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

15 Ludmila Gulkarov, Janine Torrence,
16 Kelly McKeon, and Josh Crawford,
17 Individually and on Behalf of All
18 Others Similarly Situated,

19 Plaintiffs,

20 v.

21 Plum, PBC, and Plum, Inc., Delaware
22 corporations,

23 Defendants.

Case No. 21-cv-00913-YGR

**CONSOLIDATED 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;
- (6) BREACH OF IMPLIED WARRANTY;
- (7) VIOLATIONS OF NEW YORK'S DECEPTIVE PRACTICES ACT;
- (8) VIOLATION OF MINNESOTA UNLAWFUL TRADE PRACTICES ACT;
- (9) VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT;
- (10) VIOLATION OF MINNESOTA FALSE STATEMENT IN ADVERTISING ACT;
- (11) VIOLATION OF MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;
- (12) VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW;
- (13) UNJUST ENRICHMENT;
- (14) FRAUDULENT MISREPRESENTATION; AND
- (15) FRAUD BY OMISSION.

DEMAND FOR JURY TRIAL

1 5. Defendants state they use “organic, non-GMO, whole and simple ingredients” and
2 their products are “always made without genetically modified ingredients.”¹ Defendants’ mission
3 is “to nourish little ones with the very best food from the very first bite.”²

4 6. Defendants’ packaging and labels emphasize the inclusion of quality and safe
5 ingredients, their commitment to organic food, the absence of any unnatural ingredients, and the
6 safety of their products for human infant consumption.

7 7. Yet nowhere on the labeling, advertising, statements, warranties, and/or packaging
8 do Defendants disclose that the Baby Foods³ include Heavy Metals, perchlorate, or other
9 ingredients that do not conform to the labels, packaging, advertising, and statements.

10 8. Indeed, the Baby Foods have been shown to contain significant levels of arsenic,
11 cadmium, lead, mercury, and/or perchlorate- all known to pose health risks to humans, and
12 particularly to infants.⁴

13 9. Despite this, Defendants warrant, promise, represent, mislead, label, and/or
14 advertise that the Baby Foods are free of any Heavy Metals, perchlorate, and/or unnatural
15 ingredients by making assurances that the foods are high quality and safe for infant consumption.

16 ¹ <https://www.plumorganics.com/food-philosophy/> (last accessed March 9, 2021).

17 ² <https://www.plumorganics.com/faqs/> (last accessed March 10, 2021).

18 ³ The phrase “Baby Foods” collectively refers to the following Plum Organics products: Just Sweet
19 Potato Organic Baby Food; Just Peaches Organic Baby Food; Just Prunes Organic Baby Food;
20 Apple & Carrot Organic Baby Food; Apple, Raisin, & Quinoa Organic Baby Food; Pumpkin,
21 Banana, Papaya, & Cardamom Organic Baby Food; Pear, Purple Carrot, & Blueberry Organic
22 Baby Food; Pear, Spinach, & Pea Organic Baby Food; Mighty 4 Blends- Banana, Blueberry, Sweet
23 Potato, Carrot, Greek Yogurt & Millet Tots Pouch and Banana, Kiwi, Spinach, Greek Yogurt &
24 Barley Tots Pouch; Little Teethers Organic Multigrain Teething Wafers- Banana with Pumpkin
25 and Blueberry; Mighty Morning Bar- Blueberry Lemon and Apple Cinnamon; Butternut Squash,
26 Carrot, Chickpea & Corn Organic Baby Food; Apple with Spinach Super Puffs; Mango with Sweet
27 Potato Super Puffs; Mighty Snack Bars- Blueberry and Strawberry; Teensy Snacks- Berry.
28 Discovery may reveal additional products that also contain levels of Heavy Metals, perchlorate, or
other undesirable toxins or contaminants. Plaintiffs reserve their right to include any such products
in this action.

⁴ See Healthy Babies Bright Futures’ report: What’s in My Baby’s Food?
https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed March 10, 2021); Table 1.

1 10. Defendants claim they place the safety of their customers above all else,⁵ and that
2 their Baby Foods are organic, in direct contradiction to the true nature of their contents, which
3 include Heavy Metals, perchlorate, or other undesirable toxins or contaminants.

4 11. It was recently revealed on information and belief that Defendants were knowingly,
5 recklessly, and/or negligently selling the Baby Foods that contain arsenic, cadmium, lead, mercury,
6 and/or perchlorate.

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

13 13. The Subcommittee's report revealed that "[i]nternal company standards permit
14 dangerously high levels of toxic heavy metals, and ... that the manufacturers have often sold foods
15 that exceeded these levels." Ex. 1 at 4. Defendants were among the three companies that refused
16 to cooperate with the Subcommittee's investigation, causing "great[] concern that their lack of
17 cooperation might obscure the presence of even higher levels of toxic heavy metals in their baby
18 food products, compared to their competitors' products." Ex. 1 at 5. "[E]ven limited independent
19 testing has revealed the presence of toxic heavy metals in [Defendants'] baby food." Ex. 1 at 45.

20 14. Defendants know their customers trust the quality of their products and that they
21 expect Defendants' products to be free of Heavy Metals, perchlorate, and other undesirable toxins
22 or contaminants. They also know that certain consumers seek out and wish to purchase premium
23 baby foods that possess high quality ingredients free of toxins, contaminants, or chemicals and that
24 these consumers will pay more for baby foods they believe possess these qualities than for baby
25 foods they do not believe possess these qualities.

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28 ⁵ <https://www.plumorganics.com/faqs/> (last accessed March 9, 2021).

1 15. As such, Defendants’ promises, warranties, pricing, statements, claims, packaging,
2 labeling, marketing, and advertising (hereinafter collectively referred to as “Marketing” or
3 “Claims”) center on representations and pictures that are intended to, and do, convey to consumers
4 that their baby food, including their Baby Foods, possess certain qualities and characteristics that
5 justify a premium price.

6 16. No reasonable consumer seeing Defendants’ Marketing would expect the Baby
7 Foods to contain Heavy Metals, perchlorate, or other undesirable toxins or contaminants.
8 Furthermore, reasonable consumers, like Plaintiffs, would consider the mere inclusion of Heavy
9 Metals, perchlorate, or other undesirable toxins or contaminants a material fact when considering
10 what baby food to purchase.

11 17. Defendants intended for consumers to rely on their Marketing, and reasonable
12 consumers did in fact so rely. However, Defendants’ Marketing is deceptive, misleading, unfair,
13 and/or false because, among other things, the Baby Foods include undisclosed levels of Heavy
14 Metals, perchlorate, or other undesirable toxins or contaminants.

15 18. Defendants’ Baby Foods do not have a disclaimer regarding the presence of Heavy
16 Metals, perchlorate, or other undesirable toxins or contaminants that would inform consumers that
17 the foods contain Heavy Metals, perchlorate, or other undesirable toxins or contaminants and/or
18 that Heavy Metals, perchlorate, or other undesirable toxins or contaminants can accumulate over
19 time in a child’s body to the point where poisoning, injury, and/or disease can occur.

20 19. Defendants’ wrongful Marketing, which includes misleading, deceptive, unfair,
21 and false Marketing and omissions, allowed them to capitalize on, and reap enormous profits from,
22 consumers who paid the purchase price or a price premium for Baby Foods that were not sold as
23 advertised. Defendants continue to wrongfully induce consumers to purchase their Baby Foods
24 that are not as advertised.

25 20. Plaintiffs bring this proposed consumer class action individually and on behalf of
26 all other members of the Class (as defined herein), who, from the applicable limitations period up
27 to and including the present, purchased for use and not resale any of Defendants’ Baby Foods.

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1 **JURISDICTION AND VENUE**

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

7 22. Venue is proper in this Court pursuant to 28 U.S.C. §1391, because Plaintiffs
8 suffered injury as a result of Defendants’ acts in this district, many of the acts and transactions
9 giving rise to this action occurred in this district, and Defendants conduct substantial business in
10 this district and are headquartered in this district. Defendants have intentionally availed
11 themselves of the laws and markets of this district, and Defendants are subject to personal
12 jurisdiction in this district.

13 **THE PARTIES**

14 23. Plaintiff Gulkarov (“Plaintiff Gulkarov”) is, and at all times relevant hereto has
15 been, a citizen of the state of California. She purchased the Baby Foods, specifically the Plum
16 Organics Sweet Potato Baby Food and Plum Organics Apple & Carrot, for all three of her children
17 from Vons and Albertsons grocery stores. Plaintiff Gulkarov last purchased the Baby Foods for
18 her youngest child from July 2014 to 2017.

19 24. Plaintiff Gulkarov believed she was feeding her children healthy, nutritious food.
20 Prior to purchasing the Baby Foods, Plaintiff Gulkarov saw Defendants’ nutritional claims on the
21 packaging, including the “organic” representations, which she relied on in deciding to purchase
22 the Baby Foods. During the time she purchased and fed her children the Baby Foods, and due to
23 the false and misleading claims and omissions by Defendants, she was unaware the Baby Foods
24 contained or may contain any level of Heavy Metals, perchlorate, or other undesirable toxins or
25 contaminants, and would not have purchased the food if that information had been fully disclosed.

26 25. Plaintiff Torrence (“Plaintiff Torrence”) is, and at all times relevant hereto has
27 been, a citizen of the state of New York. She purchased the Baby Foods, specifically the Plum
28 Organics pouches in Stages 1, 2, and 3, generally from Shop Rite, Stop & Shop, and Target stores.

