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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SUSAN GAGETTA and TRACIE GOMEZ, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

WALMART INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Susan Gagetta and Tracie Gomez, individually and on behalf of all others similarly  
2 situated, allege the following against Defendant Walmart, Inc. (“Walmart” or “Defendant”) on  
3 information and belief, except that Plaintiffs’ allegations as to their own actions are based on personal  
4 knowledge.

5 **NATURE OF THE ACTION**

6 1. This action seeks to recover damages and injunctive relief for Defendant’s continuing  
7 failure to disclose to consumers that certain Walmart Inc. herbs and spices sold under the brand name  
8 “Great Value,” including Great Value’s Basil Leave, Chili Powder, Ground Cumin, Organic Ground  
9 Ginger, and Organic Paprika (collectively, the “Products”), contain (or risk containing) lead, arsenic,  
10 and cadmium (collectively “Heavy Metals”).

11 2. A November 2021 report by Consumer Reports states that the offending herbs and  
12 spices, including the Products, “had high enough levels of arsenic, lead, and cadmium combined, on  
13 average, to pose a health concern for children when regularly consumed in typical servicing sizes.  
14 Most raise concern for adults, too.”<sup>1</sup>

15 3. Heavy Metals in foods pose a serious safety risk to consumers because they can cause  
16 cancer and serious and often irreversible damage to brain development as well as other serious health  
17 problems.

18 4. As described more fully below, consumers who purchase the Products are injured by  
19 Defendant’s acts and omissions concerning the presence (or risk) of Heavy Metals. No reasonable  
20 consumer would know, or have reason to know, that the Products contain (or risk containing) Heavy  
21 Metals. Worse, as companies across the industry have adopted methods to limit heavy metals in  
22 their herbs and spices, Defendant has stood idly by with a reckless disregard for its consumers’ health  
23 and well-being. As such, Plaintiffs seek relief in this action individually and as a class action on  
24 behalf of all purchasers of the Products.

25 ///

26 <sup>1</sup> Lisa L. Gill, “Your Herbs and Spices Might Contain Arsenic, Cadmium, and Lead,” *Consumer*  
27 *Reports* (Nov. 9, 2021), [https://www.consumerreports.org/food-safety/your-herbs-and-spices-](https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/)  
28 [might-contain-arsenic-cadmium-and-lead/](https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/) (last accessed June 22, 2022).

**PARTIES**

1  
2           5.       Plaintiff Susan Gagetta is a resident of Antioch, California, and a citizen of the State  
3 of California. Ms. Gagetta has purchased several of Defendant’s Products, including Great Value’s  
4 Chili Powder and Organic Paprika, as recently as May 2022 from Instacart and a Walmart located in  
5 Antioch, California. Plaintiff Gagetta believed she was purchasing quality and healthy spices that  
6 did not contain (or have a risk of containing) Heavy Metals. Had Defendant disclosed on the label  
7 that the Products contained (or risked containing) unsafe toxic Heavy Metals, Ms. Gagetta would  
8 have been aware of that fact and would not have purchased the Products or would have paid less for  
9 them.

10           6.       Ms. Gagetta continues to desire to purchase the Products from Defendant. However,  
11 Ms. Gagetta is unable to determine if the Products are actually safe. Ms. Gagetta understands that  
12 the composition of the Products may change over time. But as long as Defendant continues to market  
13 its Products as safe, she will be unable to make informed decisions about whether to purchase  
14 Defendant’s Products and will be unable to evaluate the different prices between Defendant’s  
15 Products and competitor’s Products. Ms. Gagetta is further likely to be repeatedly misled by  
16 Defendant’s conduct, unless and until Defendant is compelled to ensure that the Products marketed,  
17 labeled, packaged and sold as a safe and healthy spice is, in fact, a safe and healthy spice.

18           7.       Plaintiff Tracie Gomez is a resident of Morgan Hill, California, and a citizen of the  
19 State of California. Ms. Gomez has purchased several of Defendant’s Products, including Great  
20 Value’s Basil Leave, Chili Powder, and Ground Cumin from a Walmart in Morgan Hill, monthly  
21 during the Class Period. Plaintiff Gomez believed she was purchasing quality and healthy spices  
22 that did not contain (or have a risk of containing) Heavy Metals. Had Defendant disclosed on the  
23 label that the Products contained (or risked containing) unsafe toxic Heavy Metals, Ms. Gomez  
24 would have been aware of that fact and would not have purchased the Products or would have paid  
25 less for them.

26           8.       Ms. Gomez continues to desire to purchase the Products from Defendant. However,  
27 Ms. Gomez is unable to determine if the Products are actually safe. Ms. Gomez understands that the  
28

1 composition of the Products may change over time. But as long as Defendant continues to market  
2 its Products as safe, she will be unable to make informed decisions about whether to purchase  
3 Defendant's Products and will be unable to evaluate the different prices between Defendant's  
4 Products and competitor's Products. Ms. Gomez is further likely to be repeatedly misled by  
5 Defendant's conduct, unless and until Defendant is compelled to ensure that the Products marketed,  
6 labeled, packaged and sold as a safe and healthy spice is, in fact, a safe and healthy spice.

7 9. Defendant Walmart is a Delaware corporation with its headquarters in Bentonville,  
8 Arkansas. Defendant manufactures, markets, and sells herbs and spices, including the Products,  
9 throughout California and the United States. During the relevant period, Defendant controlled the  
10 manufacture, design, testing, packaging, labeling, marketing, advertising, promotion, distribution,  
11 and sales of its Products. Defendant therefore had complete control over how to label its Products  
12 as to their contents.

### 13 **JURISDICTION AND VENUE**

14 10. This Court has subject matter jurisdiction over this action pursuant to the Class Action  
15 Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28 U.S.C. §  
16 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as here: (a)  
17 there are 100 or more members in the proposed classes; (b) some members of the proposed classes  
18 have a different citizenship from Defendant; and (c) the claims of the proposed class members exceed  
19 the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2) and  
20 (6).

21 11. Venue is proper in this Court under 28 U.S.C. § 1391 because Defendant transacts  
22 significant business within this District, at least one Plaintiff resides within this District, and a  
23 substantial part of the events giving rise to Plaintiff's claims took place within this District.

### 24 **FACTS COMMON TO ALL CAUSES OF ACTION**

#### 25 **I. Lead, Arsenic, and Cadmium Are Toxic**

26 12. Lead, arsenic, and cadmium are heavy metals. As described more fully below, the  
27 harmful effects of heavy metals are well-documented, particularly on children. Exposure puts  
28

1 children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity  
2 disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals also pose risks to  
3 adults. Even modest amounts of heavy metals can increase the risk of cancer, cognitive and  
4 reproductive problems, and other adverse conditions. As such, it is important to limit exposure.

