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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 Ludmila Gulkarov, Individually and on)
16 Behalf of All Others Similarly Situated,)

17 Plaintiff,)

18 v.)

19 Plum, PBC, a Delaware corporation,)

20 Defendant.)

Case No. _____

CLASS ACTION COMPLAINT FOR:

- (1) NEGLIGENT MISREPRESENTATION;
- (2) VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT;
- (3) VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW;
- (4) VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW;
- (5) BREACH OF EXPRESS WARRANTY; AND
- (6) BREACH OF IMPLIED WARRANTY;

DEMAND FOR JURY TRIAL

21 _____

1 metals in baby foods” and the knowledge that “[e]ven low levels of exposure can cause serious
2 and often irreversible damage to brain development.” Ex. 1 at 2.

3 5. The Subcommittee’s report revealed that “[i]nternal company standards permit
4 dangerously high levels of toxic heavy metals, and ... that the manufacturers have often sold foods
5 that exceeded these levels.” Ex. 1 at 4. Defendant was among the three companies that refused to
6 cooperate with the Subcommittee’s investigation, causing “great[] concern that their lack of
7 cooperation might obscure the presence of even higher levels of toxic heavy metals in their baby
8 food products, compared to their competitors’ products.” Ex. 1 at 5. “[E]ven limited independent
9 testing has revealed the presence of toxic heavy metals in [Defendant’s] baby food.” Ex. 1 at 45.

10 6. Defendant knows that its customers trust the quality of its products and that they
11 expect Defendant’s products to be free of Heavy Metals. It also knows that certain consumers seek
12 out and wish to purchase premium baby foods that possess high quality ingredients free of toxins,
13 contaminants, or chemicals and that these consumers will pay more for baby foods they believe
14 possess these qualities than for baby foods they do not believe possess these qualities.

15 7. As such, Defendant’s promises, warranties, pricing, statements, claims, packaging,
16 labeling, marketing, and advertising (hereinafter collectively referred to as “Marketing” or
17 “Claims”) center on representations and pictures that are intended to, and do, convey to consumers
18 that their baby food, including its Contaminated Baby Foods,² possess certain qualities and
19 characteristics that justify a premium price.

20 8. No reasonable consumer seeing Defendant’s Marketing would expect the
21 Contaminated Baby Foods to contain Heavy Metals or other undesirable toxins or contaminants.
22 Furthermore, reasonable consumers, like Plaintiff, would consider the mere inclusion of Heavy

23 _____
24 ² The phrase “Contaminated Baby Foods” collectively refers to the following Plum Organics
25 products: Just Sweet Potato Organic Baby Food; Just Peaches Organic Baby Food; Just Prunes
26 Organic Baby Food; Apple & Carrot Organic Baby Food; Pumpkin, Banana, Papaya, and
27 Cardamom Organic Baby Food; Apple, Raisin, & Quinoa Organic Baby Food; Little Teethers
28 Organic Multigrain Teething Wafers- Banana with Pumpkin; Mighty Morning Bar- Blueberry
Lemon. Discovery may reveal additional products that also contain levels of Heavy Metals.
Plaintiff reserves her right to include any such products in this action.

1 Metals or other undesirable toxins or contaminants a material fact when considering what baby
2 food to purchase.

3 9. Defendant intended for consumers to rely on its Marketing, and reasonable
4 consumers did in fact so rely. However, Defendant's Marketing is deceptive, misleading, unfair,
5 and/or false because, among other things, the Contaminated Baby Foods include undisclosed
6 Heavy Metals or other undesirable toxins or contaminants.

7 10. Defendant's Contaminated Baby Foods do not have a disclaimer regarding the
8 presence of Heavy Metals or other undesirable toxins or contaminants that would inform
9 consumers that the foods contain Heavy Metals and/or that Heavy Metals can accumulate over
10 time in a child's body to the point where poisoning, injury, and/or disease can occur.

11 11. Defendant's wrongful Marketing, which includes misleading, deceptive, unfair,
12 and false Marketing and omissions, allowed it to capitalize on, and reap enormous profits from,
13 consumers who paid the purchase price or a price premium for Contaminated Baby Food that was
14 not sold as advertised. And Defendant continues to wrongfully induce consumers to purchase its
15 Contaminated Baby Food that are not as advertised.

16 12. Plaintiff brings this proposed consumer class action individually and on behalf of
17 all other members of the Class (as defined herein), who, from the applicable limitations period up
18 to and including the present, purchased for use and not resale any of Defendant's Contaminated
19 Baby Foods.

20 **JURISDICTION AND VENUE**

21 13. This Court has original jurisdiction over all causes of action asserted herein under
22 the Class Fairness Act, 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds the sum
23 or value or \$5,000,000 exclusive of interest and costs and more than two-thirds of the Class resides
24 in states other than the state in which Defendant is a citizen and in which this case is filed, and
25 therefore any exemptions to jurisdiction under 28 U.S.C. §1332(d)(2) do not apply.

26 14. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiff
27 suffered injury as a result of Defendant's acts in this district, many of the acts and transactions

1 giving rise to this action occurred in this district, and Defendant conducts substantial business in
2 this district and is headquartered in this district. Defendant has intentionally availed itself of the
3 laws and markets of this district, and Defendant is subject to personal jurisdiction in this district.

4 **THE PARTIES**

5 15. Plaintiff is, and at all times relevant hereto has been, a citizen of the state of
6 California. She purchased the Contaminated Baby Foods, specifically the Plum Organics Sweet
7 Potato Baby Food and Plum Organics Apple & Carrot, for all three of her children from Vons and
8 Albertsons grocery stores. Plaintiff last purchased the Contaminated Baby Foods for her youngest
9 child from July 2014 to 2017.

10 16. Plaintiff believed she was feeding her children healthy, nutritious food. During the
11 time she purchased and fed her children the Contaminated Baby Foods. Due to the false and
12 misleading claims and omissions by Defendant, she was unaware the Contaminated Baby Foods
13 contained any level of Heavy Metals, and would not have purchased the food if that information
14 had been fully disclosed.

