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

JENNIFER MIKALACKI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

BINDLE BOTTLE LLC

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Jennifer Mikalacki (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, alleges the following against Defendant Bindle Bottle LLC (“Bindle” or “Defendant”).  
3 Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon  
4 information and belief, except as to the allegations specifically pertaining to herself, which are based  
5 on personal knowledge.

### 6 **NATURE OF THE ACTION**

7 1. This is a class action against Defendant Bindle Bottle LLC for the manufacture and  
8 sale of Bindle Bottles (“Bindle Bottles” or “the Products”), all of which suffer from an identical  
9 defect. The Products are defective because they contain extremely high levels of lead, a dangerous  
10 neurotoxin (the “Defect”). The Defect renders the Products unsuitable for their principal and  
11 intended purpose and therefore the Products are completely worthless at the point of purchase.

12 2. Based on Defendant’s own words—as written in its ineffective and, at best,  
13 mismanaged recall—“[a]cute lead poisoning may cause a wide range of symptoms, including  
14 abdominal pain, muscle weakness, nausea, vomiting, diarrhea, weight loss, and bloody or decreased  
15 urinary output. Children are particularly vulnerable to lead poisoning. If a child is exposed to lead  
16 for a protracted period of time (e.g., weeks to months) permanent damage to the central nervous  
17 system can occur. This can result in learning disorders, developmental defects, and other long-term  
18 health problems. Clinical signs in dogs with acute lead poisoning may include lethargy, anorexia,  
19 behavioral changes, ataxia (wobbly gait), tremors, and seizures.”

20 3. In addition, the Products contain, or risk containing, bisphenol A (“BPA”), a chemical  
21 linked to fertility problems and certain cancers, despite Defendant’s express representations that the  
22 bottles are “100% BPA FREE.”

23 4. Despite these risks, Defendant has rested on its laurels, asking the CPSC, FDA, and  
24 the media to do its bidding. But these efforts have been unsuccessful. Defendant’s disastrous recall  
25 has left consumers uninformed and confused. Defendant began its recall offering one remedy—a  
26 refund—only to replace that remedy with another, an ineffective repair that few consumers have  
27 taken advantage of given their loss of trust in Bindle and continued concerns that Defendant has  
28

1 underreported the gravity of the problem. After all, no reasonable consumer—of the few who did  
2 hear of Defendant’s recall—would desire to continue using Defendant’s Products given the serious  
3 risks posed to their health.

4 5. Consequently, consumers are still very much at risk of severe health problems  
5 attributed to the Defect.

6 6. Plaintiff brings claims against Defendant individually and on behalf of a class of all  
7 other similarly situated purchasers of the Products for violations of California consumer protection  
8 laws, breach of implied warranty under the Song-Beverly Act, fraud, and Unjust Enrichment

9 **PARTIES**

10 7. Plaintiff Jennifer Mikalacki is a resident of Oakland, California and a citizen of the  
11 State of California. Plaintiff purchased Defendant’s Products twice. First, in approximately May  
12 2019, Plaintiff purchased two 24oz Bindle Bottles online from Amazon. In addition, Plaintiff  
13 purchased one 20oz Bindle Bottle from Defendant’s online website.

14 8. Prior to her purchase, Ms. Mikalacki saw that Defendant’s Products could be used  
15 safely as bottles for drinking water and other of her chosen beverages. Ms. Mikalacki saw and  
16 appreciated that Defendant’s bottles were BPA free, and took that as a representation and warranty  
17 that Defendant ensured that its Products were in fact free of BPA. Ms. Mikalacki did so because she  
18 cares about the presence of BPA and other contaminants even if in small amounts. Accordingly,  
19 those representations and warranties were part of the basis of the bargain in that she would not have  
20 purchased the Products or would not have purchased them on the same terms if the true facts about  
21 their contents had been known.

22 9. Plaintiff would not have purchased the Products had she known that the Products  
23 suffered from the Defect. Upon learning of the Defect, Plaintiff stopped using the Products and still  
24 has unused Products in her possession. Because of the Defect, Plaintiff can no longer use the  
25 Products and, accordingly, has suffered economic loss.