5 13. “No amount of lead is known to be safe.”<sup>2</sup> Exposure to lead may cause anemia,  
6 weakness, and kidney and brain damage.<sup>3</sup> Lead can affect almost every organ and system in the  
7 body. Lead accumulates in the body over time, and can lead to health risks and toxicity, including  
8 inhibiting neurological function, anemia, kidney damage, seizures, and in extreme cases, coma and  
9 death. Lead can also cross the fetal barrier during pregnancy, exposing the mother and developing  
10 fetus to serious risks, including reduced growth and premature birth. Lead exposure is also harmful  
11 to adults as more than 90 percent of the total body burden of lead is accumulated in the bones, where  
12 it is stored. Lead in bones may be released into the blood, re-exposing organ systems long after the  
13 original exposure.<sup>4</sup>

14 14. Arsenic is also dangerous to humans. “Arsenic is ranked first among toxicants posing  
15 a significant potential threat to human health based on known or suspected toxicity.”<sup>5</sup> Long term  
16 exposure is linked to cardiovascular disease. Arsenic can also cause bladder, lung, liver, and skin  
17 cancer, and strokes and diabetes. Recent studies have suggested that arsenic may cause IQ deficits  
18 in children and may be harmful to fetal development as “even low concentrations of arsenic impair  
19 neurological function[.]”<sup>6</sup> There is “essentially no safe level” of arsenic.<sup>7</sup>

21 <sup>2</sup> See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health> (last accessed June 22, 2022).

22 <sup>3</sup> Centers for Disease Control and Prevention, “Health Problems Caused by Lead,” *The National*  
23 *Institute for Occupational Safety and Health (NIOSH)*,  
<https://www.cdc.gov/niosh/topics/lead/health.html#:~:text=Exposure%20to%20high%20levels%20of,a%20developing%20baby's%20nervous%20system>. (last accessed June 22, 2022).

24 <sup>4</sup> State of New York Department of Health, “Lead Exposure in Adults: A Guide for Health Care  
25 Providers,” <https://www.health.ny.gov/publications/2584.pdf> (last accessed June 22, 2022).

26 <sup>5</sup> Christina R. Tyler and Andrea M. Allan, “The Effects of Arsenic Exposure on Neurological and  
27 Cognitive Dysfunction in Human and Rodent Studies: A Review,” *Curr Environ Health Rep.* 2014;  
28 1(2): 132-147, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4026128/> (last accessed June 22, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/>  
(last accessed June 22, 2022).

1           15. Cadmium is similarly harmful. “[A]ny cadmium exposure should be avoided.”<sup>8</sup>  
 2 Exposure to cadmium may lead to damage to kidneys, lungs, and bones.<sup>9</sup> “Even relatively low  
 3 chronic exposure can cause irreversible renal tubule damage, potentially progressing to glomerular  
 4 damage and kidney failure” and “bone loss often is seen in concert with these effects.”<sup>10</sup> This metal  
 5 is also known to cause cancer and targets the body’s cardiovascular, renal, gastrointestinal,  
 6 neurological, reproductive, and respiratory systems.<sup>11</sup>

## 7 **II. Defendant’s Products Contain Toxic Arsenic, Lead, and Cadmium**

8           16. In November of 2021, Consumer Reports published a report titled “Your Herbs and  
 9 Spices Might Contain Arsenic, Cadmium, and Lead.” Employing the Analysis for Arsenic,  
 10 Cadmium, Lead, and Mercury by Triple Quadruple Inductively Coupled Plasma Mass Spectrometry  
 11 (IC-QQQ-MS), With Collision Cell, Consumer Reports determined that each of the Products  
 12 contains toxic Heavy Metals. Consumer Reports’ samples were prepared and analyzed in accordance  
 13 with the Association of Official Analytical Chemists (AOAC) Method 2015.01.

14           17. Consumer Reports analyzed “126 individual products from national and private-label  
 15 brands, including Walmart’s Great Value.”<sup>12</sup>

16           18. Consumer Reports determined that “[r]oughly one-third of the tested products, 40 in  
 17 total, had high enough levels of arsenic, lead, and cadmium combined, on average, to pose a health  
 18 concern for children when regularly consumed in typical serving sizes. Most raised concern for  
 19 adults, too.”<sup>13</sup>

20           19. The authors cautioned that “just one serving—3/4 teaspoons or more—per day leaves  
 21 little room for heavy metal exposure from other sources” including in “fruit juice, baby food, and

22 \_\_\_\_\_  
 23 <sup>8</sup> M. Nathaniel Mead, “Cadmium Confusion: Do Consumers Need Protection,” *Environ Health*  
*Perspect.* 2010 Dec; 118(12): A528-A534,  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002210/> (last accessed June 22, 2022).

24 <sup>9</sup> See Agency for Toxic Substances and Disease Registry, “ToxFAQs for Cadmium,” Toxic  
 25 Substances Portal,  
<https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=47&toxid=15> (last accessed  
 June 22, 2022).

26 <sup>10</sup> Mead, *supra* note 8.

27 <sup>11</sup> See Occupational Safety & Health, “Cadmium,” <https://www.osha.gov/cadmium> (last accessed  
 June 22, 2022).

28 <sup>12</sup> See *n. 1, supra*.

<sup>13</sup> *Id.*

1 rice[.]”<sup>14</sup> These latter food categories have also tested high for heavy metals and have been the  
2 subject of numerous lawsuits.

3 20. With regards to the results, James E. Rogers, PhD, director of food safety and testing  
4 at Consumer Reports, remarked that “[w]hen people think about heavy metals in their diet, if they  
5 do at all, it’s probably the lead in their drinking water or arsenic in their children’s fruit juices or  
6 cereals . . . But our tests show that dried herbs and spices can be a surprising, and worrisome, source  
7 for children and adults.”<sup>15</sup>

8 21. Concerning the source of the heavy metals in herbs and spices, Consumer Reports  
9 stated that heavy metals may get into food, “including herbs and spices, during manufacturing—  
10 from processing equipment or packaging[.]”<sup>16</sup>

11 22. Along these lines, Consumer Reports determined that “it is possible for herb and spice  
12 companies to limit heavy metals in their products” as “[a]bout two-thirds of the spices [Consumer  
13 Reports] tested did not have concerning levels of heavy metals.”<sup>17</sup>

14 23. Instead of adequately testing its Products like its competitors, Defendant chose to  
15 ignore the health of the consuming public in pursuit of profit.

### 16 **III. The Presence (or Risk) of Toxic Heavy Metals In Defendant’s Products Far Exceeds** 17 **Expectations of Reasonable Consumers**

18 24. According to Global Market Insights, “[t]he demand for spices and seasonings has  
19 increased in recent years owing to their varied nutritional benefits.”<sup>18</sup> Indeed, “[m]ore Americans  
20 are considering the use of spices and herbs for medicinal and therapeutic/remedy use, especially for  
21 various chronic conditions” as “[t]here is now ample evidence that spices and herbs possess  
22 antioxidant, anti-inflammatory, antitumorogenic, anticarcinogenic, and glucose-and cholesterol -  
23

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24 <sup>14</sup> *Id.*

25 <sup>15</sup> *Id.*

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

27 <sup>17</sup> *Id.*

28 <sup>18</sup> Global Market Insights, “North America Seasonings Market to Exceed \$5bn by 2027,” *Press Releases* (Oct. 22, 2021), [https://www.gminsights.com/pressrelease/north-america-seasonings-market?utm\\_source=globenewswire.com&utm\\_medium=referral&utm\\_campaign=Paid\\_globenewswire](https://www.gminsights.com/pressrelease/north-america-seasonings-market?utm_source=globenewswire.com&utm_medium=referral&utm_campaign=Paid_globenewswire) (last accessed June 22, 2022).