15 17. As the result of Defendant's negligent, reckless, and/or knowingly deceptive
16 conduct as alleged herein, Plaintiff was injured when she paid the purchase price or a price
17 premium for the Contaminated Baby Foods that did not deliver what they promised. She paid the
18 purchase price on the assumption that the labeling of the Contaminated Baby Foods was accurate
19 and that it was free of Heavy Metals and safe to ingest. Plaintiff would not have paid this money
20 had she known that the Contaminated Baby Food contained excessive degrees of Heavy Metals.
21 Further, should Plaintiff encounter the Contaminated Baby Foods in the future, she could not rely
22 on the truthfulness of the Marketing, absent corrective changes to the packaging and advertising
23 of the Contaminated Baby Foods. Damages can be calculated through expert testimony at trial.

24 18. Defendant Plum, PBC was founded in 2007 and is incorporated in Delaware. Its
25 headquarters are located at 1485 Park Avenue, Suite 200, Emeryville, California. Defendant
26 formulates, develops, manufactures, labels, distributes, markets, advertises, and sells the
27 Contaminated Baby Foods under the Plum Organics name throughout the United States. Defendant
28

1 created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair,
2 misleading, and/or deceptive labeling and advertising for the Contaminated Baby Foods.

3 19. The Marketing for the Contaminated Baby Foods, relied upon by Plaintiff, was
4 prepared, reviewed, and/or approved by Defendant and its agents at its headquarters in California
5 and was disseminated by Defendant and its agents through marketing, advertising, packaging, and
6 labeling that contained the misrepresentations alleged herein. The Marketing for the Contaminated
7 Baby Foods was designed to encourage consumers to purchase the Contaminated Baby Foods and
8 reasonably misled the reasonable consumer, i.e., Plaintiff and the Class members, into purchasing
9 the Contaminated Baby Foods.

10 20. Defendant’s Products are divided into groups according to the targeted infant or
11 toddler age and/or type of food product. For example, there are five groups designated for the
12 youngest infants: Stage 1 (4+ months old), Stage 2 (6+ months old), Stage 3 (6+ months old),
13 Super Puffs®, and Little Teethers.

14 Stage 1

15 Stage 1 (4+ months) organic baby food is
16 perfect for introducing solids or first foods
17 to your budding eater. Using only non-
18 GMO, organic ingredients, the blends are
19 all unsalted, unsweetened, and kosher
20 parve. And since our pouches are
21 resealable, you can customize portion
22 sizes that are perfect for your baby.



Peaches Baby Food



Sweet Potato Baby Food



Mangos Baby Food



Prunes Baby Food

22 Stage 2

23 Stage 2 (6+ months) organic baby food
24 pouches are made with blends of fruit,
25 veggies, grains, and Greek yogurt that
26 are perfect for exposing your little foodie
27 to unique flavors and colors.



Apple, Butternut Squash & Granola, 3.5oz



Pear, Blueberry, Avocado & Granola Baby Food



Strawberry, Banana & Granola 3.5oz



Mango, Carrot & Coconut Cream Baby Food

28 [SHOW MORE >](#)

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Stage 3

Stage 3 (6+ months), a line of culinary-inspired baby meals, are perfect for budding foodies. These hearty, flavorful meals are cooked to delight & develop baby's palate while helping to transition baby to table food.



Carrot, Spinach, Turkey, Corn, Apple & Potato Baby Food



Carrot, Sweet Potato, Corn, Pea & Chicken Baby Food



Carrot, Chickpea, Pea, Beef & Tomato Baby Food

Super Puffs®

Super Puffs®, a colorful line of bite-sized, nutritious puffed snacks, are made with whole grains and organic veggies and fruit. Packed with 7 essential vitamins and minerals, Super Puffs® delight tiny taste buds with a rainbow of nutritional goodness.



Strawberry with Beet Cereal Snack



Apple with Spinach Cereal Snack



Blueberry with Purple Sweet Potato Cereal Snack



Mango with Sweet Potato Cereal Snack

Little Teethers

Little ones can't wait to sink their gums into these delicious teething wafers. Delight budding palates with unique flavors as you encourage self-feeding.



Apple with Leafy Greens Wafers



Banana with Pumpkin Wafers



Blueberry Wafers

a) Just Sweet Potato Organic Baby Food:



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b) Just Peaches Organic Baby Food:



c) Just Prunes Organic Baby Food:



d) Apple & Carrot Organic Baby Food:



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e) Pumpkin, Banana, Papaya, and Cardamom Organic Baby Food:



f) Apple, Raisin, & Quinoa Organic Baby Food:



g) Little Teethers Organic Multigrain Teething Wafer- Banana with Pumpkin:



h) Mighty Morning Bar- Blueberry Lemon



FACTUAL ALLEGATIONS

I. A Congressional Investigation Found the Presence Heavy Metals in Baby Foods

22. On February 4, 2021, the U.S. House of Representatives’ Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, published a report detailing its findings that Heavy Metals—including arsenic, cadmium, lead, and mercury—were present in “significant levels” in numerous commercial baby food products. Ex. 1.

23. Defendant was one of the baby food manufacturers from whom the Subcommittee requested internal documents and test results. However, Defendant “refused to cooperate with the Subcommittee’s investigation.” Ex. 1. Defendant refused to produce its testing standards and specific test results but instead produced a spreadsheet that “self-declared” that every product met criteria for each of the Heavy Metals, while declining to state what the criteria were.