1 Plaintiff Torrence purchased the Baby Foods for her daughter from approximately June 2020 until
2 February 2021.

3 26. Plaintiff Torrence believed she was feeding her child healthy, nutritious food. Prior
4 to purchasing the Baby Foods, Plaintiff Torrence saw Defendants' nutritional claims on the
5 packaging, including the "organic" representations, which she relied on in deciding to purchase
6 the Baby Foods. During the time she purchased and fed her child the Baby Foods, and due to the
7 false and misleading claims and omissions by Defendants, she was unaware the Baby Foods
8 contained or may contain any level of Heavy Metals, perchlorate, or other undesirable toxins or
9 contaminants, and would not have purchased the food if that information had been fully disclosed.

10 27. Plaintiff Kelly McKeon ("Plaintiff McKeon") is, and at all times relevant hereto
11 has been, a citizen of the state of Minnesota. She purchased the Baby Foods for her child, including
12 the Plum Organics Just Sweet Potato pouches, butternut squash carrot chickpea and corn pouches,
13 apple and spinach Super Puffs, mango and sweet potato Super Puffs, blueberry Little Teethers
14 multigrain wafers, blueberry Mighty Snack Bars, strawberry Mighty Snack Bars, apple and
15 cinnamon Mighty Morning Bars, blueberry lemon Mighty Morning Bars, and berry Teensy
16 Snacks. Plaintiff McKeon generally purchased the Baby Foods from Target and Whole Foods
17 stores, from approximately 2018 until the present.

18 28. Plaintiff McKeon believed she was feeding her child healthy, nutritious food. Prior
19 to purchasing the Baby Foods, Plaintiff McKeon saw Defendants' nutritional claims on the
20 packaging, including the "organic" representations, which she relied on in deciding to purchase
21 the Baby Foods. During the time she purchased and fed her child the Baby Foods, and due to the
22 false and misleading claims and omissions by Defendants, she was unaware the Baby Foods
23 contained or may contain any level of Heavy Metals, perchlorate, or other undesirable toxins or
24 contaminants, and would not have purchased the food if that information had been fully disclosed.

25 29. Plaintiff Josh Crawford ("Plaintiff Crawford") is, and at all times relevant hereto
26 has been, a citizen of the state of Pennsylvania. He purchased the Baby Foods for his child,
27 including the Plum Organics Just Prunes Organic Baby Food. Plaintiff Crawford generally
28

1 purchased the Baby Foods from Target, Weis Markets, and Amazon.com, from approximately
2 2018 until 2020.

3 30. Plaintiff Crawford believed he was feeding his child healthy, nutritious food. Prior
4 to purchasing the Baby Foods, Plaintiff Crawford saw Defendants' nutritional claims on the
5 packaging, including the "organic" representations, which he relied on in deciding to purchase the
6 Baby Foods. During the time he purchased and fed his child the Baby Foods, and due to the false
7 and misleading claims and omissions by Defendants, he was unaware the Baby Foods contained
8 or may contain any level of Heavy Metals, perchlorate, or other undesirable toxins or
9 contaminants, and would not have purchased the food if that information had been fully disclosed.

10 31. As the result of Defendants' negligent, reckless, and/or knowingly deceptive
11 conduct as alleged herein, Plaintiffs were injured when they paid the purchase price or a price
12 premium for the Baby Foods that did not deliver what they promised. Plaintiffs paid the purchase
13 price on the assumption that the labeling of the Baby Foods was accurate and that they was free of
14 Heavy Metals, perchlorate, or other undesirable toxins or contaminants, and was safe to ingest.
15 Plaintiffs would not have paid this money had they known that the Baby Foods contained or may
16 contain any level of Heavy Metals, perchlorate, or other undesirable toxins or contaminants.
17 Further, should Plaintiffs encounter the Baby Foods in the future, they could not rely on the
18 truthfulness of the Marketing, absent corrective changes to the packaging and advertising of the
19 Baby Foods. Damages can be calculated through expert testimony at trial.

20 32. Defendant Plum, PBC was founded in 2007 and is incorporated in Delaware. Its
21 headquarters are located at 1485 Park Avenue, Suite 200, Emeryville, California. Defendant Plum,
22 PBC Terms of Use as being "governed by and construed in accordance with the laws of the State
23 of California," and states exclusive jurisdiction and venue is in Alameda County.⁶ Additionally,
24 under "How to Contact Us," Defendant Plum, PBC lists its address at 1485 Park Avenue, Suite
25 200, in Emeryville, California.⁷

26 _____
27 ⁶ <https://www.plumorganics.com/terms-of-use/> (last accessed March 10, 2021).

28 ⁷ *Id.*

1 33. Defendant Plum, Inc. (doing business as “Plum Organics”) is incorporated in
2 Delaware with its headquarters and principal place of business located at 1485 Park Avenue,
3 Emeryville, California.

4 34. Defendants formulate, develop, manufacture, label, distribute, market, advertise,
5 and sell the Baby Foods under the Plum Organics name throughout the United States, including in
6 this District, during the Class Period (defined below). Defendants created, allowed, negligently
7 oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling
8 and advertising for the Baby Foods. Defendants are also responsible for sourcing ingredients,
9 manufacturing the products, and conducting all relevant quality assurance protocols, including
10 testing of the ingredients and finished baby foods.

11 35. The Marketing for the Baby Foods, relied upon by Plaintiffs, was prepared,
12 reviewed, and/or approved by Defendants and their agents at their headquarters in California and
13 was disseminated by Defendants and their agents through marketing, advertising, packaging, and
14 labeling that contained the misrepresentations alleged herein. The Marketing for the Baby Foods
15 was designed to encourage consumers to purchase the Baby Foods and reasonably misled the
16 reasonable consumer, *i.e.*, Plaintiffs and the Class members, into purchasing the Baby Foods.

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

21 Stage 1

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23 Stage 1 (4+ months) organic baby food is
24 perfect for introducing solids or first foods
25 to your budding eater. Using only non-
26 GMO, organic ingredients, the blends are
27 all unsalted, unsweetened, and kosher
28 parve. And since our pouches are
resealable, you can customize portion
sizes that are perfect for your baby.



Peaches Baby Food



Sweet Potato Baby Food



Mangos Baby Food



Prunes Baby Food

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Stage 2

Stage 2 (6+ months) organic baby food pouches are made with blends of fruit, veggies, grains, and Greek yogurt that are perfect for exposing your little foodie 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

SHOW MORE >

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

1 37. The Baby Foods, at a minimum, include:

2 a) Just Sweet Potato Organic Baby Food:



10 b) Just Peaches Organic Baby Food:



17 c) Just Prunes Organic Baby Food:



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d) Apple & Carrot Organic Baby Food:



e) Pear, Purple Carrot, & Blueberry Organic Baby Food:



f) Pear, Spinach, & Pea Organic Baby Food:



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g) Butternut Squash, Carrot, Chickpea & Corn Organic Baby Food:



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



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



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j) Little Teethers Organic Multigrain Teething Wafers- Banana with Pumpkin:



k) Little Teethers Organic Multigrain Teething Wafers- Blueberry



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l) Mighty Morning Bar- Blueberry Lemon



m) Mighty Morning Bar- Apple Cinnamon



n) Mighty Snack Bar- Blueberry:



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o) Mighty Snack Bar- Strawberry:



p) Mighty 4 Blends- Banana, Blueberry, Sweet Potato, Carrot, Greek Yogurt & Millet Tots Pouch:



q) Mighty 4 Blends- Banana, Kiwi, Spinach, Greek Yogurt & Barley Tots Pouch:



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r) Super Puffs- Apple with Spinach:



s) Super Puffs- Mango with Sweet Potato:



t) Teensy Snacks- Berry



FACTUAL ALLEGATIONS

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

38. 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.

39. Defendants were one of the baby food manufacturers from whom the Subcommittee requested internal documents and test results. However, Defendants “refused to cooperate with the Subcommittee’s investigation.” Ex. 1. Defendants 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

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

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

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

9 43. In Defendants’ published response to the Subcommittee’s Report, they stated, “We
10 are confident in the safety and quality of our products. Our top priority is to serve children healthy,
11 nutritious food made from the best ingredients. We want to assure you that Plum’s products are
12 safe (and delicious) to eat!”⁸

13 44. However, under the FAQs section, Defendants fail to describe their “protocol for
14 evaluating heavy metals in products” and simply claims they look to guidance from leading health
15 and regulatory bodies, while also failing to identify the “healthy and regulatory bodies.”⁹

16 **II. Defendants Falsely Marketed Their Baby Foods as Healthy While Omitting Any**
17 **Mention of Heavy Metals**

18 45. Defendants package, label, market, advertise, formulate, manufacture, distribute,
19 and sell their Baby Foods throughout the United States, including California.

20 46. Defendants’ advertised mission is to “nourish little ones with the very best food
21 from the very first bite.”¹⁰ Defendants repeatedly tout their commitment to and use of organic and
22 non-GMO ingredients in their products, including the Baby Foods.¹¹

23 ⁸ <https://www.plumorganics.com/faqs/> (last accessed March 9, 2021).

24 ⁹ *Id.*

25 ¹⁰ Plum Organics Mission Highlights, Fiscal Year 2018. Available at
26 https://www.plumorganics.com/wp-content/uploads/2019/05/Plum_MissionReport2018.pdf (last
27 accessed March 9, 2021).

28 ¹¹ <https://www.plumorganics.com/food-philosophy/> (last accessed March 10, 2021).

Why Plum®?

We're a brand by parents, for parents.
And when it comes to feeding your little one,
we've got you covered with:

- Delightful recipes that encourage adventurous eating
- Certified organic, non-GMO ingredients
- A brand that gives back to little ones in need (thanks to you!)



