

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

CASE TYPE: Civil Other/Misc.

---

LaKendra Camille McNealy, Individually  
and on Behalf of All Others Similarly  
Situated,

Court File No. \_\_\_\_\_

Plaintiff,

**CLASS ACTION COMPLAINT  
AND JURY DEMAND**

v.

Gerber Products Company,

Defendant.

---

Plaintiff LaKendra Camille McNealy, by and through her undersigned attorneys, brings this action individually and on behalf of others similarly situated as more fully described below against Gerber Products Company (“Defendant”) and alleges as follows:

**INTRODUCTION**

Plaintiff LaKendra Camille McNealy (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned attorneys, brings this Class Action Complaint against Defendant Gerber Products Company (“Defendant” or “Gerber”), for its negligent, reckless, and/or intentional practice of misrepresenting and failing to fully disclose the presence (or material risk of) heavy metals in its baby food sold throughout the United States. Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Class (as defined herein), including requiring full disclosure of all such substances in its marketing, advertising, and labeling and restoring monies to the members of the proposed Class. Plaintiff alleges the following based upon personal knowledge as well as investigation by her counsel, and as to all other matters, upon

information and belief (Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery).

### **NATURE OF THE ACTION**

1. Parents like Plaintiff trust manufacturers like Gerber to sell baby food that is safe, nutritious, and free from harmful toxins, contaminants, and chemicals. They expect the food they feed their infants and toddlers to be free the risk of and/or inclusion of Heavy Metals, substances known to have significant and dangerous health consequences.<sup>1</sup>

2. Consumers lack the scientific knowledge necessary to determine whether the Defendant's products do in fact contain (or have a material risk of ) Heavy Metals or to know or ascertain the true nature of the ingredients and quality of the Products. Reasonable consumers therefore must and do rely on Defendant to honestly report what its products contain.

3. A recent report by the U.S. House of Representatives' Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform reveals that parents' trust has been violated (the "Subcommittee's investigation"). Ex. 1. The Subcommittee's investigation of the seven largest baby food manufacturers in the United States, including Defendant, was spurred by "reports alleging high levels of toxic heavy metals in baby foods" and the knowledge that "[e]ven low levels of exposure can cause serious and often irreversible damage to brain development." Ex. 1 at 2.

4. Defendant knows that its customers trust the quality of its products and that they expect Defendant's products to be free of Heavy Metals. It also knows that certain consumers seek out and wish to purchase baby foods made of high quality ingredients free of toxins or

---

<sup>1</sup> As used herein, the phrase "Heavy Metals" is collectively defined as arsenic, cadmium, lead, and mercury.

contaminants and that these consumers will pay more for baby foods they believe possess these qualities than for baby foods they do not believe possess these qualities.

5. As such, Defendant's promises, warranties, pricing, statements, claims, packaging, labeling, marketing, advertising, and material nondisclosures (hereinafter collectively referred to as "Marketing" or "Claims") center on representations and pictures that are intended to, and do, convey to consumers that their baby food, including its Contaminated Baby Foods,<sup>2</sup> possess certain qualities and characteristics, including that it was nutritious, healthy and safe baby food and did not have a risk of or actual inclusion of Heavy Metals.

6. No reasonable consumer seeing Defendant's Marketing would expect the Contaminated Baby Foods to contain Heavy Metals or other undesirable toxins or contaminants. Furthermore, reasonable consumers, like Plaintiff, would consider the mere inclusion of Heavy Metals or other undesirable toxins or contaminants a material fact when considering what baby food to purchase.

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

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

---

<sup>2</sup> See Exhibit 2 for a list of the Contaminated Baby Foods. Discovery may reveal additional products that also contain levels of Heavy Metals. Plaintiff reserves her right to include any such products in this action.

9. Defendant's wrongful Marketing, which includes misleading, deceptive, unfair, and false Marketing and material omissions, allowed it to capitalize on, and reap enormous profits from, consumers who paid the purchase price for Contaminated Baby Foods that were not sold as advertised. Defendant continues to wrongfully induce consumers to purchase its Contaminated Baby Foods that are not as advertised.

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

### **JURISDICTION AND VENUE**

11. This is a civil case in which the Court has original jurisdiction under the Constitution of the State of Minnesota, Article 6, §3. Plaintiff is a citizen of the state of Minnesota and is seeking to bring this action on behalf of other Minnesotans who are similar situated.

12. Plaintiff does not assert any claims arising under federal law.

13. Venue is proper in this district pursuant to Minn. Stat. §§ 542.03 and 542.09, because Defendant has marketed, sold, or otherwise disseminated, and continues to market, sell, or disseminate the Contaminated Baby Foods in Dakota County, and throughout Minnesota.

### **THE PARTIES**

14. Plaintiff is, and at all times relevant hereto has been, a citizen of the state of Minnesota. She primarily purchased the Contaminated Baby Foods, specifically the rice and oatmeal infant cereals, various fruit and vegetable baby foods and toddler food pouches, and various flavors of Puffs cereal snacks, Lil' Crunchies baked corn snacks, yogurt melts, cereal bars, Lil' Meal trays, and juice for her 5 year-old and 2 year-old children from Walmart. Plaintiff first purchased the Contaminated Baby Foods in January 2015 and last purchased the Contaminated

Baby Foods in January 2021. Plaintiff stopped purchasing the Contaminated Baby Foods once she learned of the risk and/or actual inclusion of heavy metals in the Contaminated Baby Foods.

15. Plaintiff believed she was feeding her children healthy, nutritious food. Due to the false and misleading claims and omissions by Gerber, she was unaware the Contaminated Baby Foods contained any level of Heavy Metals, and would not have purchased the food if that information had been fully disclosed.