Product Name	Testing Date	Arsenic	Cadmium	Lead	Mercury
Plum Organics® Stage 2 Apple & Carrot, 4oz	10/29/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Peach, Banana & Apricot, 4oz	10/29/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Pear & Mango, 4oz	10/29/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Pear, Spinach & Pea, 4oz	10/29/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Apple, Cauliflower & Leek, 3.5oz	10/29/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Eat Your Colors® Cherry, Purple Carrot, Blackberry & Millet, 3.5oz	5/14/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Eat Your Colors® Cherry, Purple Carrot, Blackberry & Millet, 3.5oz	5/14/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Yellow Zucchini, Corn & Turmeric, 3.5oz	5/1/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Yellow Zucchini, Corn & Turmeric, 3.5oz	5/2/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Yellow Zucchini, Corn & Turmeric, 3.5oz	5/7/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Yellow Zucchini, Corn & Turmeric, 3.5oz	5/16/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Peach, Pumpkin, Carrot & Cinnamon, 3.5oz	5/17/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Peach, Pumpkin, Carrot & Cinnamon, 3.5oz	5/17/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Peach, Pumpkin, Carrot & Cinnamon, 3.5oz	5/25/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Pea, Kiwi, Pear & Avocado, 3.5oz	5/1/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Pea, Kiwi, Pear & Avocado, 3.5oz	5/2/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Pea, Kiwi, Pear & Avocado, 3.5oz	6/27/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Eat Your Colors® Strawberry, Apple, Rhubarb & Oats, 3.5oz	5/16/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Eat Your Colors® Strawberry, Apple, Rhubarb & Oats, 3.5oz	5/24/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Eat Your Colors® Strawberry, Apple, Rhubarb & Oats, 3.5oz	5/24/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Apple, Raisin & Quinoa, 3.5oz	10/28/2017	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Apple, Plum, Berry & Barley, 3.5oz	5/15/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Sweet Potato, Apple & Millet, 3.5oz	5/15/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Mango, Sweet Potato, Apple & Millet, 3.5oz	6/27/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Banana, Zucchini & Amaranth, 3.5oz	5/23/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria
Plum Organics® Stage 2 Banana, Zucchini & Amaranth, 3.5oz	5/23/2018	Meets Criteria	Meets Criteria	Meets Criteria	Meets Criteria

1 24. Defendants marked every product that it “meets criteria” without identifying what
2 that criteria is. Ex. 1. The Subcommittee found Defendant’s “grading” concerning and misleading
3 as it “raises questions about what [Defendant’s] other thresholds actually are, and whether they
4 exist.” Ex. 1.

5 25. The investigation found that, when baby food manufacturers were left to self-
6 regulate and establish their own Heavy Metals standards, they routinely failed to abide by their
7 own standards. Ex. 1.

8 26. In its conclusion, the Subcommittee stressed the danger associated with the
9 presence of Heavy Metals in baby food: “These toxic heavy metals pose serious health risks to
10 babies and toddlers. Manufacturers knowingly sell these products to unsuspecting parents, in spite
11 of internal company standards and test results, and without any warning labeling whatsoever.” Ex.
12 1.

13 27. In Defendant’s published response to the Subcommittee’s Report, it stated, “We are
14 confident in the safety and quality of our products. Our top priority is to serve children healthy,
15 nutritious food made from the best ingredients. We want to assure you that Plum’s products are
16 safe (and delicious) to eat!”³

17 28. However, under the FAQs section, Defendant fails to describe its “protocol for
18 evaluating heavy metals in products” and simply claims that it looks to guidance from leading
19 health and regulatory bodies, while also failing to identify the “healthy and regulatory bodies.”⁴
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26 ³ <https://www.plumorganics.com/faqs/> (last accessed February 5, 2021).

27 ⁴ *Id.*

1 **II. Defendant Falsely Marketed Its Contaminated Baby Foods as Healthy While**
2 **Omitting Any Mention of Heavy Metals**

3 29. Defendant packages, labels, markets, advertises, formulates, manufactures,
4 distributes, and sells its Contaminated Baby Foods throughout the United States, including
5 California.

6 30. Defendant’s advertised mission is to “nourish little ones with the very best food
7 from the very first bite.”⁵ Defendant repeatedly touts its commitment to and use of organic and
8 non-GMO ingredients in its products, including the Contaminated Baby Foods. Defendant claims
9 that its “top priority” is “to serve children healthy, nutritious food made from the best ingredients.”⁶

10 31. Based on Defendant’s decision to advertise, label, and market its Contaminated
11 Baby Foods as healthy, nutritious, “made from the best ingredients,” safe for consumption, and
12 including “only” the healthy fruits, vegetables, or grains pictured on the label, it had a duty to
13 ensure that these statements and the message portrayed by the labels’ imagery were true and not
14 misleading. As such, Defendant knew or should have known the Contaminated Baby Foods
15 included nondisclosed levels of Heavy Metals, and that these toxins can accumulate over time.

16 32. The Contaminated Baby Foods are available at numerous retail and online outlets.
17 The Contaminated Baby Foods are widely advertised, and Defendant includes a Vice President of
18 Brand and Marketing on its Executive Team.

19 33. As discussed above, the Marketing of the Contaminated Baby Foods also fails to
20 disclose they contain or are at risk or containing any level of Heavy Metals or other undesirable
21 toxins or contaminants. Defendant intentionally omitted these contaminants in order to induce and
22 mislead reasonable consumers to purchase its Contaminated Baby Foods.

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25 ⁵ Plum Organics Mission Highlights, Fiscal Year 2018. Available at
26 https://www.plumorganics.com/wp-content/uploads/2019/05/Plum_MissionReport2018.pdf (last
accessed February 4, 2021).

27 ⁶ <https://www.plumorganics.com/faqs/> (last accessed February 4, 2021).

1 34. As a result of Defendant's omissions, a reasonable consumer would have no reason
2 to suspect the presence of Heavy Metals in the Contaminated Baby Foods without conducting his
3 or her own scientific tests or reviewing third party scientific testing of these products.

4 **III. Defendant's Marketing Misled and Deceived Consumers**

5 35. Defendant's Marketing wrongfully conveys to consumers that its Contaminated
6 Baby Foods have certain superior quality and characteristics that they do not actually possess.

7 36. For instance, although Defendant misleadingly causes consumers to believe its
8 Contaminated Baby Foods do not contain Heavy Metals through its Marketing and omissions, the
9 Contaminated Baby Foods do in fact contain undisclosed Heavy Metals, which is material
10 information to reasonable consumers.

