48-oz/23739748> (last accessed May 13, 2021).

⁶ <https://www.walmart.com/ip/48-Pack-Parent-s-Choice-Organic-Stage-2-Banana-Baby-Snack-1-76-oz-Box/46831884> (last accessed May 13, 2021).

1 15. Plaintiff Davis purchased the Products depicted below, which contains materially
2 similar representations to all Products at issue in this Complaint. Plaintiff and all members of the
3 Class viewed the representations on the labeling of the Products at the point of purchase. These
4 representations are intended to impact, and do in fact impact, every reasonable parent's decision
5 regarding which foods to purchase for their young children.



16 16. Plaintiffs the Class relied on these representations, specifically the representations
17 conveying the organic and wholesome nature of the product, when making their purchases.

18 17. Other Products in the Product family have substantively similar labels:⁷



27 ⁷ [https://www.walmart.com/ip/Parent-s-Choice-Little-Hearts-Puffed-Grain-Snack-Strawberry-](https://www.walmart.com/ip/Parent-s-Choice-Little-Hearts-Puffed-Grain-Snack-Strawberry-Yogurt-1-48-oz/23739748)
28 [Yogurt-1-48-oz/23739748](https://www.walmart.com/ip/Parent-s-Choice-Little-Hearts-Puffed-Grain-Snack-Strawberry-Yogurt-1-48-oz/23739748) (last accessed Apr. 21, 2021).

1 18. Critically, Defendant promotes the Products as safe and health for children, yet
2 conceals the presence and elevated levels of the Toxicants because no reasonable parent would
3 purchase the Products at the price offered, or on the same terms, or as frequently, or would not
4 purchase the Products at all, if this information were disclosed.

5 19. As the retailer, manufacturer, and seller of the Products, Defendant is responsible for
6 the accuracy of information conveyed on the Product labels.

7 20. Plaintiffs reasonably believed that the Products they purchased were free of
8 concerning levels of Toxicants that, in fact, were present at levels that would gravely concern any
9 reasonable consumer.

10 21. Defendant knew or, in the exercise of reasonable care, should have known that the
11 Products' labels were false or misleading.

12 22. Defendant intended for consumers to rely upon its representations and omissions
13 concerning the Products' nature and quality.

14 23. It would be reasonable for consumers to rely—as Plaintiffs did—upon Defendant's
15 representations and omissions concerning the Products.

16 24. Defendant's misrepresentations and omissions were made with the intent to generate
17 and increase sales of the Products.

18 25. Defendant's misrepresentations and omissions were deceptive and misleading for the
19 reasons set forth in this Complaint; and they are ongoing.

20 26. By representing the Products as wholesome and organic, Defendant implicitly
21 represented the Products' value to Plaintiffs and other consumers.

22 27. As a consequence of Defendant's unfair and deceptive practices, Plaintiffs and other
23 similarly-situated consumers purchased a product of different and substantially lesser value—one
24 with a higher effective cost—than Defendant represented, under the false impression that the
25 Products were safe, high-quality, premium Products free of elevated levels of Toxicants.

26 28. In fact, because the Products contained elevated levels of Toxicants, they should not
27 have been on the market in the first place, and thus the Products were of less value or even
28 valueless—*i.e.*, the threat of exposure to high levels of Toxicants would render the Products of no

1 value to reasonable consumers because no reasonable consumer would willingly administer
2 repeated, elevated doses of Toxicants to his or her child.

3 29. Defendant's omission of all reference to the Toxicants deprived Plaintiffs and other
4 consumers the opportunity to make an informed choice whether to Purchase the Products.

5 30. Accordingly, Plaintiffs and the Class did not realize the benefit of the bargain and
6 their expectations were not met.

7 31. Plaintiffs and the Class effectively paid more than the market value represented by
8 the price bargained for. Plaintiffs and the class bargained with Defendant on a particular market
9 value for a Product purporting to be a high-quality, premium food—one that would not contain
10 unacceptable levels of Toxicants.

11 32. However, unbeknownst to consumers, the Products do contain unacceptable levels
12 of Toxicants; Plaintiffs and the Class thus effectively paid for Products that were worth less than
13 they were led to reasonably believe, *i.e.*, Plaintiffs and the Class overpaid for the Products.