16. As the result of Gerber's negligent, reckless, and/or knowingly deceptive conduct as alleged herein, Plaintiff was injured when she purchased the Contaminated Baby Foods that she would not have purchased had she known of the risk of and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance. She purchased the Contaminated Baby Foods on the reasonable expectation that the packaging was accurate (including that there were no material omissions) and that it was free of Heavy Metals and safe to ingest. Further, should Plaintiff encounter the Contaminated Baby Foods in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging and advertising of the Contaminated Baby Foods. Damages can be calculated through expert testimony at trial.

17. Gerber was founded in 1928 and is incorporated in Michigan. Its headquarters are located at 1812 North Moore Street, Rosslyn, Virginia. Defendant formulates, develops, manufactures, labels, distributes, markets, advertises, and sells the Contaminated Baby Foods under the Gerber® name throughout the United States. Defendant created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Contaminated Baby Foods.

18. The Marketing for the Contaminated Baby Foods, relied upon by Plaintiff, was disseminated by Defendant and its agents through marketing, advertising, packaging, and labeling

that contained the misrepresentations alleged herein. The Marketing for the Contaminated Baby Foods was designed to encourage consumers to purchase the Contaminated Baby Foods and reasonably misled the reasonable consumer, i.e., Plaintiff and the Class members, into purchasing the Contaminated Baby Foods that they would not have purchased had they known of the risk and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance.

19. Defendant's products are divided into eight groups according to the type of food product and then further subdivided by the targeted infant or toddler stage of development (supported sitter, sitter, crawler, and toddler). The eight categories of food based on type include, but are not limited to: baby cereal, baby food, snacks, meals and sides, and beverages:

(a) Baby Cereal



(b) Baby Food



(c) Snacks



(d) Meals and Sides



(e) Beverages



## FACTUAL ALLEGATIONS

### I. A CONGRESSIONAL INVESTIGATION FOUND THE PRESENCE OF HEAVY METALS IN BABY FOODS

20. 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.

21. Defendant provided the Subcommittee with test results it had conducted on ingredients between 2017-2019. Its test results were separated by type of ingredient. Defendant did not include test results for finished products. Ex. 1.

#### GERBER Products Company Test Results

#### Confidential Business Information 19-Dec-09

##### Conventional Rice Flour

Year	Ingredient	Total Arsenic (ppb)	Inorganic Arsenic (ppb)
2017	Flour Rice Long Grain Tote NGM InfG Kshr	120	81
2017	Flour Rice Long Grain Tote NGM InfG Kshr	120	81
2017	Flour Rice Long Grain Tote NGM InfG Kshr	81	81
2017	Flour Rice Long Grain Tote NGM InfG Kshr	120	81
2017	Flour Rice Long Grain Tote NGM InfG Kshr	113	73
2017	Flour Rice Long Grain Tote NGM InfG Kshr	113	73
2017	Flour Rice Long Grain Tote NGM InfG Kshr	83	83
2017	Flour Rice Long Grain Tote NGM InfG Kshr	130	83
2017	Flour Rice Long Grain Tote NGM InfG Kshr	130	83
2017	Flour Rice Long Grain Tote NGM InfG Kshr	113	73
2017	Flour Rice Long Grain Tote NGM InfG Kshr	113	73
2017	Flour Rice Long Grain Tote NGM InfG Kshr	121	78
2017	Flour Rice Long Grain Tote NGM InfG Kshr	130	83
2017	Flour Rice Long Grain Tote NGM InfG Kshr	130	83
2017	Flour Rice Long Grain Tote NGM InfG Kshr	150	90
2017	Flour Rice Long Grain Tote NGM InfG Kshr	150	90

##### Carrot Ingredients

Year	Ingredient	Supplier	Arsenic (ppb)	Cadmium (ppb)	Mercury (ppb)	Lead (ppb)
2017	Conventional	Supplier 1	<2	40	<1	4
2017	Conventional	Supplier 2		11		9
2017	Organic	Supplier 3		<2		
2018	Conventional	Supplier 4	<2	29	<1	6
2018	Conventional	Supplier 5	<2	11	<1	5
2018	Conventional	Supplier 1		87		
2018	Conventional	Supplier 4		53		



**Sweet Potato Ingredients**

Year	Ingredient	Supplier	Arsenic (ppb)	Cadmium (ppb)	Mercury (ppb)	Lead (ppb)
2017	Conventional	Supplier 1	<2	4	<1	5
2017	Conventional	Supplier 1		9		19
2017	Conventional	Supplier 2	<2	<2	<1	12
2017	Conventional	Supplier 2				3
2017	Conventional	Supplier 3		5		8
2017	Conventional	Supplier 4				2
2017	Conventional	Supplier 5		7		48
2017	Organic	Supplier 1				35

**Juice Concentrate Ingredients (Lead Results)**

Year	Ingredient	Supplier	Lead (ppb)
2017	Grape Juice White 68 Bx Asp Tote AR InfG	Supplier 1	11
2017	Grape Juice White 68 Bx Asp Tote AR InfG	Supplier 1	11
2017	Grape Juice White 68 Bx Asp Tote AR InfG	Supplier 1	6

**Fruit Ingredients**

Year	Ingredient	Analysis	Result (ppb)
2017	Banana Puree Conc	Arsenic	<2
2017	Banana Puree Conc	Cadmium	<2
2017	Banana Puree Conc	Lead	<2
2017	Banana Puree Conc	Arsenic	<2
2017	Banana Puree Conc	Cadmium	<2
2017	Banana Puree Conc	Lead	<2
2017	Banana Puree Conc	Arsenic	<2
2017	Banana Puree Conc	Cadmium	<2
2017	Banana Puree Conc	Lead	<2
2017	Peach Puree 16.5 Bx Aseptic Tote InfG	Lead	Meet Spec*
2017	Peach Puree 16.5 Bx Aseptic Tote InfG	Lead	Meet Spec
2017	Peach Puree 16.5 Bx Aseptic Tote InfG	Lead	Meet Spec

22. In the Subcommittee’s review of Defendant’s test results, it was concerned about the levels of arsenic, cadmium, lead, and mercury found in the Contaminated Baby Foods, as well as the limitation of its testing to only ingredients (Defendant does not test any finished products).