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16. Defendant sells these bottles in a variety of sizes.

17. Unfortunately for consumers who purchased these Products, they were not purchasing products as marketed and sold and that would enable them to safely use the bottles.

18. Indeed, the Products are defective because they pose a significant risk in that they contain exceedingly high amounts of lead, a neurotoxin. The Defect renders the Products unsuitable for the principal and intended purpose, and thus the Products are worthless at the point of sale.

19. On February 10, 2023, a report was published by Consumer Reports, in which it tested three Bindle Bottles for lead. Specifically, Consumer Reports “tested the ‘sealing dot,’ a circle of solder in the bottom storage compartment of the bottle that holds the parts of the bottle together.”<sup>1</sup>

20. The test results demonstrated that “the lead content of the dot ranged from 90,800 parts per million to 155,000 parts per million.”<sup>2</sup>

21. Ashita Kapoor, an associate director of product safety at Consumer Reports who oversaw the tests, noted that the Bindle Bottles had “exposed lead levels that are approximately **1,100 times that of the levels legally allowed** in many consumer products.”

22. In addition, the report noted that “[a]nything that touches [the sealing dot] directly can get contaminated with lead, and lead dust can get on whatever is in the bottle just by being near it.”

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<sup>1</sup> CITE

<sup>2</sup> *Id.* (emphasis added).

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

10 24. Upon being informed of the Consumer Reports testing, Defendant first announced on  
11 its website that “we are offering existing customers a full refund.”<sup>6</sup>

#### CONSUMER SAFETY

12  
13 Bindle Bottle LLC

14 02/09/2023

15 We have learned that a small soldering dot in the bottom storage area of our bottles contains lead. While we believe this poses a negligible health risk to our customers, we are offering existing customers a full refund. In addition, we are working on a solution that will retrofit existing bottles by making this soldering dot completely inaccessible. Please note that if your bottle has a black rubber disk (about the size of a penny) in the bottom storage area, then you received the new bottle design and do not have any accessible lead in the storage area.

16 We want you all to know that we are willing to do whatever is necessary to deliver on our main priority, which is the safety and best interests of our customers.

17 Please email us at [info@bindlebottle.com](mailto:info@bindlebottle.com) using the format below so we can quickly and accurately process your request.

18 Name:

19 Order Number:

20 Shipping Address:

21 25. Then, Defendant immediately modified its stance on providing refunds, removing the  
22 above statement from its website, leaving consumers confused, frustrated, and unsure of how to  
23 proceed.

24 <sup>3</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 Apr. 7, 2022).

25 <sup>4</sup> Centers for Disease Control and Prevention, “Health Problems Caused by Lead,” *The National 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 Apr. 7, 2022).

26 <sup>5</sup> State of New York Department of Health, “Lead Exposure in Adults: A Guide for Health Care Providers,” <https://www.health.ny.gov/publications/2584.pdf> (last accessed Apr. 7, 2022).

27 <sup>6</sup> See <https://web.archive.org/web/20230217072428/https://bindlebottle.com/pages/consumer-safety> (Last accessed Feb. 27, 2023).

1           26. In its current iteration of the recall, Defendant solely offers an at-home repair kit.  
2 That is, consumers are not given the option of obtaining a refund. Instead, consumers must trust that  
3 Defendant has isolated the scope of the problem and provided an effective repair—a momentous ask  
4 from a company that has inordinately abused the public’s trust.

5           27. In addition, Defendant has taken down its return policy from its website, which had  
6 stated that “Products purchased on the Bindle Bottle website can be returned to Bindle Bottle for a  
7 full refund within 30 days of the purchase date.”<sup>7</sup>

## RETURNS

### *Policy and Procedure*

We want you to be completely satisfied with your Bindle Bottle and your overall Bindle Bottle experience. Products purchased on the Bindle Bottle website can be returned to Bindle Bottle for a full refund within 30 days of the purchase date. In order to be eligible for return, products must be in an unused condition with their original packaging intact.

Feel free to contact us at [hello@bindlebottle.com](mailto:hello@bindlebottle.com) for any additional questions on exchanges and refunds. Please note that products must be in the condition in which they were originally received for us to successfully process your exchange or refund. Used bottles are not eligible for returns.