14 33. Thus, through the use of misleading representations and omissions, Defendant
15 obtained enhanced negotiating leverage allowing it to command a price Plaintiffs and the Class
16 would not have paid had they been fully informed.

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

20 35. Plaintiffs and the class lost money as a result of Defendant's misrepresentations and
21 omissions in that they did not receive what they reasonably believed they were paying for based
22 upon the misrepresentations and omissions. Plaintiffs and the class detrimentally altered their
23 position and suffered damages as a result of Defendant's misrepresentations and omissions.

24 36. If Plaintiffs had been aware that the Products contained unacceptable levels of any
25 Toxicant, Plaintiffs would have purchased a different product or no product at all. In other words,
26 Plaintiffs would not have purchased Defendant's Product but for Defendant's misrepresentations
27 and omissions.

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1 37. Plaintiffs and the Class were exposed to and justifiably relied upon the same material
2 misrepresentations and omissions made on the Products' labels.

3 **II. The Truth is Revealed**

4 38. The recent Congressional Report released by the U.S. House of Representatives
5 revealed that prominent brands of baby food Products contains "concerning levels" of the Toxicants
6 at-issue.

7 39. Public health authorities have expressed concern regarding consumption of the
8 Toxicants. For example, according to the Congressional Report, the FDA has expressed concern
9 regarding arsenic levels above 100 ppb in infant rice cereals, arsenic above 10 ppb in drinking water,
10 lead above 5 ppb in drinking water, lead above 50 ppb in juice products, and cadmium above 5 ppb
11 in drinking water. Defendant's Products routinely tested at levels exceeding these limits.

12 40. According to the Congressional Report, Defendant's ingredients tested positively for
13 arsenic, lead, cadmium and mercury. Even more concerning, the Congressional report states,
14 "Walmart refused to produce any documents showing its internal testing policies, its testing results,
15 or how Walmart treats ingredients and/or products that surpass any internal standards. Walmart's
16 evasion is concerning, as even limited independent testing has revealed the presence of toxic heavy
17 metals in its baby food."⁸

18 41. According to one report from 2019, Walmart's Parent's Choice Yogurt Cereal Snacks
19 and Rice Rusks (which are both of the items purchased by Plaintiffs) contain or contained arsenic,
20 lead, cadmium and mercury.⁹ Specifically, the Yogurt Cereal Snacks contained 56.1 ppb of arsenic,
21 5.2 ppb of lead, 26.1 ppb of cadmium, and 0.941 ppb of lead and the Rice Rusks, which are labeled
22 as organic, contained 108 ppb of arsenic (including 66 ppb of inorganic arsenic), 26.9 ppb of lead,
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25 ⁸ *Congressional Report* at 43.

26 ⁹ *Id* citing *Healthy Babies Bright Futures, What's in My Baby's Food? A National Investigation*
27 *Finds 95 Percent of Baby Foods Tested Contain Toxic Chemicals That Lower Babies' IQ, Including*
28 *Arsenic and Lead* (Oct. 2019) (online at www.healthybabyfood.org/sites/healthybabyfoods.org/files/2019-10/BabyFoodReport_FULLREPORT_ENGLISH_R5b.pdf).

1 2.4 ppb of cadmium, and 2.05 ppb of lead.¹⁰ Even after these Products tested positively for the
2 Toxicants, Defendant refused to pull the same brand of Products from its shelves and continues to
3 sell them to this day.

4 **III. The Danger of Toxicants Found in Defendant's Products, and the Defendant's Sale of**
5 **Said Products**

6 42. The Congressional Report emphasized the dangers posed by the Toxicants in the
7 Defendant's Products:

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

10 *Id.*

1 conventional baby foods. Currently, there is no federal standard on,
2 or warning to parents and caregivers about, these toxins.¹¹