- (a) Arsenic: At 90 ppb, Defendant’s inorganic arsenic levels in its ingredients were vastly higher than the Food and Drug Administration’s (“FDA”) maximum allowable levels in bottled water (10 ppb). “Gerber used high-arsenic ingredients, using 67 batches of rice flour that had tested over 90 ppb inorganic arsenic.” Ex. 1 at 3.

- (b) Cadmium: “Gerber does not test all its ingredients for cadmium,” but the Subcommittee investigation determined that “[o]f those it does test, it accepts ingredients with high levels of cadmium.” Ex. 1 at 32. The highest levels of cadmium in Defendant’s ingredients (87 ppb) were incredibly greater than the FDA’s maximum allowable levels (5 ppb), and testing revealed that “75% of carrots Gerber used had more than 5 ppb cadmium.” Ex. 1 at 32.
- (c) Lead: “Gerber produced limited lead testing results. The results for its sweet potatoes and juices demonstrated its willingness to use ingredients that contained dangerous lead levels. Gerber used an ingredient, conventional sweet potatoes, with 48 ppb lead. Gerber also used twelve other batches of sweet potato that tested over 20 ppb for lead, the EU’s lenient upper standard.” Ex. 1 at 27. In fact, [o]ver 83% of the juice concentrates tested showed greater than 1 ppb lead, which is Consumer Reports’ recommended limit for fruit juices.” Ex. 1 at 28. “Internal testing data from **Gerber**, Nurture, Beech-Nut, and Hain demonstrate that all four companies sold products or used ingredients with significant amounts of lead. Only Nurture routinely tested its finished product for lead. Hain, Beech-Nut, and **Gerber** did not test their finished products, only their ingredients. All companies, whether they test their final products or merely their ingredients, sold baby foods even when they or their ingredients contained unsafe levels of lead.” Ex. 1 at 22 (emphasis added).

- (d) Mercury: While Defendant's levels of mercury in its ingredients were lower than the Environmental Protection Agency's allowable levels in drinking water, it rarely tests for it and included test results for just three ingredients. Ex. 1. "Gerber rarely tests for mercury in its baby foods." Ex. 1. at 4.

23. The investigation found that, when baby food manufacturers were left to self-regulate and establish their own Heavy Metals standards, they routinely failed to abide by their own standards, and that the "[i]nternal company standards permit dangerously high levels of toxic heavy metals," and manufacturers, like Defendant, "have often sold foods that exceeded those levels." Ex. 1.

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

25. In Defendant's published response to the Subcommittee's Report, it stated its quality and safety standards are "industry-leading" and "among the strictest in not just the U.S., but the world."<sup>3</sup>

26. However, Defendant has limited its heavy metals testing to only ingredients and has failed to conduct any testing on its finished products. As the Subcommittee stated, "That policy recklessly endangers babies and children and prevents the companies from knowing the full

---

<sup>3</sup> [http://news.gerber.com/in\\_the\\_news/an-important-message-from-gerber](http://news.gerber.com/in_the_news/an-important-message-from-gerber) (last accessed February 5, 2021).

extent of the danger presented by their products... only testing ingredients gives the false appearance of lower-than-actual toxic heavy metals levels.” Ex. 1.

## **II. DEFENDANT FALSELY MARKETED ITS CONTAMINATED BABY FOODS AS HEALTHY WHILE OMITTING ANY MENTION OF HEAVY METALS**

27. Defendant packages, labels, markets, advertises, formulates, manufactures, distributes, and sells its Contaminated Baby Foods throughout the United States, including Minnesota.

28. Defendant claims to be “committed to promoting good nutrition and healthy eating habits for children.”<sup>4</sup> Defendant repeatedly touts its use of non-GMO fruits and vegetables that are grown by family farmers and used in its products, including the Contaminated Baby Foods. Defendant stresses the fruits and vegetables used in its Contaminated Baby Food are nutritious, “wholesome and safe.” And critically, it states it is committed using soil that is subject to standards that “are among the strictest in the world” (with food safety and quality standards that exceed government requirements) because it acknowledges the risk of certain soil with high levels of heavy metals.<sup>5</sup>

29. Based on Defendant’s decision to advertise, label, and market its Contaminated Baby Foods as nutritious, “wholesome and safe,” subject to food safety and quality standards that exceed government requirements, and including “only” the healthy fruits, vegetables, or grains pictured on the label, it had a duty to ensure that these statements and the message portrayed by the labels’ imagery were true and not misleading. As such, Defendant knew or should have known

---

<sup>4</sup> <https://www.nestle.com/brands/allbrands/gerber> (last accessed February 5, 2021).

<sup>5</sup> <https://www.gerber.com/clean-field-farming> (last accessed February 7, 2021); <https://www.gerber.com/big-standards-for-tiny-tummies> (last accessed February 7, 2021); <https://www.gerber.com/our-ingredients> (last accessed February 7, 2021).

the Contaminated Baby Foods included nondisclosed levels of Heavy Metals, and that these toxins can accumulate over time.

30. The Contaminated Baby Foods are available at numerous retail and online outlets. The Contaminated Baby Foods are widely advertised, and Defendant employs a Vice President of Marketing and a Marketing Director.