47. Defendants also claim their “top priority” is “to serve children healthy, nutritious food made from the best ingredients.”¹²

48. Defendants tout their commitment to organic, healthy food, the “very best food.”¹³



¹² <https://www.plumorganics.com/faqs/> (last accessed March 9, 2021).

¹³ Plum Organics Mission Highlights, Fiscal Year 2018. Available at https://www.plumorganics.com/wp-content/uploads/2019/05/Plum_MissionReport2018.pdf (last accessed March 9, 2021).

1 49. Defendants even state, “Our recipes always begin with organic, non-GMO
2 ingredients from real foods like fruits, vegetables, whole grains, and proteins.”¹⁴

3 50. Defendants also promote their Baby Foods as organic and free from unnatural
4 ingredients in order to place their products within the premium category of baby food.

5 51. Defendants also claim to have a “comprehensive quality and food safety program”¹⁵
6 where they “go beyond standard regulatory compliance to ensure integrity of our products,” which
7 includes “strict ingredient requirements” and “regular supplier audits.”¹⁶

8 52. Based on Defendants’ decision to advertise, label, and market their Baby Foods as
9 healthy, nutritious, organic, “made from the best ingredients,” safe for consumption, and including
10 “only” the healthy fruits, vegetables, or grains pictured on the label, they had a duty to ensure that
11 these statements and the message portrayed by the labels’ imagery were true and not misleading.
12 As such, Defendants knew or should have known the Baby Foods included nondisclosed levels of
13 Heavy Metals, perchlorate, or other undesirable toxins or contaminants and that these toxins can
14 accumulate over time.

15 53. The Baby Foods are available at numerous retail and online outlets. The Baby
16 Foods are widely advertised, and Defendants include a Vice President of Brand and Marketing on
17 their Executive Team.

18 54. As discussed above, the Marketing of the Baby Foods also fails to disclose they
19 contain or may contain any level of Heavy Metals, perchlorate, or other undesirable toxins or
20 contaminants. Defendants intentionally omitted these contaminants in order to induce and mislead
21 reasonable consumers to purchase their Baby Foods.

22 55. As a result of Defendants’ omissions, a reasonable consumer would have no reason
23 to suspect the presence of Heavy Metals, perchlorate, or other undesirable toxins or contaminants
24

25 _____
26 ¹⁴ <https://web.archive.org/web/20200922014219/https://www.plumorganics.com/ingredients-glossary/> (last accessed March 10, 2021).

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

1 in the Baby Foods without conducting his or her own scientific tests or reviewing third party
2 scientific testing of these products.

3 **III. Due to the Presence of Heavy Metals and/or Perchlorate in the Baby Foods,**
4 **Defendants' Marketing and Omissions are Misleading**

5 **A. Heavy Metals**

6 56. At all times during the Class Period, Defendants knew or should have known the
7 Baby Foods contained or may contain Heavy Metals and were not sufficiently tested for the
8 presence of Heavy Metals.

9 57. Defendants' Baby Foods contained or may contain Heavy Metals due to
10 Defendants' failure to monitor for their presence in the ingredients and finished products.
11 Defendants were aware of this risk and failed to disclose it to Plaintiffs and the Class.

12 58. Defendants knew that Heavy Metals are a potentially dangerous contaminant that
13 poses health risks to infants and children. Defendants knew or should have known the standards
14 for the presence of Heavy Metals in baby food have become increasingly stringent in recent years.

15 59. Defendants knew or should have known that they owed consumers a duty of care
16 to prevent, or at the very least, minimize the presence of Heavy Metals in the Baby Foods to the
17 extent reasonably possible.

18 60. Defendants knew or should have known they owed consumers a duty of care to
19 adequately test for Heavy Metals in the Baby Foods.

20 61. Defendants knew consumers purchased the Baby Foods based on the reasonable
21 expectation that Defendants manufactured the Baby Foods to the highest standards. Based on this
22 expectation, Defendants knew or should have known consumers reasonably inferred that
23 Defendants would hold the Baby Foods to the highest standards for preventing the inclusion of
24 Heavy Metals in the Baby Foods and for the Heavy Metals testing of the ingredients in the Baby
25 Foods as well as the final product.

26 62. A recent Congressional report from the Subcommittee on Economic and Consumer
27 Policy found that many of the products produced by the country's largest commercial baby food
28

1 manufacturers “contain significant levels of toxic heavy metals, including arsenic, lead, cadmium
2 and mercury, which can endanger infant neurological development.”¹⁷

3 63. The Food and Drug Administration (“FDA”) and the World Health Organization
4 (“WHO”) have declared arsenic, lead, cadmium, and mercury “dangerous to human health,
5 particularly to babies and children, who are most vulnerable to their neurotoxic effects.” Ex. 1 at
6 2.

7 64. Arsenic, lead, mercury, and cadmium- four heavy metals found in the Baby Foods-
8 are neurotoxins, or poisons which affect the nervous system. Exposures to these four heavy metals
9 “diminish quality of life, reduce academic achievement, and disturb behavior, with profound
10 consequences for the welfare and productivity of entire societies.”¹⁸

11 65. The four heavy metals “can harm a baby’s developing brain and nervous system”
12 and cause negative impacts such as “the permanent loss of intellectual capacity and behavioral
13 problems like attention-deficit hyperactivity disorder (ADHD).”¹⁹ Even in trace amounts found in
14 food, these heavy metals can alter the developing brain and erode a child’s IQ. Ex. 1 at 1.

15 66. Research continues to confirm that exposures to food containing arsenic, lead,
16 mercury, and cadmium causes “troubling risks for babies, including cancer and lifelong deficits in
17 intelligence[.]”²⁰

18 ***Arsenic***

19 67. The Baby Foods may contain arsenic, which when children are exposed to it early
20 in life, causes “cognitive deficits among school-age children exposed early in life, and neurological

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22 ¹⁷ Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to*
23 *Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at
<https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed
Feb. 10, 2021).

24 ¹⁸ Healthy Babies Bright Futures report, *What’s in My Baby’s Food*,
25 [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf)
26 [04/BabyFoodReport_ENGLISH_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) at 13 (last accessed March 10, 2021).

27 ¹⁹ *Id.* at 6.

28 ²⁰ *Id.* at 1.

1 problems in adults who were exposed to arsenic-poisoned milk as infants.”²¹ “There is no evidence
2 that the harm caused by arsenic is reversible.”²² Inorganic arsenic is highly toxic and a known
3 cause of human cancers. Arsenic exposure can also cause respiratory, gastrointestinal,
4 hematological, hepatic, renal, skin, neurological and immunological effects, and damage
5 children’s central nervous systems and cognitive development.²³

6 68. Based on the risks associated with exposure to higher levels of arsenic, both the
7 U.S. Environmental Protection Agency (“EPA”) and U.S. Food and Drug Administration (“FDA”)
8 have set limits concerning the allowable limit of arsenic at 10 parts per billion (“ppb”) for human
9 consumption in apple juice (regulated by the FDA) and drinking water (regulating by the EPA as
10 a maximum contaminant level).

11 69. Moreover, the FDA has set the maximum allowable arsenic levels in bottled water
12 at 10 ppb of inorganic arsenic.²⁴ The FDA is also considering limiting the action level for arsenic
13 in infant rice cereals to 100 ppb.²⁵

14 70. Again, Defendants did not cooperate with the Subcommittee’s investigation and
15 refused to produce their testing standards and specific test results. Ex. 1 at 2. Defendants instead
16
17

18 ²¹ *Id.* at 3.

19 ²² *Id.*

20 ²³ U.S. House of Representatives Staff Report by the Subcommittee on Economic and Consumer
21 Policy, Committee on Oversight and Reform: “Baby foods are tainted with dangerous levels of
22 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).

24 ²⁴ Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at
25 <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed Feb. 10, 2021).

26 ²⁵ FDA, Draft Guidance for Industry: Inorganic Arsenic in Rice Cereals for Infants: Action Level
27 (Apr. 2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocuments/RegulatoryInformation/UCM493152.pdf> (last accessed Feb. 10, 2021).
28

1 produced a spreadsheet that “self-declared” that every product met criteria for each of the Heavy
2 Metals, while declining to state what the criteria were.²⁶

3 ***Cadmium***

4 71. The Baby Foods may also contain cadmium, which has been shown to cause
5 anemia, liver disease, and nerve or brain damage in animals that eat or drink it.

6 72. Cadmium is linked to neurotoxicity, cancer, and kidney, bone, and heart damage.
7 Scientists have reported a “tripling of risk for learning disabilities and special education among
8 children with higher cadmium exposures, at levels common among U.S. children[.]”²⁷ Cadmium,
9 like lead, “displays a troubling ability to cause harm at low levels of exposure.”²⁸ The U.S.
10 Department of Health and Human Services has determined that cadmium and cadmium
11 compounds are known human carcinogens and the EPA has likewise determined that cadmium is
12 a probable human carcinogen.²⁹

13 73. The EPA has set a maximum contaminant level for cadmium in drinking water of
14 5 ppb, 40 C.F.R. § 141.62; the FDA has set a maximum level in bottled water to 5 ppb, and the
15 WHO set a maximum cadmium level in drinking water to 3 ppb. Ex. 1 at 29.

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22 ²⁶ Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019) (online at
23 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>) (last accessed Feb.
24 10, 2021).

24 ²⁷ Healthy Babies Bright Futures report, What’s in My Baby’s Food,
25 [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-
26 04/BabyFoodReport_ENGLISH_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) at 14 (last accessed March 10, 2021).

26 ²⁸ *Id.*

27 ²⁹ ATSDR, Public Health Statement: Cadmium (Sept. 2012),
28 <https://www.atsdr.cdc.gov/phs/phs.asp?id=46&tid=15> (last accessed Feb. 10, 2021).