Returned items should be shipped to the address below for processing:

Bindle Bottle  
Attn: Returns  
1620 Hygeia Ave  
Encinitas, CA 92024

\*\*All international sales are final\*\*

Cheers!

The Bindle Bottle Team

16           28. Defendant has denied consumers the ability to obtain adequate relief, despite its initial  
17 statement that a full refund was the adequate remedy.

18           29. Accordingly, Defendant’s voluntary recall is willfully inadequate.

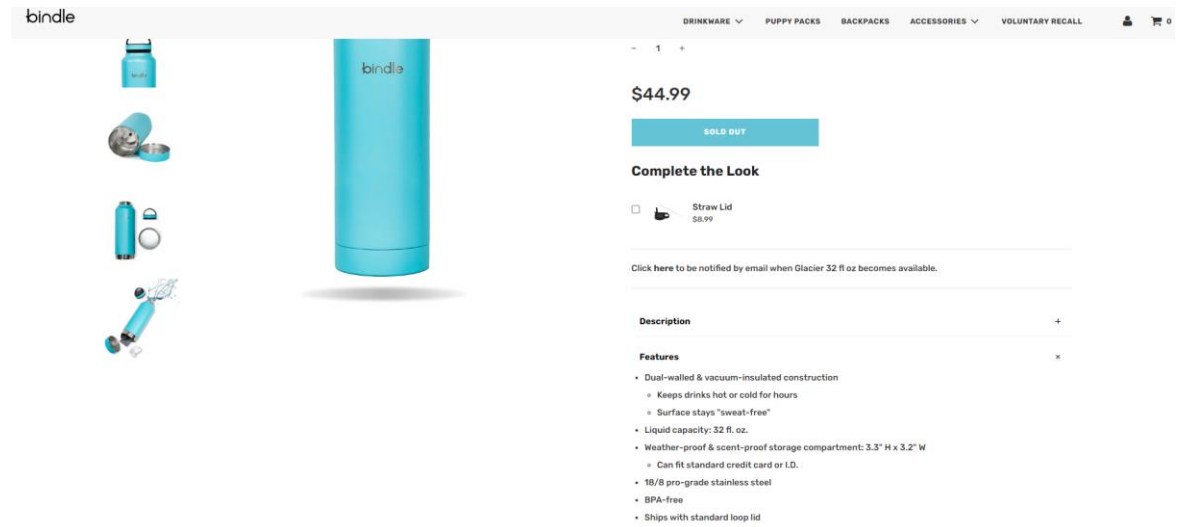
## II. Bindle Bottles Contain (or risk containing) BPA

19           30. In addition, Consumer Reports tested the outside of the three Bindle Bottles for BPA,  
20 a “chemical linked to fertility problems and certain cancers.”  
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22           31. In doing so, Consumer Reports detected the presence of BPA in two of the three  
23 bottles.

24           32. Critically, Defendant expressly represents on the Products packaging that the bottles  
25 are “100% BPA Free.”  
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27 <sup>7</sup> <https://web.archive.org/web/20221130022306/https://bindlebottle.com/pages/returns> (last  
28 accessed Feb. 27, 2023).



33. In addition, Defendant states on its website that the Products are “BPA-free.”

34. The foregoing statements on the website and the label demonstrate that Defendant knows that reasonable consumers consider it important that the Products are safe and free from BPA.

35. Based on Defendant’s decision to tout the Products as trustworthy as well as the fact that the existence of BPA pertains to matters of safety, Defendant had a duty to tell the full truth about the presence (or risk) of BPA.

36. Accordingly, Defendant’s marketing and labeling of the Products is materially deceptive, false and misleading given Defendant’s omission about the presence (or risk) of BPA as described above.

**CLASS ACTION ALLEGATIONS**

37. Plaintiff brings this action individually and on behalf of all other persons similarly situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this action and seeks certification of the following proposed classes (collectively, the Classes):

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

38. Plaintiff also brings this action on behalf of the following State Subclass:



1                   **California Subclass:** All persons who purchased the Products in  
2                   the State of California from the beginning of any applicable  
                    limitations period through the date of judgment.