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

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

### **III. DEFENDANT'S MARKETING MISLED AND DECEIVED CONSUMERS**

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

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

35. For example, the following foods were tested and found to contain undisclosed Heavy Metals at the following levels:<sup>6</sup>

---

<sup>6</sup> The following chart represents the levels of Heavy Metals in selected Defendant's products included in the Healthy Babies Bright Futures Report, dated October 2019. Available at:

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)
Rice Single Grain Cereal	106	74	3.9	11.1	1.79
MultiGrain Cereal - Sitter 2nd Foods	37	31	5.3	26.2	0.367
Oatmeal Single Grain Cereal	26.9	--	3	13	< 0.281
Barley Single Grain Cereal-Supported Sitter 1st Foods	10.6	--	3	13.7	< 0.279
Whole Wheat Whole Grain Cereal - Sitter 2nd Foods	40.6	39	5.5	50.8	< 0.14
Good Start Gentle HM-O and Probiotics Infant Formula with iron; Milk Based Powder - Stage 1, birth to 12 months	5.2	--	0.9	< 0.5	< 0.14
Diced Carrots Veggie Pick-Ups™	< 2.2	--	11.8	27.7	0.223
Sweet Potato - Sitter 2nd Food	3.9	--	29.3	5.8	< 0.138
Sweet Potato - Supported Sitter 1st Foods	6.9	--	14.6	3.5	< 0.138
Green Bean - Sitter 2nd Food	< 2.1	--	0.8 *	2.8	< 0.135
Peach - Sitter 2nd Foods	7.3	--	2.4	2.1	0.142
Pear - Sitter 2nd foods	4.2	--	1.1 *	2.5	0.169
Carrot Pear Blackberry - Sitter 2nd Foods	2.7	--	3.6	18.2	< 0.141
Apple Juice from Concentrate - Toddler 12+ months	3.1	--	2.1	< 0.5	< 0.137
Variety Pack Juices from Concentrate - White Grape	9.9	--	11.1	< 0.5	< 0.135

[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 4, 2021).

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)
Chicken Rice Dinner - Sitter 2nd Foods	19.1	--	2.3	8.9	< 0.236
Puffs Banana Cereal Snack - Crawler 8+ months	44.5	--	9.2	16	0.376
Teether Wheels - Apple Harvest - Crawlers	51.5	--	2.1 *	3.8	0.588
Fruit & Veggie Melts - Truly Tropical Blend - Freeze- Dried Fruit & Vegetable Snack - Crawler, 8+ months	22.6	--	12.2	26.8	0.455
Arrowroot Biscuits - Crawler 10+ months	13.1	--	12.5	25.9	< 0.279

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

37. 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.

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

39. In light of Defendant's Marketing, including its "stringent" quality and food safety controls, Defendant knew or should have known the Contaminated Baby Foods contained Heavy Metals.

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

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

42. Pursuant to the foregoing, Defendant's Marketing is deceptive, misleading, unfair, and false to Plaintiff and other consumers, including under the consumer protection laws of Minnesota.

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

#### **IV. WHY DEFENDANT'S MARKETING AND OMISSIONS ARE MISLEADING**

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

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

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

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

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

49. Defendant knew consumers purchased the Contaminated Baby Foods based on the reasonable expectation that Defendant manufactured the Contaminated Baby Foods to the highest standards. Based on this expectation, Defendant knew or should have known consumers



reasonably inferred that Defendant would hold the Contaminated Baby Foods to standards for preventing the risk and/or actual inclusion of Heavy Metals in the Contaminated Baby Foods and for the Heavy Metals testing of the ingredients in the Contaminated Baby Foods as well as the final product.

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

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

52. Lead is a carcinogen and developmental toxin known to cause health problems in children such as behavioral problems, decreased cognitive performance, delayed puberty, and

---

<sup>7</sup> U.S. House of Representatives Staff Report by the Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform: "Baby foods are tainted with dangerous levels of 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).

reduced postnatal growth. Because lead can build up in the body over time as one is exposed to and/or ingests it, even a low level of chronic exposure can become toxic and seriously injurious to one's health. The FDA has set standards that regulate the maximum parts per billion of lead permissible in water: bottled water cannot contain more than 5 ppb of total lead or 10 ppb of total arsenic. See 21 C.F.R. § 165.110(b)(4)(iii)(A). "Internal testing data from Gerber []demonstrate that [it] sold products or used ingredients with significant amounts of lead." *Id.* at 22. Further, whether [Gerber] test[s] their final products or merely their ingredients, [it] sold baby foods even when they or their ingredients contained unsafe levels of lead." *Id.*

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

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

---

<sup>8</sup> <https://www.nytimes.com/2021/02/04/health/baby-food-metals-arsenic.html> (last accessed February 5, 2021).

55. Based on the foregoing, reasonable consumers, like Plaintiff, would consider the risk of and/or actual inclusion of Heavy Metals a material fact when deciding what baby food to purchase.

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

57. Defendant knew that monitoring Heavy Metals was likewise important to its health-conscious consumers.

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

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

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

61. Defendant knew or should have known consumers expected Defendant to regularly test for Heavy Metals and sufficiently monitor the presence of Heavy Metals in the Contaminated Baby Foods and ingredients.

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

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

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

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

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

67. Defendant's above-referenced statements, representations, partial disclosures, and omissions are false, misleading, and crafted to deceive the public as they create an image that the Contaminated Baby Foods are nutritious, "wholesome and safe," are subject to food safety and quality standards that exceed government requirements, and are free of Heavy Metals.

68. Moreover, reasonable consumers, such as Plaintiff and the Class members, would have no reason to doubt Defendant's statements regarding the quality of the Contaminated Baby Foods. Defendant's nondisclosure and/or concealment of the toxins in the Contaminated Baby Foods coupled with the misrepresentations alleged herein that were intended to and did, in fact, cause consumers like Plaintiff and the members of the Class, to purchase products they would not have if the true quality and ingredients, including that it was not the nutritious, healthy and safe baby food as promised and instead had a risk of and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance.

69. Defendant's wrongful Marketing, which includes misleading, deceptive, unfair, and false representations and omissions, allowed it to capitalize on, and reap enormous profits from consumers who choose to purchase baby food that was promised as nutritious, healthy and safe baby food and had no disclosure of the a risk of and/or actual inclusion of heavy metals, including levels that exceed FDA and EPA guidance.