3 With respect to arsenic, the Congressional Report states:

4 Arsenic is ranked number one among substances present in the
5 environment that pose the most significant potential threat to human
6 health, according to the Department of Health and Human Services'
7 Agency for Toxic Substances and Disease Registry (ATSDR). The
8 known health risks of arsenic exposure include "respiratory,
9 gastrointestinal, haematological, hepatic, renal, skin, neurological and
10 immunological effects, as well as damaging effects on the central
11 nervous system and cognitive development in children." Studies have
12 concluded that arsenic exposure has a "significant negative effect on
13 neurodevelopment in children." This negative effect is most
14 pronounced in Full Scale IQ, and more specifically, in verbal and
15 performance domains as well as memory. For every 50% increase in
16 arsenic levels, there is an approximately "0.4 decrease in the IQ of
17 children." A study of Maine schoolchildren exposed to arsenic in
18 drinking water found that children exposed to water with an arsenic
19 concentration level greater than 5 parts per billion (ppb) "showed
20 significant reductions in Full Scale IQ, Working Memory, Perceptual
21 Reasoning and Verbal Comprehension scores." The authors pegged 5
22 ppb as an important threshold. Likewise, a study of children in Spain
23 found that increasing arsenic exposure led to a decrease in the
24 children's global motor, gross motor, and fine motor function scores.
25 Boys in particular were more susceptible to arsenic's neurotoxicity.¹²

16 With respect to lead, the Congressional Report states:

17 Lead is number two on ATSDR's list of substances present in the
18 environment that pose the most significant potential threat to human
19 health. Even small doses of lead exposure are hazardous, particularly
20 to children. Lead is associated with a range of bad health outcomes,
21 including behavioral problems, decreased cognitive performance,
22 delayed puberty, and reduced postnatal growth. According to FDA,
23 lead is especially dangerous to "infants" and "young children." FDA
24 acknowledges that: High levels of lead exposure can seriously harm
25 children's health and development, specifically the brain and nervous
26 system. Neurological effects from high levels of lead exposure during
27 early childhood include learning disabilities, behavior difficulties,
28 and lowered IQ. Because lead can accumulate in the body, even low-
level chronic exposure can be hazardous over time. Lead exposure
severely affects academic achievement in children. Even at low
levels, early childhood lead exposure has a negative impact on school
performance. Two separate studies of schoolchildren in Detroit and
Chicago public schools found a strong inverse relationship between
lead exposure and test scores. In the Detroit study, there was a

27 ¹¹ Report at 9-10 (internal citations omitted).

28 ¹² *Id* (internal citations omitted).

1 “significant association” between early childhood lead exposure and
 2 decreased standardized test performance, with lead exposure strongly
 3 linked to an adverse effect on academic achievement. The Chicago
 4 study found that higher blood lead concentrations were associated
 5 with lower reading and math scores in 3rd grade children. Increased
 6 blood lead concentrations correlated with a 32% increase in the risk
 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.¹³

7 With respect to cadmium, the Congressional Report states:

8 Cadmium is number seven on ATSDR’s list of substances present in
 9 the environment that pose the most significant potential threat to
 10 human health. Cadmium is associated with decreases in IQ, as well as
 11 the development of ADHD. A 2018 study found that cadmium
 12 exposure negatively affected children’s Full Scale IQ, particularly
 13 among boys. Boys exhibiting higher amounts of cadmium exposure
 14 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.¹⁴

15 With respect to mercury, the Congressional Report states:

16 Mercury is number three on ATSDR’s list of substances present in the
 17 environment that pose the most significant potential threat to human
 18 health. Studies of mercury’s effect on childhood development have
 19 primarily been conducted by considering the mother’s exposure to
 20 mercury while pregnant. In these instances, “pre-natal mercury
 21 exposure has been consistently associated with adverse subsequent
 neuro-development.” And pre-natal mercury exposure is also related
 to poorer estimated IQ. Beyond prenatal exposure, higher blood
 mercury levels at “2 and 3 years of age were positively associated
 with autistic behaviors among preschool-age children.”¹⁵

22 43. Defendant has shown no concern for the health risks faced by the end-users of their
 23 Products—vulnerable young children—in fact, Defendant continues today selling these Products
 24 without any indication to consumers that the Products contain alarming levels of Toxicants.

25 _____
 26 ¹³ *Id* at 11 (internal citations omitted).

27 ¹⁴ *Id* at 12 (internal citations omitted).

28 ¹⁵ *Id* at 12-13 (internal citations omitted).

1 44. Not only did Defendant knowingly mislead parents into believing the Products were
2 safe, Defendant charged a premium for them. Plaintiffs and the Class would not have purchased the
3 Products if they were aware of the elevated presence of the Toxicants or, alternatively, they would
4 not have purchased at the Products’ offered price and terms.