3                   39.       Excluded from the proposed Classes are the Defendant, and any entities in which the  
4                   Defendant has controlling interest, the Defendant’s agents, employees and its legal representatives,  
5                   any Judge to whom this action is assigned and any member of such Judge’s staff and immediate  
6                   family, and all resellers of the Products.

7                   40.       Plaintiff reserves the right to amend the definition of the Classes if discovery or  
8                   further investigation reveals that the Classes should be expanded or otherwise modified.

9                   41.       Plaintiff further reserves the right to amend the above class definitions as appropriate  
10                  after further investigation and discovery, including by seeking to certify a narrower multi-state class  
11                  (or classes) in lieu of a nationwide class if appropriate.

12                  42.       **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** At this time, Plaintiff does  
13                  not know the exact number of members of the Classes; however, given the nature of the claims and  
14                  the number of retail stores in the United States selling the Products, Plaintiff believes that the Class  
15                  members are so numerous that joinder of all members is impracticable. While the exact number of  
16                  Class members remains unknown at this time, upon information and belief, there are thousands, if  
17                  not hundreds of thousands, of putative Class members. Moreover, the number of members of the  
18                  Classes may be ascertained from Defendant’s books and records. Class members may be notified of  
19                  the pendency of this action by mail and/or electronic mail or other appropriate digital means, which  
20                  can be supplemented if deemed necessary or appropriate by the Court with published notice.

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

- 25                   a.    whether the Products contain lead;  
26                   b.    whether the Products contain BPA;

- c. whether Defendant's conduct is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers;
- d. whether Defendant misrepresented and/or failed to disclose material facts concerning the Products;
- e. whether Defendant had been unjustly enriched as a result of the unlawful conduct alleged in this Complaint such that it would be inequitable for Defendant to retain the benefits conferred upon Defendant by Plaintiff and the Class;
- f. whether Plaintiff and members of the Classes are entitled to injunctive and other equitable relief;
- g. whether Defendant made misrepresentations and/or failed to disclose material facts concerning the Products;
- h. whether Defendant's conduct was unfair and/or deceptive;
- i. whether Defendant breached implied warranties to Plaintiff and the Class members;
- j. whether Defendant violated California consumer protection, and deceptive practice statutes and are entitled to damages under such state statutes; and
- k. whether Plaintiff and the Class members have sustained damages with respect to the common-law claims asserted, and if so, the proper measure of their damages.

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

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

46. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a class action, Plaintiff and members of the Classes will continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the

1 Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might  
2 be dispositive of the interests of similarly situated consumers, substantially impeding their ability to  
3 protect their interests, while establishing incompatible standards of conduct for Defendant.

4       **47. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**  
5 Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other  
6 members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as  
7 described below, with respect to the members of the Classes as a whole. In particular, Plaintiff seeks  
8 to certify the Classes to enjoin Defendant from selling or otherwise distributing the Products until  
9 such time that Defendant can demonstrate to the Court’s satisfaction that the Products are accurately  
10 labeled. The prerequisites to maintaining a class action for equitable relief are met as Defendant has  
11 acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate  
12 equitable relief with respect to the Classes as a whole.

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

- 16       a. The damages suffered by each individual members of the putative Classes do not  
17       justify the burden and expense of individual prosecution of the complex and extensive  
18       litigation necessitated by Defendant’s conduct;
  - 19       b. Even if individual members of the Classes had the resources to pursue individual  
20       litigation, it would be unduly burdensome to the courts in which the individual  
21       litigation would proceed;
  - 22       c. The claims presented in this case predominate over any questions of law or fact  
23       affecting individual members of the Classes;
  - 24       d. Individual joinder of all members of the Classes is impracticable;
  - 25       e. Absent a Class, Plaintiff and members of the putative Classes will continue to suffer  
26       harm as a result of Defendant’s unlawful conduct; and
- 27  
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- 1 f. This action presents no difficulty that would impede its management by the Court as  
2 a class action, which is the best available means by which Plaintiff and members of  
3 the putative Classes can seek redress for the harm caused by Defendant.
- 4 g. In the alternative, the Classes may be certified for the following reasons:
- 5 i. The prosecution of separate actions by individual members of the Classes  
6 would create a risk of inconsistent or varying adjudication with respect to  
7 individual members of the Classes, which would establish incompatible  
8 standards of conduct for Defendant;
- 9 ii. Adjudications of claims of the individual members of the Classes against  
10 Defendant would, as a practical matter, be dispositive of the interests of other  
11 members of the putative Classes who are not parties to the adjudication and  
12 may substantially impair or impede the ability of other putative Class  
13 Members to protect their interests; and
- 14 iii. Defendant has acted or refused to act on grounds generally applicable to the  
15 members of the putative Classes, thereby making appropriate final and  
16 injunctive relief with respect to the putative Classes as a whole.