70. This is not surprising given that, for example, that the baby food market in the United States was valued at \$12.9 billion in 2018 and was expected to increase to \$17.2 billion by 2026.<sup>9</sup> The organic baby food market is also considerably sized, valued at \$1.9 billion in the U.S. in 2018, with an anticipated value of \$3.32 billion by 2024.<sup>10</sup>

71. The market for packaged baby food, such as Defendant's Contaminated Baby Foods, is due to the added convenience, (perceived) higher nutrition level, and numerous health advantages.<sup>11</sup>

72. Millennial parents, in particular, "prioritize organic foods and chemical-free baby products and are ready to purchase products at a higher price."<sup>12</sup> The incredible rise in consumer demand for organic baby food is "driven by the growing awareness among consumers to limit that

---

<sup>9</sup> <https://www.globenewswire.com/news-release/2020/01/16/1971596/0/en/U-S-Baby-Food-Market-by-Product-Type-and-Distribution-Channel-Opportunity-Analysis-and-Industry-Forecast-2019-2026.html> (last accessed February 7, 2021).

<sup>10</sup> <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).

<sup>11</sup> <https://www.globenewswire.com/news-release/2020/01/16/1971596/0/en/U-S-Baby-Food-Market-by-Product-Type-and-Distribution-Channel-Opportunity-Analysis-and-Industry-Forecast-2019-2026.html> (last accessed February 7, 2021).

<sup>12</sup> *Id.*

baby's exposure to the harmful chemicals used in conventional food production and the awareness of the benefits of organic products."<sup>13</sup>

**DEFENDANT'S MISREPRESENTATIONS AND  
MATERIAL OMISSIONS VIOLATE MINNESOTA LAWS**

73. Minnesota law is designed to ensure that a company's claims about its products are truthful and accurate.

74. Defendant violated Minnesota law by negligently, recklessly, and/or intentionally incorrectly claiming that the Contaminated Baby Foods are nutritious, "wholesome and safe," are subject to food safety and quality standards that exceed government requirements, and by not disclosing that the products contain Heavy Metals, including levels that exceed FDA and EPA guidance.

75. Defendant owed consumers a legal duty to disclose that the Contaminated Baby Foods contained and/or had a material risk of containing Heavy Metals and/or other ingredients and contaminants that did not conform to Defendant's packaging claims.

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

77. Defendant's deceptive marketing practices implicated the public as consumers because Defendant directed its misrepresentations at the market generally.

78. Defendant has engaged in this long-term advertising campaign to convince potential customers that the Contaminated Baby Foods were nutritious, "wholesome and safe," are

---

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

subject to food safety and quality standards that exceed government requirements, and did not contain harmful ingredients, such as Heavy Metals.

**PLAINTIFF'S RELIANCE WAS REASONABLE  
AND FORESEEN BY DEFENDANT**

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

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

81. A reasonable consumer would consider the labeling of a product when deciding whether to purchase. Here, Plaintiff relied on the specific statements and omissions on the Contaminated Baby Foods' labeling that led her to believe it was nutritious, "wholesome and safe," are subject to food safety and quality standards that exceed government requirements, and free of Heavy Metals.

**DEFENDANT'S KNOWLEDGE OF THE MISREPRESENTATIONS  
AND THEIR MATERIALITY**

82. Defendant had exclusive knowledge of the physical and chemical makeup of the Contaminated Baby Foods and ingredients, including whether any of the Contaminated Baby Foods or ingredients contained and/or had a risk of containing non-conforming contaminants, such as Heavy Metals.

83. Defendant also had exclusive knowledge of its ingredients and supply chains, including, among other things, the location and identity of its ingredient suppliers as well as the quality and quantity of the ingredients used in the Contaminated Baby Foods based on Defendant's recipes and manufacturing practices.

84. Further, consumers, like Plaintiff, had no means to ascertain that the Contaminated Baby Foods contained and/or had a material risk of containing ingredients and contaminants that did not conform to Defendant's labels and packaging claims. Consumers could not discover on their own that Defendant's testing and quality control of the Contaminated Baby Foods and ingredients for non-conforming contaminants, such as Heavy Metals, was insufficient.

**DEFENDANT'S KNOWLEDGE AND NOTICE OF ITS BREACHES OF ITS EXPRESS AND IMPLIED WARRANTIES**

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

**PRIVITY EXISTS WITH PLAINTIFF AND THE PROPOSED CLASS**

86. Defendant knew that consumers such as Plaintiff and the proposed Class would be the end purchasers of the Contaminated Baby Foods and the target of its advertising and statements.

87. Defendant intended that the warranties, advertising, labeling, statements, and representations would be considered by the end purchasers of the Contaminated Baby Foods, including Plaintiff and the proposed Class.

88. Defendant directly marketed to Plaintiff and the proposed Class through statements on its website, labeling, advertising, and packaging.

---

<sup>14</sup> Nonprofit organization, Healthy Babies Bright Futures, published a report based on a scientific 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).



89. Plaintiff and the proposed Class are the intended beneficiaries of the expressed and implied warranties.

### **CLASS ACTION ALLEGATIONS**

90. Plaintiff brings this action individually and on behalf of the following Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

All citizens and residents of Minnesota who, from February 5, 2015, to the present, purchased the Contaminated Baby Foods for household or business use, and not for resale (the “Class”).

91. Excluded from the Class is the Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

92. This action is brought and may be properly maintained as a class action. There is a well-defined community of interests in this litigation and the members of the Class are easily ascertainable.

93. The members in the proposed Class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of the members of all Class members in a single action will provide substantial benefits to the parties and Court.