1 74. Despite Defendants’ assertion that all of their Baby Foods met criteria for each of
2 the Heavy Metals, reports indicate that Defendants sold products containing levels as high as 6.3
3 ppb cadmium.³⁰

4 **Lead**

5 75. The Baby Foods may also contain lead, which is another carcinogen and
6 developmental toxin known to cause health problems in children.

7 76. Lead exposure can seriously harm the brain and nervous systems in children and is
8 associated with a range of negative health outcomes such as behavioral problems, decreased
9 cognitive performance, delayed puberty, and reduced postnatal growth.

10 77. Exposure to lead in foods builds up over time. Build up can and has been
11 scientifically demonstrated to lead to the development of chronic poisoning, cancer,
12 developmental, and reproductive disorders, as well as serious injuries to the nervous system, and
13 other organs and body systems.

14 78. Even very low exposure levels to lead “cause lower academic achievement,
15 attention deficits and behavior problems. No safe level of exposure has been identified.”³¹

16 79. One study found that “children age 0 to 24 months lose more than 11 million IQ
17 points from exposure to arsenic and lead in food.³² Additionally, studies have established a link
18 between lead exposure and ADHD. Ex. 1 at 12.

19 80. Although there is no federal standard for lead in baby food, health experts,
20 including the American Academy for Pediatrics, the Environmental Defense Fund, and Consumer
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25 ³⁰ Healthy Babies Bright Futures report, What’s in My Baby’s Food,
https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf at 27 (last accessed March 10, 2021).

26
27 ³¹ *Id.* at 13.

28 ³² *Id.* at 7.

1 Reports, have agreed that lead in baby foods should not exceed 1 ppb.³³ “The European Union has
2 set the maximum lead level in infant formula to 20 ppb.”³⁴

3 81. On January 15, 2021, the EPA issued Lead and Copper Rule Revisions, with a new
4 “trigger level” for treatment of 10 ppb lead in drinking water, effective March 16, 2021. 86 F.R.
5 28691 (Jan. 15, 2021). Previously, the EPA had required treatment for water exceeding lead
6 concentrations of 15 ppb. 40 C.F.R. 141, Subpart I.

7 82. Again, Defendants did not cooperate with the Subcommittee’s investigation and
8 instead produced a spreadsheet that “self-declared” that every product met criteria for each of the
9 Heavy Metals, while declining to state what the criteria were.³⁵

10 83. Other reports, however, indicate Defendants sold products containing levels as high
11 as 14 ppb lead.³⁶

12 **Mercury**

13 84. The Baby Foods may also contain mercury, which increases the risk for
14 cardiovascular disease and can cause vision, intelligence, and memory problems for children
15 exposed in utero. Exposure to mercury has been linked to higher risk of lower IQ scores and
16 intellectual disability.³⁷ Mercury exposure at two and three years of age has been positively
17 associated with autistic behaviors among pre-school age children. Ex. 1 at 12-13.

19 ³³ Laura Reiley, *New Report Finds Toxic Heavy Metals in Popular Baby Foods. FDA Failed to*
20 *Warn Consumers of Risk*, The Washington Post (Feb. 4, 2021), available at
21 <https://www.washingtonpost.com/business/2021/02/04/toxic-metals-baby-food/> (last accessed
Feb. 10, 2021).

22 ³⁴ *Id.*

23 ³⁵ Campbell, *Product Heavy Metal Test Results* (Dec. 11, 2019) (online at
24 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf>) (last accessed Feb.
10, 2021).

25 ³⁶ Healthy Babies Bright Futures report, *What’s in My Baby’s Food*,
26 [https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf)
27 [04/BabyFoodReport_ENGLISH_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) at 22 (last accessed March 10, 2021).

28 ³⁷ *Id.* at 14.

1 85. The EPA has set a maximum contaminant level for mercury in drinking water at 2
2 ppb. Ex. 1 at 32.

3 86. While federal regulations regarding levels of Heavy Metals in most baby foods are
4 non-existent, it is not due to a lack of risk. According to Linda McCauley, Dean of the Nell
5 Hodgson Woodruff School of Nursing at Emory University, who studies environmental health
6 effects, stated, “No level of exposure to these [heavy] metals has been shown to be safe in
7 vulnerable infants.”³⁸

8 87. Indeed, the FDA has acknowledged that “exposure to [these four heavy] metals are
9 likely to have the most significant impact on public health” and has prioritized them in connection
10 with its heavy metals workgroup looking to reduce the risks associated with human consumption
11 of heavy metals.³⁹

12 88. Despite the known risks of exposure to these heavy metals, Defendants have
13 negligently, recklessly, and/or knowingly sold the Baby Foods without disclosing they may
14 contain levels of arsenic, mercury, cadmium and lead to consumers like Plaintiffs.

15 **B. Perchlorate**

16 89. The Baby Foods may contain perchlorate, a neurotoxic chemical compound.
17 Perchlorate can disrupt the function of the thyroid, which is crucial for normal growth and
18 development of the central nervous system in infants and young children.⁴⁰ It has also been “linked
19 to IQ loss among children born to mothers with thyroid dysfunction.”⁴¹

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21 _____
22 ³⁸ <https://www.nytimes.com/2021/02/04/health/baby-food-metals-arsenic.html> (last accessed
February 5, 2021).

23 ³⁹ FDA, Metals, <https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/default.htm>
24 (last accessed Feb. 10, 2021).

25 ⁴⁰ <https://www.fda.gov/food/chemicals/perchlorate-questions-and-answers> (last accessed March
26 9, 2021).

27 ⁴¹ Healthy Babies Bright Futures report, What’s in My Baby’s Food,
[https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-
28 04/BabyFoodReport_ENGLISH_R6.pdf](https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf) at 8 (last accessed March 10, 2021).

1 90. The levels of perchlorate in children’s food has increased significantly from 2005.
2 Perchlorate, which is both a naturally occurring and manmade chemical, was approved by the FDA
3 in 2005 for use as an antistatic in plastic food packaging. In 2016, the FDA expanded the approval
4 to cover dry food handling equipment. Hypochlorite bleach, which is used to disinfect food
5 processing equipment, can also create perchlorate as a product of degradation.

6 91. The dangers of perchlorate in human food are recognized by the FDA.⁴² The EPA
7 has also recognized the dangers of perchlorate in drinking water and has set the maximum
8 contaminant level goal for perchlorate in drinking water of 56 µg/L. 85 F.R. 43990 (July 21, 2020).

9 92. At all times during the Class Period, Defendants knew or should have known the
10 Baby Foods contained or may contain perchlorate, and/or were not sufficiently tested for
11 perchlorate. During this time, Defendants omitted any reference to the presence or risk of
12 perchlorate from the Baby Foods’ packaging.

13 93. Defendants knew or should have known that perchlorate is a potentially dangerous
14 contaminant that poses health risks to infants and children.

15 94. Defendants knew or should have known they owed consumers a duty of care to
16 prevent, or at the very least, minimize, the presence of perchlorate in the Baby Foods.

17 95. Defendants knew or should have known they owed consumers a duty of care to
18 adequately test for perchlorate in the Baby Foods.

19 96. Defendants knew consumers purchased the Baby Foods based on the reasonable
20 expectation that Defendants manufactured the Baby Foods to the highest standards to be safe and
21 healthy for consumption by infants and children. Defendants knew or should have known
22 consumers reasonably inferred that they would hold the Baby Foods to the highest standards for
23 preventing the presence or risk of perchlorate and for testing for perchlorate.

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25 _____
26 ⁴² FDA, Exploratory Survey Data on Perchlorate in Food 2004-2005,
27 <https://www.fda.gov/food/chemicals/exploratory-survey-data-perchlorate-food-2004-2005> (last
28 accessed Feb. 10, 2021). (“Human exposure to sufficient doses of perchlorate can interfere with
iodide uptake into the thyroid gland, disrupting its functions and potentially leading to a reduction
in the production of thyroid hormones.”).

1 97. Still, certain Baby Foods are sold by Defendants that may contain levels of
2 perchlorate.

3 98. Despite the risk and/or actual presence of these unnatural and potentially harmful
4 chemicals, Defendants prominently warrant, claim, feature, represent, advertise, or otherwise
5 market the Baby Foods as “organic” and appropriate for consumption by infants and fail to disclose
6 the presence of Heavy Metals, perchlorate, or other undesirable toxins or contaminants.

7 **IV. Defendants’ Marketing Misled and Deceived Consumers**

8 99. Defendants’ Marketing wrongfully conveys to consumers that their Baby Foods
9 have certain superior quality and characteristics that they do not actually possess.

10 100. For instance, although Defendants misleadingly cause consumers to believe their
11 Baby Foods do not contain Heavy Metals through their Marketing and omissions, the Baby Foods
12 do in fact contain undisclosed Heavy Metals, which is material information to reasonable
13 consumers.

14 101. For example, the following foods were tested and found to contain undisclosed
15 Heavy Metals at the following levels:⁴³

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)	Perchlorate (ppb)
Plum Organics Gentle Organic Infant Formula with Iron, Milk-Based Powder-0-12 months	4.6	-- ⁴⁴	4.7	< 1.1	< 0.278	--

25 ⁴³ The following chart represents the levels of Heavy Metals in Defendants’ products included in
26 the Healthy Babies Bright Futures Report, dated October 2019. Available at:
https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed February 4, 2021).