11 37. For example, the following foods were tested and found to contain undisclosed
12 Heavy Metals at the following levels:⁷

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)
Plum Organics Just Sweet Potato Organic Baby Food- 1, 4 months	3.1* ⁸	--	5.6	2.3	<0.142
Plum Organics Just Peaches Organic Baby Food (Stage 1)	7.2	--	0.9*	<0.5	<0.139
Plum Organics Just Prunes Organic Baby Food- 1, 4 months & up	7.6	--	2.5	<0.5	0.194*

23 _____
24 ⁷ The following chart represents the levels of Heavy Metals in Defendant's products included in
25 the Healthy Babies Bright Futures Report, dated October 2019. Available at:
26 https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed February 4, 2021).

27 ⁸ An "*" indicates that test results were estimated, between the limit of detection and the limit of
28 quantitation.

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)
Plum Organics Pumpkin Banana Papaya Cardamom, 6 months & up	2.4*	--	1.4*	2.4	<0.139
Plum Organics Apple, Raisin, & Quinoa Organic Baby Food- 2	5.6*	--	2.2	1.9	0.145*
Plum Organics Little Teethers Organic Multigrain Teething Wafers- Banana with Pumpkin- Baby Crawler	49.9	--	1.4*	6.3	0.726
Plum Organics Mighty Morning Bar- Blueberry Lemon- Tots, 15 months & up	40 ⁹	39	3.4	24.3	<0.137

38. Defendant's Marketing wrongfully fails to disclose to consumers the presence of Heavy Metals in its Contaminated Baby Foods.

39. Based on Defendant's Marketing, a reasonable consumer would not suspect the presence of Heavy Metals, nor would a reasonable consumer be able to detect the presence of Heavy Metals in the Contaminated Baby Foods without conducting his or her own scientific tests or reviewing scientific testing conducted on the Products.

40. Reasonable consumers must and do rely on Defendant to honestly report what its Contaminated Baby Foods contain.

41. In light of Defendant's Marketing, including its "comprehensive" quality controls, Defendant knew or should have known the Contaminated Baby Foods contained Heavy Metals.

42. Defendant intended for consumers to rely on its Marketing, and reasonable consumers did in fact so rely.

⁹ "This value is the average of 3 tests of total arsenic (44, 37, and 39 ppb). The original homogenized bar was tested twice, and homogenate of a second, separate bar from the same box was tested once."

1 43. Defendant had a duty to ensure the Contaminated Baby Foods were as they were
2 represented and not deceptively, misleadingly, unfairly, and falsely marketed.

3 44. Pursuant to the foregoing, Defendant's Marketing is deceptive, misleading, unfair,
4 and false to Plaintiff and other consumers, including under the consumer protection laws of
5 California.

6 45. Defendant acted negligently, recklessly, unfairly, and/or intentionally with its
7 deceptive, misleading, unfair, and false Marketing and omissions.

8 **IV. Why Defendant's Marketing and Omissions are Misleading**

9 46. At all times during the Class Period, Defendant knew or should have known the
10 Contaminated Baby Foods contained Heavy Metals and were not sufficiently tested for the
11 presence of Heavy Metals.

12 47. Defendant's Contaminated Baby Foods had a risk of containing Heavy Metals due
13 to Defendant's failure to monitor for their presence in the ingredients and finished products.
14 Defendant was aware of this risk and failed to disclose it to Plaintiff and the Class.

15 48. Defendant knew that Heavy Metals are a potentially dangerous contaminant that
16 poses health risks to humans.

17 49. Defendant knew or should have known that it owed consumers a duty of care to
18 prevent, or at the very least, minimize the presence of Heavy Metals in the Contaminated Baby
19 Foods to the extent reasonably possible.

20 50. Defendant knew or should have known it owed consumers a duty of care to
21 adequately test for Heavy Metals in the Contaminated Baby Foods.

22 51. Defendant knew consumers purchased the Contaminated Baby Foods based on the
23 reasonable expectation that Defendant manufactured the Contaminated Baby Foods to the highest
24 standards. Based on this expectation, Defendant knew or should have known consumers
25 reasonably inferred that Defendant would hold the Contaminated Baby Foods to the highest
26 standards for preventing the inclusion of Heavy Metals in the Contaminated Baby Foods and for
27

1 the Heavy Metals testing of the ingredients in the Contaminated Baby Foods as well as the final
2 product.

3 52. Arsenic is an odorless and tasteless element that does not degrade or disappear.
4 Arsenic occurs in the environment and can be found in rocks, soil, water, air, plants, and animals.
5 Inorganic arsenic is highly toxic and a known cause of human cancers. Arsenic exposure can also
6 cause respiratory, gastrointestinal, hematological, hepatic, renal, skin, neurological and
7 immunological effects, and damage children’s central nervous systems and cognitive
8 development.¹⁰ Based on the risks associated with exposure to higher levels of arsenic, both the
9 U.S. Environmental Protection Agency (“EPA”) and U.S. Food and Drug Administration (“FDA”)
10 have set limits concerning the allowable limit of arsenic at 10 parts per billion (“ppb”) for human
11 consumption in apple juice (regulated by the FDA) and drinking water (regulating by the EPA).

12 53. Cadmium is associated with decreases in IQ and the development of ADHD. The
13 U.S. Department of Health and Human Services has determined that cadmium and cadmium
14 compounds are known human carcinogens and the EPA has likewise determined that cadmium is
15 a probable human carcinogen. It has been specifically noted that “Kidney and bone effects have
16 ... been observed in laboratory animals ingesting cadmium.”

17 54. Lead is a carcinogen and developmental toxin known to cause health problems in
18 children such as behavioral problems, decreased cognitive performance, delayed puberty, and
19 reduced postnatal growth. Because lead can build up in the body over time as one is exposed to
20 and/or ingests it, even a low level of chronic exposure can become toxic and seriously injurious to
21 one’s health. The FDA has set standards that regulate the maximum parts per billion of lead
22 permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10 ppb of total
23 arsenic. *See* 21 C.F.R. § 165.110(b)(4)(iii)(A).

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25 ¹⁰ U.S. House of Representatives Staff Report by the Subcommittee on Economic and Consumer
26 Policy, Committee on Oversight and Reform: “Baby foods are tainted with dangerous levels or
27 arsenic, lead, cadmium, and mercury.” Available at
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> (last accessed February 4, 2021).