1 lowering activities as well as properties that affect cognition and mood.”<sup>19</sup> As such, the safety of  
2 herbs and spices that can be easily purchased to season such food, amongst others, is a material fact  
3 to reasonable consumers (such as Plaintiffs and the Class members).

4 25. Given the negative effects of toxic heavy metals (such as arsenic, lead, and cadmium)  
5 on child development and adult health, the presence of these substances in food is a material fact to  
6 reasonable consumers, including Plaintiffs and members of the Class.

7 26. Defendant knows that the safety of its herbs and spices (as a general matter) is a  
8 material fact to reasonable consumers, as demonstrated below.

9 27. As such, Defendant also knows that the presence (or risk) of toxic Heavy Metals in  
10 its herbs and spices is a material fact to reasonable consumers, including Plaintiffs and the Class  
11 members.

12 28. A consumer survey confirms that purchasers of spices consider it important to know  
13 if there are Heavy Metals (or the risk of Heavy Metals) in the products even in small amounts.  
14 Plaintiffs’ counsel conducted a nationwide survey of just over 500 adult consumers who bought  
15 spices, including Defendant’s spices, within the past two years.<sup>20</sup> The vast majority (approximately  
16 94%) answered that the presence or risk of even a small amount of Heavy Metals in the spices would  
17 be either important or very important to their purchasing decisions.<sup>21</sup>

18  
19 <sup>19</sup> T Alan Jiang, “Health Benefits of Culinary Herbs and Spices,” *JAOAC Int.* 2019 Mar 1; 102(2):  
20 395-411, 10.5740/jaoacint.18-0418 <https://academic.oup.com/jaoac/article/102/2/395/5658185> (last  
accessed June 22, 2022).

21 <sup>20</sup> The survey included 503 participants over the age of 18, 259 of whom were female, 242 of  
22 whom were male, and 2 of whom were non-binary. Some 67 percent of the participants were from  
23 the following states, with a minimum of 3% (15 participants) each: Arizona, California, Florida,  
24 Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas  
25 and Washington. The remaining approximately 33 percent, with a minimum of one participant  
each, were from the following states: Alabama, Alaska, Arkansas, Colorado, Connecticut, District  
of Columbia, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine,  
Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire,  
New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Virginia, West  
Virginia, and Wisconsin.

26 <sup>21</sup> The question in the survey was as follows: “A November 2021 report of an investigation by  
27 Consumer Reports reveals that certain brands of particular herbs and spices contain heavy metals  
28 consisting of lead, arsenic, and/or cadmium. Please select how important, if at all, would it be to  
your purchasing decision if the spice(s) you purchased contained, or risked containing, even a  
small amount of the heavy metals previously described?” The response choices provided were as  
follows: Not at all important; important; very important.



1           29. Herbs and spices manufacturers (such as Defendant) hold a special position of public  
2 trust. Consumers believe that they would not sell products that are unsafe.

3           30. Defendant knew that if the presence (or risk) of toxic Heavy Metals in its herbs and  
4 spices was disclosed to Plaintiffs and the Class members, then Plaintiffs and the Class members  
5 would be unwilling to purchase them or would pay less for them.

6           31. In light of Defendant's knowledge that Plaintiffs and the Class members would be  
7 unwilling to purchase the Products or would pay less for the Products if they knew that they contained  
8 (or risked containing) toxic Heavy Metals, Defendant intentionally and knowingly concealed this  
9 fact from Plaintiffs and the Class members and did not disclose the presence (or risk) of these toxic  
10 Heavy Metals on the labels of the Products.

11           32. Defendant knew or should have known that Plaintiffs and the Class members would  
12 rely upon the packages of the Products and intended for them to do so but failed to disclose the  
13 presence (or risk) of Heavy Metals.

14           33. Defendant knew or should have known that it owed consumers a duty of care to  
15 adequately test for Heavy Metals in the Products, which it failed to do.

16           34. Additionally, Defendant knew or should have been aware that a reasonable consumer  
17 would consume the Products multiple times each day, and possibly multiple Products. This leads to  
18 repeated exposure to the Heavy Metals.

19           35. Defendant knew or should have known it could control the levels of Heavy Metals in  
20 the Products by properly monitoring the ingredients for Heavy Metals and adjusting any formulation  
21 to reduce or eliminate ingredients that contained or may contain higher levels of Heavy Metals.

22           36. Prior to purchasing the Products, Plaintiffs and the Class members were exposed to,  
23 saw, read, and understood Defendant's labels, and relied upon them in purchasing the Products, but  
24 Defendant failed to disclose the presence (or risk) of Heavy Metals.

25           37. As a result of Defendant's concealment of the fact that the Products contained toxic  
26 Heavy Metals, Plaintiffs and the Class members reasonably believed that Defendant's Products were  
27 free from substances that would negatively affect children's development as well as their own health.  
28

1           38. In reliance upon Defendant’s labels that contained omissions, Plaintiffs and the Class  
2 members purchased Defendant’s Products.

3           39. Had Plaintiffs and the Class members known the truth—*i.e.*, that the Products  
4 contained (or risked containing) toxic Heavy Metals, rendering them unsafe for consumption by  
5 children and adults—they would not have been willing to purchase them or would have paid less for  
6 them.

7           40. Therefore, as a direct and proximate result of Defendant’s omissions concerning the  
8 Products, Plaintiffs and the Class members purchased the Products.

9           41. Plaintiffs and the Class members were harmed in the form of the monies they paid for  
10 the Products which they would not otherwise have paid had they known the truth about the Products.  
11 Since the presence (or risk) of toxic Heavy Metals in herbs and spices renders them unsafe for human  
12 consumption, the Products that Plaintiffs and the Class members purchased are worthless or are  
13 worth less than Plaintiffs and the Class paid for them.

14           42. Defendant’s label omissions at issue in this Complaint are put in context by its  
15 rebranding efforts which have emphasized trust at nearly every point of interaction with consumers,  
16 including its logo, tag line, website, and commercials amongst others.

17           43. For example, Defendant’s CEO, Doug McMillon, stated that “a differentiating  
18 characteristic of our company will be that we still care about people, and they know it.”<sup>22</sup>

19           44. To do so, Defendant engaged the marketing agency, Lippincott, to rebrand. As  
20 Lippincott notes, “How do you pivot the world’s largest retailer to speak to a newly expanded  
21 consumer base, a new shopping experience, a new merchandise mix and a new level of confidence  
22 from its 1.5 million employees? It requires a solid belief system that an internal culture will  
23 passionately rally behind, and it extends to a vibrant makeover that inspires everyone who walks  
24 through its doors.”<sup>23</sup>

25  
26 <sup>22</sup> Eric Pandey, “Walmart is rebranding itself as the most trusted company in America as Amazon  
27 increasingly becomes a villain,” *Business Insider* (Feb. 14, 2019),  
<https://www.businessinsider.com/walmart-is-rebranding-itself-as-the-most-trusted-company-in-america-as-amazon-increasingly-becomes-a-villain-2019-2> (last accessed June 22, 2022).