5 **IV. Due to Defendant’s Misconduct, Plaintiffs and the Class Suffered Economic Injury**

6 45. Plaintiffs and the Class were injured economically when they purchased the
7 Products. As alleged herein, Plaintiffs and the Class received something worth less than what they
8 paid for, and did not receive the benefit of their bargain. They paid for Products which were
9 supposed to be wholesome, but were not. No reasonable consumer would have purchased or paid as
10 much or as frequently for the Products had they known the Products contained elevated levels of
11 Toxicants. Defendant knew of the Toxicants and the levels at which they occur in the Products, but
12 chose not to disclose this material information to their consumers in an effort to persuade them they
13 were buying wholesome Products rather than Products with elevated levels of Toxicants.

14 **CLASS ACTION ALLEGATIONS**

15 46. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to
16 Rule 23 of the Federal Rules of Civil Procedure on behalf of members of the following proposed
17 Classes:

18 **National Class.** All persons within the United States who purchased
19 one or more of the Products from the beginning of the applicable
statutory period through present (the “National Class”).

20 **Multistate Class.** All persons within the States of California, Florida,
21 Illinois, New York, North Carolina, Ohio, and Washington who
22 purchased one or more of the Products from the beginning of the
applicable statutory period through present (the “Multistate Class”).

23 **California Class.** All persons within the State of California who
24 purchased one or more of the Products from the beginning of the
applicable statutory period through present (the “California Class”).

25 47. Unless otherwise stated, use of the term “Class” throughout this Complaint refers to
26 the National Class, the Multistate Class, and the California Class, collectively.

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1 48. Excluded from the Class are Defendant, any of their respective members, affiliates,
2 subsidiaries, officers, directors, employees, successors or assigns, the judicial officers, and their
3 immediate family members; as well as the Court staff assigned to this action.

4 49. Plaintiffs reserve the right to modify or amend Class definitions as appropriate during
5 the pendency of this Action.

6 50. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
7 Plaintiffs can prove the elements of the claims on a class-wide basis using the same evidence as
8 individual Class members would use to prove those elements in individual actions alleging the same
9 claims.

10 51. This action has been brought and may be properly maintained as a class action under
11 the criteria of Rule 23:

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

16 **Commonality and Predominance – Rule 23(a)(2),(b)(3).** This action involves questions
17 of law and fact common to the Classes, which predominate over any individual questions, including:

- 18 a. whether Defendant engaged in the conduct alleged herein;
- 19 b. whether Defendant's course of conduct alleged herein violates the statutes
20 and other laws that are pled in this Complaint;
- 21 c. whether Defendant intended for consumers to rely upon its representations
and omissions;
- 22 d. whether reasonable consumers would rely upon Defendant's representations
23 and omissions;
- 24 e. whether Defendant knew or should have known its representations and
omissions were false or misleading;
- 25 f. whether reasonable consumers were misled by Defendant's labeling,
26 marketing and advertising of the Products;
- 27 g. whether Defendant was unjustly enriched by retaining monies from the sale
of the Products at issue;
- 28 h. whether certification of the Class is appropriate under F.R.C.P. Rule 23;

1 i. whether Plaintiffs and the Class are entitled to declaratory, equitable, or
injunctive relief, and/or other relief, and the scope of such relief; and

2 j. the amount and nature of the relief to be awarded to Plaintiffs and the Class,
3 including whether Plaintiffs and the Class are entitled to punitive damages.

4 **Typicality – Rule(a)(3).** Plaintiffs’ claims are typical of the other Class members because
5 the Plaintiffs, as well as the members of the Class, paid for Defendant’s contaminated Products at
6 retail. Plaintiffs and the members of the Class relied on the representations and omissions made by
7 the Defendant prior to making their purchase of the Products at issue. Plaintiffs and the Class paid
8 for Defendant’s products at retail and would not have purchased them (or would have paid
9 substantially less for them) had they known that the Defendant’s representations were untrue and/or
10 had they possessed the information Defendant omitted from the labels regarding the Toxicants.

11 **Adequacy of Representation – Rule 23(a)(4).** Plaintiffs are adequate Class representatives
12 because Plaintiffs’ interests do not conflict with the interests of the other Class members whom she
13 seeks to represent, Plaintiffs have retained counsel competent and experienced in complex class
14 action litigation, and Plaintiffs intend to prosecute this action vigorously. Class members’ interests
15 will be fairly and adequately protected by Plaintiffs and her counsel.