17 **CAUSES OF ACTION**

18 **FIRST COUNT**

19 **California's Unfair Competition Law ("UCL")**  
20 **Violation of California Business & Professions Code § 17200 *et seq.*,**  
21 **Based on Fraudulent Acts and Practices**  
22 **(On behalf of Plaintiff and the Classes)**

23 49. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
24 fully stated herein.

25 50. Plaintiff brings this claim individually and on behalf of the Class and California  
26 Subclass members.

27 51. Under California Business & Professions Code §17200, any business act or practice  
28 that is likely to deceive members of the public constitutes a fraudulent business act or practice.



1           58. Plaintiff brings this claim individually and on behalf of the Class and California  
2 Subclass members.

3           59. The violation of any law constitutes an unlawful business practice under California  
4 Business & Professions Code §17200.

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

8           61. By violating these laws, Defendant has engaged in unlawful business acts and  
9 practices, which constitute unfair competition within the meaning of Business & Professions Code  
10 §17200.

11           62. Plaintiff purchased the Products in reliance on Defendant's material  
12 misrepresentations and omissions. Plaintiff would not have purchased the Products at all or would  
13 have paid less for them had they known of Defendant's misrepresentations and omissions. Plaintiff  
14 and the Class and California Subclass members paid money for the Products. However, Plaintiff and  
15 the California Subclass members did not obtain the full value, or any value, of the advertised products  
16 due to Defendant's material misrepresentations and omissions regarding the Products. Accordingly,  
17 Plaintiff and the California Subclass members have suffered injury in fact and lost money or property  
18 as a direct result of Defendant's material misrepresentations and omissions.

19           63. In accordance with California Business & Professions Code §17203, Plaintiff seeks  
20 an order: (1) enjoining Defendant from continuing to conduct business through its fraudulent  
21 conduct; (2) requiring Defendant to conduct a corrective advertising campaign; and (3) requiring  
22 Defendant to issue an effective recall of the Products, providing Class members with full refunds for  
23 the purchase of the Products.

24           64. As a result of Defendant's conduct, Plaintiff seeks restitution, disgorgement, and  
25 injunctive relief under California Business & Professions Code §17203.  
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**THIRD COUNT**

**California’s Unfair Competition Law (“UCL”)  
Violation of California Business & Professions Code § 17200 *et seq.*,  
Based on Unfair Acts and Practices  
(On behalf of Plaintiff and the Classes)**

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65. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

66. Plaintiff brings this claim individually and on behalf of the Class and Subclass members.

67. By committing the acts and practices alleged herein, Defendant has violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210, as to the California Subclass, by engaging in unfair conduct.

68. As more fully described above, Defendant’s acts and practices described above also violate the UCL’s proscription against engaging in unfair conduct.

69. Plaintiff and the other Class and Subclass members suffered a substantial injury by virtue of buying the Products that they would not have purchased absent Defendant’s unfair manufacture, distribution, and sale of the defective and worthless Products.

70. There is no benefit to consumers or competition from unfairly manufacturing, distributing, and selling the defective and worthless Products.

71. Plaintiff and the other Class and Subclass members had no way of reasonably knowing that the Products they purchased were not defective because Defendant has exclusive knowledge of the Defect. Thus, they could not have reasonably avoided the injury each of them suffered.