28 <sup>23</sup> Lippincott, “Walmart,” <https://lippincott.com/work/walmart/> (last accessed June 22, 2022).

1           45. As a part of this effort, Defendant altered its logo. According to the marketing agency,  
2 DesignRush, Defendant’s new logo “makes Walmart appear like a brand you can trust, a brand that  
3 you want to trust and want to have on your side.”<sup>24</sup>

4           46. Lippincott states that this was a part of the purpose in also redesigning the tag line to  
5 “‘Save money. Live better,’ which resonates with legacy Walmart shoppers but also with new  
6 customer segments who see value as an enabler to a better, less compromised life. Together, logo  
7 and tagline complete the simple but powerful value calculus of the newly enlivened brand.”<sup>25</sup>

8           47. In fact, so important is Defendant’s tagline, “Save Money. Live Better,” to  
9 Defendant’s business, that it has gone as far as to trademark that phrase.<sup>26</sup>

10           48. And this rebranding effort has led to growth in sales for Defendant as it has worked  
11 to capture new consumer segments. Lippincott stated that “[a]s a result, Walmart’s performance on  
12 key brand attributes continues to improve” as “the company maintained traffic from core customers  
13 while growing traffic by approximately 7 percent from customers with incomes above \$75,000—an  
14 underreported customer segment for Walmart prior to the brand revitalization.”<sup>27</sup>

15           49. These efforts have extended to Defendant’s website where it further underscores its  
16 commitment to the consumer’s well-being, noting, for example, that “[w]e take our responsibility as  
17 one of the world’s largest grocers and retailers seriously. Our customers expect that the food and  
18 products they buy from us are safe. To earn their trust, we must source, transport, prepare, and sell  
19 safe and compliant food and merchandise. We have high internal standards, and we expect the same  
20 of our suppliers.”<sup>28</sup>

21           50. Defendant further claims on its website that “Our commitment to ethics and integrity  
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23 <sup>24</sup> DesignRush, “Walmart’s Modern Logo Adds Trust and Friendliness To The Major Retailer  
24 Through Welcoming Shapes and Colors,” <https://www.designrush.com/best-designs/logo/walmart>  
(last accessed June 22, 2022).

25 <sup>25</sup> *Id.*

26 <sup>26</sup> Justia Trademarks, “Save Money. Live Better,” <https://trademarks.justia.com/859/49/save-money-live-85949496.html> (last accessed June 22, 2022).

27 <sup>27</sup> *Id.*

28 <sup>28</sup> Walmart, “Build Trust with Our Customers,” [https://www.walmartethics.com/content/walmartethics/en\\_us/faqs/our-customers/sell-safe-food-and-products.html](https://www.walmartethics.com/content/walmartethics/en_us/faqs/our-customers/sell-safe-food-and-products.html) (last accessed June 22, 2022).

1 is reflected in our actions [including] [e]nsuring the food and products we sell are safe[.]”<sup>29</sup>

2 51. Defendant also states on its website that “[t]o ensure the integrity of our products, we  
3 have developed and deployed a long-standing Quality Assurance Program to manage and control our  
4 global supply chain” and that “[w]e conduct millions of product analyses each year by testing for  
5 contaminants . . . and more to ensure the safety and quality of our products.”<sup>30</sup>

6 52. Defendant has also worked to inspire trust and confidence from consumers in its  
7 commercials. In one commercial, for instance, Defendant asks: “can a company help you live a  
8 better life? We’re not talking about just any company. We’re talking about the one in your  
9 neighborhood . . . with almost two million people to help you live a better life everyday, we see your  
10 hopes and fears, your dreams and doubts. It’s why we show up day after day: to get you what you  
11 need, when you need it, to keep you healthy and safe, and to put a better meal on the table.”  
12 Defendant makes these statements next to the following photograph of a family passing around a  
13 dinner plate:



24 53. Defendant also highlighted this fact to shareholders, noting that “Our strategy is to  
25 make every day easier for busy families . . . and make trust a competitive advantage” and that “At  
26 every level of our Company, we work to create a culture that inspires trust among our . . .

27 <sup>29</sup> Walmart, “Purpose,” <https://corporate.walmart.com/purpose> (last accessed June 22, 2022).

28 <sup>30</sup> *Id.*

1 customers.”<sup>31</sup>

2 54. Defendant further notes on its website that “[t]hrough our Great Value brands . . . we  
3 are delivering on our promise to provide customers with the quality products they need and want at  
4 a price they can afford to help them save money and live better.”<sup>32</sup>

5 55. And this effort has not been without consequence, as Defendant notes, “our largest  
6 brand Great Value does more than \$27 billion a year globally.”<sup>33</sup>

7 56. Thus, when consumers, like Plaintiffs, interact with Defendant’s packaging—  
8 examples of which are set out below—they expect it to embody Defendant’s brand, which as noted  
9 above, has continuously emphasized that it is worthy of consumers’ trust because it places their  
10 health and safety at the fore.



23 <sup>31</sup> Walmart, Form 10-K,  
24 [https://www.corporatereport.com/walmart/2022/ar/FY22\\_Walmart\\_Form\\_10-K.pdf](https://www.corporatereport.com/walmart/2022/ar/FY22_Walmart_Form_10-K.pdf) (last accessed  
25 June 22, 2022).

26 <sup>32</sup> Walmart, ‘Walmart’s Revamped Brand Great Value Brand Delivers Affordably Quality Choices  
27 When Consumers Need Them Most,’  
28 <https://corporate.walmart.com/newsroom/2009/03/15/walmarts-revamped-great-value-brand-delivers-affordable-quality-choices-when-consumers-need-them-most> (last accessed June 22,  
2022).

<sup>33</sup>Dan Ochwat, “Walmart’s Great Value brand earns more than \$27 billion annually,” *Storebrands*  
(Feb. 18, 2020), <https://storebrands.com/walmarts-great-value-brand-earns-more-27-billion-annually> (last accessed June 22, 2022).



1 every transaction. The Products are sold in brick-and-mortar stores and online stores nationwide.

2 65. **HOW:** Defendant omitted from the Products' labeling the fact that they contain (or  
3 risk containing) Heavy Metals. And as discussed in detail throughout this Complaint, Plaintiffs and  
4 Class members read and relied on Defendant's front-label omissions before purchasing the Products.

5 66. **WHY:** Defendant omitted from the Products' labeling the fact that they contain (or  
6 risk containing) Heavy Metals for the express purpose of inducing Plaintiffs and Class members to  
7 purchase the Products at a substantial price premium or more than they would have paid had they  
8 known the truth about the Products. As such, Defendant profited by selling the Products to at least  
9 thousands of consumers throughout the nation, including Plaintiffs and the Class members.