16 **Superiority of Adjudication as a Class Action – Rule 23(b)(3).** To preserve judicial
17 economy, this case will be best maintained as a class action, which is superior to other methods of
18 individual adjudication of these claims. This action is best maintained as a class action because of
19 the large number of consumers affected by the alleged violations of law as well as the relatively
20 smaller-purchase economic damages being sought by Plaintiffs and the Class. The damages
21 individual Class members suffered are small compared to the burden and expense of individual
22 prosecution of the complex and extensive litigation needed to address Defendant’s conduct, such
23 that it would be virtually impossible for the Class to redress the wrongs done to them and they would
24 have little incentive to do so given the amount of damage each Class member has suffered when
25 weighed against the costs and burdens of litigation. The class procedure presents fewer management
26 difficulties than individual litigation and provides the benefits of single adjudication, economies of
27 scale, and supervision by a single court.

28 ///

1 58. Defendant violated the CLRA by way of the following provisions:

2 a. Passing of the Products as that of another, specifically indicating the Products
3 are safe for young children when in fact they are not in violation of Civ. Code § 1770(a)(1);

4 b. Representing that the Products have “characteristics” which they do not have
5 in violation of Cal. Civ. Code § 1770(a)(5);

6 c. Representing that the Products are of a “particular standard, quality, or grade”
7 when they were not in violation of Cal. Civ. Code § 1770(a)(7);

8 d. Advertising the Products be safe for young children with the “intent not to
9 sell them as advertised” in violation of Cal. Civ. Code § 1770(a)(9); and

10 e. Representing that the subject of a transaction has been supplied in accordance
11 with a previous representation when it has not in violation of Cal. Civ. Code § 1770(a)(16).

12 59. Defendant is aware that its representations are false and misleading.

13 60. Due to Defendant’s conduct, Plaintiff and members of the Class suffered
14 ascertainable economic injury.

15 61. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff provided notice to
16 Defendant of its alleged violations of the CLRA, demanding that Defendant correct such violations,
17 and providing it the opportunity to correct its business practices. If Defendant does not do so,
18 Plaintiffs will seek leave to amend the Complaint to add claims for monetary relief, including
19 restitution and actual damages under the Consumers Legal Remedies Act. Notice was sent via
20 certified mail, return receipt requested, on May 17, 2021.

21 62. Accordingly, Plaintiffs seek injunctive relief, reasonable attorneys’ fees and costs,
22 and all other available relief as pled in this Complaint. Plaintiffs will seek to amend this Complaint
23 at the appropriate time to assert claims for damages.

24 **SECOND CLAIM:**
25 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW,**
26 **Cal. Bus. & Prof. Code §§ 17200, et seq.**
27 **(Individually and on Behalf of the California Class)**

28 63. Plaintiffs reallege and incorporate the foregoing paragraphs.

64. Plaintiff Davis brings this claim individually and on behalf of the California Class
(referred to throughout this Count as “the Class”).

1 65. Defendant’s conduct constitutes unfair business acts or practices under the
2 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

3 66. Defendant’s business practices are considered to be “unfair” because it violates
4 California’s Unfair Competition Law, which states that unfair acts are acts where the reasons,
5 justifications and motivations of Defendant are outweighed by the harm to Plaintiff(s).

6 67. A business practice is also considered to be “unfair” if the conduct alleged is
7 immoral, unethical, oppressive, or substantially injurious to consumers; as well as if the conduct
8 alleged causes an injury which is not outweighed by any benefits to other consumers or to
9 competition, and that the injury is of the type that the consumer could not have avoided. Defendant’s
10 conduct is “unfair” pursuant to the UCL under each of the three tests described in these paragraphs.

11 68. Defendant’s behavior constitutes unfair business practices under California law.

12 69. Defendant’s retention of Plaintiffs’ and Class members’ payments for the Products
13 with the issues as described herein, namely, that the Products are not wholesome as advertised, are
14 not organic (where applicable), and are not fit for consumption by young children, does not outweigh
15 the economic harm that said retention imposes on consumers. The only party that benefits is
16 Defendant. Defendant’s sale of the Products with the misrepresentations discussed herein are
17 immoral, unethical, oppressive, and substantially injures consumers.