1 55. Mercury is a known toxin, and pre-natal exposure has been associated with affected
2 neuro-development, a lowered IQ, and autistic behaviors. The impact of the various ways humans
3 and animals are exposed and ingest mercury has been studied for years. In fact, in as early as 1997,
4 the EPA issued a report to Congress that detailed the health risks to both humans and animals.
5 Based on the toxicity and risks of mercury, regulations have been enacted at both the Federal and
6 state level.

7 56. While federal regulations regarding levels of Heavy Metals in most baby foods are
8 non-existent, it is not due to a lack of risk. According to Linda McCauley, Dean of the Nell
9 Hodgson Woodruff School of Nursing at Emory University, who studies environmental health
10 effects, stated, “No level of exposure to these [heavy] metals has been shown to be safe in
11 vulnerable infants.”¹¹

12 57. Based on the foregoing, reasonable consumers, like Plaintiff, would consider the
13 inclusion of Heavy Metals a material fact when considering what baby food to purchase.

14 58. Defendant knew that properly and sufficiently monitoring for Heavy Metals in its
15 ingredients and Contaminated Baby Foods was not only important but critical.

16 59. Defendant also knew that monitoring Heavy Metals was likewise important to its
17 health-conscious consumers.

18 60. Finally, Defendant knew or should have known it could control the levels of Heavy
19 Metals in the Contaminated Baby Foods by properly monitoring their ingredients for Heavy Metals
20 and adjusting any formulation or diet to reduce ingredients that contained higher levels of Heavy
21 Metals.

22 61. However, Defendant also knew it was not properly and sufficiently testing for
23 Heavy Metals in the Contaminated Baby Foods. Defendant knew its failure to properly and
24 sufficiently test for Heavy Metals in the Contaminated Baby Foods continued throughout the Class
25 Period.

26 _____
27 ¹¹ <https://www.nytimes.com/2021/02/04/health/baby-food-metals-arsenic.html> (last accessed
28 February 5, 2021).

1 62. Defendant's Marketing was misleading due to its failure to properly and sufficiently
2 monitor for and to disclose the risk of the presence of Heavy Metals in the Contaminated Baby
3 Foods.

4 63. Defendant knew or should have known consumers paid premium prices and
5 expected Defendant to regularly test for Heavy Metals and sufficiently monitor the presence of
6 Heavy Metals in the Contaminated Baby Foods and ingredients.

7 64. At all times during the Class Period, Defendant did not consistently monitor or test
8 for Heavy Metals in the Contaminated Baby Foods and ingredients.

9 65. Defendant knew or should have known that consumers reasonably expected it to
10 test for and monitor the presence of Heavy Metals in the Contaminated Baby Foods and
11 ingredients.

12 66. Defendant knew or should have known the Contaminated Baby Foods contained
13 unmonitored levels of Heavy Metals that were inconsistent with their Marketing.

14 67. Defendant knew or should have known that consumers expected it to ensure the
15 Contaminated Baby Foods were monitored and tested for Heavy Metals to ensure compliance with
16 their Marketing.

17 68. Defendant knew, yet failed to disclose, its lack of regular testing and knowledge of
18 the risk or presence of Heavy Metals in the Contaminated Baby Foods and ingredients.

19 69. Defendant's above-referenced statements, representations, partial disclosures, and
20 omissions are false, misleading, and crafted to deceive the public as they create an image that the
21 Contaminated Baby Foods are healthy, nutritious, and made from the best ingredients, are subject
22 to stringent quality control, and are free of Heavy Metals.

23 70. Moreover, reasonable consumers, such as Plaintiff and the Class members, would
24 have no reason to doubt Defendant's statements regarding the quality of the Contaminated Baby
25 Foods. Defendant's nondisclosure and/or concealment of the toxins in the Contaminated Baby
26 Foods coupled with the misrepresentations alleged herein that were intended to and did, in fact,
27 cause consumers like Plaintiff and the members of the Class, to purchase products they would not
28

1 have if the true quality and ingredients were disclosed or would not have paid a premium price for
2 such baby food.

3 71. As a result of Defendant’s wrongful Marketing, which includes misleading,
4 deceptive, unfair, and false statements and omissions, Defendant has generated substantial sales
5 of the Contaminated Baby Foods.

6 72. Defendant’s wrongful Marketing, which includes misleading, deceptive, unfair,
7 and false representations and omissions, allowed it to capitalize on, and reap enormous profits
8 from, consumers who paid the purchase price or premium for the Products that were not as
9 advertised.

10 73. This is not surprising given that, for example, organic baby food was valued at were
11 \$1.9 billion in the U.S. in 2018 and is expected to reach \$3.32 billion by 2024.¹²

12 74. The incredible rise in consumer demand for organic baby food is “driven by the
13 growing awareness among consumers to limit that baby’s exposure to the harmful chemicals used
14 in conventional food production and the awareness of the benefits of organic products.”¹³

15 **DEFENDANT’S STATEMENTS AND OMISSIONS VIOLATE CALIFORNIA LAWS**

16 75. California law is designed to ensure that a company’s claims about its products are
17 truthful and accurate.

18 76. Defendant violated California law by negligently, recklessly, and/or intentionally
19 incorrectly claiming that the Contaminated Baby Foods are healthy, nutritious, and “made from
20 the best ingredients,” and by not accurately detailing that the products contain Heavy Metals.

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¹² <https://www.businesswire.com/news/home/20200120005436/en/North-America-Organic-Baby-Food-Market-Expected-to-Reach-a-Value-of-3.32-Billion-by-2024-with-a-CAGR-of-9.6---ResearchAndMarkets.com> (last accessed February 4, 2021).

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¹³ <https://www.mordorintelligence.com/industry-reports/organic-baby-food-market> (last accessed February 4, 2021).

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1 77. Defendant’s marketing and advertising campaign has been sufficiently lengthy in
2 duration, and widespread in dissemination, that it would be unrealistic to require Plaintiff to plead
3 relying upon each advertised misrepresentation.