10 **CLASS ACTION ALLEGATIONS**

11 67. Plaintiffs bring this action individually and on behalf of all other persons similarly  
12 situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on the  
13 information obtained throughout discovery. Notwithstanding, at this time, Plaintiffs bring this action  
14 and seek certification of the following proposed classes (collectively, the Classes):

15 **Class:** All persons within the United States who purchased the  
16 Products from the beginning of any applicable limitations period  
through the date of judgment.

17 68. Plaintiffs also bring this action on behalf of the following State Subclass:

18 **California Subclass:** All persons who purchased the Products in  
19 the State of California from the beginning of any applicable  
20 limitations period through the date of judgment. [The Class and  
California Subclass are collectively referred to as the "Classes."]

21 69. Excluded from the proposed Classes are the Defendant, and any entities in which the  
22 Defendant has controlling interest, the Defendant's agents, employees and its legal representatives,  
23 any Judge to whom this action is assigned and any member of such Judge's staff and immediate  
24 family, and all resellers of the Products.

25 70. Plaintiffs reserve the right to amend the definition of the Classes if discovery or  
26 further investigation reveals that the Classes should be expanded or otherwise modified.

27 71. Plaintiffs further reserve the right to amend the above class definition as appropriate  
28 after further investigation and discovery, including by seeking to certify a narrower multi-state class

1 (or classes) in lieu of a nationwide class if appropriate.

2 72. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** At this time, Plaintiffs do  
3 not know the exact number of members of the Classes; however, given the nature of the claims and  
4 the number of retail stores in the United States selling the Products, Plaintiffs believe that the Class  
5 members are so numerous that joinder of all members is impracticable. While the exact number of  
6 Class members remains unknown at this time, upon information and belief, there are thousands, if  
7 not hundreds of thousands, of putative Class members. Moreover, the number of members of the  
8 Classes may be ascertained from Defendant’s books and records. Class members may be notified of  
9 the pendency of this action by mail and/or electronic mail or other appropriate digital means, which  
10 can be supplemented if deemed necessary or appropriate by the Court with published notice.

11 73. **Predominance of Common Questions of Law and Fact – Federal Rule of Civil**  
12 **Procedure 23(a)(2) and 23(b)(3).** There is a well-defined community of interest in the questions of  
13 law and fact involved in this case. Questions of law and fact common to the members of the Classes  
14 that predominate over questions that may affect individual Class members include:

- 15 a. whether the Products contain toxic Heavy Metals;
- 16 b. whether Defendant’s conduct is unethical, oppressive, unscrupulous, and/or  
17 substantially injurious to consumers;
- 18 c. whether the amount of toxic Heavy Metals in the Products is material to a reasonable  
19 consumer;
- 20 d. whether Defendant had a duty to disclose that its Products had toxic Heavy Metals;
- 21 e. whether Plaintiff and members of the Classes are entitled to injunctive and other  
22 equitable relief;
- 23 f. whether Defendant failed to disclose material facts concerning the Products;
- 24 g. whether Defendant’s conduct was unfair and/or deceptive;
- 25 h. whether Defendant has been unjustly enriched as a result of the unlawful, fraudulent,  
26 and unfair conduct alleged in this Complaint such that it would be inequitable for  
27  
28



1 Defendant to retain the benefits conferred upon Defendant by Plaintiffs and the Class  
2 members;

- 3 i. whether Defendant breached implied warranties to Plaintiffs and the Class members;  
4 j. whether Defendant violated California consumer protection and deceptive practice  
5 statutes and are entitled to restitution and/or damages under such state statutes; and  
6 k. whether Plaintiffs and the Class members have sustained damages with respect to the  
7 common-law claims asserted, and if so, the proper measure of their damages.

8 74. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’ claims are typical  
9 of those of the Class members because Plaintiffs, like other Class members, purchased, in a typical  
10 consumer setting, the Products and Plaintiffs sustained damages from Defendant’s wrongful conduct.

11 75. **Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs will fairly and  
12 adequately protect the interests of the Class members and have retained counsel that is experienced  
13 in litigating complex class actions. Plaintiffs have no interests which conflict with those of the  
14 Classes.

15 76. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).**  
16 Absent a class action, Plaintiffs and members of the Classes will continue to suffer the harm  
17 described herein, for which they would have no remedy. Even if separate actions could be brought  
18 by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and  
19 expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and  
20 adjudications that might be dispositive of the interests of similarly situated consumers, substantially  
21 impeding their ability to protect their interests, while establishing incompatible standards of conduct  
22 for Defendant.

23 77. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**  
24 Defendant has acted or refused to act on grounds generally applicable to Plaintiffs and the other  
25 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as  
26 described below, with respect to the members of the Classes as a whole. In particular, Plaintiffs seek  
27 to certify the Classes to enjoin Defendant from selling or otherwise distributing the Products until  
28

1 such time that Defendant can demonstrate to the Court's satisfaction that the Products are accurately  
2 labeled. The prerequisites to maintaining a class action for equitable relief are met as Defendant has  
3 acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate  
4 equitable relief with respect to the Classes as a whole.

5       78. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior  
6 to any other available methods for the fair and efficient adjudication of the present controversy for  
7 at least the following reasons:

- 8       a. The damages suffered by each individual members of the putative Classes do not  
9       justify the burden and expense of individual prosecution of the complex and extensive  
10       litigation necessitated by Defendant's conduct;
- 11       b. Even if individual members of the Classes had the resources to pursue individual  
12       litigation, it would be unduly burdensome to the courts in which the individual  
13       litigation would proceed;
- 14       c. The claims presented in this case predominate over any questions of law or fact  
15       affecting individual members of the Classes;
- 16       d. Individual joinder of all members of the Classes is impracticable;
- 17       e. Absent a Class, Plaintiffs and members of the putative Classes will continue to suffer  
18       harm as a result of Defendant's unlawful conduct; and
- 19       f. This action presents no difficulty that would impede its management by the Court as  
20       a class action, which is the best available means by which Plaintiffs and members of  
21       the putative Classes can seek redress for the harm caused by Defendant.
- 22       g. In the alternative, the Classes may be certified for the following reasons:
  - 23       i. The prosecution of separate actions by individual members of the Classes  
24       would create a risk of inconsistent or varying adjudication with respect to  
25       individual members of the Classes, which would establish incompatible  
26       standards of conduct for Defendant;



1 the toxic Heavy Metals. Accordingly, Plaintiffs and the California Subclass members have suffered  
2 injury in fact and lost money or property as a direct result of Defendant's omissions.

3 84. By committing the acts alleged above, Defendant has engaged in fraudulent business  
4 acts and practices, which constitute unfair competition within the meaning of California Business &  
5 Professions Code §17200.

6 85. In accordance with California Business & Professions Code §17203, Plaintiffs seek  
7 an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent conduct;  
8 and (2) requiring Defendant to conduct a corrective advertising campaign.

9 86. As a result of Defendant's conduct, Plaintiffs seek restitution, disgorgement, and  
10 injunctive relief under California Business & Professions Code §17203.