18 70. Plaintiffs and members of the Class had no way of knowing that Defendant’s
19 Products contained Toxicants. And, as Defendant continues to unfairly retain Plaintiffs’ and
20 members of the Class’ payments for the Products, this conduct continues to be unfair under
21 California law. This is exactly the type of unscrupulous and inexcusable business practice that the
22 UCL was enacted to address.

23 71. As a result of Defendant’s conduct, Plaintiffs and Class members have suffered
24 injury-in-fact by way of lost assets. Plaintiffs request that the Court issue sufficient equitable relief
25 to restore them and Class members to the position they would have been had Defendant not engaged
26 in unfair business practices. Plaintiffs seek all other available relief as pled in this Complaint.

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THIRD CLAIM:
VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,
Cal. Bus. & Prof. Code § 17500
(Individually and on Behalf of the California Class)

72. Plaintiffs reallege and incorporate the foregoing paragraphs.

73. Plaintiff Davis brings this claim individually and on behalf of the California Class (referred to throughout this Count as “the Class”).

74. Defendant violated California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 (“FAL”), by publicly disseminating misleading and false advertisements through advertising and marketing statements, suggesting that consumers purchase the Products at-issue:

- a. that the Products are wholesome;
- b. that the Products are organic, where applicable; and
- c. that the Products are fit for consumption by children.

75. Defendant’s contribution to the false and misleading advertisements were made in order to prop up and increase sales of the Products at-issue.

76. Defendant knew these false and misleading advertisements were untrue.

77. Plaintiffs and members of the proposed Classes would not have bought these products had they known that any or all of these misrepresentations were false.

78. Pursuant to Business & Professions Code § 17500, Plaintiffs and members of the Class seek an order of this Court permanently enjoining Defendant from continuing to publicly disseminate misleading and false advertisements as alleged herein. Plaintiffs and Class Members also seek an order requiring Defendant to: (a) make full restitution for all monies wrongfully obtained; and (b) disgorge all ill-gotten revenues and/or profits. Plaintiffs seek all other available relief as pled in this Complaint.

FOURTH CLAIM:
VIOLATIONS OF VARIOUS STATE CONSUMER PROTECTION ACTS
(Individually and on behalf of the Multistate Class)

79. Plaintiffs reallege and incorporate the foregoing paragraphs.

1 80. Plaintiffs bring this claim for deceptive acts and practices in violation of various
2 states’ consumer protection statutes individually, as to their respective states’ laws, and on behalf
3 of the Multistate Class, as to the laws of the other states (referred to throughout this count as “the
4 Class”).

5 81. The various state laws cited below, upon which this Count is premised, are consonant
6 with one another and with the laws of the Plaintiffs’ respective states, both procedurally and
7 substantively.

8 82. Defendant has engaged in deceptive, unfair, unconscionable, and fraudulent acts and
9 practices that have caused actual damages to Plaintiffs and the Class, as described herein, including
10 the knowing and intentional misrepresentations and omissions described with respect to the
11 marketing, advertising, promotion, packaging, labeling, and sale of the Products.

12 83. Defendant’s deceptive, unfair, unconscionable, and fraudulent acts and practices
13 have been carried out in the course of conducting Defendant’s business, trade, and commerce.

14 84. Such acts and practices—including Defendant’s intentional efforts to mislead
15 consumers by the misrepresentations and omissions alleged throughout this Complaint—are willful,
16 unfair, unconscionable, deceptive, immoral, unethical, oppressive, unscrupulous, contrary to public
17 policy, and substantially injurious to consumers, including Plaintiffs and the Class.

18 85. Such acts and practices, including Defendant’s misrepresentations and omissions,
19 have the capacity to mislead, deceive, and confuse a substantial portion of the public and all
20 reasonable consumers in a material way and have in fact misled, deceived, and confused Plaintiffs
21 and the Class in a material way, as Defendant intended.

22 86. Defendant’s intentionally false, deceptive, misleading, and confusing representations
23 and omissions would be material to any ordinary, average, and reasonable consumer’s decision
24 whether to buy the Product, given that they pertain to a fundamental and important feature of the
25 Products. No reasonable consumer would have purchased the Products but for Defendant’s acts and
26 practices, including its misrepresentations and omissions, described throughout this Complaint.