27 ⁴⁴ “--” indicates that analysis was not performed by Healthy Babies Bright Futures.
28

Food	Arsenic (total, ppb)	Arsenic (inorganic, ppb)	Lead (ppb)	Cadmium (ppb)	Mercury (total, ppb)	Perchlorate (ppb)
Plum Organics Just Sweet Potato Organic Baby Food- 1, 4 months	3.1* ⁴⁵	--	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*	--
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 ⁴⁶	39	3.4	24.3	<0.137	1.8(J)

Table 1.

⁴⁵ An "*" indicates that test results were estimated, between the limit of detection and the limit of quantitation.

⁴⁶ "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."

1 102. In addition, testing recently conducted by an independent laboratory further
2 confirmed the presence of undisclosed Heavy Metals in the Baby Foods:

	Arsenic (ppb)	Cadmium (ppb)	Lead (ppb)	Mercury (ppb)
3 Plum Organics Pear, Purple Carrot, & 4 Blueberry Organic Baby Food, Sample 1	7.6	3.4	4.6	< 1.9
5 Plum Organics Pear, Purple Carrot, & 6 Blueberry Organic Baby Food, Sample 2	7.5	4.3	4.3	< 1.9
7 Plum Organics Pear, Spinach, & Pea 8 Organic Baby Food, Sample 1	3.4	20.1	1.6	< 1.7
9 Plum Organics Pear, Spinach, & Pea 10 Organic Baby Food, Sample 2	4.0	27.3	1.8	< 1.7
11 Plum Organics Just Sweet Potato Organic 12 Baby Food, Sample 1	3.0	3.5	31.0	< 1.8
13 Plum Organics Just Sweet Potato Organic 14 Baby Food, Sample 2	2.9	3.9	30.0	< 1.6
15 Plum Organics Mighty 4 Blends Banana, 16 Blueberry, Sweet Potato, Carrot, Greek Yogurt & Millet Tots Pouch	2.8	2.9	2.7	< 1.7
17 Plum Organics Mighty 4 Blends Banana, 18 Kiwi, Spinach, Greek Yogurt & Barley Tots Pouch	7.4	7.7	3.9	< 1.8

19
20 *Table 2.*

21 103. Defendants' Marketing wrongfully fails to disclose to consumers the presence of
22 Heavy Metals, perchlorate, or other undesirable toxins or contaminants in their Baby Foods.

23 104. Based on Defendants' Marketing, a reasonable consumer would not suspect the
24 presence of Heavy Metals, perchlorate, or other undesirable toxins or contaminants, nor would a
25 reasonable consumer be able to detect the presence of Heavy Metals, perchlorate, or other
26 undesirable toxins or contaminants in the Baby Foods without conducting his or her own scientific
27 tests or reviewing scientific testing conducted on the Products.

1 105. Reasonable consumers must and do rely on Defendants to honestly report what their
2 Baby Foods contain.

3 106. In light of Defendants' Marketing, including their "comprehensive" quality
4 controls, Defendants knew or should have known the Baby Foods contained or may contain Heavy
5 Metals, perchlorate, or other undesirable toxins or contaminants.

6 107. Defendants had a duty to ensure the Baby Foods were as they were represented and
7 not deceptively, misleadingly, unfairly, and falsely marketed.

8 108. Pursuant to the foregoing, Defendants' Marketing is deceptive, misleading, unfair,
9 and false to Plaintiffs and other consumers, including under the consumer protection laws of
10 California.

11 109. Defendants acted negligently, recklessly, unfairly, and/or intentionally with their
12 deceptive, misleading, unfair, and false Marketing and omissions.

13 110. Defendants knew that properly and sufficiently monitoring for Heavy Metals,
14 perchlorate, and other undesirable toxins or contaminants in their ingredients and Baby Foods was
15 not only important, but critical.

16 111. Additionally, Defendants knew or should have been aware that a consumer would
17 be feeding the Baby Foods multiple times each day to his or her child, making it a primary source
18 of food for the child. This leads to repeated exposure of the Heavy Metals, perchlorate, or other
19 undesirable toxins or contaminants to the child.

20 112. Finally, Defendants knew or should have known they could control the levels of
21 Heavy Metals, perchlorate, or other undesirable toxins or contaminants in the Baby Foods by
22 properly monitoring their ingredients for Heavy Metals, perchlorate, or other undesirable toxins or
23 contaminants and adjusting any formulation or diet to reduce ingredients that contained or may
24 contain higher levels of Heavy Metals, perchlorate, or other undesirable toxins or contaminants.

25 113. Defendants' omissions are material, false, misleading, and reasonably likely to
26 deceive the public. This is true especially considering the long-standing campaign by Defendants
27 to market the Baby Foods as healthy, nutritious, organic, and made from the best ingredients to
28 induce consumers, such as Plaintiffs, to purchase the products.

1 114. Using such descriptions and promises makes Defendants' advertising campaign
2 deceptive based on the presence or risk of Heavy Metals, perchlorate, or other undesirable toxins
3 or contaminants in the Baby Foods. Reasonable consumers, like Plaintiffs, would consider the
4 mere presence or risk of Heavy Metals, perchlorate, or other undesirable toxins or contaminants
5 in the Baby Foods a material fact when considering what baby food to purchase.

6 115. At all times during the Class Period, Defendants knew they were not sufficiently
7 and consistently monitoring or testing the Baby Foods or their ingredients for Heavy Metals,
8 perchlorate, or other undesirable toxins or contaminants. Defendants knew their failure to properly
9 and sufficiently test for Heavy Metals, perchlorate, or other undesirable toxins or contaminants in
10 the Baby Foods continued throughout the Class Period.

11 116. Defendants knew, yet failed to disclose, their lack of regular testing, monitoring,
12 and knowledge Baby Foods contained or may contain Heavy Metals, perchlorate, or other
13 undesirable toxins or contaminants in the Baby Foods and ingredients.

14 117. Defendants' Marketing was misleading due to their failure to properly and
15 sufficiently monitor for and to disclose the risk of the presence of Heavy Metals, perchlorate, or
16 other undesirable toxins or contaminants in the Baby Foods.

17 118. Defendants knew or should have known the Baby Foods contained or may contain
18 unmonitored levels of Heavy Metals, perchlorate, or other undesirable toxins or contaminants that
19 were inconsistent with their Marketing.

20 119. Defendants knew or should have known that consumers expected them to ensure
21 the Baby Foods and ingredients were monitored and tested for Heavy Metals, perchlorate, or other
22 undesirable toxins or contaminants to ensure compliance with their Marketing.

23 120. Defendants knew or should have known consumers paid premium prices and
24 expected Defendants to regularly test for Heavy Metals, perchlorate, or other undesirable toxins
25 or contaminants and sufficiently monitor the presence of Heavy Metals, perchlorate, or other
26 undesirable toxins or contaminants in the Baby Foods and ingredients.

27 121. Defendants' above-referenced statements, representations, partial disclosures, and
28 omissions are false, misleading, and crafted to deceive the public as they create an image that the

1 Baby Foods are healthy, nutritious, organic, and made from the best ingredients, are subject to
2 stringent quality control, and are free of Heavy Metals, perchlorate, or other undesirable toxins or
3 contaminants.

4 122. Moreover, reasonable consumers, such as Plaintiffs and the Class members, would
5 have no reason to doubt Defendants' statements regarding the quality of the Baby Foods.
6 Defendants' nondisclosure and/or concealment of the Heavy Metals, perchlorate, or other
7 undesirable toxins and contaminants in the Baby Foods, coupled with the misrepresentations
8 alleged herein that were intended to and did, in fact, cause consumers like Plaintiffs and the
9 members of the Class, to purchase products they would not have if the true quality and ingredients
10 were disclosed or would not have paid a premium price for such baby food.

11 123. As a result of Defendants' wrongful Marketing, which includes misleading,
12 deceptive, unfair, and false statements and omissions, Defendants have generated substantial sales
13 of the Baby Foods, which allowed them to capitalize on, and reap enormous profits from,
14 consumers who paid the purchase price or premium for the Baby Foods that were not as advertised.

15 124. This is not surprising given that, for example, organic baby food was valued at were
16 \$1.9 billion in the U.S. in 2018 and is expected to reach \$3.32 billion by 2024.⁴⁷

17 125. The incredible rise in consumer demand for organic baby food is "driven by the
18 growing awareness among consumers to limit that baby's exposure to the harmful chemicals used
19 in conventional food production and the awareness of the benefits of organic products."⁴⁸

20 **DEFENDANTS' STATEMENTS AND OMISSIONS VIOLATE CALIFORNIA LAWS**

21 126. California law is designed to ensure that a company's claims about its products are
22 truthful and accurate.

23
24
25 ⁴⁷ [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](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).

27 ⁴⁸ <https://www.mordorintelligence.com/industry-reports/organic-baby-food-market> (last accessed
28 February 4, 2021).

1 127. Defendants violated California law by negligently, recklessly, and/or intentionally
2 incorrectly claiming that the Baby Foods are healthy, nutritious, organic, and “made from the best
3 ingredients,” and by not accurately detailing that the products contain Heavy Metals, perchlorate,
4 or other undesirable toxins or contaminants.

5 128. Defendants’ marketing and advertising campaign has been sufficiently lengthy in
6 duration, and widespread in dissemination, that it would be unrealistic to require Plaintiffs to plead
7 relying upon each advertised misrepresentation.

8 129. Defendants have engaged in this long-term advertising campaign to convince
9 potential customers that the Baby Foods were healthy, nutritious, organic, and “made from the best
10 ingredients,” and did not contain harmful ingredients, such as Heavy Metals, perchlorate, or other
11 undesirable toxins or contaminants.

12 **PLAINTIFFS’ RELIANCE WAS REASONABLE AND FORESEEN BY DEFENDANTS**

13 130. Plaintiffs reasonably relied on Defendants’ claims, warranties, representations,
14 advertisements, and other marketing concerning the particular qualities and benefits of the Baby
15 Foods.