4 78. Defendant has engaged in this long-term advertising campaign to convince
5 potential customers that the Contaminated Baby Foods were healthy, nutritious, and “made from
6 the best ingredients,” and did not contain harmful ingredients, such as Heavy Metals.

7 **PLAINTIFF’S RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANT**

8 79. Plaintiff reasonably relied on Defendant’s claims, warranties, representations,
9 advertisements, and other marketing concerning the particular qualities and benefits of the
10 Contaminated Baby Food.

11 80. Plaintiff read and relied upon the labels and packaging of the Contaminated Baby
12 Foods when making her purchasing decisions. Had she known Defendant omitted the presence of
13 Heavy Metals from its packaging, she would not have purchase it.

14 81. A reasonable consumer would consider the labeling of a product when deciding
15 whether to purchase. Here, Plaintiff relied on the specific statements and omissions on the
16 Contaminated Baby Foods’ labeling that led her to believe it was healthy, nutritious, and free of
17 Heavy Metals.

18 **DEFENDANT’S KNOWLEDGE AND NOTICE OF ITS BREACHES OF ITS**
19 **EXPRESS AND IMPLIED WARRANTIES**

20 82. Defendant had sufficient notice of its breaches of express and implied warranties.
21 Defendant has, and had, exclusive knowledge of the physical and chemical make-up of the
22 Contaminated Baby Foods. Moreover, Defendant was put on notice by the Healthy Babies Bright
23 Future Report about the inclusion of Heavy Metals or other undesirable toxins or contaminants in
24 the Contaminated Baby Foods.¹⁴

25 _____
26 ¹⁴ Nonprofit organization, Healthy Babies Bright Futures, published a report based on a scientific
27 study of the presence of Heavy Metals in baby foods.
[https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-
04/BabyFoodReport_ENGLISH_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) (last accessed February 5, 2021).

- 1 (a) whether Defendant owed a duty of care;
- 2 (b) whether Defendant knew or should have known that the Contaminated Baby
3 Foods contained Heavy Metals;
- 4 (c) whether Defendant represented and continue to represent that the
5 Contaminated Baby Foods are healthy, nutritious, made from the best ingredients, and safe for
6 consumption;
- 7 (d) whether Defendant represented and continues to represent that the
8 manufacturing of its Products is subjected to rigorous quality standards;
- 9 (e) whether Defendant failed to disclose that the Contaminated Baby Foods
10 contained Heavy Metals;
- 11 (f) whether Defendant's representations in advertising, warranties, packaging,
12 and/or labeling are false, deceptive, and misleading;
- 13 (g) whether those representations are likely to deceive a reasonable consumer;
- 14 (h) whether Defendant had knowledge that those representations were false,
15 deceptive, and misleading;
- 16 (i) whether Defendant continues to disseminate those representations despite
17 knowledge that the representations are false, deceptive, and misleading;
- 18 (j) whether a representation that a product is healthy, nutritious, made from the
19 best ingredients, and safe for consumption and does not contain Heavy Metals is material to a
20 reasonable consumer;
- 21 (k) whether Defendant's Marketing of the Contaminated Baby Foods are likely
22 to mislead, deceive, confuse, or confound consumers acting reasonably;
- 23 (l) whether Defendant violated California Business & Professions Code
24 sections 17200, *et seq.*;
- 25 (m) whether Defendant violated California Business & Professions Code
26 sections 17500, *et seq.*;
- 27
- 28

1 (n) whether Defendant violated California Civil Code sections 1750, *et seq.*;
2 and

3 (o) whether Plaintiff and the members of the Class are entitled to declaratory
4 and injunctive relief.

5 92. Defendant engaged in a common course of conduct giving rise to the legal rights
6 sought to be enforced by Plaintiff individually and on behalf of the other members of the Class.
7 Identical statutory violations and business practices and harms are involved. Individual questions,
8 if any, are not prevalent in comparison to the numerous common questions that dominate this
9 action.

10 93. Plaintiff's claims are typical of those of the members of the Class in that they are
11 based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

12 94. Plaintiff will fairly and adequately represent and protect the interests of the Class,
13 has no interests incompatible with the interests of the Class, and has retained counsel competent
14 and experienced in class action, consumer protection, and false advertising litigation.

15 95. Class treatment is superior to other options for resolution of the controversy
16 because the relief sought for each member of the Class is small such that, absent representative
17 litigation, it would be infeasible for members of the Class to redress the wrongs done to them.

18 96. Questions of law and fact common to the Class predominate over any questions
19 affecting only individual members of the Class.

20 97. As a result of the foregoing, class treatment is appropriate.

21 **COUNT I**

22 **(Negligent Misrepresentation Against Defendant on Behalf of the Class)**

23 98. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 99. Plaintiff reasonably placed her trust and reliance in Defendant's representations that
26 the Contaminated Baby Foods were as Marketed to her and Class, and were healthy, nutritious,
27 made from the best ingredients, and safe for consumption, and did not contain Heavy Metals.

1 100. Because of the relationship between the parties, the Defendant owed a duty to use
2 reasonable care to impart correct and reliable disclosures concerning the presence of Heavy Metals
3 in the Contaminated Baby Foods or, based upon its superior knowledge, having spoken, to say
4 enough to not be misleading.

5 101. Defendant breached its duty to Plaintiff and the Class by providing false,
6 misleading, and/or deceptive information regarding the nature of the Contaminated Baby Foods.

7 102. Plaintiff and the Class reasonably and justifiably relied upon the information
8 supplied to them by the Defendant. A reasonable consumer would have relied on Defendant's
9 own warranties, statements, representations, advertising, packaging, labeling, and other marketing
10 as to the quality, make-up, and included ingredients of the Contaminated Baby Foods.

11 103. As a result of these misrepresentations, Plaintiff and the Class purchased the
12 Contaminated Baby Foods at a premium.

13 104. Defendant failed to use reasonable care in its communications and representations
14 to Plaintiff and the Class, especially in light of its knowledge of the risks and importance of
15 considering ingredients to consumers when purchasing the Contaminated Baby Foods.