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1 87. Any ordinary, average, objectively reasonable consumer acting reasonably in the
2 circumstances would have been deceived by Defendant’s acts and practices, including the
3 misrepresentations and omissions described herein.

4 88. Defendant’s acts are unconscionable and actuated by bad faith, lack of fair dealing,
5 actual malice, are accompanied by a wanton and willful disregard for consumers’ well-being, and
6 are motivated solely by the desire for financial gain.

7 89. As a direct and proximate result of Defendant’s deceptive practices, Plaintiffs and
8 the Class have sustained actual damages including but not limited any price premium paid and other
9 damages alleged in this Complaint.

10 90. Plaintiffs’ claims under the laws of California are representative of similar claims
11 available to Multistate Class members under the laws of other states, which are consonant with one
12 another and with the laws of California.

13 91. Defendant’s acts and practices described herein constitute unfair competition and
14 deceptive, unfair, unconscionable, and fraudulent acts and practices in violation the following state
15 consumer protection statutes:

16 a. California’s Consumer Legal Remedies Act (“CLRA”) (Cal. Civ. Code §§
17 1750, *et seq.*), California’s Unfair Competition Law (“UCL”) (Bus. & Prof. Code §§ 17200 *et seq.*),
and California’s False Advertising Law Cal. Bus. & Prof. Code § 17500;

18 b. Florida Deceptive and Unfair Trade Practices Act (§§ 501.201, Fla. Stat., *et*
19 *seq.*);

20 c. Illinois Consumer Fraud and Deceptive Business Practices Act (815 Ill.
Comp. Stat. 505/1, *et seq.*);

21 d. New York Deceptive Acts and Practices Act (N.Y. Gen. Bus. Law §§ 349, *et*
22 *seq.*) and New York False Advertising Law (N.Y. Gen. Bus. Law §§ 349, *et seq.*);

23 e. North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. §§
75-1.1, *et seq.*);

24 f. Ohio Consumer Sales Practices Act (ORC §§ 4165.01, *et seq.*) and Ohio
25 Deceptive Trade Practices Act (ORC §§ 4165.01, *et seq.*); and

26 g. Washington Consumer Protection Act (Wash. Rev. Code §§ 19.86.010, *et*
seq.

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1 Accordingly, Plaintiffs and the Class seek a declaration or declaratory judgment that Defendant’s
2 acts and practices have violated and continue to violate the foregoing laws and all other available
3 relief as pled in this Complaint.

4 **FIFTH CLAIM:**

5 **UNJUST ENRICHMENT/QUASI-CONTRACT/RESTITUTION**

6 **(Individually and on Behalf of all Classes)**

7 92. Plaintiffs reallege and incorporate the foregoing paragraphs.

8 93. Plaintiffs bring this claim for unjust enrichment also referred to as quasi-contract or
9 restitution, in violation of the law of the states identified in the Multistate Class, all of which are
10 consonant with one another. Plaintiffs plead this claim in the alternative to their claims for legal
11 relief.

12 94. Plaintiffs bring this claim individually and on behalf of the National Class, the
13 Multistate Class, and the California Class (referred to throughout this Count as “the Class”).

14 95. Plaintiffs and the Class purchased the Products and paid a premium for said
15 products—products which misrepresented or omitted the quality of the products which justified the
16 premium.

17 96. Plaintiffs and the Class paid more than the fair value of Defendant’s Products as
18 reflected in any price premium paid and for the reasons alleged above.

19 97. Because of Defendant’s wrongful acts and practices, Defendant charged, and
20 Plaintiffs and the Class paid, a higher effective price for the Products than that which reflects their
21 true value and Defendant accordingly obtained monies that rightfully belong to Plaintiffs and the
22 Class.

23 98. Defendant received a direct benefit from Plaintiffs and the Class in the form of
24 Product sales and increased market share for the Products. Defendant obtained this benefit by its
25 misrepresentations and omissions because those misrepresentations and omissions induced
26 reasonable consumers to purchase the Products they would not otherwise have purchased.

27 99. Defendant appreciated this benefit and knowingly accepted it at the expense of, and
28 to the detriment of, Plaintiffs and the Class. Defendant currently retains this benefit.

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JURY TRIAL DEMAND

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

Dated: May 17, 2021

Respectfully Submitted,

s/ Michael H. Pearson

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