16 131. Plaintiffs read and relied upon the labels and packaging of the Baby Foods when
17 making their purchasing decisions. Had they known Defendants omitted the presence of Heavy
18 Metals, perchlorate, or other undesirable toxins or contaminants from their packaging, they would
19 not have purchase it.

20 132. A reasonable consumer would consider the labeling of a product when deciding
21 whether to purchase. Here, Plaintiffs relied on the specific statements and omissions on the Baby
22 Foods’ labeling that led them to believe it was healthy, nutritious, organic, and “made from the
23 best ingredients,” and free of Heavy Metals, perchlorate, or other undesirable toxins or
24 contaminants.

25 **DEFENDANTS’ KNOWLEDGE AND NOTICE OF THEIR BREACHES OF**
26 **THEIR EXPRESS AND IMPLIED WARRANTIES**

27 133. Defendants had sufficient notice of their breaches of express and implied
28 warranties. Defendants have, and had, exclusive knowledge of the physical and chemical make-

1 up of the Baby Foods. Defendants also had exclusive knowledge of their suppliers and whether
2 any suppliers provided ingredients that contained or may contain Heavy Metals, perchlorate, or
3 other undesirable toxins or contaminants.

4 134. Moreover, Defendants were put on notice by the Healthy Babies Bright Future
5 Report about the inclusion of Heavy Metals, perchlorate, or other undesirable toxins or
6 contaminants in the Baby Foods.⁴⁹

7 135. Defendants did not change their packaging or labels to include any disclaimer that
8 the Baby Foods contained or may contain any levels of Heavy Metals, perchlorate, or other
9 undesirable toxins or contaminants.

10 **PRIVITY EXISTS WITH PLAINTIFFS AND THE PROPOSED CLASS**

11 136. Defendants knew that consumers such as Plaintiffs and the proposed Class would
12 be the end purchasers of the Baby Foods and the target of their advertising and statements.

13 137. Defendants intended that the warranties, advertising, labeling, statements, and
14 representations would be considered by the end purchasers of the Baby Foods, including Plaintiffs
15 and the proposed Class.

16 138. Defendants directly marketed to Plaintiffs and the proposed Class through
17 statements on their website, labeling, advertising, and packaging.

18 139. Plaintiffs and the proposed Class are the intended beneficiaries of the expressed
19 and implied warranties.

20 **CLASS ACTION ALLEGATIONS**

21 140. Plaintiffs bring this action individually and on behalf of the following Class
22 pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

23 All persons who, from February 5, 2015, to the present, purchased
24 the Baby Foods for household or business use, and not for resale (the
25 “Class”).

26 _____
27 ⁴⁹ Healthy Babies Bright Futures report, What’s in My Baby’s Food,
28 https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf (last accessed March 10, 2021).

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

3 All persons who, from February 5, 2015, to the present purchased
4 the Baby Foods for household or business use, and not for resale (the
5 “California Subclass”).

6 142. Plaintiff Torrence brings this action individually and on behalf of the following
7 Subclass pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

8 All persons who are citizens of New York who, from February 5,
9 2015, to the present, purchased the Baby Foods for household or
10 business use, and not for resale (the “New York Subclass”).

11 143. Plaintiff McKeon brings this action individually and on behalf of the following
12 Subclass pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

13 All persons who are citizens of Minnesota who, from February 5,
14 2015, to the present, purchased the Baby Foods for household or
15 business use, and not for resale (the “Minnesota Subclass”).

16 144. Plaintiff Crawford brings this action individually and on behalf of the following
17 Subclass pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure:

18 All persons who are citizens of Pennsylvania who, from February 5,
19 2015, to the present, purchased the Baby Foods for household or
20 business use, and not for resale (the “Pennsylvania Subclass”).

21 145. Excluded from the Class and Subclasses (collectively, “Classes”) are the
22 Defendants, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal
23 representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or
24 judicial officer presiding over this matter.

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

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

 148. Questions of law and fact common to Plaintiffs and the Classes include, but are not
limited to, the following:

- 1 (a) whether Defendants owed a duty of care;
- 2 (b) whether Defendants knew or should have known that the Baby Foods
3 contained or may contain Heavy Metals;
- 4 (c) whether Defendants knew or should have known the Baby Foods contained
5 or may contain perchlorate;
- 6 (d) whether Defendants represented and continue to represent that the Baby
7 Foods are healthy, nutritious, organic, made from the best ingredients, and safe for consumption
8 (by infants);
- 9 (e) whether Defendants represented and continue to represent that the
10 manufacturing of their Baby Foods are subjected to rigorous quality standards;
- 11 (f) whether Defendants represented and continue to represent the Baby Foods
12 as organic;
- 13 (g) whether Defendants failed to disclose that the Baby Foods contained or may
14 contain Heavy Metals;
- 15 (h) whether Defendants failed to disclose that the Baby Foods contained or may
16 contain perchlorate;
- 17 (i) whether Defendants' representations in advertising, warranties, packaging,
18 and/or labeling are false, deceptive, and misleading;
- 19 (j) whether those representations are likely to deceive a reasonable consumer;
- 20 (k) whether Defendants had knowledge that those representations were false,
21 deceptive, and misleading;
- 22 (l) whether Defendants continue to disseminate those representations despite
23 knowledge that the representations are false, deceptive, and misleading;
- 24 (m) whether a representation that a product is healthy, nutritious, organic, made
25 from the best ingredients, and safe for consumption and does not contain Heavy Metals,
26 perchlorate, or other undesirable toxins or contaminants is material to a reasonable consumer;
- 27 (n) whether Defendants' Marketing of the Baby Foods are likely to mislead,
28 deceive, confuse, or confound consumers acting reasonably;

- 1 (o) whether Defendants violated the laws of the State of California;
- 2 (p) whether Defendants violated the laws of the State of New York;
- 3 (q) whether Defendants violated the laws of the State of Minnesota;
- 4 (r) whether Defendants violated the laws of the State of Pennsylvania;
- 5 (s) whether Defendants breached their express warranties;
- 6 (t) whether Defendants breached their implied warranties;
- 7 (u) whether Defendants engaged in unfair trade practices;
- 8 (v) whether Defendants engaged in false advertising;
- 9 (w) whether Defendants' conduct was negligent per se;
- 10 (x) whether Defendants made negligent and/or fraudulent misrepresentations
- 11 and/or omissions;
- 12 (y) whether Plaintiffs and members of the Class are entitled to actual, statutory,
- 13 and punitive damages; and
- 14 (z) whether Plaintiffs and the members of the Class are entitled to declaratory
- 15 and injunctive relief.

16 149. Defendants engaged in a common course of conduct giving rise to the legal rights
17 sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes.
18 Identical statutory violations and business practices and harms are involved. Individual questions,
19 if any, are not prevalent in comparison to the numerous common questions that dominate this
20 action.

21 150. Plaintiffs' claims are typical of those of the members of the Classes in that they are
22 based on the same underlying facts, events, and circumstances relating to Defendants' conduct.

23 151. Plaintiffs will fairly and adequately represent and protect the interests of the
24 Classes, have no interests incompatible with the interests of the Classes, and have retained counsel
25 competent and experienced in class action, consumer protection, and false advertising litigation.

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

1 153. Questions of law and fact common to the Classes predominate over any questions
2 affecting only individual members of the Classes.

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

4 **COUNT I**

5 **(Negligent Misrepresentation Against Defendants on Behalf of the Class
6 or, Alternatively, the State Subclasses)**

7 155. Plaintiffs incorporate by reference and reallege each and every allegation contained
8 above, as though fully set forth herein.

9 156. Plaintiffs reasonably placed their trust and reliance in Defendants' representations
10 that the Baby Foods were as marketed to them and the Class, and were healthy, nutritious, organic,
11 made from the best ingredients, and safe for consumption, and did not contain Heavy Metals,
12 perchlorate, or other undesirable toxins or contaminants.

13 157. Because of the relationship between the parties, Defendants owed Plaintiffs and the
14 Class a duty to use reasonable care in the formulation, testing, manufacturing, marketing,
15 distribution, and sale of the Baby Foods, and to impart correct and reliable disclosures concerning
16 the presence of Heavy Metals, perchlorate, or other undesirable toxins or contaminants in the Baby
17 Foods or, based upon their superior knowledge, having spoken, to say enough to not be misleading.

18 158. Defendants breached their duty to Plaintiffs and the Class by formulating, testing,
19 manufacturing, advertising, marketing, distributing, and selling products to Plaintiffs and the Class
20 that did not have the ingredients, qualities, characteristics, and suitability for consumption as
21 marketed by Defendants and by providing false, misleading, and/or deceptive information
22 regarding the nature of the Baby Foods.

23 159. Defendants knew or should have known the ingredients, qualities, and
24 characteristics of the Baby Foods were not as advertised or suitable for their intended use
25 (consumption by infants), and were otherwise not as warranted and represented.

26 160. Plaintiffs and the Class reasonably and justifiably relied upon the information
27 supplied to them by the Defendants. A reasonable consumer would have relied on Defendants'
28

1 warranties, statements, representations, advertising, packaging, labeling, and other marketing as
2 to the quality, make-up, and included ingredients of the Baby Foods.

3 161. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs and
4 the Class suffered actual damages in that they purchased the Baby Foods that were worth less than
5 the price paid and that they would not have purchased at all had they known they contained or may
6 contain Heavy Metals, perchlorate, or other undesirable toxins or contaminants that do not conform
7 to the products' labels, packaging, advertising, and statements.