16 105. By virtue of Defendant's negligent misrepresentations, Plaintiff and the Class have
17 been damaged in an amount to be proven at trial or alternatively, seek rescission and disgorgement
18 under this Court.

19 **COUNT II**

20 **(Violations of California's Consumer Legal Remedies Act, California Civil Code §§1750,
21 *Et Seq.*, Against Defendant on Behalf of the Class)**

22 106. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 107. Plaintiff and each proposed Class member is a "consumer," as that term is defined
25 in California Civil Code section 1761(d).

26 108. The Contaminated Baby Foods are "goods," as that term is defined in California
27 Civil Code section 1761(a).

1 109. Defendant is a “person” as that term is defined in California Civil Code section
2 1761(c).

3 110. Plaintiff and each proposed Class member’s purchase of Defendant’s products
4 constituted a “transaction” as that term is defined in California Civil Code section 1761(e).

5 111. Defendant’s conduct alleged herein violates the following provisions of
6 California’s Consumer Legal Remedies Act (the “CLRA”):

7 (a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
8 intentionally representing that the Contaminated Baby Foods are healthy, nutritious, made from
9 the best ingredients, and safe for consumption, and by failing to make any mention of Heavy
10 Metals in the Contaminated Baby Foods;

11 (b) California Civil Code section 1770(a)(7), by negligently, recklessly, and/or
12 intentionally representing that the Contaminated Baby Foods were of a particular standard, quality,
13 or grade, when they were of another;

14 (c) California Civil Code section 1770(a)(9), by negligently, recklessly, and/or
15 intentionally advertising the Contaminated Baby Foods with intent not to sell them as advertised;
16 and

17 (d) California Civil Code section 1770(a)(16), by representing that the
18 Contaminated Baby Foods have been supplied in accordance with previous representations when
19 they have not.

20 112. As a direct and proximate result of these violations, Plaintiff and the Class have
21 been harmed, and that harm will continue unless Defendant is enjoined from using the misleading
22 marketing described herein in any manner in connection with the advertising and sale of the
23 Contaminated Baby Foods.

24 113. Plaintiff seeks an award of attorneys’ fees pursuant to, inter alia, California Civil
25 Code section 1780(e) and California Code of Civil Procedure section 1021.5.

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COUNT III

**(Violations of California False Advertising Law, California Business
& Professions Code §§17500, *Et Seq.*, Against Defendant on
Behalf of the Class)**

114. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

115. California’s False Advertising Law prohibits any statement in connection with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof. Code §17500.

116. As set forth herein, Defendant’s claims that the Contaminated Baby Foods are healthy, nutritious, made from the best ingredients, and safe for consumption are literally false and likely to deceive the public.

117. Defendant’s claims that the Contaminated Baby Foods are healthy, nutritious, made from the best ingredients, and safe for consumption are untrue or misleading, as is failing to mention the presence of Heavy Metals in the Contaminated Baby Foods.

118. Defendant knew, or reasonably should have known, that all these claims were untrue or misleading.

119. Defendant’s conduct is ongoing and continuing, such that prospective injunctive relief is necessary, especially given Plaintiff’s desire to purchase these products in the future if she can be assured that, so long as the Contaminated Baby Foods are as advertised: healthy, nutritious, made from the best ingredients, and safe for consumption, and do not contain Heavy Metals.

120. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and restitution in the amount they spent on the Contaminated Baby Foods.

COUNT IV

**(Violations of the Unfair Competition Law, California Business
& Professions Code §§17200, *Et Seq.*, Against Defendant on
Behalf of the Class)**

121. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

1 122. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business
2 act or practice.” Cal. Bus. & Prof. Code §17200.

3 **Fraudulent**

4 123. Defendant’s statements that the Contaminated Baby Foods are healthy, nutritious,
5 made from the best ingredients, and safe for consumption are literally false and likely to deceive
6 the public, as is Defendant’s failing to make any mention of Heavy Metals in the Contaminated
7 Baby Foods.

8 **Unlawful**

9 124. As alleged herein, Defendant has advertised the Contaminated Baby Foods with
10 false or misleading claims, such that Defendant’s actions as alleged herein violate at least the
11 following laws:

- 12 • The CLRA, California Business & Professions Code sections 1750, *et seq.*; and
- 13 • The False Advertising Law, California Business & Professions Code sections
14 17500, *et seq.*

15 **Unfair**

16 125. Defendant’s conduct with respect to the labeling, packaging, advertising,
17 marketing, and sale of the Contaminated Baby Foods is unfair because Defendant’s conduct was
18 immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its
19 conduct, if any, does not outweigh the gravity of the harm to its victims.

20 126. Defendant’s conduct with respect to the labeling, packaging, advertising,
21 marketing, and sale of the Contaminated Baby Foods is also unfair because it violates public policy
22 as declared by specific constitutional, statutory, or regulatory provisions, including, but not limited
23 to, the False Advertising Law and the CLRA.

24 127. Defendant’s conduct with respect to the labeling, packaging, advertising,
25 marketing, and sale of the Contaminated Baby Foods is also unfair because the consumer injury is
26 substantial, not outweighed by benefits to consumers or competition, and not one consumers,
27 themselves, can reasonably avoid.

1 128. In accordance with California Business & Professions Code section 17203, Plaintiff
2 seeks an order enjoining Defendant from continuing to conduct business through fraudulent or
3 unlawful acts and practices and to commence a corrective advertising campaign. Defendant's
4 conduct is ongoing and continuing, such that prospective injunctive relief is necessary.

5 129. On behalf of herself and the Class, Plaintiff also seeks an order for the restitution
6 of all monies from the sale the Contaminated Baby Foods, which were unjustly acquired through
7 acts of fraudulent, unfair, or unlawful competition.

8 **COUNT V**
9 **(Breach of Express Warranty, California Commercial Code §2313,**
10 **Against Defendant on Behalf of the Class)**

11 130. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 131. As set forth herein, Defendant made express representations to Plaintiff and the
14 Class that the Contaminated Baby Foods were healthy, nutritious, made from the best ingredients,
15 and safe for consumption.

16 132. These promises became part of the basis of the bargain between the parties and thus
17 constituted express warranties.