94. Questions of law and fact common to Plaintiff and the Class include, but are not limited to, the following:

- (a) whether Defendant owed a duty of care;
- (b) whether Defendant knew or should have known the Contaminated Baby Foods contained Heavy Metals;
- (c) whether Defendant represented and continue to represent that the Contaminated Baby Foods are nutritious, “wholesome and safe,” are subject to food safety and quality standards that exceed government requirements;

(d) whether Defendant represented and continues to represent that the manufacturing of its Products is subjected to “stringent” quality and food safety controls;

(e) whether Defendant failed to disclose that the Contaminated Baby Foods contained Heavy Metals;

(f) whether Defendant’s representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;

(g) whether those representations are likely to deceive a reasonable consumer;

(h) whether Defendant had knowledge that those representations were false, deceptive, and misleading;

(i) whether Defendant continues to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;

(j) whether a representation that a product is nutritious, “wholesome and safe,” are subject to food safety and quality standards that exceed government requirements, and does not contain Heavy Metals is material to a reasonable consumer;

(k) whether Defendant’s Marketing of the Contaminated Baby Foods are likely to mislead, deceive, confuse, or confound consumers acting reasonably;

(l) whether Defendant violated Minnesota law;

(m) whether Defendant engaged in unfair trade practices;

(n) whether Defendant engaged in false advertising;

(o) whether Defendant breached its express warranties;

(p) whether Defendant breached its implied warranties;

(q) whether Defendant unjustly enriched itself at consumers’ expense;

(r) whether Defendant had a duty to disclose the material omissions concerning the quality and nature of the Contaminated Baby Foods and ingredients;

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

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

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

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

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

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

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

### **COUNT I**

#### **Negligent Misrepresentation Against Defendant on Behalf of the Class**

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

102. Plaintiff reasonably placed her trust and reliance in Defendant's representations that the Contaminated Baby Foods were as Marketed to her and the Class, and were nutritious, "wholesome and safe," are subject to food safety and quality standards that exceed government requirements, and did not contain Heavy Metals.

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

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

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

106. As a result of these misrepresentations, Plaintiff and the Class purchased the Contaminated Baby Foods that they would not have purchased had they known of the risk and inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance.

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

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

**COUNT II**  
**Violation of Minnesota Unlawful Trade Practices Act**  
**Minn. Stat. § 325D.09, *et seq.***  
**Against Defendant on Behalf of the Class**

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

110. Defendant is a “person” within the meaning of the Minnesota Unlawful Trade Practices Act (“MUTPA”).

111. Defendant violated the MUTPA by knowingly misrepresenting the true quality and ingredients of the Contaminated Baby Foods by falsely claiming that they are nutritious, healthy, and safe baby foods as promised, but instead had a risk of and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance. Such misrepresentations were intended to and did, in fact, cause consumers like Plaintiff and the Class members to purchase the Contaminated Baby Foods they would not have if the true quality and ingredients had been disclosed.

112. Defendant knew or should have known the Contaminated Baby Foods did not have the quality and ingredients described above because they contained and/or had a material risk of containing, heavy metals or any other ingredients or contaminants that do not conform to the packaging claims.

113. Defendant’s pattern of knowing misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff and the Class with respect to the Contaminated Baby Foods’ quality, ingredients, and suitability for consumption.

114. Defendant intended that Plaintiff and the Class would rely on its misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the Contaminated Baby Foods' quality, ingredients, and suitability for consumption.

115. Defendant's conduct and omissions described herein occurred repeatedly in its trade or business and were capable of deceiving a substantial portion of the consuming public.

116. The facts concealed or not disclosed by Defendant were material facts in that Plaintiff and any reasonable consumer would have considered them in deciding whether to purchase the Contaminated Baby Foods. Had Plaintiff known the Contaminated Baby Foods did not have the quality and ingredients advertised by Defendants, they would not have purchased the Contaminated Baby Foods.

117. Defendant's unlawful conduct is continuing, with no indication that Defendant intend to cease this fraudulent course of conduct.

118. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class have suffered actual damages in that they purchased the Contaminated Baby Foods that were worth less than the price they paid.

119. Plaintiff and the members of the Class would not have purchased the Contaminated Baby Foods had they known of the presence of these non-conforming ingredients, contaminants, and/or unnatural or other ingredients.

120. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325D.15, Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Defendant's violations of the MUTPA.

**COUNT III**  
**Violation of Minnesota Uniform Deceptive Trade Practices Act**  
**Minn. Stat. § 325D.43, *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.

122. Defendant is a “person” within the meaning of the Minnesota Uniform Deceptive Trade Practices Act (MUDTPA).

123. Defendant willingly engaged in deceptive trade practices, in violation of the MUDTPA, by knowingly misrepresenting the true quality and ingredients of the Contaminated Baby Foods by falsely claiming the Contaminated Baby Foods are nutritious, “wholesome and safe,” are subject to food safety and quality standards that exceed government requirements, and by failing to make any mention of Heavy Metals in the Contaminated Baby Foods.

124. Defendant knew or should have known the Contaminated Baby Foods did not have the quality and ingredients described above because they contained, and/or had a material risk of containing, heavy metals or any other ingredients or contaminants that do not conform to the packaging claims.

125. Defendant’s misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff and the Class with respect to the Contaminated Baby Foods’ ingredients, uses, benefits, standards, quality, grade, and suitability for consumption.

126. Defendant’s intended that Plaintiff and the Class would rely on Defendant’s misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the Contaminated Baby Foods’ ingredients, uses, benefits, standards, quality, grade, and suitability for consumption.

127. The facts concealed or not disclosed by Defendant were material facts in that Plaintiff and any reasonable consumer would have considered them in deciding whether to purchase the Contaminated Baby Foods. Had Plaintiff known the Contaminated Baby Foods did not have the quality and ingredients advertised by Defendant, she would not have purchased the Contaminated Baby Foods.

128. Defendant intended that Plaintiff and the Class would rely on the deception by purchasing the Contaminated Baby Foods, unaware of the undisclosed material facts. This conduct constitutes consumer fraud.

129. Defendant's unlawful conduct is continuing, with no indication that Defendant intends to cease this fraudulent course of conduct.

130. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class have suffered actual damages in that they purchased the Contaminated Baby Foods that were worth less than the price they paid.