8 162. Defendants failed to use reasonable care in their communications and
9 representations to Plaintiffs and the Class, especially in light of their knowledge of the presence
10 of Heavy Metals, perchlorate, or other undesirable toxins or contaminants in the Baby Foods and
11 the importance consumers place on ingredients when deciding whether to purchase products such
12 as the Baby Foods.

13 163. By virtue of Defendants' negligent misrepresentations, Plaintiffs and the Class have
14 been damaged in an amount to be proven at trial or alternatively, seek rescission and disgorgement
15 under this Court.

16 **COUNT II**

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

19 164. Plaintiffs incorporate by reference and reallege each and every allegation contained
20 above, as though fully set forth herein.

21 165. Plaintiffs and each proposed Class member are a "consumer," as that term is
22 defined in California Civil Code section 1761(d).

23 166. The Baby Foods are "goods," as that term is defined in California Civil Code
24 section 1761(a).

25 167. Defendants are a "person" as that term is defined in California Civil Code section
26 1761(c).

27 168. Plaintiffs and each proposed Class member's purchase of Defendants' products
28 constituted a "transaction" as that term is defined in California Civil Code section 1761(e).

1 169. Defendants' conduct alleged herein violates the following provisions of
2 California's Consumer Legal Remedies Act (the "CLRA"):

3 (a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or
4 intentionally representing that the Baby Foods are healthy, nutritious, organic, made from the best
5 ingredients, and safe for consumption, and by failing to make any mention of Heavy Metals,
6 perchlorate, or other undesirable toxins or contaminants in the Baby Foods;

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

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

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

14 170. As a direct and proximate result of these violations, Plaintiffs and the Class have
15 been harmed, and that harm will continue unless Defendants are enjoined from using the
16 misleading marketing described herein in any manner in connection with the advertising and sale
17 of the Baby Foods.

18 171. Plaintiffs seek an award of attorneys' fees pursuant to, inter alia, California Civil
19 Code section 1780(e) and California Code of Civil Procedure section 1021.5.

20 **COUNT III**

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

23 172. Plaintiffs incorporate by reference and reallege each and every allegation contained
24 above, as though fully set forth herein.

25 173. California's False Advertising Law prohibits any statement in connection with the
26 sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.
27
28

1 **Unlawful**

2 182. As alleged herein, Defendants have advertised the Baby Foods with false or
3 misleading claims, such that Defendants' actions as alleged herein violate at least the following
4 laws:

- 5 • The CLRA, California Business & Professions Code sections 1750, *et seq.*; and
- 6 • The False Advertising Law, California Business & Professions Code sections
7 17500, *et seq.*

8 **Unfair**

9 183. Defendants' conduct with respect to the labeling, packaging, advertising,
10 marketing, and sale of the Baby Foods is unfair because Defendants' conduct was immoral,
11 unethical, unscrupulous, or substantially injurious to consumers and the utility of their conduct, if
12 any, does not outweigh the gravity of the harm to their victims.

13 184. Defendants' conduct with respect to the labeling, packaging, advertising,
14 marketing, and sale of the Baby Foods is also unfair because it violates public policy as declared
15 by specific constitutional, statutory, or regulatory provisions, including, but not limited to, the
16 False Advertising Law and the CLRA.

17 185. Defendants' conduct with respect to the labeling, packaging, advertising,
18 marketing, and sale of the Baby Foods is also unfair because the consumer injury is substantial,
19 not outweighed by benefits to consumers or competition, and not one consumers, themselves, can
20 reasonably avoid.

21 186. In accordance with California Business & Professions Code section 17203,
22 Plaintiffs seek an order enjoining Defendants from continuing to conduct business through
23 fraudulent or unlawful acts and practices and to commence a corrective advertising campaign.
24 Defendants' conduct is ongoing and continuing, such that prospective injunctive relief is
25 necessary.

26 187. On behalf of themselves and the Class, Plaintiffs also seek an order for the
27 restitution of all monies from the sale the Baby Foods, which were unjustly acquired through acts
28 of fraudulent, unfair, or unlawful competition.

COUNT V

**(Breach of Express Warranty Against Defendants on Behalf of the Class, or
Alternatively, the State Subclasses)**

188. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

189. Defendant marketed and sold the Baby Foods into the stream of commerce with the intent that the Baby Foods would be purchased by Plaintiffs and the Class.

190. As set forth herein, Defendant made express representations to Plaintiffs and the Class that the Baby Foods were healthy, nutritious, organic, made from the best ingredients, and safe for consumption.

191. Defendants made these express warranties regarding the Baby Foods' quality, ingredients, and fitness for consumption in writing through their website, advertisements, and marketing materials and on the Baby Foods' packaging and labels. These express warranties became part of the basis of the bargain that Plaintiffs and the Class entered into upon purchasing the Baby Foods.

192. Defendants' advertisements, warranties, and representations were made in connection with the sale of the Baby Foods to Plaintiffs and the Class. Plaintiffs and the Class relied on Defendants' advertisements, warranties, and representations regarding the Baby Foods in deciding whether to purchase Defendants' products. Such promises became part of the basis of the bargain between the parties, and thus constituted express warranties.

193. On the basis of these express warranties, Defendants sold to Plaintiffs and the Class members the Baby Foods.

194. Defendants knowingly breached the express warranties by including Heavy Metals, perchlorate, or other undesirable toxins or contaminants in the Baby Foods.

195. Defendants were on notice of this breach as they was aware of the included Heavy Metals in the Baby Foods, and based on the public investigation by the nonprofit organization, Healthy Babies Bright Futures, that showed their baby food products as containing Heavy Metals and/or perchlorate.

1 204. Plaintiffs and the Class relied on Defendants' promises and affirmations of fact
2 when they purchased the Baby Foods.

3 205. The Baby Foods were not fit for their ordinary use (consumption by infants) and
4 did not conform to Defendants' affirmations and promises as they contained or may contain Heavy
5 Metals, perchlorate, or other undesirable toxins or contaminants that do not conform to the
6 packaging or labels.

7 206. These promises became part of the basis of the bargain between the parties and thus
8 constituted implied warranties.

9 207. Defendants breached the implied warranties by selling the Baby Foods that failed
10 to conform to the promises or affirmations of fact made on the packaging or labels as each product
11 contained Heavy Metals, perchlorate, or other undesirable toxins or contaminants.

12 208. Defendants were on notice of this breach as they were aware of the inclusion of
13 Heavy Metals, perchlorate, or other undesirable toxins or contaminants in the Baby Foods, and
14 based on the public investigation by the nonprofit organization, Healthy Babies Bright Futures,
15 that showed their baby food products as containing Heavy Metals and/or perchlorate.

16 209. Privity exists because Defendants impliedly warranted to Plaintiffs and the Class
17 members through the warranting, packaging, advertising, marketing, and labeling that the Baby
18 Foods were healthy, nutritious, organic, made from the best ingredients, and safe for consumption
19 and by failing to make any mention of Heavy Metals, perchlorate, or other undesirable toxins or
20 contaminants.

21 210. As a direct and proximate result of Defendant's breach of their implied warranties,
22 Plaintiffs and the Class suffered actual damages as they purchased the Baby Foods that were worth
23 less than the price paid and that they would not have purchased at all had they known of the
24 presence of Heavy Metals, perchlorate, or other undesirable toxins or contaminants.

25 211. Plaintiffs, on behalf of themselves and the Class, seek actual damages for
26 Defendant's failure to deliver goods that conform to their implied warranties and resulting breach.

27
28

COUNT VII

**(Violations of New York’s Deceptive Practices Act, N.Y. Gen. Bus. Law § 349,
Against Defendant on Behalf of Plaintiff Torrence and the New York Subclass)**

1
2
3 212. Plaintiffs incorporate by reference and reallege each and every allegation contained
4 above, as though fully set forth herein.

5 213. New York General Business Law § 349 prohibits deceptive acts or practices in the
6 conduct of any business, trade, or commerce.

7 214. In their sale of goods throughout New York, Defendants conduct business and trade
8 within the meaning and intendment of New York General Business Law § 349.

9 215. Defendants violated N.Y. Gen. Bus. Law § 349 by representing that their Baby
10 Foods were healthy, nutritious, organic, made from the best ingredients, and safe for consumption,
11 which was deceptive because of the inclusion of Heavy Metals, perchlorate, or other undesirable
12 toxins or contaminants in the Baby Foods.

13 216. Defendants intentionally represented that the Baby Foods were of a particular
14 standard, grade, or quality when they in fact contained or may contain Heavy Metals, perchlorate,
15 or other undesirable toxins or contaminants and were not safe for consumption.

16 217. The facts that Defendants concealed or misrepresented were material in that
17 Plaintiff Torrence and the New York Subclass, and any other reasonable consumer would have
18 considered them when deciding whether to purchase the Baby Foods.

19 218. Defendants’ conduct and omissions described herein repeatedly occurred in the
20 course of Defendants’ business and were capable of deceiving a substantial portion of the
21 consuming public.

22 219. Defendants have engaged and continue to engage in deceptive conduct in violation
23 of the New York General Business Law.

24 220. Defendants’ misrepresentations and deceptive acts or practices resulted in Plaintiff
25 Torrence and the New York Subclass and other reasonable consumers suffering actual damages
26 when they purchased the Baby Foods that were worth less than the price paid and that they would
27 not have purchased at all had they known of the inclusion of Heavy Metals, perchlorate, or other
28 undesirable toxins or contaminants.

1 238. Defendants willingly engaged in deceptive trade practices, in violation of the
2 MUDTPA, by knowingly misrepresenting the true quality of the Baby Foods by falsely claiming
3 that the Baby Foods were healthy, nutritious, organic, made from the best ingredients, and safe for
4 consumption.