72. The gravity of the consequences of Defendant’s conduct as described above outweighs any justification, motive, or reason therefore, particularly considering the available legal alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous, offends established public policy, or is substantially injurious to Plaintiff and the other members of the Class and Subclass.







1 be “merchantable” under the Act, it must satisfy both of these elements. Defendant breached these  
2 implied warranties because the Products were unsafe and contained lead and contained (or risked  
3 containing) BPA. Therefore, the Products would not pass without objection in the trade or industry  
4 and were not fit for the ordinary purpose for which they are used, which is consumption by  
5 consumers.

6 89. Plaintiff and the California Subclass members purchased the Products in reliance  
7 upon Defendant’s skill and judgment in properly packaging and labeling the Products.

8 90. The Products were not altered by Plaintiff or the California Subclass members.

9 91. Defendant knew that the Products would be purchased and used without additional  
10 testing by Plaintiff and the California Subclass members.

11 92. As a direct and proximate cause of Defendant’s breach of the implied warranty,  
12 Plaintiff and the California Subclass members have been injured and harmed because they would not  
13 have purchased the Products or would have paid less for them if they knew the truth about the  
14 Products, namely, that they contained lead and contained (or risk containing) BPA.

15 **SIXTH COUNT**

16 **Fraud**

17 **(On Behalf of Plaintiff and the Classes)**

18 93. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if  
19 fully stated herein.

20 94. Plaintiff brings this claim individually and on behalf of the Classes under California  
21 law.

22 95. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n alleging fraud or  
23 mistake, a party must state with particularity the circumstances constituting fraud or mistake.” To  
24 the extent necessary, as detailed in the paragraphs above and below, Plaintiff has satisfied the  
25 requirements of Rule 9(b) by establishing the following elements with sufficient particularity:

- 26 a. **WHO**: Defendant made material misrepresentations and omissions of fact  
27 in its packaging of the Products omitting the presence of lead, and by  
28 omitting the presence (or risk) of BPA.

- 1                   b. **WHAT**: Defendant’s conduct was and continues to be fraudulent and  
2                   deceptive because it has the effect of deceiving consumers into believing  
3                   that the Products do not contain lead and do not contain (or risk containing)  
4                   BPA. Defendant omitted from Plaintiff and Class members that the Products  
5                   contain lead and omitted that the Products contain (or risk containing) BPA.  
6                   Defendant knew or should have known this information is material to all  
7                   reasonable consumers and impacts consumers’ purchasing decisions. Yet,  
8                   Defendant has omitted from the Products’ labeling the fact that they contain  
9                   lead and omitted from the Products’ labeling the fact that they contain (or  
10                  risk containing) BPA.
- 11                  c. **WHEN**: Defendant made material misrepresentations and omissions  
12                  detailed herein, including omitting that the Products do contain lead and do  
13                  contain (or risk containing) BPA, continuously throughout the applicable  
14                  relevant periods.
- 15                  d. **WHERE**: Defendant’s misrepresentations and omissions were made on the  
16                  front labeling and packaging of the Products and were thus viewed by every  
17                  purchaser, including Plaintiff, at the point of sale in every transaction. The  
18                  Products are sold online nationwide.
- 19                  e. **HOW**: Defendant made misrepresentations and omitted from the Products’  
20                  labeling the fact that they contain lead and contain (or risk containing) BPA.  
21                  And as discussed in detail throughout this Complaint, Plaintiff and Class  
22                  members read and relied on Defendant’s label misrepresentations and  
23                  omissions before purchasing the Products.
- 24                  f. **WHY**: Defendant made misrepresentations and omitted from the Products’  
25                  labeling the fact that they contain lead and contain (or risk containing) BPA  
26                  for the express purpose of inducing Plaintiff and Class members to purchase  
27                  the Products at a substantial price premium or more than they would have  
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1 paid had they known the truth about the Products. As such, Defendant  
2 profited by selling the Products to at least thousands of consumers  
3 throughout the nation, including Plaintiff and the Class members.

4 96. As alleged herein, Defendant made these material misrepresentations and omissions  
5 in order to induce Plaintiff and Class members to purchase the Products.