11 87. Here, equitable relief is appropriate because Plaintiffs may lack an adequate remedy  
12 at law if, for instance, damages resulting from their purchase of the Product is determined to be an  
13 amount less than the premium price of the Product. Without compensation for the full premium price  
14 of the Product, Plaintiffs would be left without the parity in purchasing power to which they are  
15 entitled.

16 88. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
17 provide full and accurate disclosures regarding the Product so that Plaintiffs and California Subclass  
18 members can reasonably rely on Defendant's packaging as well as those of Defendant's competitors  
19 who may then have an incentive to follow Defendant's deceptive practices, further misleading  
20 consumers.

21 89. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
22 than other legal remedies requested herein. The return of the full premium price, and an injunction  
23 requiring either (1) adequate disclosures of the existence of Heavy Metals in the Products; or (2) the  
24 removal of such Heavy Metals from the Products, will ensure that Plaintiffs are in the same place they  
25 would have been in had Defendant's wrongful conduct not occurred, i.e., in the position to make an  
26 informed decision about the purchase of the Products absent omissions with the full purchase price at  
27 their disposal.

**SECOND COUNT**

**California's Unfair Competition Law ("UCL")  
Violation of California Business & Professions Code § 17200 *et seq.*,  
Based on Unlawful Acts and Practices**

1  
2  
3  
4 90. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
5 fully stated herein.

6 91. Plaintiffs bring this claim individually and on behalf of the California Subclass  
7 members.

8 92. The violation of any law constitutes an unlawful business practice under California  
9 Business & Professions Code §17200.

10 93. Defendant has violated §17200's prohibition against engaging in unlawful acts and  
11 practices by, *inter alia*, making omissions of material facts, as set forth more fully herein, and  
12 violating Cal. Civ. Code § 1750 *et seq.*, and by violating the Song-Beverly Act.

13 94. By violating these laws, Defendant has engaged in unlawful business acts and  
14 practices, which constitute unfair competition within the meaning of Business & Professions Code  
15 §17200.

16 95. Plaintiffs purchased the Products in reliance on Defendant's omissions as to the toxic  
17 Heavy Metals contained therein (or the risk of same). Plaintiffs would not have purchased the  
18 Products at all or would have paid less for them had they known of Defendant's omissions. Plaintiffs  
19 and the California Subclass members paid money for the Products. However, Plaintiffs and the  
20 California Subclass members did not obtain the full value, or any value, of the advertised products  
21 due to Defendant's omissions regarding the Products. Accordingly, Plaintiffs and the California  
22 Subclass members have suffered injury in fact and lost money or property as a direct result of  
23 Defendant's omissions.

24 96. In accordance with California Business & Professions Code §17203, Plaintiffs seek  
25 an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent  
26 conduct; and (2) requiring Defendant to conduct a corrective advertising campaign.

27 97. As a result of Defendant's conduct, Plaintiffs seek restitution, disgorgement, and  
28 injunctive relief under California Business & Professions Code §17203.



1           104. Defendant has engaged, and continues to engage, in conduct which is immoral,  
2 unethical, oppressive, unscrupulous, and/or substantially injurious to consumers. This conduct  
3 includes its failure to disclose that the Products contain (or risk containing) toxic Heavy Metals.

4           105. Defendant has engaged, and continues to engage, in conduct that violates the  
5 legislatively declared policies of: (1) California Civil Code §§1572, 1573, 1709, 1710, 1711 against  
6 committing fraud and deceit; and (2) California Civil Code §1750 against committing acts and  
7 practices intended to deceive consumers regarding the representation of goods in certain particulars.  
8 Defendant gained an unfair advantage over its competitors, whose labeling, advertising, and  
9 marketing for other similar products must comply with these laws.

10           106. Defendant's conduct is substantially injurious to consumers. Such conduct has  
11 caused, and continues to cause, substantial injury to consumers because consumers would not have  
12 purchased the Products at all or would have paid less for them but for Defendant's omissions  
13 regarding the presence (or risk) of toxic Heavy Metals in the Products. Such injury is not outweighed  
14 by any countervailing benefits to consumers or competition. Indeed, no benefit to consumers or  
15 competition results from Defendant's conduct. Since consumers reasonably rely on Defendant's  
16 labels, and thus also its omissions, consumers could not have reasonably avoided such injury. *Davis*  
17 *v. Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 597-98 (2009); *see also Drum v. San Fernando*  
18 *Valley Bar Ass'n*, 182 Cal. App. 4th 247, 257 (2010) (outlining the third test based on the definition  
19 of "unfair" in Section 5 of the FTC Act).

20           107. By committing the acts alleged above, Defendant has engaged in unfair business acts  
21 and practices which constitute unfair competition within the meaning of Business & Professions  
22 Code §17200.

23           108. Plaintiffs purchased the Products based on Defendant's labels, which omitted the  
24 presence (or risk) of toxic Heavy Metals in the Products. Plaintiffs would not have purchased the  
25 Products at all or would have paid less for them but for Defendant failing to disclose that they  
26 contained (or risked containing) toxic Heavy Metals. Plaintiffs and the California Subclass members  
27 paid money for the Products. However, Plaintiffs and the California Subclass members did not  
28

1 obtain the full value or any value of the Products due to Defendant's omissions regarding the nature  
2 of said Products. Accordingly, Plaintiffs and the California Subclass members suffered an injury in  
3 fact and lost money or property as a direct result of Defendant's material omissions.

4 109. Because Defendant's conduct is ongoing, Plaintiffs seek an order enjoining Defendant  
5 from continuing to conduct business through its fraudulent conduct and further seek an order  
6 requiring Defendant to conduct a corrective advertising campaign in accordance with California  
7 Business & Professions Code §17203.

8 110. As a result of Defendant's conduct, Plaintiffs seek restitution, disgorgement, and  
9 injunctive relief under California Business & Professions Code §17203.

10 111. Here, equitable relief is appropriate because Plaintiffs may lack an adequate remedy  
11 at law if, for instance, damages resulting from their purchase of the Product is determined to be an  
12 amount less than the premium price of the Product. Without compensation for the full premium price  
13 of the Product, Plaintiffs would be left without the parity in purchasing power to which they are  
14 entitled.

15 112. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
16 provide full and accurate disclosures regarding the Product so that Plaintiffs and Class members can  
17 reasonably rely on Defendant's packaging as well as those of Defendant's competitors who may then  
18 have an incentive to follow Defendant's deceptive practices, further misleading consumers.

19 113. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
20 than other legal remedies requested herein. The return of the full premium price, and an injunction  
21 requiring either (1) adequate disclosures of the existence of Heavy Metals in the Products; or (2) the  
22 removal of such Heavy Metals from the Products, will ensure that Plaintiffs are in the same place they  
23 would have been in had Defendant's wrongful conduct not occurred, i.e., in the position to make an  
24 informed decision about the purchase of the Products absent omissions with the full purchase price at  
25 their disposal.

26 **FOURTH COUNT**

27 **(Violation of California's False Advertising Law, California Business**  
28 **& Professions Code §§ 17500, et seq.)**



1           114. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
2 fully stated herein.