5 239. Defendants knew or should have known the Baby Foods did not have the quality
6 and ingredients described above because they contained or may contain Heavy Metals, perchlorate,
7 or any other undesirable toxins or contaminants that do not conform to the packaging claims.

8 240. Defendants' misrepresentations, concealment, omissions, and other deceptive
9 conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff McKeon
10 and the Minnesota Subclass with respect to the Baby Foods' ingredients, uses, benefits, standards,
11 quality, grade, and suitability for consumption by infants.

12 241. Defendants intended that Plaintiff McKeon and the Minnesota Subclass would rely
13 on Defendants' misrepresentations, concealment, warranties, deceptions, and/or omissions
14 regarding the Baby Foods' ingredients, uses, benefits, standards, quality, grade, and suitability for
15 consumption by infants.

16 242. Defendants' conduct and omissions described herein occurred repeatedly in their
17 trade or business and were capable of deceiving a substantial portion of the consuming public.

18 243. The facts concealed or not disclosed by Defendants were material facts in that
19 Plaintiff McKeon, the Minnesota Subclass, and any reasonable consumer would have considered
20 them in deciding whether to purchase the Baby Foods. Had Plaintiff McKeon known the Baby
21 Foods did not have the quality advertised by Defendants, she would not have purchased the Baby
22 Foods.

23 244. Defendants intended that Plaintiff McKeon and the Minnesota Subclass would rely
24 on the deception by purchasing the Baby Foods, unaware of the undisclosed material facts. This
25 conduct constitutes consumer fraud.

26 245. Defendants' unlawful conduct is continuing, with no indication they intend to cease
27 this fraudulent course of conduct.

28

1 254. Defendants knew or should have known the Baby Foods did not have the quality
2 and ingredients described above because they contained or may contain Heavy Metals, perchlorate,
3 or any other undesirable toxins or contaminants that do not conform to the packaging claims.

4 255. Defendants' misrepresentations, concealment, omissions, and other deceptive
5 conduct were likely to deceive or cause misunderstanding and did in fact deceive Plaintiff McKeon
6 and the Minnesota Subclass with respect to the Baby Foods' ingredients, uses, benefits, standards,
7 quality, grade, and suitability for consumption by infants.

8 256. Defendants' conduct and omissions described herein occurred repeatedly in
9 Defendants' trade or business and were capable of deceiving a substantial portion of the consuming
10 public.

11 257. The facts concealed or not disclosed by Defendants were material facts in that
12 Plaintiff McKeon, the Minnesota Subclass, and any reasonable consumer would have considered
13 them in deciding whether to purchase the Baby Foods. Had Plaintiff McKeon known the Baby
14 Foods did not have the quality as advertised by Defendants, she would not have purchased the
15 Baby Foods.

16 258. Defendants intended that Plaintiff McKeon and the Minnesota Subclass would rely
17 on the deception by purchasing the Baby Foods, unaware of the undisclosed material facts. This
18 conduct constitutes consumer fraud.

19 259. Defendants' unlawful conduct is continuing, with no indication that they intend to
20 cease this fraudulent course of conduct.

21 260. As a direct and proximate result of Defendants' conduct, Plaintiff McKeon and the
22 Minnesota Subclass have suffered actual damages in that they purchased the Baby Foods that was
23 worth less than the price they paid.

24 261. Plaintiff McKeon and the members of the Minnesota Subclass would not have
25 purchased the Baby Foods at all had they known of the presence of these Heavy Metals,
26 perchlorate, or other undesirable toxins or contaminants.

27

28

1 280. Plaintiff Crawford and the Pennsylvania Subclass purchased the Baby Foods for
2 personal, household, or family use.

3 281. Defendants misrepresented the quality of the Baby Foods and the ingredients
4 contained therein on their labels in violation of the UTPCL.

5 282. Defendants' deceptive, false and misleading statements deceived Plaintiff
6 Crawford and the Pennsylvania Subclass and deceived a substantial segment of the target
7 consumer audience in violation of the UTPCL.

8 283. The conduct described above and throughout this Complaint took place within the
9 Commonwealth of Pennsylvania and constitutes unfair methods of competition or unfair or
10 deceptive acts or practices pursuant to §§201-2(4)(v), (vii), and (xxi) of the UTCPL.

11 284. In violation of the UTPCPL, Defendants omitted and concealed material facts from
12 Plaintiff Crawford and the Pennsylvania Subclass regarding the quality, characteristics, and
13 benefits of the Baby Foods.

14 285. The omissions and misrepresentations described herein were likely to deceive
15 consumers into purchasing the Baby Foods.

16 286. Defendants knew or reasonably should have known their representations about the
17 Baby Foods were false, that the Baby Foods contained or may contain Heavy Metals, perchlorate,
18 or other undesirable toxins or contaminants, and otherwise were not as warranted and represented
19 by Defendants.

20 287. Defendants knew or should have known, at the time the Baby Foods left their
21 control that they contained or may contain Heavy Metals, perchlorate, or other undesirable toxins
22 or contaminants, and were not made of ingredients fit for consumption by babies.

23 288. Defendants' deception is material as they influenced purchasing and payment
24 decisions.

25 289. Plaintiff Crawford and the Pennsylvania Subclass have been damaged as a direct
26 and proximate result of Defendants' deceptive and unfair practices.

27
28

1 290. Defendants intended that Plaintiff Crawford and the Pennsylvania Subclass would
2 rely on their presentations, as their reliance was crucial to Defendants being able to command a
3 premium for the Baby Foods.

4 291. Defendants deceived and continue to deceive consumers about the quality and
5 ingredients of their Baby Foods as well as the fitness of these products for ingestion by infants.
6 This conduct constitutes unfair or deceptive acts or practices within the meaning of the UTPCPL.
7 This illegal conduct by Defendants is continuing, with no indication that it will cease.

8 292. Defendants' actions in connection with the manufacture and distribution of the
9 Baby Foods as set forth herein evidence a lack of good faith, honesty in fact, and observance of
10 fair dealing so as to constitute unconscionable commercial practices, in violation of the UTPCPL.

11 293. Defendants acted willfully, knowingly, intentionally, unconscionably, and with
12 reckless indifference when they committed these acts of consumer fraud.

13 294. Defendants intended that Plaintiff Crawford and the Pennsylvania Subclass would
14 rely on the acts of concealment, omissions and misrepresentations regarding the nature of the Baby
15 Foods so that Plaintiff Crawford and the Pennsylvania Subclass members would purchase the Baby
16 Foods.

17 295. Plaintiff Crawford and the Pennsylvania Subclass relied on the acts of concealment,
18 omissions, and misrepresentations regarding the nature of the Baby Foods.

19 296. Plaintiff Crawford and the Pennsylvania Subclass, had Defendants disclosed to
20 them all material information regarding the Baby Foods, would have considered the omitted
21 information material to their decision to purchase the Baby Foods at the price they paid.

22 297. As a direct proximate result of Defendants' misrepresentations and omissions,
23 Plaintiff Crawford and the Pennsylvania Subclass suffered direct economic loss by purchasing the
24 Baby Foods at a premium, and unwarranted, price. Had Plaintiff Crawford and the Pennsylvania
25 Subclass known the Heavy Metals, perchlorate, or other undesirable toxins or contaminants
26 content of the Baby Foods, they would not have bought them, or they would not have paid the
27 premium price that they did.

28

1 314. Defendants concealed from and failed to disclose to Plaintiffs and the Class that
2 their Baby Foods contained or may contain, Heavy Metals, perchlorate, or other undesirable toxins
3 or contaminants that do not conform to the products' labels, packaging, advertising, and
4 statements.

5 315. Defendants were under a duty to disclose to Plaintiffs and the Class the true quality,
6 characteristics, ingredients and suitability of the Baby Foods because: (1) Defendants were in a
7 superior position to know the true state of facts about their products; (2) Defendants were in a
8 superior position to know the actual ingredients, characteristics, and suitability of the Baby Foods
9 for consumption by infants; and (3) Defendants knew that Plaintiffs and the Class could not
10 reasonably have been expected to learn or discover that the Baby Foods were misrepresented in
11 the packaging, labels, advertising, and websites prior to purchasing the Baby Foods.

12 316. The facts concealed or not disclosed by Defendants to Plaintiffs and the Class are
13 material in that a reasonable consumer would have considered them important when deciding
14 whether to purchase the Baby Foods.

15 317. Plaintiffs and the Class justifiably relied on Defendants' omissions to their
16 detriment. The detriment is evident from the true quality, characteristics, and ingredients of the
17 Baby Foods, which is inferior when compared to how the Baby Foods are advertised and
18 represented by Defendants.

19 318. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class
20 have suffered actual damages in that they purchased Baby Foods that were worth less than the
21 price they paid and that they would not have purchased at all had they known Baby Foods
22 contained or may contain Heavy Metals, perchlorate, or other undesirable toxins or contaminants
23 that do not conform to the products' labels, packaging, advertising, and statements.

24 319. Plaintiffs and the Class seek actual damages, injunctive and declaratory relief,
25 attorneys' fees, costs, and any other just and proper relief available under the laws.

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PRAYER FOR RELIEF

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

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

B. An order enjoining Defendants from selling the Baby Foods until the higher and/or unsafe levels of Heavy Metals are removed or full disclosure of the presence of such appears on all labels, packaging, and advertising;

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

D. An order requiring Defendants 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 Defendants from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendants' past conduct;

F. An order requiring Defendants 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 law, plus pre- and post-judgment interest thereon;

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

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

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

J. An order awarding attorneys' fees and costs to Plaintiffs and the Class; and

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

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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: March 11, 2021

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