131. Plaintiff and the members of the Class would not have purchased the Contaminated Baby Foods at all had they known of the presence of these Heavy Metals, contaminants, and/or unnatural or other ingredients.

132. Pursuant to Minn. Stat. § 325D.45, Plaintiff and the Class seek injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Defendants' violations of the MUDTPA.

#### **COUNT IV**

#### **Violation of Minnesota False Statement in Advertisement Act**

#### **Minn. Stat. § 325F.675, *et seq.***

#### **Against Defendant on Behalf of the Class**

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



134. Plaintiff purchased “goods,” specifically the Contaminated Baby Foods discussed herein, and is a “person” within the meaning of the False Statement in Advertising Act (FSAA).

135. Plaintiff purchased the Contaminated Baby Foods through Defendant’s statements and materials omissions on the packaging that contained numerous material assertions representations, and statements of fact made, published, disseminated, circulated, and placed before the public by Defendant that were untrue, deceptive, and misleading.

136. By engaging in the conduct herein, Defendant violated and continues to violate Minn. Stat. § 325F.67.

137. Defendant’s misrepresentations, knowing omissions, and use of other sharp business practices include, by way of example, representations that the Contaminated Baby Foods are nutritious, “wholesome and safe,” are subject to food safety and quality standards that exceed government requirements, and by failing to make any mention of Heavy Metals in the Contaminated Baby Foods.

138. As a result of Defendant’s misrepresentations, Plaintiff and the Class purchased the Contaminated Baby Foods that they would not have purchased had they known of the risk and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance.

139. Defendant knew or should have known the Contaminated Baby Foods did not have the quality and ingredients described above because they contained, and/or had a material risk of containing, heavy metals and/or any other ingredients or contaminants that do not conform to the packaging claims.

140. Defendant’s misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff and the

Class with respect to the Contaminated Baby Foods' ingredients, uses, benefits, standards, quality, grade, and suitability for consumption.

141. Defendant's conduct and omissions described herein occurred repeatedly in Defendant's trade or business and were capable of deceiving a substantial portion of the consuming public.

142. The facts concealed or not disclosed by Defendant were material facts in that Plaintiff and any reasonable consumer would have considered them in deciding whether to purchase the Contaminated Baby Foods. Had Plaintiff known the Contaminated Baby Foods did not have the quality and ingredients advertised by Defendant, she would not have purchased the Contaminated Baby Foods.

143. Defendant intended that Plaintiff and the Class would rely on the deception by purchasing the Contaminated Baby Foods, unaware of the undisclosed material facts. This conduct constitutes consumer fraud.

144. Defendant's unlawful conduct is continuing, with no indication that Defendant intends to cease this fraudulent course of conduct.

145. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class have suffered actual damages in that they purchased the Contaminated Baby Foods that were worth less than the price they paid.

146. Plaintiff and the members of the Class would not have purchased the Contaminated Baby Foods at all had they known of the presence of these non-conforming ingredients, contaminants, and/or unnatural or other ingredients.

147. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325F.67, Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Defendants' violations of the FSAA.

**COUNT V**  
**Violation of Minnesota Prevention of Consumer Fraud Act**  
**Minn. Stat. § 325F.69, *et seq.***  
**Against Defendant on Behalf of the Class**

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

149. Plaintiff is a resident of the State of Minnesota.

150. Defendant is a "person" within the meaning of the Minnesota Prevention of Consumer Fraud Act ("MPCFA").

151. Defendant's representations with respect to the Contaminated Baby Foods were made in connection with the sale of the Contaminated Baby Foods to Plaintiff and the Class.

152. Defendant knowingly acted, used, and employed fraud, false pretenses, false promises, misrepresentations, misleading statements, and deceptive practices in connection with the sale of its Contaminated Baby Foods. Defendant's non-disclosure and/or concealment of the toxins in the Contaminated Baby Foods, coupled with the misrepresentations alleged herein that were intended to and did, in fact, cause consumers like Plaintiff and the Class, to purchase products they would not have if the true quality and ingredients were disclosed, including that they were not nutritious, healthy, and safe baby foods as promised by Defendant and instead had a risk and/or actual inclusion of Heavy Metals, including levels that exceed FDA and EPA guidance.

153. Defendant knew or should have known the Contaminated Baby Foods did not have the quality and ingredients described above because they contained, and/or had a material risk of

containing, heavy metals and/or any other ingredients or contaminants that do not conform to the packaging claims.

154. Defendant intended for Plaintiff and the Class to rely on and accept as true these representations in deciding whether to purchase the alleged Contaminated Baby Foods.

155. Defendant's unfair or deceptive acts or practices were likely to deceive reasonable consumers about the Contaminated Baby Foods' quality, ingredients, fitness for consumption and, by extension, the true value of the Contaminated Baby Foods. Plaintiff and the Class relied on, and were in fact deceived by, Defendant's representations and omissions respect to the Contaminated Baby Foods' quality, ingredients, and fitness for consumption in deciding to purchase them over competitors' baby foods.

156. Defendant's unlawful conduct is continuing, with no indication that Defendant intends to cease this fraudulent course of conduct.

157. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class have suffered actual damages in that they purchased the Contaminated Baby Foods that were worth less than the price they paid.

158. Plaintiff and the members of the Class would not have purchased the Contaminated Baby Foods at all had they known of the presence of these non-conforming ingredients, contaminants, and/or unnatural or other ingredients.

159. Pursuant to Minn. Stat. § 8.31, subd. 3a, and § 325F.69, Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Defendants' violations of the MPCFA.

**COUNT VI****Breach of Express Warranty Against Defendant on Behalf of the Class**

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

161. Defendant marketed and sold its Contaminated Baby Foods into the stream of commerce with the intent that the Contaminated Baby Foods would be purchased by Plaintiff and the Class.