18 133. There was a sale of goods from Defendant to Plaintiff and the Class members.

19 134. On the basis of these express warranties, Defendant sold to Plaintiff and the Class
20 members the Contaminated Baby Foods.

21 135. Defendant knowingly breached the express warranties by including Heavy Metals
22 in the Contaminated Baby Foods.

23 136. Defendant was on notice of this breach as it was aware of the included Heavy
24 Metals in the Contaminated Baby Foods, and based on the public investigation by the nonprofit
25 organization, Healthy Babies Bright Futures, that showed its baby food products as containing
26 Heavy Metals.
27
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1 137. Privity exists because Defendant expressly warranted to Plaintiff and the Class that
2 the Contaminated Baby Foods were healthy, nutritious, made from the best ingredients, and safe
3 for consumption.

4 138. Plaintiff and the Class members reasonably relied on the express warranties by
5 Defendant.

6 139. As a result of Defendant's breaches of its express warranties, Plaintiff and the Class
7 sustained damages as they paid money for the Contaminated Baby Foods that were not what
8 Defendant represented.

9 140. Plaintiff, on behalf of herself and the Class, seek actual damages for Defendant's
10 breach of warranty.

11 **COUNT VI**

12 **(Breach of Implied Warranty, California Commercial Code
13 §2314, Against Defendant on Behalf of the Class)**

14 141. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 142. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Class
17 members.

18 143. There was a sale of goods from Defendant to Plaintiff and the Class members.

19 144. As set forth herein, Defendant marketed the Contaminated Baby Foods' labels to
20 Plaintiff and the Class that the Contaminated Baby Foods were healthy, nutritious, made from the
21 best ingredients, and safe for consumption and did not contain Heavy Metals.

22 145. The Contaminated Baby Foods did not conform to these affirmations and promises
23 as they contained Heavy Metals at undisclosed and alarming levels.

24 146. These promises became part of the basis of the bargain between the parties and thus
25 constituted implied warranties.

26 147. Defendant breached the implied warranties by selling the Contaminated Baby
27 Foods that failed to conform to the promises or affirmations of fact made on the container or label
28 as each product contained Heavy Metals.

1 148. Defendant was on notice of this breach as it was aware of the inclusion of Heavy
2 Metals in the Contaminated Baby Foods, and based on the public investigation by the nonprofit
3 organization, Healthy Babies Bright Futures, that showed its baby food products as containing
4 Heavy Metals.

5 149. Privity exists because Defendant impliedly warranted to Plaintiff and the Class
6 members through the warranting, packaging, advertising, marketing, and labeling that the
7 Contaminated Baby Foods were healthy, nutritious, made from the best ingredients, and safe for
8 consumption and by failing to make any mention of Heavy Metals.

9 150. As a result of Defendant's breach of its implied warranties of merchantability,
10 Plaintiff and the Class sustained damages as they paid money for the Contaminated Baby Foods
11 that were not what Defendant represented.

12 151. Plaintiff, on behalf of herself and the Class, seek actual damages for Defendant's
13 breach of warranty.

14 **COUNT XII**
15 **(Unjust Enrichment Against Defendant on Behalf of the Classes)**

16 152. Plaintiff incorporates by reference and reallege each and every allegation contained
17 above, as though fully set forth herein.

18 153. Substantial benefits have been conferred on Defendant by Plaintiff and the Classes
19 through the purchase of the Contaminated Baby Foods. Defendant knowingly and willingly
20 accepted and enjoyed these benefits.

21 154. Defendant either knew or should have known that the payments rendered by
22 Plaintiff were given and received with the expectation that the Contaminated Baby Foods would
23 have the qualities, characteristics, ingredients, and suitability for consumption represented and
24 warranted by Defendant. As such, it would be inequitable for Defendant to retain the benefit of
25 the payments under these circumstances.

26 155. Defendant's acceptance and retention of these benefits under the circumstances
27 alleged herein make it inequitable for Defendant to retain the benefits without payment of the
28 value to Plaintiff and the Classes.

1 156. Plaintiff and the Classes are entitled to recover from Defendant all amounts
2 wrongfully collected and improperly retained by Defendant, plus interest thereon.

3 157. Plaintiff and the Classes seek actual damages, injunctive and declaratory relief,
4 attorneys' fees, costs, and any other just and proper relief available under the laws.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray
7 for judgment against the Defendant as to each and every count, including:

8 A. An order declaring this action to be a proper class action, appointing Plaintiff and
9 her counsel to represent the Class, and requiring Defendant to bear the costs of class notice;

10 B. An order enjoining Defendant from selling the Contaminated Baby Foods until the
11 higher and/or unsafe levels of Heavy Metals are removed;

12 C. An order enjoining Defendant from selling the Contaminated Baby Foods in any
13 manner suggesting or implying that they are healthy, nutritious, and safe for consumption;

14 D. An order requiring Defendant to engage in a corrective advertising campaign and
15 engage in any further necessary affirmative injunctive relief, such as recalling existing products;

16 E. An order awarding declaratory relief, and any further retrospective or prospective
17 injunctive relief permitted by law or equity, including enjoining Defendant from continuing the
18 unlawful practices alleged herein, and injunctive relief to remedy Defendant's past conduct;

19 F. An order requiring Defendant to pay restitution to restore all funds acquired by
20 means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business
21 act or practice, untrue or misleading advertising, or a violation of the Unfair Competition Law,
22 False Advertising Law, or CLRA, plus pre- and post-judgment interest thereon;

23 G. An order requiring Defendant to disgorge or return all monies, revenues, and profits
24 obtained by means of any wrongful or unlawful act or practice;

25 H. An order requiring Defendant to pay all actual and statutory damages permitted
26 under the counts alleged herein;

27 I. An order requiring Defendant to pay punitive damages on any count so allowable;

28

1 J. An order awarding attorneys' fees and costs to Plaintiff, the Class; and

2 K. An order providing for all other such equitable relief as may be just and proper.

3 **JURY DEMAND**

4 Plaintiff hereby demands a trial by jury on all issues so triable.

5 Dated: February 5, 2021

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