6 97. As alleged in detail herein, Defendant knew the misrepresentations and omissions  
7 regarding the Products were false and misleading but nevertheless made such misrepresentations and  
8 omissions on the Products' labeling. In reliance on these misrepresentations and omissions, Plaintiff  
9 and Class members were induced to, and did, pay monies to purchase the Products.

10 98. Had Plaintiff and the Class members known the truth about the Products, they would  
11 not have purchased them or would have paid less for them.

12 99. As a proximate result of the fraudulent conduct of Defendant, Plaintiff and Class  
13 members paid monies to Defendant, through its regular retail sales channels, to which Defendant is  
14 not entitled, and have been damaged in an amount to be proven at trial.

15 **SEVENTH COUNT**

16 **Violation of California's Consumers Legal Remedies Act ("CLRA"),**  
17 **California Civil Code § 1750, et seq.**  
18 **(On behalf of Plaintiff and the Classes)**  
19 **(Injunctive Relief Only)**

20 100. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

21 101. Plaintiff brings this claim individually and on behalf of the members of the proposed  
22 California Subclass against Defendant.

23 102. Civil Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have  
24 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
25 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
26 does not have." Civil Code § 1770(a)(7) prohibits "[r]epresenting that goods or services are of a  
27 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
28 another." Civil Code § 1770(a)(9) prohibits "advertising goods or services with intent not to sell  
them as advertised."



1 unfit for use as bottles. These omissions caused injuries to Plaintiff and Class members because they  
2 would not have purchased the Products if the true facts were known.

3 113. Retention of those moneys also is unjust and inequitable because, as alleged above,  
4 Defendant commenced an ineffective recall that was calculated to result in no refunds, thereby  
5 protecting profits Defendant collected from selling the defective products.

6 114. Plaintiff and members of the putative class have been injured as a direct and proximate  
7 result of Defendant's inequitable conduct. Plaintiff and members of the putative class lack an  
8 adequate remedy at law with respect to this claim and are entitled to non-restitutionary disgorgement  
9 of the financial profits that Defendant obtained as a result of its unjust conduct.

10 115. Plaintiff and the members of the Classes have suffered an injury in fact resulting from  
11 the loss of money and/or property as a proximate result of the violations of law and wrongful conduct  
12 of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct  
13 at issue here. Legal remedies available to Plaintiff and class members are inadequate because they  
14 are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not  
15 equally certain as restitution because the standard that governs restitution is different than the  
16 standard that governs damages. Hence, the Court may award restitution even if it determines that  
17 Plaintiff fails to sufficiently adduce evidence to support an award of damages. Damages and  
18 restitution are not the same amount. Unlike damages, restitution is not limited to the amount of  
19 money Defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including  
20 restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where the original  
21 funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for  
22 damages are not equally certain as restitution because claims under the UCL entail few elements. In  
23 short, significant difference in proof and certainty establish that any potential legal claim cannot  
24 serve as an adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully request that the Court grant Plaintiff and all members of the proposed Classes the following relief against Defendant:

- a. That the Court certify the Classes under Rule 23 of the Federal Rules of Civil Procedure and appoint Plaintiff as Class Representatives and their attorneys as Class Counsel to represent the members of the Classes;
- b. That the Court declare that Defendant’s conduct violates the statutes referenced herein;
- c. That the Court preliminarily and permanently enjoin Defendant from conducting business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and misleading labeling and marketing and other violations of law described in this Complaint;
- d. That the Court order Defendant to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;
- e. That the Court order Defendant to notify each and every individual who purchased the Products of the pendency of the claims in this action to give such individuals an opportunity to obtain restitution from Defendant;
- f. For an award of compensatory damages, the amount of which is to be determined at trial;
- g. For punitive damages;
- h. That the Court grant Plaintiff’s reasonable attorneys’ fees and costs of suit pursuant to California Code of Civil Procedure §1021.5, California Civil Code §1780(d), the common fund doctrine, and/or any other appropriate legal theory; and
- i. That the Court grant such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: February 27, 2023

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ Sean L. Litteral  
Sean L. Litteral

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