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

5           116. As set forth herein, the Plaintiffs purchased the Products based on Defendant’s labels,  
6 which constituted advertising and which omitted the presence (or risk) of toxic Heavy Metals in the  
7 Products.

8           117. Plaintiffs would not have purchased the Products at all or would have paid less for  
9 them but for Defendant failure to disclose that they contained (or risked containing) toxic Heavy  
10 Metals.

11           118. Plaintiffs and the California Subclass paid money for the Products. However, they  
12 did not obtain the full value or any value of the Products due to Defendant’s omissions regarding the  
13 nature of the Products. Accordingly, Plaintiffs and the California Subclass members suffered an  
14 injury in fact and lost money or property as a direct result of Defendant’s omissions.

15           119. Defendant’s conduct is ongoing and continuing, such that prospective injunctive relief  
16 is necessary, especially given Plaintiffs’ desire to purchase these Products in the future and hope to  
17 rely on Defendant’s marketing and packaging.

18           120. Plaintiffs and members of the California Subclass are entitled to injunctive and  
19 equitable relief, and restitution in the amount they spent on the Products.

20           121. Here, equitable relief is appropriate because Plaintiffs may lack an adequate remedy  
21 at law if, for instance, damages resulting from their purchase of the Product is determined to be an  
22 amount less than the premium price of the Product. Without compensation for the full premium price  
23 of the Product, Plaintiffs would be left without the parity in purchasing power to which they are  
24 entitled.

25           122. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
26 provide full and accurate disclosures regarding the Product so that Plaintiffs and Class members can  
27  
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1 reasonably rely on Defendant’s packaging as well as those of Defendant’s competitors who may then  
2 have an incentive to follow Defendant’s deceptive practices, further misleading consumers.

3 123. Restitution and/or injunctive relief may also be more certain, prompt, and efficient  
4 than other legal remedies requested herein. The return of the full premium price, and an injunction  
5 requiring either (1) adequate disclosures of the existence of Heavy Metals in the Products; or (2) the  
6 removal of such Heavy Metals from the Products, will ensure that Plaintiffs are in the same place they  
7 would have been in had Defendant’s wrongful conduct not occurred, i.e., in the position to make an  
8 informed decision about the purchase of the Products absent omissions with the full purchase price at  
9 their disposal.

10 **FIFTH COUNT**  
11 **California’s Consumer Legal Remedies Act**  
12 **Cal. Civ. Code § 1750 et seq. (“CLRA”)**

13 124. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
14 fully stated herein.

15 125. Plaintiffs bring this claim individually and on behalf of the California Subclass  
16 members.

17 126. Plaintiffs purchased Defendant’s Products for household use.

18 127. The acts and practices of Defendant as described above were intended to deceive  
19 Plaintiffs and the California Subclass members as described herein, and have resulted, and will result,  
20 in damages to Plaintiffs and members of the California Subclass. These actions violated, and  
21 continue to violate, the California Consumers Legal Remedies Act (“CLRA”) in at least the  
22 following respects:

- 23 a. In violation of California Civil Code §1770(a)(5) of the CLRA, Defendant’s acts and  
24 practices constitute omissions that the Products have characteristics, uses, and/or  
25 benefits, which they do not;  
26 b. in violation of California Civil Code §1770(a)(7) of the CLRA, Defendant’s acts and  
27 practices constitute omissions that the Products are of a particular quality, which they  
28 are not; and

1 c. in violation of California Civil Code §1770(a)(9) of the CLRA, Defendant's acts and  
2 practices constitute the advertisement of the goods in question without the intent to  
3 sell them as advertised.

4 128. By committing the acts alleged above, Defendant has violated the CLRA.

5 129. Plaintiffs and the California Subclass members suffered injuries caused by  
6 Defendant's omissions because they were induced to purchase the Products they would not have  
7 otherwise purchased or would have paid less for if they had known that they contained (or risked  
8 containing) toxic Heavy Metals.

9 130. In compliance with the provisions of California Civil Code §1782, Plaintiffs' counsel  
10 sent written notice to Defendant on January 8, 2022, informing Defendant of their intention to seek  
11 damages under California Civil Code §1750, *et seq.* The letter stated that it was sent on behalf of all  
12 other persons similarly situated. Accordingly, Plaintiffs seek damages from Defendant for its  
13 violations of the CLRA. Defendant has failed to respond to or remedy the issues raised in the notice  
14 letter regarding the Products.

15 131. Plaintiffs and the California Subclass members are also entitled to, pursuant to  
16 California Civil Code §1780, an order enjoining the above-described wrongful acts and practices of  
17 Defendant, and any other relief deemed appropriate and proper by the Court under California Civil  
18 Code §1780.

19 132. Here, equitable relief is appropriate because Plaintiffs may lack an adequate remedy  
20 at law if, for instance, damages resulting from their purchase of the Product is determined to be an  
21 amount less than the premium price of the Product. Without compensation for the full premium price  
22 of the Product, Plaintiffs would be left without the parity in purchasing power to which they are  
23 entitled.

24 133. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
25 provide full and accurate disclosures regarding the Product so that Plaintiffs and Class members can  
26 reasonably rely on Defendant's packaging as well as those of Defendant's competitors who may then  
27 have an incentive to follow Defendant's deceptive practices, further misleading consumers.  
28





1 that the Products were of merchantable quality and fit for their ordinary use (consumption by  
2 consumers).

3 151. Defendant impliedly warranted to retail buyers that the Products were merchantable  
4 in that they: (a) would pass without objection in the trade or industry under the contract description,  
5 and (b) were fit for the ordinary purposes for which the Products are used. Defendant breached these  
6 implied warranties because the Products were unsafe and contained (or risked containing) toxic  
7 Heavy Metals. Therefore, the Products would not pass without objection in the trade or industry and  
8 were not fit for the ordinary purpose for which they are used, which is consumption by consumers.

9 152. Plaintiffs and the Class members purchased the Products in reliance upon Defendant's  
10 skill and judgment in properly packaging and labeling the Products.

11 153. The Products were not altered by Plaintiffs or the Class members.

12 154. Defendant knew that the Products would be purchased and used without additional  
13 testing by Plaintiffs and the Class members.

14 155. Defendant was on notice of this breach as it was aware of the inclusion (or risk) of  
15 Heavy Metals in the Products, including based on the public investigation by Consumer Reports that  
16 showed the Products contain Heavy Metals.

17 156. As a direct and proximate cause of Defendant's breach of the implied warranty,  
18 Plaintiffs and the Class members have been injured and harmed because they would not have  
19 purchased the Products or would have paid less for them if they knew the truth about the Products,  
20 namely, that they contained (or risked containing) toxic Heavy Metals.

21 157. On January 8, 2022, Plaintiffs' counsel provided notice to Defendant, apprising  
22 Defendant of its breach of warranties. This letter was sent on behalf of all "similarly situated  
23 purchasers." Defendant did not respond.