162. Defendant expressly warranted, advertised, and represented to Plaintiff and the Class that its Contaminated Baby Foods were nutritious, “wholesome and safe,” and because it acknowledges the risk of growing fruit and vegetables in soil with high levels of heavy metals, using soil that is subject to standards that “are among the strictest in the world,” with food safety and quality standards that exceed government requirements.

163. Defendant’s advertisements, warranties, and representations were made in connection with the sale of the Contaminated Baby Foods to Plaintiff and the Class. Plaintiff and the Class relied on Defendant’s advertisements, warranties, and representations regarding the Contaminated Baby Foods when deciding whether to purchase Defendant’s products.

164. Defendant’s Contaminated Baby Foods do not conform to its advertisements, warranties, and representations in that they are not safe for consumption and contain levels of various heavy metals.

165. Defendant was on notice of this breach as it was aware of the included Heavy Metals in the Contaminated Baby Foods and based on the report by Healthy Babies Bright Future

that identified the inclusion of Heavy Metals or other undesirable toxins or contaminants in the Contaminated Baby Foods.<sup>15</sup>

166. Privity exists because Defendant expressly warranted to Plaintiff and the Class that the Contaminated Baby Foods were nutritious, “wholesome and safe,” and because it acknowledges the risk of growing fruit and vegetables in soil with high levels of heavy metals, using soil that is subject to standards that “are among the strictest in the world.”

167. As a direct and proximate result of Defendant’s conduct, Plaintiff and the Class suffered actual damages in that the purchased Contaminated Baby Foods that they would not have purchased at all had they known of the presence of Heavy Metals.

168. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys’ fees, costs, and any other just and proper relief available thereunder for Defendant’s failure to deliver goods that do not conform to its express warranties and resulting breach.

### **COUNT VII**

#### **Breach of Implied Warranty of Merchantability Against Defendant on Behalf of the Class**

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

170. Defendant is a merchant engaging in the sale of goods to Plaintiff and the Class.

171. There was a sale of goods from Defendant to Plaintiff and the Class.

172. At all times mentioned herein, Defendant manufactured or supplied the Contaminated Baby Foods, and prior to the time the Contaminated Baby Foods were purchased by Plaintiff and the Class, Defendant impliedly warranted to them that the Contaminated Baby

---

<sup>15</sup> Report by Healthy Babies Bright Futures, regarding 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).

Foods were of merchantable quality, fit for their ordinary use (consumption by infants and toddlers), and conformed to the promises and affirmations of fact made on the Contaminated Baby Foods' packaging and labels, including that the food was nutritious, "wholesome and safe," and because it acknowledges the risk of growing fruit and vegetables in soil with high levels of heavy metals, using soil that is subject to standards that "are among the strictest in the world."

173. Plaintiff and the Class relied on Defendant's promises and affirmations of fact when they purchased the Contaminated Baby Foods.

174. The Contaminated Baby Foods were not fit for their ordinary use (consumption by infants and toddlers), and did not conform to Defendant's affirmations of fact and promises as they contained Heavy Metals at material levels to a reasonable consumer.

175. Defendant breached the implied warranties by selling the Contaminated Baby Foods that failed to conform to the promises or affirmations of fact made on the packaging and labels as each product contained Heavy Metals.

176. Defendant was on notice of this breach as it was aware of the included Heavy Metals in the Contaminated Baby Foods and based on the report by Healthy Babies Bright Future that identified the inclusion of Heavy Metals or other undesirable toxins or contaminants in the Contaminated Baby Foods.<sup>16</sup>

177. Privity exists because Defendant expressly warranted to Plaintiff and the Class that the Contaminated Baby Foods were nutritious, "wholesome and safe," and because it acknowledges the risk of growing fruit and vegetables in soil with high levels of heavy metals, using soil that is subject to standards that "are among the strictest in the world."

---

<sup>16</sup> *Id.*

178. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class suffered actual damages in that they purchased Contaminated Baby Foods that they would not have purchased at all had they known of the presence of Heavy Metals.

179. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available thereunder for Defendant's failure to deliver goods that conform to their implied warranties and resulting breach.

**COUNT VIII**  
**Unjust Enrichment Against Defendant on Behalf of the Class**

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

181. Substantial benefits have been conferred on Defendant by Plaintiff and the Class through the purchase of the Contaminated Baby Foods. Defendant knowingly and willingly accepted and enjoyed these benefits.

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

183. Defendant's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendant to retain the benefits without payment of the value to Plaintiff and the Class.

184. Plaintiff and the Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.



185. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the laws.

**PRAYER FOR RELIEF**

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

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

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

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

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

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

F. An order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the Unlawful Trade Practices Act, Uniform Deceptive Trade Practices Act, False Statement in Advertisement Act, plus pre- and post-judgment interest thereon;

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

- H. An order requiring Defendant to pay all actual and statutory damages permitted under the counts alleged herein;
- I. An order requiring Defendant to pay punitive damages on any count so allowable;
- J. An order awarding attorneys' fees and costs to Plaintiff, the Class; and
- K. An order providing for all other such equitable relief as may be just and proper.

**JURY DEMAND**

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

Dated: February 8, 2021

LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
Robert K. Shelquist (MN #21310X)  
Rebecca A. Peterson (MN #0392663)

By: s/ Rebecca A. Peterson

100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
E-mail: rkshelquist@locklaw.com  
rapeterson@locklaw.com

LITE DEPALMA GREENBERG, LLC  
Joseph DePalma  
Susana Cruz Hodge  
570 Broad Street, Suite 1201  
Newark, NJ 07102  
Telephone: (973) 623-3000  
E-mail: jdepalma@litedepalma.com  
scrushodge@litedepalma.com

CUNEO GILBERT & LADUCA, LLP  
Charles LaDuca  
Katherine Van Dyck  
C. William Frick  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
Telephone: (202) 789-3960  
Facsimile: (202) 789-1813  
E-mail: charles@cuneolaw.com  
kvandyck@cuneolaw.com  
bill@cuneolaw.com

***ATTORNEYS FOR PLAINTIFF***