24 158. Plaintiffs, on behalf of themselves and the members of the Classes, seek actual  
25 damages for Defendant's failure to deliver goods that conform to its implied warranties and resulting  
26 breach.

**EIGHTH COUNT**  
**Fraud**

1  
2           159. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
3 fully stated herein.

4           160. Plaintiffs bring this claim individually and on behalf of the members of the Class and,  
5 in the alternative, the California Subclass against Defendant.

6           161. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n alleging fraud or  
7 mistake, a party must state with particularity the circumstances constituting fraud or mistake.” To  
8 the extent necessary, as detailed in the paragraphs above and below, Plaintiffs have satisfied the  
9 requirements of Rule 9(b) by establishing the following elements with sufficient particularity:

- 10           a. **WHO**: Defendant made omissions of fact in its packaging of the Products  
11 by omitting the presence (or risk) of Heavy Metals.
- 12           b. **WHAT**: Defendant’s conduct was and continues to be fraudulent and  
13 deceptive because it has the effect of deceiving consumers into believing  
14 that the Products do not contain (or risk containing) Heavy Metals.  
15 Defendant omitted from Plaintiffs and Class members that the Products  
16 contain (or risk containing) Heavy Metals. Defendant knew or should have  
17 known this information is material to all reasonable consumers and impacts  
18 consumers’ purchasing decisions. Yet, Defendant has omitted from the  
19 Products’ labeling the fact that they contain (or risk containing) Heavy  
20 Metals.
- 21           c. **WHEN**: Defendant made omissions detailed herein, including omitting that  
22 the Products do contain (or risk containing) Heavy Metals, continuously  
23 throughout the applicable relevant periods.
- 24           d. **WHERE**: Defendant’s omissions were made on the front labeling and  
25 packaging of the Products and were thus viewed by every purchaser,  
26 including Plaintiffs, at the point of sale in every transaction. The Products  
27 are sold in brick-and-mortar stores and online stores nationwide.  
28

- 1 e. **HOW:** Defendant omitted from the Products' labeling the fact that they  
2 contain (or risk containing) Heavy Metals. And as discussed in detail  
3 throughout this Complaint, Plaintiffs and Class members read and relied on  
4 Defendant's front-label omissions before purchasing the Products.
- 5 f. **WHY:** Defendant omitted from the Products' labeling the fact that they  
6 contain (or risk containing) Heavy Metals for the express purpose of  
7 inducing Plaintiffs and Class members to purchase the Products at a  
8 substantial price premium or more than they would have paid had they  
9 known the truth about the Products. As such, Defendant profited by selling  
10 the Products to at least thousands of consumers throughout the nation,  
11 including Plaintiffs and the Class members.

12 162. As alleged herein, Defendant made these material omissions in order to induce  
13 Plaintiffs and Class members to purchase the Products.

14 163. As alleged in detail herein, Defendant knew the omissions regarding the Products  
15 were false and misleading but nevertheless made such omissions on the Products' labeling. In  
16 reliance on these omissions, Plaintiffs and Class members were induced to, and did, pay monies to  
17 purchase the Products.

18 164. Had Plaintiffs and the Class members known the truth about the Products, they would  
19 not have purchased them or would have paid less for them.

20 165. As a proximate result of the fraudulent conduct of Defendant, Plaintiffs and Class  
21 members paid monies to Defendant, through its regular retail sales channels, to which Defendant is  
22 not entitled, and have been damaged in an amount to be proven at trial.

23 **NINTH COUNT**  
24 **Unjust Enrichment**

25 166. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
26 fully stated herein.

27 167. Plaintiffs bring this claim individually and on behalf of the members of the Class and,  
28 in the alternative, the California Subclass against Defendant either together or in the alternative to



1 the legal claims asserted above.

2 168. Plaintiffs and the Class members conferred a benefit on Defendant in the form of the  
3 gross revenues Defendant derived from the money they paid to Defendant.

4 169. Defendant had an appreciation or knowledge of the benefit conferred on it by  
5 Plaintiffs and the Class members.

6 170. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs  
7 and the Class members' purchases of the Products, which retention of such revenues under these  
8 circumstances is unjust and inequitable because Defendant omitted that the Products contained (or  
9 risked containing) toxic Heavy Metals. This caused injuries to Plaintiffs and members of the Classes  
10 because they would not have purchased the Products or would have paid less for them if the true  
11 facts concerning the Products had been known.

12 171. Defendant accepted and retained the benefit in the amount of the gross revenues it  
13 derived from sales of the Products to Plaintiffs and the Class members.

14 172. Defendant has thereby profited by retaining the benefit under circumstances which  
15 would make it unjust for Defendant to retain the benefit.

16 173. Plaintiffs and the Class members are, therefore, entitled to restitution in the form of  
17 the revenues derived from Defendant's sale of the Products.

18 174. As a direct and proximate result of Defendant's actions, Plaintiffs and Class members  
19 have suffered in an amount to be proven at trial.

20 175. Here, equitable relief is appropriate because Plaintiffs may lack an adequate remedy  
21 at law if, for instance, damages resulting from their purchase of the Product is determined to be an  
22 amount less than the premium price of the Product. Without compensation for the full premium price  
23 of the Product, Plaintiffs would be left without the parity in purchasing power to which they are  
24 entitled.

25 176. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
26 provide full and accurate disclosures regarding the Product so that Plaintiffs and Class members can  
27

1 reasonably rely on Defendant's packaging as well as those of Defendant's competitors who may then  
2 have an incentive to follow Defendant's deceptive practices, further misleading consumers.

3 177. Restitution may also be more certain, prompt, and efficient than other legal remedies  
4 requested herein. The return of the full premium price will ensure that Plaintiffs are in the same place  
5 they would have been in had Defendant's wrongful conduct not occurred, i.e., in the position to make  
6 an informed decision about the purchase of the Products absent omissions with the full purchase price  
7 at their disposal.

8 **TENTH COUNT**  
9 **(Negligent Failure to Warn)**

10 178. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if  
11 fully stated herein.

12 179. Plaintiffs bring this claim individually and on behalf of the Class and, in the  
13 alternative, the California Subclass.

14 180. At all relevant times, Defendant was responsible for manufacturing, inspecting,  
15 distributing, labeling, marketing, advertising, and/or selling the Products and its packaging. At all  
16 relevant times, it was reasonably foreseeable by Defendant that the use of the Products in their  
17 intended manner involved substantial risk of injury and was unreasonably dangerous to Plaintiffs  
18 and the Class members as the ultimate users of the Products.

19 181. At all relevant times, Defendant knew or had reason to know of the risk of injury and  
20 the resultant harm that the Products posed to Plaintiffs and the Class members, as the problems  
21 discussed throughout existed at the time of its manufacturing, inspection, distribution, labeling,  
22 marketing, advertising, and/or sale.

23 182. Defendant as the manufacturer, tester, distributor, marketer, advertiser, and/or seller  
24 of the Products had a duty to warn Plaintiffs and the Class members of all dangers associated with  
25 the intended use of the Products.

26 183. At a minimum, the duty arose for Defendant to warn consumers that the use of the  
27 Products was unreasonably dangerous.  
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